REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND 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 2020/2021

The National Assemly
(TABLE OFFICE)
Report as Adopted by the
28 FEB 2024
House on the ....Day
of ....20...............

DIRECTORATE OF AUDIT, APPROPRIATIONS
& OTHER SELECT COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2023

LIST OF ABBREVIATIONS/ACRONYMS

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 first 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) management responses 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 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. CPA JOHN MBADI NG'ONG'O, EGH, MP
CHAIRMAN, 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 2020/21.

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 this 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, Commission or Agency; the specific audit reservations raised by the Auditor-General; management response 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 fourteen (14) Members;

i. The Hon. CPA John Mbadi Ng'ong'o, EGH, MP – **Chairperson**
ii. The Hon. Nicholas Tindi S. Mwale, MP – **Vice Chairperson**
iii. The Hon. Eckomas Mwengi Mutuse, OGW, MP
iv. The Hon. (Dr.) Otiende Amollo, SC, EBS, MP
v. The Hon. (Dr.) Wilberforce Ojiambo Oundo, MP
vi. The Hon. Samuel Kinuthia Gachobe, MP
vii. The Hon. Amina Udgoon Siyad, MP
viii. The Hon. David Kiplagat, MP
ix. The Hon. (Dr.) Edwin Mugo Gichuki, MP
x. The Hon. Gabriel Gathuka Kagombe, MP
xi. The Hon. Mohamed Aden Adow, MP
xii. The Hon. Nabwera Daraja Nabii, MP
xiii. The Hon. Victor Kipng'etich Koech, MP
xiv. The Hon. Yakub Adow Kuno, MP

The Committee makes special mention of the late **Hon. Hassan Kulow Maalim** whose untimely demise cut short his membership to the Committee.

1.2 Committee Secretariat

3) The secretariat facilitating the Committee comprises the following technical staff;

i. Mr. Victor Weke	-	Senior Clerk Assistant/Lead Clerk
ii. Mr. Abdiraman G. Hassan	-	Clerk Assistant I
iii. Ms. Lilian Mwikali Mutiso	-	Clerk Assistant III
iv. Mr. Nimrod Mate	-	Clerk Assistant III
v. CPA. Cyrille Mutali	-	Fiscal Analyst III
vi. Mr. Henry Gichana	-	Research Officer III
vii. Mr. Lenny Muchangi	-	Legal Counsel II
viii. Mr. Mark Mbuthia	-	Audio Recording Officer
ix. Ms. Yvonne Kendi	-	Hansard Officer III
x. Mr. Peter Atsiaya	-	Media Relations Officer
xi. Ms. Faith Malala	-	Public Relations Officer
xii. Mr. Luka Mutua	-	Sergeant-at-Arms

1.3 Committee proceedings

4) To produce this report, the Committee held ninety-five (95) sittings in which it examined the audited financial statements of all ministries, state departments and agencies for the financial year 2020/21.

5) 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.

6) 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

7) 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: -

8) 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".

9) 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.

10) 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 BASIS FOR RECOMMENDATIONS

11) In prescribing recommendations, the Committee relied on the various expressions of the law and remedies ascribed to each breach. Specifically, the Committee deployed the following sanctions;

12) Sanctions under the Constitution

Article 226 (5) of the Constitution provides—

If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, <u>the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not</u>.

13) Sanctions under the Public Finance Management Act, 2012

Section 74 provides—

Disciplinary measures against public and accounting officers

(1)Subject to the Constitution, the Public Officers Ethics Act (No. 4 of 2003) and the Public Service codes of ethics or any other relevant laws, if an accounting officer reasonably believes that a public officer employed by a national government entity is engaging in, or has engaged in improper conduct within the meaning of subsection (4) in relation to the resources of the entity, the accounting officer shall—

(a)take appropriate measures to discipline the public officer in accordance with regulations; or

(b)refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that public officer.

(2) If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall—

(a)take such measures as may be provided in regulations; or

(b)refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.

(3) The measures referred to in subsection (2)(a) include revoking the position as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer—

(a)contravenes or fails to comply with this Act, including their accounting responsibilities;

(b)undermines any financial management procedures or controls that apply to the entity;

(c)makes or permits expenditure that is unlawful or has not been authorised by the entity; or

(d)fails, without reasonable excuse, to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1)(a) or (2)(a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct.

Section 196 of the Act provides—

Offences by public officers

(1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.
(2) A public officer shall not raise revenues other than in accordance with the Constitution, an Act of Parliament or an Act of a County Assembly.

(3)A public officer shall not enter into any obligation that has financial implications for the national government budget or a county government budget unless the obligation is authorised by the Constitution, an Act of Parliament or an Act of a County Assembly.

(4) A public officer shall not borrow money, issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind the national government entity or a county government entity to any future financial obligation, unless the borrowing, guarantee, indemnity, security or other transaction is authorised by this Act or by any other written law and, in the case of loans or guarantees, is within the limits provided under this Act.

(5) A public officer shall not direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.

(6) A public officer who contravenes this section commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

(7) Where a national government entity or a county government entity—

(a) engages in an action that it is prohibited from doing by this Act; or
(b) fails to comply with an obligation imposed on it by this Act,
a public officer who assisted or facilitated the act, or who was a party to, or contributed to, the failure, commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both in addition to provisions under Article 226(5) of the Constitution.

Section 197 of the Act provides—

Offences of financial misconduct

(1) A public officer employed by the national government or a national government entity commits an offence of financial misconduct if, without lawful authority, the officer—

(a) issues public government securities, or varies their terms and conditions;
(b) opens a bank account in the name of the government;
(c) lends money on behalf of the Government;
(d) issues guarantees or indemnities on behalf of the Government;
(e) issues securities for loans made to the government;
(f) disposes of property belonging to or under the control of, that government or entity;

(g) *fails to pay into a government hank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity;*
(h) *incurs expenditure or makes a commitment on behalf of that government or entity;*
(i) *incurs wasteful expenditure on behalf of that government or entity;*
(j) *fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act;*
(k) *fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorised by this Act or any other written law;*
(l) *fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;*
(m) *intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;*
(n) *makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;*
(o) *for the purpose of procuring for the public officer or any other person or organisation—*
(p) *makes improper payment of public money belonging to or entrusted to that government or entity; or*
(q) *(ii) makes improper use of any public property of that government or entity; or*
(r) *fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.*

Section 198 of the Act provides—

Other offences by public officers

(1) A public officer commits an offence if that officer—
(a) *takes possession of public funds or assets without lawful authority;*
(b) *misappropriates public funds or assets;*
(c) *conceals information on public finances to obtain a financial benefit either for the officer or another person; or*
(d) *engages in a corrupt act.*

(2) In this section, "corrupt act" includes soliciting or receiving an inducement.

Section 199 of the Act provides—

Penalties for offences

Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding ten million shillings, or to both.

14) Sanctions under the Public Audit Act, 2015

Section 62 of the Act provides—

Other Offences

(1) A person shall not—

(a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General or professional acting under this Act;

(b) without justification, fail to provide information required under this Act;

(c) without justification, fail to provide information within reasonable time that is required under this Act;

(d) submit false or misleading information;

(e) misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General or professional acting under this Act; or

(f) interfere with or exert undue influence on any staff of the Office of the Auditor-General or on any person authorized by the Auditor-General to perform functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

Section 63 of the Act provides—

General penalty

Except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both.

Section 66 of the Act provides—

Ineligibility to hold public office

A person who is convicted of an offence under this Act shall not be eligible to hold public office or work with an entity owned in whole or part by the State for a period of ten years following the conviction.

15) Sanctions under the Public Procurement and Asset Disposal Act, 2015

Section 176 provides—

Prohibitions and offences

(1) A person shall not—

(a) obstruct or hinder a person carrying out a duty or function or exercising a power under this Act;

(b) knowingly lie to or mislead a person carrying out a duty or function or exercising a power under this Act;

(c) delay without justifiable cause the opening or evaluation of tenders, the awarding of contract beyond the prescribed period or payment of contractors beyond contractual period and contractual performance obligations;

(d) unduly influence or exert pressure on any member of an opening committee evaluation committee and disposal committee or on any employee or agent of a procuring

entity or the accounting officer to take a particular action which favours or tends to favour a particular tenderer;

(e) open any sealed tender, including such tenders electronically submitted and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the tender or documents except for tenders inadvertently opened under section 77(6);

(f) divulge confidential information under section 67;

(g) inappropriately influence tender evaluations;

(h) split procurements contrary to section 54 of the Act;

(i) commit a fraudulent act;

(j) knowingly withholds the notification of award to a successful tenderer;

(k) knowingly withholds notification to unsuccessful tenderer;

(l) sign a contract contrary to the requirements of this Act or Regulations made thereunder; or

(m) contravene a lawful order of the Authority given under Part IV or the Review Board under Part XV.

(2) A person who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable upon conviction—

(a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both;

(b) if the person is a body corporate, to a fine not exceeding ten million shillings.

(3) In addition to the penalty under subsection (2), a state or public officer involved shall be subject to internal disciplinary action while any other person who is not a state or public officer shall be debarred.

(4) If a person or an employee or agent of a person contravenes the provisions of this Act, the following shall apply—

(a) the person shall be disqualified from entering into a contract for the procurement; or

(b) if a contract has already been entered into with the person, the contract shall be voidable at the option of the procuring entity.

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

Section 177 of the Act provides—

General penalty and sanctions

A person convicted of an offence under this Act for which no penalty is provided shall be liable upon conviction—

(a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both;

(b) if the person is a body corporate, to a fine not exceeding ten million shillings.

16) From the foregoing, the Committee has made various observations and recommendations, after weighing the veracity of each breach, including;

i. Admonish/Reprimand the Accounting Officer or relevant officer for failure to perform functions bestowed upon the office;
ii. Prosecution of the Accounting Officer or relevant officer;
iii. Imposition of a fine to the Accounting Officer or relevant officer;
iv. Surcharge the Accounting Officer or relevant officer in the event of loss of funds;
v. Declare that the Accounting Officer or relevant officer is unfit to hold a particular office or generally hold office as a public/state officer.

17) The Committee notes that subsequent audits will be on financial statements that have been personally handled by incumbent Accounting Officers, and not inherited from previous office holders. The Committee will proceed to fully recommend prescriptions in law elaborated above, for various acts of omission or commission.

4.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

18) 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 in relation to the respective agency.

19) 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. Accounting Officers have also cited IFMIS challenges.

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 the relevant professional bodies enforce compliance to standards and met out sanctions to those officers found to be willfully failing to discharge their functions.

20) 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.

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.

Further, the Committee will not entertain continuous engagement between officers of the Auditor General and Accounting Officers, beyond the time period prescribed by law. All queries carried to the report of the Auditor General will be considered as such and attract requisite recommendations as is.

The Committee also recommends that the Departmental Committee on Finance and National Planning considers amending the law to reduce the time period allowed for Accounting Officers to submit financial accounts to the Auditor General from three (3) months to one (1) month.

21) 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 certain cases, 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 economic 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.

22) 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 recommends that Treasury to submit proposals to the National Assembly within six (6) months of adoption of this report, delinking internal audit functions in terms of appointment, facilitation and reporting from Accounting Officers to an independent office.

23) 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.

24) 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 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.

25) Accrual vs cash basis accounting

The National Government has continued to operate under the primitive and outdated 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. This will invariably need National Treasury to make realistic budgetary projections as has already been observed above.

The Committee recommends that National Treasury expedites the full roll-out of accrual basis of accounting, by the end of the financial year 2023/24.

26) 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. Funds cited as commitment fees for the year under review amounted to Kshs. 2,063,104,537 from 20 loan agreements worth Kshs. 379,943,389,070 that had no drawdowns. 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.

Moreover, the Committee recommends that the Auditor General conducts a forensic audit on the country's entire debt portfolio and submits a report to Parliament, within six (6) months of adoption of this report.

27) Dual implementation of projects between National and County Governments

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

28) Non-compliance with the one-third rule of basic salary

The Committee observed several instances where government employees were not able to comply with provisions of the law and Human Resource policies on the one-third rule of basic salaries. Reasons adduced were tax reliefs accorded public officers during covid-19 but later lifted despite staff committing their net salaries. Moreover, changes in superannuation and tax brackets led to this anomaly. The Committee observes that there was the potential of the same recurring due to an uncertain tax regime.

The Committee recommends that government ensures staff are not disadvantaged through imposition of tax or other measures and that any new policy regime should be capped at the maximum of two-thirds of existing staff basic salaries.

29) Failure to resolve prior year matters

The Committee noted various instances where matters recurred because Accounting Officers did not implement remedial measures on errors of omission or commission. Whilst awaiting the Committee's report for any preceding financial year, it is the expectation of the Committee that Accounting Officers be pro-active and incrementally improve internal controls.

The Committee recommends that all Accounting Officers avail a matrix on implementation of various recommendations, within three (3) months of adoption of this report. This will be alongside the usual Treasury memorandum.

30) Statement on Audited Accounts of Revenue for the period ending 30th June 2021

During the 2020/2021 financial year, total revenue recorded under various revenue statements as received by the National Government amounted to Kshs. 1,713,642,981,513 representing a decrease of Kshs. 17,349,712,351 or about 1% when compared to actual collections of Kshs.1,730,992,693,864 realized in the year 2019/2020 as tabulated below.

Table 1: Comparative Summary of Actual Revenue Receipts in Kenya Shillings

DETAILS	2020/21 Actual Receipts	2019/20 Actual Receipts	Increase/Decrease (Kshs)	Increase/Decrease (%)
Recurrent Revenue	**1,626,801,249,470**	**1,673,714,909,446**	**-46,913,659,976.00**	**-2.8%**
o/w Sharable Revenue	1,570,562,945,014	1,578,035,418,992	- 7,472,473,978.00	**-0.5%**
GIPE	56,238,304,456	95,679,490,454	- 39,441,185,998.00	**-41.2%**
Development Revenue	**86,841,732,043**	**57,277,784,418**	**29,563,947,625.00**	**51.6%**
TOTAL	**1,713,642,981,513**	**1,730,992,693,864**	**- 17,349,712,351.00**	**-1.0%**

Data Source: *The Kenya National Audit Office*

The total revenue of Kshs. 1,713,642,981,513 for the year 2020/2021 comprised of Kshs. 1,570,562,945,014 as sharable revenue, Kshs. 56,238,304,456 as receipts from Government Investment & Public Enterprises and Kshs. 86,841,732,043 relating to Development revenue. However, the total sharable revenue of Kshs. 1,570,562,945,014 reported in the 2020/21 financial year differs by Kshs. 7,472,473,978 with the revenue receipts of Kshs. 1,578,035,418,992 in the 2019/20 financial year.

The Committee recommends that the total nationally collected revenue amount of Kshs. 1,570,562,945,014 forms the basis of sharing of revenue between the national and county governments as contemplated in Article 203 (3) of the Constitution.

1. THE NATIONAL TREASURY – VOTE 1071

REPORT ON THE FINANCIAL STATEMENTS

Dr. Chris Kiptoo, PhD., CBS, the Principal Secretary and Accounting Officer for the State Department for National Treasury appeared before the Committee on 16th February 2023 and on 18th May 2023 accompanied by the following officers:

1.	Mr. Benard Ndungu	–	Director General, Accounting Services
2.	Mr. Christopher K. Kirigwa	–	Director General, Public Private Partnership
3.	Mr. Michael A. Kagika, EBS	–	Ag. Director General, PIPM
4.	Mr. Josepth Waruiru	–	Deputy Accountant General
5.	Mr. Francis L. Amuyunzu	–	Deputy Accountant General
6.	Mr. Livingstone Bumbe	–	Deputy Director
7.	Mr. Mohammed Omar	–	Commissioner, Kenya Revenue Authority
8.	Mr. Nemwel Mutanya	–	Senior Deputy Accountant General
9.	Mr. George K. Gichuru	–	Senior Deputy Accountant General
10.	Mr. Ambrose R. M. Ogango	–	Senior Chief Finance Officer
11.	Mr. Victor Mino	–	Chief Manager, Kenya Revenue Authority
12.	CPA. Isabella Kogei	–	Parliamentary Liaison Officer
13.	Ms. Damaris Onsomu	–	Senior Principal Finance Officer

and submitted as follows;

Basis for Qualified Opinion

1. Inaccuracies in the Financial Statements

The statement of assets and liabilities and the statement of cash flows reflects a prior year adjustment of Kshs. 161,975,656 and the respective comparative balance of Kshs. 956,197,623 with no details of the comparative balance. Further, the Trial Balance provided for audit reflected a nil balance in respect to prior year adjustments. No schedules or ledgers in support of the prior year adjustments were provided for audit review.

Consequently, it was not possible to ascertain the accuracy and validity of the prior year adjustment in the current and prior years.

Submission by the Accounting Officer

The Treasury noted that the Statement of Assets and Liabilities and the Statement of Cash Flows reflects a prior year adjustment of Kshs. 161,975,656.00 and respective comparative balance of Kshs. 956,197,623.00. The prior year's adjustments figure consisted of;

1. Recurrent vote opening balance for FY 2020/2021 of Kshs. 25,221,575.00 transmitted to Exchequer Account.
2. Financial Sector Support Project expenditure of Kshs. 136,754,081.00 posted in IFMIS as direct expenditure instead of Appropriation-In-Aid.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to explain the inaccuracies in the financial statements; and

(ii) The Committee noted with concern that Treasury was the custodian of financial records and ought to lead from the front.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office and recommends that the Auditor General confirms status in subsequent financial year audit.

2. Acquisition of Assets

The statement of receipts and payments reflects a balance of Kshs.19,356,211,675 in respect to acquisition of assets which includes a balance of Kshs.490,436,605 spent on foreign equity participation. Review of the cash book provided indicated that the Management had incurred Kshs. 961,024,323 with regard to the same item resulting to an unexplained and unreconciled variance of Kshs. 470,587,718.

In the circumstances, it has not been possible to ascertain the accuracy and validity of the acquisitions of assets for the current and prior years.

Submissions by the Accounting Officer

The Accounting Officer noted that the Financial Statement reflected Kshs. 19,356,211,675 in respect to acquisitions of assets. During the year under review, the Ministry spent Kshs. 961,024,323 on foreign equity participation (subscription to international organizations) and out of this amount Kshs. 490,436,605.00 was charged to foreign equity participation item whereas the balance of Kshs. 470,587,717.50 was charged under account Item 2640502 – (grant and transfer).

The amount of Kshs. 470,587,717.50 was a Pay Advice and Payment Voucher payable to African Development Bank as Government of Kenya subscription and Authority to pay subscriptions from the grants item was granted by the Accounting Officer.

Committee Observations and Findings

The Committee noted that even though National Treasury has the authority to reallocate the aforementioned expenditure, the Accounting Officer failed to avail this authority.Committee

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of section 43 of the PFM Act.

3. Purchase of Specialized Materials and Services

The statement of receipts and payments reflects an amount of Kshs. 26,166,355,878 under use of goods and services which includes an amount of Kshs. 10,008,528,374 incurred on purchase of specialized materials and services. However, the schedule in support of the expenditure only indicated the item code, date of payment and amount paid but omitted the fields for payee and the purpose for which the expenditure was incurred. In the circumstances, propriety of the expenditure could therefore not be confirmed.

Submissions by the Accounting Officer

The Principal Secretary for National Treasury noted that the Statements of receipts and payments reflects an amount of Kshs. 26,166,355,878 under use of goods and services which was disclosed in the financial statements. It includes an amount of Kshs. 10,008,528,374 which was incurred on purchase of specialized materials and services.

The Accounting Officer averred that the IFMIS system generated ledger does not indicate the names of payee and the reason for payment and that such details are generated in the IFMIS invoice module. However, the observations from the Office of the Auditor-General were noted and would be incorporated in the ongoing IFMIS re-engineering. IFMIS ledger will be reconfigured to have the omitted fields incorporated.

The PS reiterated that the Pensions Information Management System is integrated to all other government systems and there is a linkage with the Government Human Resource Information Management System (GHRIS) to translate Civil Servants who have retired into the Pensions system.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer failed to submit documents on the names of payee and the purpose for which the expenditure was made; and

(ii) The Committee noted that IFMIS should have captured all the information regarding purchase, including payee and details of payment.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should provide an update on the IFMIS re-engineering to the Committee.

4. Unauthorized Utilization of Surplus

Review of the financial statements revealed that, during the year under review, the statement of receipts and payments reflects an expenditure of Kshs. 96,100,506,622 against the total receipts of Kshs. 95,959,362,651 resulting to an over expenditure of Kshs. 141,143,971. Management has however, indicated that this was due to The National Treasury spending part of the previous year's surplus of Kshs. 351,896,424 which should have been surrendered to the Exchequer. The balance was not surrendered to the Exchequer for re-voting as prescribed under Regulation 117(2) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, the propriety in the utilization of Kshs. 141,143,971 during the year could not be confirmed. Further, the Management was in breach of the law.

Submissions by the Accounting Officer

The Ministry testified that the total exchequer issued during the year 2020/2021 was Kshs. 84,791,601,100.03 for both recurrent and development votes. The Development Vote exchequer issue was Kshs. 36,422,190,303.30 against a budget of Kshs. 45,806,656,597 resulting to under issue of 9,384,486,293.70.

The closing balance of Kshs. 351,896,423.90 for FY 2019/2020 was carried forward to the FY 2020/2021. This amount was not surrendered to the exchequer but remained in the books and utilized during the year under review to clear part of the outstanding pending bills claims as first charge. This led to expenditure of Kshs. 141,143,971 above the exchequer received during the year. The same amount was deducted from the exchequer issues due to the Ministry. During the year the Ministry requested development vote exchequer funding of Kshs. 45,806,656,597 and received Kshs. 36,422,190,303.30. Cash book extract in support of surplus and analysis of Development vote exchequer position was availed for audit review.

Committee Observations and Findings

i) **The Committee observed that the Accounting Officer failed to surrender the previous year's surplus of Kshs. 351,896,424 to the Exchequer for re-voting as prescribed under Regulation 117(2) of the PFM (National Government) Regulations, 2015.**

ii) **The Committee also noted that Treasury had surpluses that it could carry forward to subsequent financial years while other state departments were starved of finances and experienced late exchequer releases.**

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of Regulation 117(2) of the PFM (National Government) Regulations, 2015.

Other matter

5. Budgetary Control and Performance

The summary statement of appropriation - recurrent and development combined reflects final receipts budget and actual on comparable basis of Kshs. 114,525,735,724 and Kshs. 95,959,362,651, respectively resulting to an under-funding of Kshs. 18,566,373,073 or 16% of the budget. Similarly, The National Treasury expended Kshs. 96,100,506,622 against an approved budget of Kshs. 114,525,735,724 resulting to an under-expenditure of Kshs. 18,425,229,102 or 16% of the budget. However, the actual expenditure exceeded the receipts realised during the year by Kshs. 141,143,971. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submissions by the Accounting Officer

The Accounting Officer submitted that the reasons for underutilization of the budget was due to;

i. Activities including procurement were suspended since there was lockdown due to the COVID-19 Pandemic.

ii. Exchequer under issue totaling Kshs. 9,384,486,293.70

The reason for under collection of revenue was as a result of low activities during the year as a result of the COVID-19 Pandemic. The closing balance of Kshs. 351,896,423.90 for the FY 2019/2020 was carried forward to the FY 2020/2021 and not surrendered to the exchequer. This was utilized to pay expenditure for the year which then explains why the expenditure exceeded the exchequer receipts for the year.

Committee Observations and Findings

The Committee noted the explanation and documents provided by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

6. Lack of Fixed Asset Register

Financial statements reflect a summary of fixed assets register with a historical cost of Kshs. 5,614,749,805 (2020: Kshs. 4,826,589,614) including assets valued at Kshs. 788,160,191 as additions during the year under review. However, The National Treasury did not provide an assets' register to support the assets valued at Kshs. 5,614,749,805 as required by Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015. In the circumstances, Management was in breach of the law.

Submissions by the Accounting Officer

The Accounting Officer submitted that the National Treasury prepared an Asset inventory up to 2019 and was in the process of preparing a complete assets register. The State Department also updated the Assets record in form S3 cards and stores ledger and constituted a technical taskforce committee to operationalize a fixed assets module in IFMIS. The Accounting Officer assured the Committee that the National Treasury will have a working fixed asset register by December 2023.

Committee Observations and Findings

i. **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. 5,614,749,805; and**
ii. **The Committee noted that there was a gross violation by the Treasury in using form S3 card up to FY 2019. This has been noted as a manual system and was not used in the year under review.**

Committee Recommendation

Within three (3) months after adoption of this report, the Accounting Officer should ensure that a complete fixed asset register is maintained pursuant to Regulation 143(1) of the PFM (National Government) Regulations 2015. Further, the complete asset register should be availed to the Committee for verification.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

7. There were no material issues relating to effectiveness of internal controls, risk management and governance

NATIONAL EXCHEQUER ACCOUNT
REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

8. There were no material issues noted during the audit of the financial statements of the National Exchequer Account.

Emphasis of Matter

9. Late Exchequer releases

Attention is drawn to Note 13.6 where an amount of Kshs. 165,455,973,366 is indicated as payments in the cash book not yet recorded in the bank statement (uncleared items). Examination of records indicated that the total amount of Kshs. 165,455,973,366 related to Exchequer releases to Ministries, Departments and Agencies, Public Debt and County Governments disbursed between 1 July and 8 July, 2021. Although Management explained that the amount represented receipts of proceeds from Sovereign Bond and International Monetary Fund (IMF) and that approval was given by the Office of the Controller of Budget, this was against the provisions of 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 is 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. The practice has also resulted in discrepancies between Exchequer disbursements reported by The National Treasury and Exchequer receipts reported by some counties in their financial statements.

Submissions by the Accounting Officer

The Accounting Officer affirmed that a total of Kshs. 165,455,973,366.35 was transferred to Ministries, Departments and Agencies (MDAs), County Governments and consolidated fund services (Public Debt Pensions) was cleared in the Central Bank Account after 30th June 2021, Sovereign Bond Kshs. 107.6 billion and International Monetary fund Kshs. 43.6 billion.

As per the fiscal framework and budget estimates for FY 2020/2021, all the revenue and loans received as at 30th June, 2021 were budgeted to fund expenditures relating to that financial year and it was therefore imperative that these funds are released to the MDAs and County Governments. Otherwise, the unfunded exchequer requests would have translated to pending bills.

The Principal Secretary reiterated that the National Treasury did not encroach on the revenue for the subsequent year. The receipts and issues were properly recorded and accounted for in the National Treasury's books of accounts. Further, the National Treasury sought 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.

The Accounting Officer informed the Members that there was a roadmap to migrate from cash to accrual basis of accounting from 1st July, 2023 but the process will take three (3) years for full transition.

Committee Observations and Findings

(i) **The Committee noted that National Treasury is mandated to ensure that exchequer releases are done in a timely manner before the end of the financial year so that implementation of programs are not interfered with; and**

(ii) **The Committee observed that National Treasury compromised government programs by delayed disbursement of public funds.**

Committee Recommendations

i) **The Committee recommends that the National Treasury should present realistic budgets to Parliament that are in tandem with revenue collection;**

ii) **The Budget & Appropriations Committee of the National Assembly should re-align projections provided by Treasury, and consider zero-based budgeting rather than the current incremental programme-based budgeting.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

10. There were no materials issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

11. There were no material issues relating to effectiveness of internal controls, risk management and governance

CONSOLIDATED FUND SERVICES – PUBLIC DEBT
REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

12. There were no material issues noted during the audit of the financial statements of the Consolidated Fund Services – Public Debt.

Emphasis of Matter

13. Payment of Commitment Fees on Undrawn Amounts

The statement of receipts and payments reflects finance costs including loan interest amounting to Kshs. 408,338,777,362, which as disclosed in Note 13.3 to the financial statements, includes interest payment on foreign borrowing of Kshs. 106,265,999,668. The latter balance includes commitment fees on undrawn amounts paid during the period under review amounting to Kshs. 2,063,104,537. The commitment fees relates to loans signed between the Government of Kenya and foreign lenders for the loans that had not been drawn. Review of the summary statement of debt stock as at 30 June, 2021 revealed that twenty (20) loan agreements with a cumulated loan 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, 2021. Had the Implementing Agencies put proper mechanisms in place to enable absorption of the committed credit within the agreed timeframe, the payment of commitment fees would have been minimized. The National Treasury, being the overall supervisor of Government Ministries, Departments and Implementing Agencies ought to have ensured that programmes and projects were ready for execution before committing the Government with the credits.

Submission by the Accounting Officer

The Accounting Officer submitted that the commitment fees are paid on the loan that become effective. Further, not all loans that become effective have commitment fee charges. Notably, loans become effective when the conditions precedent are met by both the borrower and the lender.

The National Treasury's role is to ensure counter funds are available to Ministries, Departments and Agencies (MDAs) during the project implementation period. It also ensures that MDAs absorb funds during the implementation period by providing the exchequer issues as requested and on timely basis.

Committee Observations and Findings

- **(i) The Committee observed that Treasury did not conduct realistic projections leading to avoidable fees on undrawn loans;**
- **(ii) The Committee further noted that loans are being secured before project implementation strategy is concluded and implementing agencies ready;**
- **(iii) There was a general lapse with management of loan uptake and their negotiations.**

Committee Recommendations

The Committee recommends that;

- **(i) The Accounting Officer reviews all unutilized loans and renegotiate commitment fees to stop further possible loss of public funds and report to the Committee within three (3) months after adoption of this report;**
- **(ii) Treasury ensures loan agreements are only signed with an immediate implementation strategy ready;**
- **(iii) Further loan agreements should have clauses protecting public interest by allowing for interest accruals effective drawdown.**

14. Guaranteed Debts

The summary statement of public debt reflects total outstanding debt stock balance of Kshs. 7,545,923,130,128 as at 30 June, 2021. Review of the debt stock records provided revealed that the balance includes guaranteed loans amounting to Kshs. 157,219,741,914 as at 30 June, 2021. These are loans advanced to State Agencies for which The National Treasury is a 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 5 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

The Accounting Officer submitted that 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. 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.

Committee Observations and Findings

- **(i) The Committee observed that the overdrafts are amounts due and default would attach public property if Treasury does not make good. The overdrafts constitute debt in any form;**
- **(ii) It was not clear who kept a record of all the overdrafts;**

(iii) Parliament's role in oversighting debt is hugely compromised by Treasury's failure to disclose all indebtedness of government, both actual and contingent.

Committee Recommendations

(i) The Accounting Officer should, within three (3) months of tabling and adoption of this report, report to the National Assembly on Kenya's total debt portfolio and total bank overdraft and guarantee amounts.

(ii) Treasury to operationalize requirements of the law requiring approval of all borrowings, including overdrafts and submits regulations for the same to Parliament within six (6) months of adoption of this report by the House.

15. Default on Debt Repayment

Review of records held by The National Treasury's Commonwealth Secretariat Debt Recording and Management System revealed that the Government has defaulted on servicing an amount of Kshs. 5,108,764,705 in respect of three (3) loans advanced by an international commercial bank towards the construction of three (3) dams as detailed below:

PROJECT	DISBURSED AMT (EUROS)	PRINCIPAL DEFAULTED (EUROS)	INTEREST DEFAULTED (EUROS)	TOTAL ARREARS (EUROS)	EQUIVALENT KSHS.
Arror Dam	91,852,267	-	6,159,578	6,159,578	790,661,549
Itare Dam	141,552,608	20,026,363	3,794,129	23,820,492	3,057,668,414
Kimwarer Dam	71,878,751	5,126,759	4,692,545	9,819,304	1,260,434,742
TOTAL	**305,283,626**	**25,153,122**	**14,646,252**	**39,799,374**	**5,108,764,705**

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 Criminals Investigation (DCI) as the matter is 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. My opinion is not modified in respect of the above matters.

Submission by the Accounting Officer

The Accounting Officer submitted that following ongoing investigations by the Directorate of Criminal Investigations (DCI), the transaction files containing credit agreements for the dam projects were taken by the DCI and to date remain in their custody.

To confirm the termination of the credit, letters communicating the creditor Intesa San Paolo cancelled the remaining amount have been provided. The remaining balances for the projects were cancelled effective 30/10/2020 and no further disbursements have occurred ever since.

Currently, the matter is in court and legal proceedings are ongoing. The office of the Attorney General is addressing the claims that have been presented by the creditor. The Accounting Officer reiterated that there has been further development on the projects and that the projects will proceed to implementation without any loss of public funds.

Committee Observations and Findings

i. **The Committee noted that the issue of Arror and Kimwarer Dams had been a long winding issue involving an international lender. It was further noted that this was an active matter in Court;**
ii. **The Committee noted that the Accounting Officer failed to provide sufficient information to the Committee within the agreed upon time including an inventory list of documents in possession with the DCI;**
iii. **The court process on criminal culpability does not stop the Auditor General from conducting accountability audits;**
iv. **The Auditor General confirmed having done a special audit on the dams.**

Committee Recommendations

(i) **The Committee reprimands the Accounting Officer for failure to submit audit documents on time;**
(ii) **The Accounting Officer to provide a status report to the Committee within three (3) months after adoption of this report on the contractors involved, the total amounts disbursed to each project to date, the steps taken to resolve project issues and the transaction files for the project.**
(iii) **The Auditor General to avail to the Committee its report on the special audit on the dams, within one month of adoption of this report.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

16. There were no materials issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

17. There were no material issues relating to effectiveness of internal controls, risk management and governance

RECEIVER OF REVENUE - REVENUE STATEMENTS (RECURRENT)

REPORT ON THE REVENUE STATEMENTS

Basis for Qualified Opinion

18. Long Outstanding Arrears of Revenue

The statement of arrears of revenue as at 30 June, 2021 reflects total tax arrears amounting to Kshs. 1,601,133,022,443 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. These debts date back to 1992 and relate to penalties, interest, prior debt, estimated assessment debt and other debts that are subject to key factors including data corrections, objections and appeal processes. Further, the statement of arrears of loan and interest as at 30 June, 2021 reflects non-tax revenues arrears of Kshs. 74,015,186,078 comprising of loan redemption amounting to Kshs. 38,078,376,052 and loan interest amounting to Kshs. 35,936,810,026. Included in the balance is an amount of Kshs. 39,165,038,029 which has been outstanding for more than two years. Although Management provided various reasons for the non-receipt of the revenues, it has not stated how it intends to ensure that the revenues are collected and accounted for or why the balances continue to be retained in the revenue statements some of which are unrecoverable.

Submission by the Accounting Officer

The Accounting Officer submitted that part of the stated arrears has been outstanding for more than two years, and the National Treasury has continued demanding for what is due from the respective entities, through the regular evaluation/ budget meetings and issuance of the annual demand letters. The Kenya Revenue Authority (KRA) is doing the following;

i. Implementing the under listed specific measures to address debts dated back to 1992; Implementing aggressive debt recovery initiatives as provided by law;
ii. Enhancing ledger reconciliation and correction;
iii. Reversal of erroneous debt in KRA system;
iv. Undertaking independent review of objections and updating ledgers with validated debts; and
v. Undertaking tax returns amendment to reverse erroneous declarations for identified taxpayers

Further KRA has taken the following general measures to improve revenue collection;

(i) Formation of a centralized team to validate debts on full time basis for Tax services offices in Nairobi region, which constitute about 77% of the debt portfolio;
(ii) Tax waivers guidelines have been reviewed and streamlined to facilitate and fast track processing of waivers;
(iii) Continuous strengthening of the Corporate Taxpayer Account Management Division that is charged with debt management at corporate level by improving structures and staff capacity (numbers of training);
(iv) Automation and roll out of debt module in tax to transform the overall debt management;
(v) Establishment of Corporate Data Office at corporate level to fast track debt validation in the legacy system and migration of the same to iTax system;
(vi) Strengthening of the tax appeal process including objections, Alternative Dispute resolutions (ADR) and Tax Appeal Tribunal (TAT) to enhance timely resolution of many cases tying up huge debts;
(vii) Implementation of Business Process Re-engineering (BPR) initiatives to provide system based solutions to minimize erroneous debts in KRA system; and
(viii) Undertaking system integration for key Government Institutions (e.g. IFMIS/IPPD/CBK/iTax) to eliminate build-up of invalid PAYE debts for public institutions that pay taxes directly to CBK.

KRA has developed guidelines and is also reviewing specific categories of debts with a view of recommending write off/abandonment of uncollectible debts.

The Accounting Officer committed that the revenue books will be streamlined in three months and that the agency had communicated with the Chief Justice on speedy finalization of pending cases that relate to the National Treasury.

Committee Observations and Findings

i. **The Committee noted that the outstanding arrears of revenue of Kshs. 1.6 trillion was not fairly stated;**
ii. **The Committee also noted that there was no evidence to show what KRA was doing to collect the arrears and further, there was no policy to determine which of these revenues are uncollectable and the timelines for clearing the revenue register; and**
iii. **The Accounting Officer failed to provide an aging analysis of these outstanding arrears of revenues.**

Committee Recommendations

i. **Within three (3) months after adoption of this report, the Accounting Officer should provide a reconciliation of the actual amount of outstanding arrears of revenue to the Committee; and**
ii. **The Accounting Officer should within three (3) months of adoption of this report, report to the National Assembly, a comprehensive financial statement of tax waivers, exemptions, interest and penalties write off/abandonment for the period FY 2014/2015 to date in line with Article 210 of the CoK, 2010 and Sections 77, 80 and 82 of the PFM Act 2012.**

Other Matter

19. Under-Collection of Property Income

Total property income realized in the period under review was Kshs. 50,499,781,627 against estimated revenue of Kshs. 66,981,870,924 resulting to under-collection of Kshs. 16,482,089,297 or 25%. 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 Accounting Officer agreed with the above observations made by the Auditor General especially on the impact of under collection of property income for the period under review as indicated below

PROPERTY INCOME

Description	**Original Estimates**	**Revised Estimates**	**Actual**	**% Realized**
Interest	1,659,783,124	1,886,634,220	2,095,215,295	111
Dividends from Central Bank of Kenya (CBK)	0	7,500,000,000	7,500,000,000	100
Other Profits and Dividends	28,567,655,534	32,567,655,534	37,607,115,535	116
Surplus funds from Regulatory Authorities	12,338,000,000	24,400,000,000	2,777,185,000	11
Rent of Land	884,332,266	627,581,170	520,265,797	83
Stand Premier on Town Plots	0	0	0	
Royalty on Carbon Dioxide	0	0	0	

Mining Royalties	0	0	0	
Magadi Soda Royalty	0	0	0	
Base Titanium Royalty	0	0	0	
Fishing Rights	**0**	**0**	**0**	
Total Property Income	**43,449,770,924**	**66,981,870,924**	**50,499,781,627**	**75**
Balance brought forward			**0**	
Transfers to the Exchequer account			**50,499,781,627**	
Balance carried forward			**0**	

1410101: Loan Interest
Revised estimates of Kshs. 1.89 billion against actual receipts of Kshs. 2.1 billion shows an over collection of Kshs. 0.28 billion mainly due to repayment of interest on loans where the revision had been done based on moratorium request that had been received at The National Treasury and financial challenges that were reported by the State Corporations. KENGEN paid their interest equivalent to the moratorium that they had been given in the 2020/21 FY.

1410202: Dividends from Central Bank of Kenya (CBK)
The budgeted dividend from CBK in FY 2020/2021 revised estimates of Kshs. 7.50 billion against actual receipts of Kshs. 7.5 billion shows there was no variance hence the revenue item was on target.

1410202: Other Profits & Dividends
The budgeted dividend in the revised estimates of Kshs. 32.6 billion against actual receipts of Kshs. 37.61 billion shows an over collection of Kshs. 5.01 billion. The increase is mainly attributable to Kenya Ports Authority (KPA), Kenya Pipeline Company (KPC) and Kenya Electricity Generating Company Ltd (KENGEN) where majority paid a special dividend to the National Treasury. This was an accrued amount that was supposed to be paid in 2019/20 FY after the review and rationalization of State Corporations budget for 2019/2020 FY, where some Entities were found with resources that were not required for immediate use and the funds were identified to be remitted to the National Exchequer.

1410203: Surplus Funds
Revised estimates Kshs. 24.4 billion against actual receipts of Kshs. 2.8 billion shows an under collection of Kshs. 21.6 billion. The decrease is mainly due to some State Corporation (Regulatory) who were expected to remit the surplus to National Treasury but they paid directly to KRA.

1410401: Land Rent
Revised estimate of Kshs. 627.6 million against the actual of Kshs. 520.3 million shows revenue underperformance of Kshs. 107.3 million. This implies a shortfall of about 17.1% against the target which is attributed to difficult operating environment during the financial year especially slowdown in economic activity due to COVID-19.

Committee Observations and Findings

The Committee noted that there was need for a centralised way of collecting revenue led by KRA.

Committee Recommendation

The National Treasury should streamline all revenues with KRA by 30th June 2024, pursuant to Regulation 219 (2) of the PFM (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

20. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

21. There were no material issues relating to effectiveness of internal controls, risk management and governance

REVENUE STATEMENTS (DEVELOPMENT)

REPORT ON THE REVEUE STATEMENTS

Unmodified Opinion

22. There were no material issues noted during the audit of the development revenue statements.

Other Matter

23. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final revenue budget and actual on comparable basis of Kshs. 104,620,168,896 and Kshs. 86,841,732,043 respectively resulting to under performance of Kshs. 17,778,436,853 or 17% of the budget. Management has attributed the under collection to the COVID-19 pandemic and the resultant restrictions which hampered implementation of various projects that had been budgeted for. Management also attributed the under collection on the delay in documentation by the county governments. The underfunding of the planned development activities may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the under performance was occasioned by various reasons which include;

i. The COVID-19 pandemic and the subsequent Ministry of Health restrictions that hampered implementation of various budgeted project activities. This hindered disbursement; and
ii. Delay in submission of returns and documentation from the County Government negatively affected disbursement. Subsequent disbursements depended on availing of returns and documentation of previous disbursement.

Committee Observations and Findings

On the issue of conditional grants/allocations, the Committee noted that counties must meet set conditions and criteria.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

24. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

25. There were no material issues relating to effectiveness of internal controls, risk management and governance

REVENUE STATEMENTS – GOVERNMENT INVESTMENTS AND PUBLIC ENTERPRISES

REPORT ON THE REVENUE STATEMENTS

Basis for Adverse Opinion

26. Failure to Prepare Revenue Statements in Accordance with the Public Sector Accounting Standards Board's Template.

Review of the Government Investments and Public Enterprises – Revenue Statement for the year ended 30 June, 2021 revealed that Management did not prepare the statement of financial assets and liabilities as prescribed by the Public Sector Accounting Standards Board (PSASB) as communicated through The National Treasury Circular Ref. No. AG.4/16/ 2 Vol.3(72) of 30 June, 2021: The National Treasury provided revised reporting templates for the annual and quarterly statements as prescribed by PSASB to enable entities comply with statutory requirements for end of year and in-year reporting in accordance with the Public Finance Management Act, 2012. Consequently, and in the absence of the statement of financial assets and liabilities, it was not possible to ascertain the status of the outstanding loans as at 30 June, 2021.

Submission by the Accounting Officer
The PSASB's template for the Receiver of Revenue requires that a Statement of Assets & Liabilities be prepared and submitted together with other Statements. Government Investment and Public Enterprise (GIPE) as a receiver of Investments Income, is required to prepare this Statement. However, the department does not operate its own Bank Account but rather receives and pays the received revenues into the Exchequer Account through National Treasury Deposit Account maintained by the Ministry.

In addition, the Department keeps a record/schedule of Government Investments in form of loans given to various entities and Government Investments in various companies, memorandum statements which are normally attached to revenue statements prepared by the department. The Revenues that the Department receives from the on lent/direct loans and investments in various companies include; Loan Redemption, Interest Income, Dividends and Directors Fees. These Revenues form GIPE Annual Revenue Statement which is prepared and then consolidated in the main National Treasury's Revenue Statement.

The status of the outstanding loan balances is reported in Schedule of outstanding loans which is part of the revenue statements in accordance with the Cash Basis of Accounting Method under the International Public Sector Accounting Standards (IPSAS).

Committee Observations and Findings
The Committee observed that the Accounting Officer did not adhere to the Public Sector Accounting Standards Board's Template and section 81(3) of the PFM Regulations.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office and failure to comply with Treasury's own circulars.

27. Unreconciled Outstanding Loans Balances

As previously reported, included in the Government Investments and Public Enterprises (GIPE) revenue statement for the year ended 30 June, 2021 is an analysis of the outstanding loans as at 30 June, 2021, which reflects an outstanding loans balance of Kshs. 921,930,325,958. However, entities with a total loan balances amounting to Kshs. 801,382,820,943 reflected in the statement differed with the loan balance of Kshs. 468,063,607,436 independently confirmed from the entities resulting to unexplained variances as summarized below.

	INSTITUTION	BALANCE AS PER REVENUE STATEMENTS (KSHS.)	BALANCE CONFIRMED AFTER CIRCULARISATION (KSHS.)	VARIANCE (KSHS.)
1	Agricultural Settlement & Central Land Board	75,778,732	1,997,085	73,781,647
2	Agro-Chemical & Food Company Ltd	2,846,884,000	2,941,884,000	(95,000,000)
3	Catering Levy Trustees/Kenya Utalii	122,00,000	122,125,028	(125,028)
4	Coast Water Services Board	26,271,589,290	12,612,106,531	13,659,482,759
5	IDB Capital Ltd	1,555,675,500	427,859,958	1,127,815,542
6	Industrial & Commercial Development Corporation.	1,154,256,132	834,256,132	320,000,000
7	Kenya Civil Aviation Authority	2,083,556,987	2,029,024,956	54,532,031
8	Kenya Electricity Generating Co. Ltd	124,031,838,792	91,083,498,902	32,948,339
9	Kenya Meat Commission	940,241,100	300,000,000	640,241,100
10	Kenya Mortgage Refinance Company	34,028,098,320	-	34,028,098,320
11	Kenya Power	81,057,031,602	48,028,197,610	33,028,833,992

12	Kenya Railways Cop	473,210,691,342	275,999,310,390	197,211,380,952
13	Kenyatta University	10,857,620,656	-	10,857,620,656
14	Lake Victoria South Water Services Board	14,511,405,134	1,978,015,170	12,533,389,964
15	Northern Water Services Board	5,389,000,000	2,757,691,547	2,631,308,453
16	Nzoia Sugar Co. Ltd	458,510,100	11,026,057,100	(10,567,547,000)
17	South Nyanza Sugar Company Ltd	199,027,420	207,504,015	(8,476,595)
18	Tana Water Services Board	7,543,116,143	1,806,440,885	5,736,675,258
19	Water Resource Management	1,397,341,243	362,612,300	1,034,728,943
20	Rural Electrification Authority	13,649,158,450	15,545,025,827	(1,895,867,377)
	TOTAL	**801,382,820,943**	**468,063,607,436**	

Further, debtors with outstanding balances amounting to Kshs. 116,884,137,600 did not confirm their loan balances as at 30 June, 2021 as detailed below;

NO	Institution	Balance as per Revenue Statements (Kshs.)
1	Athi Water Services Board	60,318,787,074
2	Co-operative Bank of Kenya Ltd.	287,416,721
3	East African Sugar Industries Ltd, Muhoroni	177,123,100
4	Equity Bank Ltd	614,213,405
5	Faulu Kenya Deposit taking Micro-Finance Ltd	58,892,166
6	Halal Meat products	27,701,420
7	Kenya Airports Authority	2,966,983,076
8	Kenya Urban Transport Various Towns	40,706,140
9	Kenya Women Finance Trust Deposit taking Micro-Finance Ltd	60,333,584
10	Kilifi Mariakani Water & Sewerage Co. Ltd.	1,059,644,328
11	Kwale Water & Sewarage Co.	2,051,265,560
12	Lake Victoria North Water Services Board	11,607,143,705
13	Local Government Loans Authority	7,594,273,720
14	Malindi Water, Sewerage & Sanitation Co.	1,058,633,217
15	Miwani Outgrowers Mills Ltd	6,600,000
16	Miwani Sugar Company (1989) Ltd	16,000,020
17	Miwani Sugar Mills Ltd	78,088,180
18	Mombasa Pipeline Board	22,964,980

19	Mombasa Water & Sanitation Co. Ltd	1,798,411,538
20	Mumias Outgrowers Company Ltd	16,517,400
21	Mumias Sugar Company Ltd	3,000,000,000
22	Nairobi City Council	102,333,760
23	National Irrigation Board	2,262,036,544
24	National Water Conservation & Pipeline Corporation	2,460,874,897
25	Rift Valley Water Services Board	4,895,315,071
26	Tanathi Water Services Board	9,713,565,506
27	Tavevo Water & Sewerage Co. Ltd	1,506,555,390
28	Uchumi Supermarkets Ltd	1,200,000,000
29	Water Sector Trust Fund	1,881,757,098
	TOTAL	**116,884,137,600**

Under the circumstances, the validity, accuracy and completeness of the reported outstanding loans balance of Kshs. 921,930,325,958 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that to confirm the accuracy of the outstanding loan balances, the National Treasury circularized and requested the 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 2021.

Some of the loan balances confirmed did not agree with the balances in the National Treasury records. To address this, the National Treasury has designed, developed and is in the process of rolling out Government Investment Management Information System (GIMIS) module on Government Investment and Loans Management.

It is envisaged that State Corporations will capture and submit data/information with respect to loan amount, drawdowns and date of drawdown. This will enable The National Treasury to calculate the correct interest payable and due for the National Treasury to reconcile the loan records.

Meanwhile, reconciliation is ongoing between the National Treasury and the reported entities with variances. Eight (8) entities out of the listed twenty (20) having a variance of Kshs. 29,085,204,395 have since been reconciled and the variances agreed. Reconciliation for the remaining Twelve (12) Entities with a variance of Kshs. 42,052,419,655 is ongoing.

On Unconfirmed Loan Balances, the Accounting Officer submitted that **c**ircularization is an annual exercise, where the National Treasury request the entities with loan balances to confirm directly to the office of the Auditor General. Those who do not confirm on time, a follow-up is made via reminder letters of the entities that the Audit reported as not having confirmed the balances by then Eighteen (18) have so far confirmed their outstanding loan balances as at 30th June 2022.

The Accounting Officer also submitted that there is now a system and all the organizations will comply before the next financial year. Further, some variances were caused by foreign exchange fluctuations.

Committee Observations and Findings

i. **The Committee noted that the loan balances of twelve (12) entities had not been reconciled; and**

ii. **The Committee noted that the GIMS was still under implementation.**

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should furnish the Committee with reconciliations for the remaining twelve (12) entities.

Other Matter

28. Dormant Loans

As previously reported, included in the total loan portfolio of Kshs. 921,930,325,958 as at 30 June, 2021 were seventeen (17) loans amounting to Kshs. 218,811,487,711 representing 24% of the total loan portfolio that 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 30th June 2021 (Kshs.)
1	Kenya Railways Corporation	179,042,472,762
2	Kenyatta University	10,857,620,656
3	Tanathi Water Services Board	9,713,565,506
4	Tana Water Services Board	7,543,116,143
5	Mumias Sugar Company Ltd	3,000,000,000
6	National Water Conservation & Pipeline Corporation	2,460,874,897
7	National Irrigation Board	2,262,036,544
8	Water Resource Management	1,397,341,243
9	Uchumi Supermarkets Ltd	1,200,000,000
10	Kenya Meat Commission	940,241,100
11	East Africa Sugar Industries Ltd, Muhoroni	177,123,100
12	Miwani Sugar Mills Ltd	78,088,180
13	Kenya Tourist Development Corporation	48,000,000
14	Kenya Urban Transport Various Towns	40,706,140
15	Halal Meat Products	27,701,420
16	Miwani Sugar Company (1989) Ltd	16,000,020
17	Miwani Outgrowers Mills Ltd	6,600,000
		218,811,487,711

Submission by the Accounting Officer

The Accounting Officer submitted that there are dormant loans in the National Treasury records which are mainly attributed to:

i. **Reforms and changes in law governing the 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 having a challenge on servicing the on-lent loan obligations.

To address the same, a Government Inter-Ministerial Committee was formed to analyze and propose sustainable modalities on restructuring debts for development of water infrastructure among other terms of references. The report and recommendation of the Taskforce is still being awaited and once the taskforce report is adopted and approved, the recommendations will be implemented, and appropriate updates effected in their records.

ii. **Dormant loans relating to Government owned Sugar Companies.** The Government Sugar Millers have perpetually been unable to meet their financial obligations including their operating costs and have from time to time requested the National Treasury to write off their debts. Due to the poor management of the millers and their inability to meet their financial obligations, the Government deemed it fit to privatize them through Privatization Commission. Government efforts to finalize the privatization/leasing of the Government owned sugar companies and the outstanding loans will be addressed during the privatization/leasing process.

iii. **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 specific terms on loan repayment thus making a follow up on loan repayments a challenge. In FY 1994/95, 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 documents 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 as far back as in the 1960s. A Taskforce to deal with Dormant Loans has been formed and the recommendation will assist in addressing the issue.

The Loans amounting to Kshs. 218,811,487,711 referred to as dormant and the associated issues are outlined and explained.

The Accounting Officer also submitted that the National Treasury continues to demand the loan dues from the entities through the demand letters on annual basis.

Committee Observations and Findings

i. **The Committee noted that the Accounting Officer failed to take action on the recommendations in the previous PAC report; and**
ii. **The Committee noted that some of the debts ought to be written off through the approved legal channels.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to implement recommendations in the previous PAC report, and directs that he submits a status report on the same within one (1) month of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

29. Because of the significance of the matters discussed in the Basis for Adverse Opinion section of my report, based on the audit procedures performed, I confirm that public resources have not been applied lawfully and in an effective way.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

30. Because of the significance of the matters discussed in the Basis for Adverse Opinion section of my report, based on the audit procedures performed, I confirm that internal controls, risk management and governance were not effective.

EAST AFRICA TOURIST VISA FEE COLLECTION ACCOUNT

REPORT ON THE REVENUE STATEMENTS

Unmodified Opinion

31. There were no material issues noted during the audit of the revenue statements of the East Africa Tourist Visa Fee Collection Account.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

32. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

33. There were no material issues relating to effectiveness of internal controls, risk management and governance.

STATEMENT OF OUTSTANDING OBLIGATIONS GUARANTEED BY THE GOVERNMENT OF KENYA

REPORT ON THE FINANCIAL STATEMENTS

Basis for Disclaimer of Opinion

34. Unsupported and Undisclosed Balance

The statement of outstanding obligations guaranteed by the Government of Kenya reflects an outstanding balance of Kshs. 152,317,825; (2020-Kshs. 152,317,825) being capital and interest owed by the Cereals and Sugar Finance Company. However, the balance has not been supported by any verifiable records and documents. Further, the Consolidated National Government Investment Report for the year 2020/2021, prepared by The National Treasury in accordance with Section 89 of the Public Finance Management Act, 2012, indicates that the total outstanding Government guaranteed debt stood at Kshs. 157,220,000,000 as detailed below:

Agency	Outstanding Balances as at 30th June 2021 (Kshs.)
Kenya Electricity Generating Co. PLC	26,577,000,000
Kenya Ports Authority	37,901,000,000
Kenya Power & Lighting Co	11,779,000,000
Kenya Airways	80,963,000,000
Total	**157,220,000,000**

The total outstanding Government guaranteed debt of Kshs. 157,220,000,000 above does not include the balance of Kshs. 152,317,825 reflected in the statement of outstanding obligations guaranteed by the Government of Kenya prepared and submitted for audit by The National Treasury, which is indicated as relating to capital and interest owed by the Cereals and Sugar Finance Corporation. 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.

Under the circumstances, the completeness and accuracy of the outstanding balance of Kshs. 152,317,825 reflected in the statement of outstanding obligations guaranteed by the Government of Kenya as at 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that account balances of Kshs. 152,317,825 are historical relating to a defunct Cereals and Sugar Finance Corporation. This is what prompted the National Treasury to form a taskforce to address all issues arising from the defunct corporation. The winding up process is ongoing.

The PFM Act Regulations 2015 Section 216 (6) states "Upon dissolution of a state corporation, the funds corresponding to government equity in the corporation shall be deposited into the Consolidated Fund."

The Accounting Officer also submitted that the total outstanding Government guaranteed debt stood at Kshs. 157,220,000 as documented by the debt stock report of 30th June 2021.

Committee Observations and Findings

The Committee noted that to bring this matter to a closure, the winding up should be hastened and the amounts realised handed over to the National Treasury pursuant to the relevant laws.

Committee Recommendation

Within three (3) months after adoption of this report, the Accounting Officer should submit a status report to the Committee on the winding up process.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

35. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

36. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

CONSOLIDATED FUND SERVICES - SUBSCRIPTIONS TO INTERNATIONAL ORGANIZATIONS

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

37. There were no material issues noted during the audit of the financial statements of the Consolidated Fund Services – Subscriptions to International Organizations.

Other Matter

38. Multiple Laws Guiding Operations of the Fund

Until 2017, the Government through The National Treasury has 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 Accounting Officer submitted that the Management has started a process of repealing the earlier laws by writing to their legal counsel who advised the National treasury to seek legal opinion of the Attorney General on the necessary amendments. This will be done once the process will be completed.

The Accounting Officer also submitted that the existing regulations will be repealed and have written to the Attorney General affirming that there will not be double payment and that regularization will be effected within the next three months.

Committee Observations and Findings
The Committee noted the submission and explanation provided by the Accounting Officer.

Committee Recommendation
The Accounting Officer should within three months (3) of adoption of this report, report on status of harmonization of these multiple laws to the Committee.

39. 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% underutilization. The under-utilization of funds was attributed to the fact that the Fund did not receive any invoices during the period under review. There is need for Management to review its budget making process with a view to formulating a realistic budget that would be actualized during implementation.

Submission by the Accounting Officer
Kshs. 500,000 is an amount under Recurrent 53, Consolidated Fund Services Budget. During the year under review no expenditure was incurred since no invoices were channeled through the Subscription Fund under Recurrent vote 1071. There will be no future Budget allocation under this line item and the Kshs. 500,000 in the FY 2022/23 will be removed through Supplementary Budget.

Committee Observations and Findings
It is further noted that the amount budgeted of Kshs. 500,000 had since been reallocated in the Supplementary Budget for FY 2022/23 as submitted by the Accounting Officer.

Committee Recommendation
The Accounting Officer should ensure that the line item is not appropriated in future financial years.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

40. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

41. There were no material issues relating to effectiveness of internal controls, risk management and governance.

CONSOLIDATED FUND SERVICES - SALARIES, ALLOWANCES AND MISCELLANEOUS SERVICES

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

42. There were no material issues noted during the audit of the financial statements of the Consolidated Fund Services – Salaries, Allowances and Miscellaneous Services.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

43. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

44. There were no material issues relating to effectiveness of internal controls, risk management and governance.

CONSOLIDATED FUND SERVICES – PENSION AND GRATUITIES

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

45. Unsupported Accounts Payables

As disclosed in Note 15.6 to the financial statements, the statement of financial assets and liabilities reflects an accounts payables balance of Kshs. 6,171,928,414 (2020: Kshs. 5,358,204,131) as at 30 June, 2021. As previously reported, the balance has not been supported by detailed schedules indicating names, dates and amounts owed to respective creditors and the corresponding source documents. Management provided a soft copy of the ledger and indicated that the balance relates to accumulated returned pensions which has been growing since the introduction of the Pensions Management Information System (PMIS). However, detailed schedules indicating names, dates and amounts owed to respective creditors were not provided for audit review.

Consequently, the accuracy, completeness and validity of the reported accounts payables balance of Kshs. 6,171,928,414 as at 30 June, 2021, could not be ascertained.

Submission by the Accounting Officer

The figure of Kshs. 6,171,928,513 is the net-off returned and re-payment of pension since the inception of Pension Management Information System (PMIS) in the financial year 2008/2009 to the current financial year under review 2020/2021. The schedules generated by the system gives a detailed beneficiaries name, amount and time when the deposits or payment were made by or to beneficiaries. Therefore the figure of Kshs. 6,171,928,513 is accumulated net off returned pension or re-credited cheques from FY 2008/09 to 2020/2021 financial years.

Schedules indicating the names and amounts owed to each respective creditor and the corresponding source documents was provided during audit. Further, a summary of net off balance per Financial Year has been availed for audit review and verification**.** An Excel extract has been provided to the Auditor in soft copy. Additionally, the Department has provided the auditors with log in credentials to enable verification of returned and repaid pension**.**

Committee Observations and Findings

The Committee noted that the welfare of the pensioners had not been addressed in adequate time, leading to long term suffering of retirees.

Committee Recommendation

The Accounting Officer should within three (3) months of tabling and adoption of this report avail a comprehensive schedule clearly supporting the payables balance in the financial statement.

46. Long Outstanding Balance

The statement of financial assets and liabilities reflects a bank balance of Kshs. 1,205,074,907 which, as disclosed in Note 15.5 to the financial statements, relates to the funds held at the recurrent bank account at the Central Bank of Kenya. However, an examination of the bank reconciliation statement for the month of June, 2021 revealed payments in cash book not in bank amounting to Kshs. 33,634,076 with transactions dating as far back as August, 2019. Further, the reconciliation statement reflects payments in bank not in cash book of Kshs. 16,733,547 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. 1,362,296 while receipts in cash book not in bank amounted to Kshs. 28,544,800 with some transactions having remained outstanding since 2010. Management has cleared the above balances leaving a balance of Kshs. 1,410,365 still outstanding.

Although, Management has indicated that it has sought guidance from Old Balances Committee on how to deal with the items, no evidence of communication to the Committee was provided for audit review and no lasting solution has been forthcoming.

Submission by the Accounting Officer

The Accounting Officer submitted that as at the time of audit Kshs. 33,634,076.85 was appearing as payments in cash book but not in bank. These payments related to failed transaction in the internet banking system arising from changes of CBK bank accounts of the various MDAs as well as a result of banks that adopted new generation account numbers that did not correlate with the Accounts coded in the PMIS.

National Treasury have since made payments relating to Kshs. 29,294,039.65 which had failed in the Internet Banking system after adjusting to the correct CBK Accounts as received from the relevant MDA's. In addition they have cleared Kshs. 2,929,670.80 being payments due to pensioner's whose Bank Accounts had mutated to the new generation bank codes.

The balance of Kshs. 1,410,365.40 has since been received back in the cash book as they await for individual payees to submit their correct bank accounts from their respective financial institutions. The figure Kshs. 16,743,547 comprise of Kshs. 14,891,204.85 old balance that date back to the year 2008, for which the Old Balance Committee has been indulged to provide guidance while Kshs. 792,940.40 were dishonored cheques but later replaced on different dates indicated and they have now cleared them from the reconciliation. The balance of Kshs. 845,129.50 are dishonored cheques and have written to respective institutions for replacement.

Further, the receipt of Kshs. 1,362,295.60 in the bank was directly done by a third party and the department had not received the details of the depositor, hence not receipted by the year ended 30th June, 2021. However, after getting the details of the depositor the amount has been receipted and the same has been cleared from bank reconciliation statement as receipts in bank not in the cashbook in the month of December 2021 as per the receipts and cash book extract.

The department requested for previous year bank statements from Central Bank of Kenya and identified Kshs. 12,999,234.20 which were reflected in statement on various date indicated, these items have been cleared from the reconciliation leaving a balance of Kshs. 15,545,565.60 to be cleared.

Committee Observations and Findings

i. **The Committee noted that the Accounting Officer had submitted the latest bank reconciliation statement to the Auditor-General for verification;**
ii. **The Committee further noted that the Auditor-General would confirm the reconciliation in the subsequent financial year.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office through failure to submit financial statements for audit on time.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

47. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

48. Failure to Provide Internal Audit Reports

As previously reported, the Department has continued to operate without the services of an internal auditor thereby exposing public resources to risk of abuse and wasteful operations. However, Management indicated that the Department has an Internal Audit function even though there were no reports from the team.

In the circumstances, the existence of an effective internal control system to safeguard public resources could not be confirmed.

Submission by the Accounting Officer

The Internal Audit unit have since provided their reports to the Auditors for review.

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, and directs that he ensures that there are appropriate measures in place for conducting internal audit according to the guidelines of the Public Sector Accounting Standards Board pursuant to the provisions of Section 73(1)(a) of the Public Finance Management Act, 2012.

REVENUE STATEMENTS OF THE PENSIONS DEPARTMENT

REPORT ON THE REVENUE STATEMENTS

Unmodified Opinion

49. There were no material issues noted during the audit of the revenue statements.

Other Matter

50. Unresolved Prior Years Matters

The following prior year matters remained unresolved as at 30 June, 2021.

50.1 Discrepancies between Budget Statement and Printed Estimates

The statement of comparison of budget and actual amounts for the year ended 30 June, 2019 reflected total non-tax receipts budget of Kshs. 309,398,233 being contribution by government employees to social welfare which differed from the 2018/2019 printed revenue estimates amount of Kshs. 894,349,041, resulting to an unexplained and unreconciled variance of Kshs. 584,950,808.

Submission by the Accounting Officer

During the year under review the Department collected amount of Kshs. 309,398,233 being contribution by Government Employees to Social Welfare. Funds collected include 31% contributions from employees, government liabilities (abatement) and unremitted Widows and Children Pensions Scheme (WCPS).

50.2 Variance between the Revenue Statement and Trial Balance

The statement of revenues and transfers for the year ended 30 June, 2019 reflected total non-tax receipts of Kshs. 262,230,402; (2018 - Kshs. 308,019,086). However, the trial balance and revenue analysis provided for audit reflected a total non-tax receipts balance of Kshs. 270,789,739 resulting to an unexplained variance of Kshs. 8,559,337.

Submission by the Accounting Officer

The trial balance generated by the PMIS ledger accumulates figures from previous period and the figures for the current financial year are arrived at by deducting the opening balances from the closing balances. The difference in trial balance has since been corrected, Journal voucher no. 167 and analysis have been submitted for audit review.

Committee Observations and Findings

i. **The Committee noted that this matter was discussed in the FY 2018/19 but still remained outstanding; and**
ii. **The Committee noted the failure by the Accounting Officer to provide a verifiable internal control system for the funds.**

Committee Recommendation

i) **The Committee admonishes the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012;**
ii) **The Auditor-General to undertake a review and report to the National Assembly in the subsequent audit reporting cycle.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

51. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

52. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

53. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

54. Budgetary Control and Performance

The statement of comparison between the budget and actual amounts reflects approved revenue budget of Kshs. 492,983,367 and actual amounts realized of Kshs. 391,281,000 resulting to an under-funding of Kshs. 103,702,367 or 30% of the budget. Similarly, the Project spent Kshs. 408,810,452 out of the approved budget of Kshs. 492,983,367 or 17% of the approved budget resulting to an under expenditure of Kshs. 84,172,915. Management has attributed the low performance mainly to the impact of COVID-19 which imposed travel restrictions leading delayed procurement of goods and services. The low realization of receipts and the low absorption may have adversely affected the achievement of the planned activities which may have impacted negatively on service delivery of the project.

Submission by the Accounting Officer

The Project was negatively impacted by the effects of the COVID-19 pandemic that resulted in slow pace of implementation of activities, and as a result, delayed completion of milestones for payment.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

55. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

56. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

57. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

GLOBAL FUND PROGRAMMME - 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 (GRANT NO. KEN-T-TNT 1548)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

58. Unsupported Expenditure - Counterpart Funding

The statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 387,459,444. However, the amount differs from the amount indicated in the ledger of Kshs. 479,667,665 by an unexplained variance of Kshs. 92,208,221. Further, the statement of receipts and payments reflects comparative receipts from Government of Kenya (Counterpart Funding) of Kshs. 250,000,000 for the financial year ended 30 June, 2020 bringing the cumulative to-date from inception to Kshs. 637,459,444. Management has not supported the expenditure to show how the balance has been build up since the Program inception. Although the amount had previously been omitted in the audited financial statements for the year then ended, the balances have not been marked as restated in the face of the financial statements.

Consequently, in absence of any reconciliation and explanation, the accuracy and completeness of the reported cumulative receipts from Government of Kenya and Other Grants and Transfer payments (CPF) balance of Kshs. 637,459,444 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 387,459,444. However, the amount initially differed from the amount indicated in the ledger by Kshs. 92,208,221.

This was an IFMIS system challenge whereby part of the expenditure relating to counter-part funding was not captured in the ledger by the time of Audit. However, the total expenditure was later on transferred to the General Ledger and the two records agree. The General Ledger and the Authority to process these payments using GOK counterpart funding were provided. The Accounting Officer also submitted that there was authority from Global Fund to incur.

Committee Observations and Findings
The Committee noted the submission and explanation provided by the Accounting Officer.

Committee Recommendation
The Accounting Officer should always 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 and that complete financial and accounting records are presented to the Auditor General pursuant to the provisions of Article 229 of the Constitution of Kenya 2010 and Section 68 (2) (k) of the PFM Act 2012.

Other matter

59. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 701,838,786 and Kshs. 505,966,555 respectively resulting to an under-funding of Kshs. 91,957,722 or 28% of the budget. Similarly, the Program expended Kshs. 511,798,842 against an approved budget of Kshs. 701,654,497 resulting to an under-expenditure of Kshs. 785,954,969 or 27% 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 the Statement of Comparative Budget and Actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 701,838,786 and Kshs. 505,966,555 respectively resulting to an under-funding of Kshs. 91,957,722 or 28% of the budget. Similarly, the Program expended Kshs. 511,798,842 against an approved budget of Kshs. 701,654,497 resulting to an under-expenditure of Kshs. 785,954,969 or 27% of the budget. All Program activities including procurement of contracts, drugs and test kits were suspended since there was lockdown due to the COVID-19 pandemic. By the time the outbreak was managed, there was little time left to procure supplier contracts, drugs and test kits thus leading to under-funding and under-expenditure.

Committee Observations and Findings
The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

60. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

61. There were no material issues relating to internal controls, risk management and governance.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

62. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

63. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

64. Lack of Internal Audit Services

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 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. During the year under review, there was no evidence of the Project having been reviewed by The National Treasury's internal audit function. 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

The National Treasury Internal Auditors were not able to audit the project during the year due to shortage of staff and heavy workload. However, the Internal Audit review commenced on 28th June 2021 and was ongoing at the time of Audit. The minutes of the entry meeting and other relevant correspondences were submitted after the audit. Further, an auditor has been deployed to be auditing the IFPPP project.

Committee Observations and Findings

The Committee observed that the failure to ensure the project was audited by the internal audit function was unacceptable as internal audit is domiciled at Treasury.

Committee Recommendation

The Committee reprimands the Accounting Officer, and further recommends that he ensures the presence and facilitation of an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

65. As required by International Development Association (IDA), I report based on my audit that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

PUBLIC FINANCIAL MANAGEMENT REFORMS PROGRAM (CREDIT NOS. DANIDA FY06, SIDA 51110081, IDA GESDEK-6133-KE & KDSP5765-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

66. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

67. Proceeds from Domestic and Foreign Grants

I draw your attention to Note 2 to the financial statements which reflects an amount of Kshs. 55,057,288 in respect to proceeds from foreign and domestic grants. However, Note 11A in the special deposit accounts movement schedule indicates total withdrawals from the special deposit accounts of USD 856,600 equivalent to Kshs. 92,973,610 resulting to a variance of Kshs. 37,916,322 between the amount reported in the Project's financial statements and the amount withdrawn from the special deposit account. Management has however attributed the discrepancy to the amount which had been drawn from the special deposit account in the Central Bank of Kenya but had not been issued to the Project through the Exchequer. My opinion is not modified in respect to the above matter.

Submission by the Accounting Officer

The amount in question was withdrawn from the special account (Receipt from Central bank of Kenya) but by the close of the financial year the Project had not received the full disbursement.

Committee Observations and Findings

The Committee observed the variance had not been explained in the special deposit account reconciliation at the time of the audit but availed to the Committee.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to provide audit documents on time.

Other Matter

68. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects a receipts budget and actual receipts on comparable basis of Kshs. 1,016,219,415 and Kshs. 446,505,445 respectively, resulting to receipts shortfall of Kshs. 600,048,445 or 59% while the expenditure budget and actual payments on comparable basis of Kshs. 1,016,219,415 and Kshs. 881,239,653 respectively, resulting to an under-absorption of Kshs. 134,979,762 or 13% of the approved budget. The underfunding and underperformance affected the planned activities and have impacted negatively on service delivery to the public.

Submission by the Accounting Officer
The auditor's observation on underfunding is correct. It is also true that it can affect the performance of planned activities. Further, the under absorption of Kshs. 134,979,762 or 13 % of the Budget was occasioned by the COVID-19 pandemic.

Committee Observations and Findings
The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

69. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

70. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

71. As required by DANIDA FY06, SIDA 51110081, IDA GESDEK-6133-KE and KDSP5765-KE Agreements, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

72. There were no material issues noted during the audit of the financial statements of the Project.

Other matter

73. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 18,700,000 and Kshs. 9,075,750 respectively resulting to an under-funding of Kshs. 9,624,250 or 51% of the budget. Similarly, the Project expended Kshs. 9,075,750 against an approved budget of Kshs. 18,700,000 resulting to an under-expenditure of Kshs. 9,624,250 or 51% of the budget. Management has attributed the dismal performance to failure to carry out planned trainings due to the effects of the COVID-19 outbreak and the fact that all payments are done directly by the donor in the form of A.I.A after approval from The National

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

Submission by the Accounting Officer

The Accounting Officer submitted that the underperformance was occasioned by various reasons which include;

i. The COVID-19 pandemic and the subsequent Ministry of health restrictions that hampered implementation of various budgeted project activities. This hindered disbursement; and
ii. Delay in submission of returns and documentation from the County Government negatively affected disbursement. Subsequent disbursements depended on availing of returns and documentation of previous disbursement.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

74. Irregular Termination of Technical Assistant 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 matter was discussed by PAC in Financial Year 2019/2020 and resolved. The post was re-advertised according to Development Partner Procurement guidelines and the interviews were held between 29th April, and 4th May 2020 as per the National Treasury Letter No. MOF/ERD/20/148/78/01 'B' of 29th May 2020 and other supporting documents.

Committee Observations and Findings

The Committee noted that this matter was discussed in the FY 2018/19 and FY 2019/20.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

75. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

Unmodified Opinion

76. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

77. Dormant Project Bank Accounts

The Project continues to maintain three local currency accounts, two held at Co-operative Bank of Kenya with bank balances of Kshs. 1,136,902 and Kshs. 359, respectively and a third Account at Equity Bank with a balance of Kshs. 22,823,151 as at 30 June, 2021. No deposits or withdrawals have been made for the last five (5) financial years with respect to the two Co-operative bank accounts while the Equity bank account did not have transactions during the year under review.

Further, the programme had no activities during the year, yet the project account had Kshs. 23,960,413 in the bank that remained unutilized. The continued maintenance of the dormant accounts expose the Programme to risk of loss of funds. Management should embark on a foreclosure report to terminate the Programme and avert gradual loss through bank charges and interests on idle resources. My opinion is however not modified with respect to the above matter.

Submission by the Accounting Officer

The Accounting Officer submitted that two of the projects bank account at Co-operative bank of Kenya were dormant with balances of Kshs. 1,136, 90.00 and Kshs. 359.00. These cooperative bank accounts No. 0114149783101 and No. 01141419783100 have been closed vide letters dated 19th August, 2022, 27th June, 2022 and 17th November, 2021 respectively.

The Accounting Officer also submitted that the project came to an end on 6th September, 2021 and its Equity bank account is yet to be closed. To conclude the process of closure of the Account, it's noted that the project management is awaiting the finalization of project verification exercise by the European Union (EU) for which thereafter the EU will issue a recovery order. This order will facilitate the transfer of unspent funds to the EU.

The Accounting Officer further submitted that the National Treasury are still waiting for the EU so as to give a compressive report and promised to report in three months. The Accounting Officer reiterated that the 23 million will be given back to the donor.

Committee Observations and Findings

The Committee observed that Treasury was still waiting for feedback from the EU.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should liaise with the EU to close the bank account and provide a status report to the Committee.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

78. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

79. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

80. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

81. Amount Withdrawn but Unclaimed

Part B of the statement of special (designated) account reconciliation for the project reflects Euro 1,152,653.73 (Kshs. 147,804,787.79) at the then exchange rate of 1 Euro at Kshs. 128.23 as withdrawn but unclaimed as at 30 June, 2021. This represents cumulative funds transfers to the local project bank account but whose expenditure returns have not been submitted to The National Treasury by close of the financial year. Further, an additional Euro 30,000 (Kshs. 2,846,900) cash advance to the project reflected in the list of advances which ought to have been justified by 31 December, 2015 is yet to be justified as at 30 June, 2021 under the Grant Facility CKE 6010. My opinion is not modified in respect of the effects of the above matter.

Submission by the Accounting Officer

The Government of Kenya (GOK) entered into a Credit Facility Agreement (CFA) with the French Development Agency (AFD) on 25 May 2005 for a facility of Euro 10,000,000 (Ten million Euros) to support the Micro-Finance Sector Support Credit Project (MFSSC).

The objective of the project was to support the financial deepening in the banking sector in order to ensure access to credit by the non-banked population of Kenya and to establish a Microfinance Unit (MFU) within the Ministry of Finance to integrate Microfinance issues within the broader Financial Sector. The project comprised of the following four components:

1. Re-financing of credit facilities granted by wholesaler banks to lend to second tier micro-finance organizations (MFI’s and Sacco’s);
2. Capacity building of the wholesalers for the management of the MFSSC facility;
3. Capacity building of the second tier institutions on the basis of capacity building programs developed by the wholesalers but managed by an independent program management unit (FSD Kenya);
4. Establishment and capacity building of the Microfinance Unit (MFU) within the MoF. The Project was being implemented by the National Treasury (NT) through

partnerships with Wholesaler Banks including Cooperative Bank, Equity Bank and KRep Bank (now Sidian Bank).

The first (1) component of the programme, the Government made available through subsidiary agreements a loan facility of Euro 6.8 Million to the three wholesalers for on-lending to 2nd Tier SACCOs and MFIs for a period of four years effective 14th February 2007. The 2nd Tier institutions (SACCOS and MFIs) were expected to extend credit to the final beneficiaries who were the non-banking population, thus enhancing credit delivery and access in Kenya.

The second (2) component of the program was a grant of Euros 600,000 to the wholesalers intended to enhance their capacity to deliver the program goals effectively.

The Third (3) component of the program was an additional grant of Euro 2.3 million for the capacity building of the second tier microfinance organizations managed by Financial Sector deepening (FSD) Kenya and available on request after evaluation of the training needs of the Sacco's and MFIs by the wholesalers.

The fourth (4) component was to establish a Microfinance Unit in the National Treasury and build its capacity to ensure that specific sector issues are addressed within the overall framework of financial sector strategy. This component had an allocation of Euro 100,000 for capacity building and Euro 200,000 for Audit and Impact Assessment.

Committee Observations and Findings

i. **The Committee noted that the Accounting Officer failed to submit expenditure returns and account for Euro 1,152,653.73 (Kshs. 147,804,787.79) and non-justification of cash advance of Euro 30,000, was as a result of laxity;**
ii. **The Committee observed that it is key for the State Department to ensure adherence to the grant terms and conditions, including deadlines for justifications and reporting.**

Committee Recommendation

Within three (3) months upon adoption of this report, the Accounting Officer should provide a report and supporting schedules to the Committee on the unclaimed funds and unjustified cash advances.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

82. Failure to Close Project

As per Clause 10 of the financing agreement, the Project was to end on 31 October, 2010 but the closing date was later extended to 31 December, 2014. However, the Project Management is yet to formally prepare and submit the Project closure report. Consequently, the Project is in breach of the agreement with Agence Francaise Development (AFD).

Submission by the Accounting Officer

The Accounting Officer submitted that further consultations have been done with AFD and that the National Treasury will do a portfolio review.

Committee Observations and Findings
The Committee observed that National Treasury was working on a portfolio review after consultation with AFD.

Committee Recommendation
The Committee recommends that the Accounting Officer submits the project closure report to the Committee within one (1) month of adoption of this report by the House.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

83. There were no material issues relating to effectiveness of internal controls, risk management and governance

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

84. As required by Agence Francaise de Development (AFD), I report based on my audit that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

PROGRAMME FOR RURAL OUTREACH OF FINANCIAL INNOVATIONS AND TECHNOLOGIES (PROFIT) (IFAD LOAN NO.814-KE AND GRANT NO.1218-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

85. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

86. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

87. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

88. As required by International Fund for Agricultural Development (IFAD), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Programme's financial statements are in agreement with the accounting records and returns.

GLOBAL FUND PROGRAM - TO REDUCE MORBIDITY AND MORTALITY CAUSED BY MALARIA IN THE VARIOUS EPIDEMIOLOGICAL ZONES BY TWO THIRDS OF THE 2015 LEVEL BY 2020 PROGRAM-GRANT AGREEMENT-KEN-M-TNT NO.1546

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

89. Unsupported Expenditure - Counterpart Funding

The statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 383,971,795. However, the amount differs from the amount indicated in the ledger of Kshs. 62,554,589 by an unexplained variance of Kshs. 321,417,206.

Further, the statement of receipts and payments reflects comparative receipts from the Government of Kenya (Counterpart Funding) of Kshs. 250,000,000 for the financial year ended 30 June, 2020 bringing the cumulative to-date from inception to Kshs. 633,971,795. Management has not supported the expenditure to show how the balance has been built up since the inception of the Program. Although the amount had previously been omitted in the audited financial statements for the year then ended, the balances have not been marked as restated in the face of the financial statements. Consequently, in absence of any reconciliation and explanation, the accuracy and completeness of the reported receipts from Government of Kenya of Kshs. 633,971,795 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 383,971,795. However, the amount initially differed from the amount indicated in the ledger by Kshs. 321,417,206.

This was an IFMIS challenge whereby part of the expenditure relating to counterpart funding was not captured by the time of Audit. However, the total expenditure was later on transferred to the General Ledger and the two records agree. The General Ledger and the Authority to process these payments using GOK counterpart funding have now been availed.

Committee Observations and Findings

The Committee observed that the challenge with IFMIS was on a user-capacity and not technical in nature. This was a sad state of affairs considering IFMIS was domiciled at Treasury and had been in use for years now.

Committee Recommendation

The Accounting Officer should ensure that staff operating the IFMIS system are capacity-built at all times to enable the effective use of the system.

Other Matter

90. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 2,834,891,108 and Kshs. 2,034,686,081 respectively resulting to an under-funding of Kshs. 800,205,027 or 28% of the budget. Similarly, the Program expended Kshs.

2,053,436,139 against an approved budget of Kshs. 2,839,391,108 resulting to an under-expenditure of Kshs. 785,954,969 or 28% 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 the Statement of Comparative Budget and Actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 2,834,891,108 and Kshs. 2,034,686,081 respectively resulting to an under-funding of Kshs. 800,205,027 or 28% of the budget. Similarly, the Program expended Kshs. 2,053,436,139 against an approved budget of Kshs. 2,839,391,108 resulting to an under-expenditure of Kshs. 785,954,969 or 28% of the budget. This was due to COVID-19 pandemic effects. All Program activities including procurement of contracts, drugs and test kits were suspended since there was lockdown due to the pandemic outbreak. There was no movement of vessels as transport was also affected. By the time the curfew was being lifted, there was little time left to procure supplier contracts, drugs and test kits thus leading to under-funding and under-expenditure.

Committee Observations and Findings
The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

91. Non-Compliance with the Public Finance Management Regulations, 2015
The budget for total payments of Kshs. 2,839,391,108 exceeds the budgeted total receipts budget of Kshs. 2,834,891,108 by Kshs. 4,500,000 implying that the Management has anticipated to spend more than what the Program could actually realize. This is contrary to Regulation 12(c) of the PFM (National Government) Regulations, 2015 which states that "Unless provided otherwise in the Act, these Regulations or any other guidelines developed in furtherance of the Act or these Regulations, the following guidelines shall be observed at all times during budget formulation and approval budget shall be balanced". In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
The observation by the auditor on the difference between budgeted total payments of Kshs. 2,839,391,108 and total budgeted receipts of Kshs. 2,834,891,108 was on draft financial statements that were submitted to them early September, 2021 in order for them to plan their audit as per their request.

This error was corrected to reflect the correct total budget payments of Kshs. 2,839,391,108 and total budget receipts of Kshs. 2,839,391,108 and the final financial statements presented to the Office of the Auditor General-Kenya and certificate issued.

Committee Observations and Findings
The Committee noted the submission and explanation provided by the Accounting Officer.

Committee Recommendation

The Accounting Officer should ensure submission of financial statements that are accurate and comprehensible annual financial statements to the Auditor General.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

92. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GLOBAL FUND PROGRAM-TO CONTRIBUTE TO ACHIEVING VISION 2030 THROUGH UNIVERSAL ACCESS TO COMPREHENSIVE HIV PREVENTION, TREATMENT AND CARE PROJECT - KEN-H-TNT, GA NO. 1547

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

93. Unsupported Expenditure - Counterpart Funding

The statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 1,840,254,274. However, the amount differs from the amount indicated in the ledger of Kshs. 1,757,959,461 by an unexplained variance of Kshs. 82,294,813. In addition, the original Payment Voucher No. 486 for Kshs. 686,787,309 which was included in the schedule in support of Kshs. 1,757,959,461, was not provided for audit.

Further, the statement of receipts and payments reflects comparative receipts from Government of Kenya (Counterpart Funding) of Kshs. 1,614,446,081 for the financial year ended 30 June, 2020 bringing the cumulative to-date from inception to Kshs. 3,454,700,355. Management has not supported the expenditure to show how the balance has been built up since the inception of the Program. Although the amount had previously been omitted in the audited financial statements for the year then ended 30 June, 2020 and earlier years, the balances have not been marked as restated in the face of the financial statements.

Consequently, in absence of any reconciliation and explanation, the accuracy and completeness of the reported receipts from Government of Kenya and other grants and 29 transfers and payments (CPF) balance of Kshs. 3,454,700,355 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

It is true the statement of receipts and payments reflects receipts from Government of Kenya (Counterpart Funding) of Kshs. 1,840,254,274. However, the amount initially differed from the amount indicated in the ledger by Kshs. 82,294,813.00.

This was an IFMIS challenge whereby part of the expenditure relating to counterpart funding was not captured by the time of Audit. However, the total expenditure was later on transferred to the General Ledger and the two records agree. The General Ledger and the Authority to process these payments using GOK counterpart funding were provided. The payment voucher No. 486 of Kshs. 686,787,309 has since been availed to the auditor for review.

Committee Observations and Findings

i. **The Committee noted the failure by the Accounting Officer to ensure that the IFMIS system is configured accurately to capture all relevant expenditure related to counterpart funding in a timely manner; and**

ii. **The Committee further noted that the Accounting Officer failed to properly support the payment voucher No. 486 of Kshs. 686,787,309 and provide a reconciliation statement of the balances during the audit process.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to avail reconciliation documents on time.

94. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 12,297,591,685 and Kshs. 10,882,430,493 respectively resulting to an under-funding of Kshs. 1,415,161,192 or 12% of the budget. Similarly, the Program expended Kshs. 10,918,124,580 against an approved budget of Kshs. 12,297,591,685 resulting to an under-expenditure of Kshs. 1,379,467,105 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

It is true the Statement of Comparative Budget and Actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 12,297,591,685.00 and Kshs. 10,882,430,493 respectively resulting to an under-funding of Kshs. 1,415,161,192.00 or 12% of the budget. Similarly, the Program expended Kshs. 10,918,124,580.00 against an approved budget of Kshs. 12,297,591,685 resulting to an under-expenditure of Kshs. 1,379,467,105 or 11% of the budget. This was due to COVID-19 pandemic effects. All Program activities including procurement of contracts, drugs and test kits were suspended since there was lockdown worldwide due to the pandemic outbreak.

There was no movement of vessels as transport was also affected. By the time the curfew was being lifted, there was little time left to procure supplier contracts, drugs and test kits thus leading to under-funding and under-expenditure.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

95. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

96. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

97. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

98. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects approved revenue budget of Kshs. 317,000,000 and actual amounts realized of Kshs. 256,108,600 resulting to an under-funding of Kshs. 60,891,400 or 19% of the budget. Similarly, the Project spent Kshs. 150,512,680 out of the approved budget of Kshs. 317,000,000 resulting to an under expenditure of Kshs. 166,487,320 or 47% of the approved budget. Management has 30 attributed the under expenditure to delayed signing of consultants' contracts, suspension/delayed training and workshops and delayed procurement of the program car but has not given specific reasons for specific variances in the items.

In the circumstances, low absorption of project funds implies that the project may not be able to meet its strategic objectives.

Submission by the Accounting Officer

It is accurate that the Project spent Kshs. 150,512,680 out of an approved budget of Kshs. 317,000,000, representing a 47% utilization. The under-expenditure was occasioned by the following exogenous factors:

(i) Compensation of employees – planned recruitment of staff was halted pending the restructuring of the PPP Unit to the PPP Directorate.

(ii) Purchase of goods and services – the procurement of technical advisors was put on hold pending rationalization of services required. In-person training and worKshs.ops were suspended due to the COVID pandemic and travel restrictions. The former constitutes a significant allocation of the budget.

(iii) Acquisition of non-financial assets – The planned procurement of a Project motor vehicle budgeted at Kshs. 10 million, was put on hold due to COVID -19 pandemic.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Basis for Conclusion

99. Irregular Recruitment of an Advisor

The statement of receipts and payments for the period under review reflects compensation of employee's expenditure of Kshs. 84,065,438. Review of records related to the expenditure revealed that through the project, the National Treasury 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. It was however noted that the position is not provided for in the approved project organization structure as outlined in the IFPPP Project Implementation Manual.

Although Management has 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.

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. It was therefore not possible to confirm value for money on the expenditure amounting to Kshs. 19,943,319 paid to the advisor during the year ended 30 June, 2021.

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

Submission by the Accounting Officer

The Accounting Officer submitted 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 CS, National Treasury, as the Authorized Officer, approved the position. 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 World Bank issued 'No objection' to award contract for the advisor to CS, on 29th June 2020, on the negotiated terms. 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 and not in breach of The Financing Agreement.

Committee Observations and Findings

i. **The Committee observed that this was a consultancy and not employment hence the Salaries and Remuneration Commission guidelines need not apply;**
ii. **The salary was negotiated; and**
iii. **The World Bank, being the paying agent, gave a no objection letter.**

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

100. Lack of Internal Audit Services

During the year under review, the project was not subjected to review by The National Treasury Internal Audit Unit. The Internal Audit Unit only commenced review on 28 June, 2021, two days to the closure of the financial year. This is 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.

Under 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

The National Treasury Internal Auditors were not able to audit the project during the year due to shortage of staff and heavy workload. However, the Internal Audit review commenced on 28th June 2021 and was ongoing at the time of Audit. The minutes of the entry meeting and other relevant correspondences were provided. An auditor has been deployed to be auditing the IFPPP project.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to ensure the project was audited by the internal audit function, despite the function being domiciled at Treasury.

Committee Recommendation

The Accounting Officer must at all times ensure that they have appropriate arrangements in place for conducting internal audit according to the guidelines of the Accounting Standards Board pursuant to the provisions of Section 73(1)(a) of the Public Finance Management Act, 2012.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

101. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the Financing Agreement.

FINANCING LOCALLY-LED CLIMATE ACTION PROGRAM PREPARATION ADVANCE NO. IDA V319-KE (P173065)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

102. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

103. Amount Withdrawn but Not Claimed

Part B of the special (designated) account reconciliation statement for the Program reflects amounts withdrawn but unclaimed of USD 369,926 (Kshs. 39,896,500, based on an exchange rate of Kshs. 107.85), as at 30 June, 2021. This represents cumulative funds transferred to the Program bank account but whose expenditure returns had not been submitted to The National Treasury by the close of the financial year.

Submission by the Accounting Officer

The Accounting Officer submitted that the outstanding Special Account Amount of USD 369,926 (Kshs. 39,896,500) as at 30th June, 2021 was made up of amount drawn, paid and was under documentation to the World Bank amounting to USD 75,637 (Kshs. 8,157,483). The Amount with the Local Program Account as per bank balance as at June 30, 2021 was USD 294,289 (Kshs. 31,739,036).

Committee Observations and Findings

The Auditor General confirmed that the amounts had now all been claimed.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that all amounts withdrawn are promptly claimed.

Other Matter

104. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts of Kshs. 159,486,605 against budgeted receipts of Kshs. 171,237,191, resulting in a shortfall of Kshs.

11,750,586 or 17% of total budget. The shortfall arose under the IDA Loan where actual receipts amounted to Kshs. 119,486,605 against the budgeted receipts of Kshs. 131,237,191, resulting in a shortfall of Kshs. 11,750,586 or 17% of the total budgeted receipts.

Further, the statement of comparative budget and actual amounts reflects budgeted payments of Kshs. 171,237,191 and actual payments of Kshs. 93,687,314, resulting to under-expenditure of Kshs. 77,549,877 or 45% of total budget. Included in the under expenditure of Kshs. 77,549,877 is a closing bank balance of Kshs. 58,511,086 reflected under Note 7 to the financial statements. Although these funds were withdrawn during the year under review, they were not utilized. Management has attributed the under expenditure to slow procurement processes at The National Treasury and Planning.

In view of the above, the Program may not have implemented all its planned and approved programmes, resulting to delayed provision of services to the people of Kenya.

Submission by the Accounting Officer

The under expenditure reported during the year ended June 30, 2021 of Kshs. 77,549,877 or 45% of total budget was as a result of slow procurement processes at the Ministry that delayed conclusion of a number of procurement activities including supply and delivery of motor vehicles, ICT equipment and hiring of program experts.

This was as a result of the non-responsiveness of the procurement processes arising from advisory of Ministry of Health restricting public gatherings which affected various tendering, resulting in delays in conclusion of procurement activities including supply and delivery of motor vehicles.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

105. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

106. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

107. As required by the International Development Association (IDA) and Credit Facility Agreement No. IDA V319-KE dated 20 March, 2020, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

108. There were material issues noted during the audit of the financial statements of the Project.

Other Matter

109. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects total receipts of Kshs. 28,170,286 against estimated receipts of Kshs. 41,000,000 resulting into shortfall of receipts of Kshs. 12,829,714 or 31%. Similarly, the statement reflects actual expenditure totaling Kshs. 28,170,286 against estimated expenditure of Kshs. 41,000,000 resulting into an under-expenditure of Kshs. 12,829,714 or 31% which occurred under purchase of goods and services. The under expenditure was attributed to planned activities not being undertaken due to COVID-19 pandemic.

Submission by the Accounting Officer

During the FY 2020/2021 the project had a work plan of procuring ICT items. The procurement process did not take place as a result of omission in the main National Treasury's work plan hence low absorption of the Budget.

Committee Observations and Findings

The Committee observed that budgets follow work plans hence the Accounting Officer was negligent in not having prepared the work plans.

Committee Recommendation

The Committee reprimands the Accounting Officer.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

110. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

111. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

112. As required by African Development Bank (ADB) and African Development Fund, I report based on my audit that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

Unmodified Opinion

113. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

114. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

115. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

116. As required by the financing agreement IDA Credit No.5638-KE, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

117. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

118. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

119. There were no material issues relating to effectiveness of internal controls, risk management and governance.

2. STATE DEPARTMENT FOR PLANNING - VOTE 1072

REPORT ON THE FINANCIAL STATEMENTS

Mr. James Muhati, the Principal Secretary and Accounting Officer for the State Department of Economic Planning appeared before the Committee on 7th February 2023 and 22nd March 2023 accompanied by the following officers:

1.	Mr. Mcdonald G. Obudho	–	Director-General, KNBS
2.	Ms. Ann Mburu	–	Director, Corporate Services
3.	Mr. Joel Makori	–	Director, Administration
4.	Mr. John Munywoki	–	Senior Chief Finance Officer
5.	Mr. Douglas Mutua	–	Head of Programme
6.	Ms. Olivia Kimata	–	Principal Accountant
7.	Mr. Elias N. Njoroge	–	Senior Accountant
8.	Mr. James T. Gatungu	–	Project Manager, KNBS

and submitted as follows;

Basis for Qualified Opinion

120. Unsupported Pending Bills

Annex 1 to the financial statements reflects a pending bills balance of Kshs. 28,062,845 which includes an amount of Kshs. 5,397,937 relating to historical balance brought forward from the 2017/2018 financial year. This historical balance further includes two balances of Kshs. 2,007,000 and Kshs. 363,000 relating to two hotels in Nakuru and Mombasa and dated 28 June, 2014 and 13 July, 2018, respectively all totalling to Kshs. 2,370,000. These bills were reflected as additional pending bills in the year under review. However, the additional pending bills were not reflected in the prior years audited financial statements and were not supported with the relevant supporting documentation including, requisitions, local service/purchase orders, invoices and delivery notes.

In the absence of the relevant supporting documents, it was not possible to confirm the authenticity of pending bills amounting to Kshs. 2,370,000. In addition, failure to settle bills during the year in which they relate to adversely affects the provisions of the subsequent year to which they are charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills balance included two historical bills of Kshs. 2,007,000 and Kshs. 343,000 relating to two hotels in Nakuru and Mombasa and dated 28th June 2014 and 13th July 2018 respectively. However, the correct figure for Mombasa Beach Hotel pending bill was Kshs. 343,000 and not Kshs. 363,000 indicated in the audit report. The two pending bills had not been verified and thus could not be captured as pending bills in the prior periods.

In respect to the pending bill of Kshs. 2,007,000, the bill was incurred when the State Department was under the Ministry of Devolution and Planning. There were correspondences between the State Department and the service provider over the years in regard to verification of the claim. A demand note dated 07th December 2015 from the service provider was declined by the Accounting Officer due to lack of supporting documents vide letter Ref. No. MDP/17/05 Vol. IV (3) dated 15th June 2016. However, the service provider vide letter Ref. MDP/17/05 Vol. IV (3) of 25th June 2016, provided the documents which included the Local Service Order issued by the Ministry and the signed attendance register.

A taskforce appointed on 13th September 2021 by the Accounting Officer reviewed all historical pending bills and cleared the bill for processing upon confirmation of delivery of the services and confirmation by the user Directorate.

In respect to the pending bill of Kshs. 343,000, the hotel demanded payment for the services rendered and forwarded a copy of the invoice dated 13th July 2018, copies of the attendance register for the participants and a copy of the local service order issued at the time of rendering the service. The order no. 486160 issued before the workshop was for Kshs. 812,500 as per the proforma invoice no. 16/07/18/MBH/01. However, the actual cost incurred during the workshop was Kshs. 343,000 as per the invoice.

The service provider, appearing before a taskforce indicated that they had erroneously submitted the claim to the National Treasury instead of State Department for Planning thus occasioning the delay. The committee upon consideration of the provided documents cleared the bill for processing upon confirmation of delivery of the services by the user Directorate. The supporting documents in respect of the bill which included a copy of LSO, invoice and signed attendance registers were provided.

Committee Observations and Findings

(i) **The Committee noted that this audit query was recurring in the Auditor's General National Government Audit Report for FY 2021/22, and only Kshs. 2.7 million was outstanding;**

(ii) **The hotels had since been paid.**

Committee Recommendation

Within thirty (30) days upon asdoption of this report, the Accounting Officer should initiate process for write-off of those that are unverifiable.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC ESOURCES

Conclusion

121. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

122. Management of Grounded Motor Vehicles

A review of the State Department's motor vehicle register revealed that the State Department had sixty (60) motor vehicles out of which twenty-three (23) or 38% were grounded. In addition, the details of the specific defects and duration of the defects, log books and the work tickets for these grounded vehicles, were not provided for audit verification. Further, it was noted that the motor vehicle register provided was missing some crucial information about the grounded vehicles. This is contrary to Section K.11 of the Code of Regulations, (Revised 2006), which provides that the use of the work ticket(s) for a Government vehicle is compulsory and that the instructions set out in the front cover of the book of work tickets must be made known to all drivers and other officers responsible for the management of Government transport.

In addition, a summary (as provided for at part G of the cover) of fuel, oil and 36 distance travelled, should be entered, with the related work ticket number, in the vehicle log-book on completion of each such ticket or at the end of each month, should a ticket remain incomplete at the end of that month. Further, Section K.12 provides that a register of all Government vehicles, trailers and motor cycles should be maintained by the Permanent Secretary/Head of Department of each Ministry. The Register should include the following particulars: (i) Description of vehicle, trailer and motor-cycle (ii) Chassis number (iii) Engine number (iv) GK Registration number (v) The date the vehicle was put into service (vi) Department to which allotted; and (vii) The date of disposal of the vehicle.

In the absence of proper records with details of the grounded vehicles, it was not possible confirm effective management of the grounded vehicles, which may continue to deteriorate resulting in loss of any salvage value which would have been realized through disposal of the motor vehicles.

Submission by the Accounting Officer

The Accounting Officer submitted that at the time of the audit, the State Department's motor vehicle register revealed that 23 out of the 60 motor vehicles were grounded. The details of the specific defects and duration of the defects had not been provided since the motor vehicles had not been inspected as at the time of the audit.

However, 17 Motor vehicles whose registration documents were available at the State Department were inspected by the Chief Mechanical and Transport Engineering Unit, State Department of Infrastructure on diverse dates and the specific defects for each vehicle indicated in the vehicle valuation and inspection reports. Copies of the logbooks and work tickets in respect to the 17 motor vehicles were presented to the Committee.

A disposal committee was appointed by the accounting officer vide letter reference no. TNTP/SDP/12/17 dated 04th October, 2021 to identify and verify all unserviceable, obsolete and surplus assets/items and recommend the best method of disposal including the minimum reserve prices for the items to the accounting officer.

Arising from the review process, the disposal committee recommended that six out of the 17 motor vehicles inspected with high minimum reserve price be sold by open tender. The tender sale advert was done on 8th March, 2022 and letters of award were given to the winners on 11th May, 2022. Kshs. 2,207,000 was realised from the sale of the six vehicles.

Further, the disposal committee recommended that three out of 17 vehicles be donated to Nyagah Vocational Training Centre for learning purposes because the valuation from Chief Mechanical Engineer had placed the reserve prices for the three vehicles at Ksh. 10,000, KSh. 20,000 and KSh. 56,000. This was informed by the circular Reference No. MOE/DTE/ADM1/115/VOL.II (52) dated 09th December, 2021 from the Office of the Principal Secretary, State Department for Vocational and Technical Training and a letter from Nyaga Vocational Training Centre dated 18th

February, 2022 addressed to the Principal Secretary State Department for Planning which were forwarded by the Principal Secretary to the disposal committee for consideration. This was in line with Section 165 (1)(a) of the Public Procurement and Asset Disposal Act, 2015 which prescribes that an accounting officer of a procuring entity may dispose assets by a method which may include "transfer to another public entity or part of a public entity with or without financial adjustment" and Regulation 185(5) of the Public Procurement Disposal Regulation of 2020 where " An accounting officer of a procuring entity that is receiving the items may pay an agreed amount of money to the transferring procuring entity or may receive the item free of charge". Thereafter, Nyaga Vocational Training Centre confirmed receipt of the vehicles on 11th May, 2022 as per form FO.58. The remaining eight motor vehicles out of the 17 inspected were found to be serviceable. Five were repaired and three are awaiting funds for repairs.

Out of the 23 motor vehicles, it was established that the remaining six vehicles did not belong to the State Department for Economic Planning but rather belonged to the National Economic and Social Council (NESC) which is currently domiciled in the Office of the Prime Cabinet Secretary.

Committee Observations and Findings

(i) **The Committee observed that the explanation and documents given by the Accounting Officer was unsatisfactory since supportive documentation were not availed; and**

(ii) **The Accounting Officer also failed to explain how the beneficiary school was identified, and the Committee observed the blatant abuse of public office in transferring assets through discretion, without equity and transparency.**

Committee Recommendation

The Committee reprimands the Accounting Officer and directs that he ensures proper records are availed within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015. Further, disposal through donations should be streamlined through clear policy.

DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE STATE DEPARTMENT FOR PLANNING

DATA COLLECTION AND DATABASE DEVELOPMENT PROJECT (UNFPA-KEN7P32A) - KENYA NATIONAL BUREAU OF STATISTICS

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

123. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

124. Status of Project Activities

As reported in the prior years, the Project remained dormant in the year under review. However, it had an opening cash in bank balance amounting to Kshs. 2,162,338 against which bank charges amounting Kshs. 4,320 were debited resulting in a closing balance of Kshs. 2,158,018 as reflected in the statement of financial assets and liabilities as at 30 June, 2021.

Management has indicated that activities for the Project were implemented under GOK/UNFPA 8th County Programme and therefore, no new programme agreement was signed in respect to the Project's activities, which entailed financing preparatory activities for the 2019 Kenya Population and Housing Census. Management has further indicated that although no funding was received in the four financial years ended 30 June, 2021, UNFPA has indicated they will finance a 9th GOK/UNFPA Country Programme on data collection and database management. Management says it has maintained the Project bank account for the purpose.

Submission by the Accounting Officer

The Accounting Officer submitted that the project began under the then Ministry of Planning and National Development and was implemented by the then Central Bureau of Statistics (currently KNBS) which was a department within the Ministry. By then, UNFPA used to fund activities by directly sending funds to the Central Bureau of Statistics (CBS) as the implementing entity through the Ministry. When CBS became a SAGA in 2008, it opened and maintained an account with the Cooperative Bank, Kimathi House Branch, Account No. 011200818570000 where UNFPA used to channel the project funds.

Following policy changes on remittances for donor funded projects in government, and the provisions of the PFM Act 2012, all project funds were to be channelled through the National Treasury before getting to the implementing entity. Due to the aforementioned policy, the project bank account in Cooperative Bank remained dormant from FY 2017/2018 up to the period under audit (2020/2021), as it did not receive any funds. However, the account continued incurring monthly bank charges.

The account had a closing balance of Kshs. 2,158,018 as reflected in the statement of financial assets and liabilities as at 30th June, 2021. As a result of this the management requested the KNBS Board to approve closure of the account to avoid additional running costs. The Board, in its meeting held on 15th April 2021, granted approval to seek authority to close off the account. A letter was done on 25th April 2022 to the National Treasury, who granted authority to close it on 9th May 2022. The Bureau instructed the Cooperative Bank on 12th May 2022 to close off the account and this was effected on 13th June, 2022.

The funds were transferred to the Bureau's KCB Moi Avenue Branch Account No. 1116027593 on 14th June 2022. The account in KCB does not charge monthly ledger fees. The Accounting Officer provided copies of the final Cooperative Bank statement and the Bureau's KCB statements.

The Bureau had written to UNFPA on 15th January 2022, seeking a no objection to utilize the funds or refund the amount back to them before the account could be closed. No response was received and a reminder letter was done on 7th November, 2022.

Committee Observations and Findings

The Committee noted the explanation and documents given by the Accounting Officer with regard to the status of Project Activities.

Committee Recommendation

The Accounting Officer should within one (1) month after adoption of this report provide a status of the request to utilize the fund from the Donor to the Committee or remit the funds to the National Treasury. Treasury should further provide a clear framework on closing the accounts.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

125. Undisclosed Financing Conditions

The Project financing agreement NO.KEN7P32A signed between the Government of Kenya and UNFPA was not provided for audit review. As a result, the accuracy and validity of the cumulative receipts and payments amounting to Kshs. 393,337,875, and Kshs. 391,179,857 respectively transacted during the year ended 30 June, 2021 could not been confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that a letter by UNFPA Country Office (FPA/2023/KNBS/01) dated 8th February, 2023 clarified that the quoted reference number KEN7P32A was not a Financing Agreement but a Programme code for the data collection and data base development Programme. The Accounting Officer also submitted that the project was implemented through Country Action Plan that was signed between the UNFPA, the then Ministries of Finance and the State for Planning, National Development and Vision 2030 in February, 2009. The Country Programme Action Plan (2009-2013), the signed work plans, the budgets and the cumulative receipts and payments amounting to Kshs. 393,337,875, and Kshs. 391,179,857 respectively was summarized.

The matter in contention was why the agency had not provided the Financing Agreements it had entered with donor agencies particularly the UNFPA. The agency explained that the UN agencies at the time used the Country Program Action Plan (CPAP) and not Financing Agreements. However, the UN agencies have now introduced Financing agreements.

Committee Observations and Findings

(i) **The Committee observed that a Financing Agreement was not a requirement at the time and instead a Country Program Action Plan was used for the programme; and**

(ii) **The Committee also observed that the explanation and documents submitted by the Accounting Officer was satisfactory.**

Committee Recommendation

The Committee therefore marked the matter as resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

126. There were no material issues relating to effectiveness of internal controls, risk management and governance.

COORDINATION OF POPULATION POLICY IMPLEMENTATION PROJECT (UNFPA PROJECT NO. KEN08POP) – NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

127. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

128. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

129. There were no material issues relating to effectiveness of internal controls, risk management and governance.

MULTIPLE INDICATOR CLUSTER SURVEY PROJECT - UNICEF - KENYA NATIONAL BUREAU OF STATISTICS

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

130. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

131. Status of Project Activities

The financial statements indicate that the Project did not receive any funds from UNICEF or the Government of Kenya during the year under review. In addition, no project activities were carried out in the year and the only expense incurred amounting to Kshs. 4,320 related to bank charges for the Project account. Management has previously indicated the intention to close the Project Bank account to avoid the bank charges but is yet to do so.

Submission by the Accounting Officer

The Accounting Officer submitted that the Bureau maintained a bank account with The Cooperative Bank, Kimathi House Branch, Account No. 01120081528600. The account remained dormant from FYs 2019/2020-2020/2021 as UNICEF did not fund the project, but was incurring monthly bank charges.

To avoid additional running costs, the management sought authority from the Board to close the account. In its meeting held on 28th January 2021, the Board granted authority to close off this account. The Bureau wrote to The National Treasury on 8th December 2021 and authority was granted on 3rd January 2022. The Bureau instructed the Cooperative Bank on 21st January 2022. The account was closed off on 28th January 2022 and the funds transferred to the Bureau's KCB Bank, Moi Avenue Branch Account Number 1116027593 on 28th January 2022. The account in KCB does not charge monthly ledger fees. Copies of the final Cooperative Bank statement and the relevant Bureau's KCB statement was provided. The matter is therefore closed as this Account bad been closed.

Committee observations and Findings

The Committee observed that the explanation and documents given by the Accounting Officer with regard to the status of Project Activities was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

132. Undisclosed Financing Conditions

As in the previous financial year, the Project financing agreement signed between the Government of Kenya and UNICEF was not provided for audit review. Management has explained that no agreement was signed in respect to the Project as funding from UNICEF was based on work plans for various activities. However, Management has not disclosed the terms and conditions attached to the work plans.

As a result, the validity of the cumulative receipts and payments amounting to Kshs. 86,392,918 and Kshs. 86,339,620 respectively transacted during the year ended 30 June, 2021 has not been confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Government of Kenya and UNICEF entered into a Basic Cooperation Agreement dated January 1993 which stipulated the general principles, terms and conditions on how to manage the UNICEF programmes.

The Accounting Officer also submitted that the project was implemented through the Memorandum of Understanding (MOU) signed on 6th October, 2010 and that the general principles, details of the activities to be undertaken and the source of funds are stipulated in the MOU. The Accounting Officer further submitted that the cumulative receipts and payments amounting to Kshs. 86,392,918 and Kshs. 86,339,620 respectively transacted during the periods up to 30th June, 2021 were summarized and presented.

Committee Observations and Findings

The Committee also observed that the explanation and documents submitted by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

133. There were no material issues relating to effectiveness of internal controls, risk management and governance.

NATIONAL INFORMATION PLATFORM FOR FOOD SECURITY AND NUTRITION PROJECT- FOOD/2017/393-022 - KENYA NATIONAL BUREAU OF STATISTICS

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

134. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

135. Late Submission of Financial Statements

Management submitted the financial statements for audit on 6th October, 2021, Six (6) days after the statutory deadline of 30 September, 2021 contrary to Section 81(4)(a) of the Public Finance Management Act, 2012 which requires Accounting Officers to submit financial statements to the Auditor-General within three (3) months after the end of each financial year.
Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that a special Board meeting to approve the financial statement was held on 28th September, 2021. The management prepared a forwarding letter for all the three donor funded projects' financial statements, as described in the letter, on the same day. The forwarding letter was duly acknowledged in the Office of the Auditor General on 29th September, 2021.

The Accounting Officer also submitted that the Office of the Auditor General (OAG) later noted that the Financial Statement for the NIPFN Project was not among the other two statements in their custody. To ensure compliance with the reporting requirements, the Management signed another copy on 30th September, 2021. The finance officer was to ensure delivery to the OAG offices, but did not deliver on time.

The Kenya National Bureau of Statistics acknowledged that the Financial Statement for the NIPFN Project was submitted late but reiterated that it was not deliberate. The Management took note of this omission by the officer who was assigned to deliver the project financial statement to OAG and disciplinary action was taken against him. Subsequently, proper control measures have since been put in place to avoid recurrence of such an omission.

The Accounting Officer further submitted that the matter was as a result of human error by one member of staff; Mr. Tom Mutua, the officer responsible for the late submission of the statutory documents, and that a verbal warning was given to him in line with the Agency's Human Resource Policies and Procedures Manual.

Committee Observations and Findings

The Committee observed that the verbal warning issued to the Officer, Mr. Tom Mutua, who failed to submit the documents on time was lenient considering that the action was a breach of the PFM and Public Audit Acts.

Committee Recommendation

The Accounting Officer should issue a written reprimand to the said officer for failure to ensure that the financial statements are submitted within the statutory period.

136. Non-Compliance with Affirmative Action on Gender, Ethnicity and Regional Distribution

Review of the payroll records revealed that the Project has ten (10) staff who are engaged on contractual basis to carry out various roles as per the project's agreement. However, an examination of staff personal records indicates that about four (4) or 40% of the staff belong to one ethnic community contrary to Article 232(1)(h & i) of the Constitution of Kenya 2010 which recognizes representation of Kenya's diverse communities and equal opportunities for appointment, training and advancement and 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. The Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer concurred with the observation of the Office of the Auditor General that there were four (4) staff members out of ten (10) from the same community; he however confirmed that the recruitment of the 10 (ten) staff was transparent and implemented as per the KNBS Human Resource Policies and Procedures Manual. The recruitment process started by an open advertisement for the positions in the print media on 22nd January, 2019.

The Accounting Officer also submitted that shortlisting of the candidates was undertaken on 24th April, 2019. Interviews were then conducted by independent panelists constituted by the Bureau management from 14th to 27th May, 2019 as guided by the KNBS Human Resource Manual. Selection was based on merit by the independent interviewing panelists and the best candidate in each category selected.

The concern on non-compliance on ethnic balancing was noted by the management and moving forward the Bureau has undertaken measures to ensure compliance on Affirmative Action on Gender, Ethnicity and Regional Distribution as provided for by the Constitution.

Committee Observations and Findings

The Committee takes cognizance of the situation and noted that the issue of ethnic and regional balance is a constitutional and statutory requirement and is achievable.

Committee Recommendation

(i) The Accounting Officer should adopt the corrective measures to address the requirements of Section 7 (2) of the National Cohesion and Integration Act 2008.

(ii) Moreover, the Auditor General should examine ethnic composition in all agencies, in every year of audit, as a standard parameter in reporting.

137. Purchase of Goods and Services

137.1 Domestic Travel and Subsistence

The statement of receipts and payments reflects a balance of Kshs. 4,505,301 under purchase of goods and services which as disclosed in Note 9.5 to the financial statements includes an amount of Kshs. 1,268,336 on domestic travel and subsistence out of which Kshs. 438,800 was spent on adjudication of tender worth Kshs. 3,259,600. The payment was made to staff who travelled to Naivasha in the month of August, 2020 and conference facilities for the tender processing of eight (8) Computers and six (6) laptops. However, the adjudication would have been done efficiently and economically at the Project's offices hence saving project funds. No plausible explanation was provided by Management for incurring expenditure amounting to Kshs. 1,268,336 on travelling for the adjudication of a tender worth Kshs. 3,259,600.

In the circumstances, it has not been possible to ascertain whether the Project got value for money on the travel expenses.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount of Kshs. 1,268,336 on Domestic Travel and Subsistence Allowance for the NIPFN project during the year under review was not only for the adjudication of the evaluation of the tender No. KNBS/ONT/01/2020-2021 but it was the total expenditure involving other activities within the project

The specific amount for the Evaluation of tender No. KNBS/ONT/01/2020-2021 for project was Kshs. 438,800 to cater for a conference facility of Kshs. 99,000, daily subsidence allowance of Kshs. 324,800 and fuel amounting to Kshs. 15,000. The reason for staff to carry out the tender evaluation out of the project offices was due to the large number of bidders who were 47 having been an open tender, and involved bulky bids. The technical specifications were detailed and required concentration in order to be fair to all bidders, and to avoid interferences from third parties.

Further, the officers had to work up to late hours in order to complete the exercise within the stipulated time. The tender opening minutes, the evaluation report and the list of bidders who participated in the bidding were provided.

Committee Observations and Findings

(i) **The Committee observed that Kshs. 438,800 spent out of Kshs. 3,259,600 did not represent value for tax payers' money; and**

(ii) **The Committee also observed that the response provided by the Accounting Officer didn't indicate the various assignments undertaken by each of the tender evaluation officer.**

Committee Recommendation

The Committee recommends that Kshs. 438,800 be recovered from the then Accounting Officer, as surcharge, in accordance to Article 226(5) of the Constitution and the PFM Act and its Regulations.

137.2 Acquisition of Non-Financial Assets

The statement of receipts and payments reflects a balance of Kshs. 4,105,519 under acquisition of non-financial assets. The assets included eight (8) laptops and six (6) desktop computers. However, there is no evidence that these assets were included in the fixed assets register. This is contrary to provisions of Section 162(1) of the Public Procurement and Asset Disposal Act, 2015 which requires an Accounting Officer of a procuring entity to ensure that all inventory, stores and assets purchased be received and taken on charge as a basis for ensuring that all procured items are properly accounted for and put in proper use as intended by the procuring entity. The assets remained unrecorded and therefore could not be verified. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that as at the time of conclusion of the audit, the assets in question had not been updated on the Asset Register. The Bureau's assets tagging process and updating of the register by a consultant was ongoing, during the time of the audit. All the purchased assets were received and taken on charge so as to ensure that they were properly accounted for and put into proper use as intended.

The Accounting Officer also submitted that all the Bureau assets including those of the projects are included in the Fixed Asset Register in the Financial Management System. An extract of the fixed assets register for the NIPFN project was provided. He further submitted that the Bureau was in the process of acquiring its assets' tagging machine to ensure that the tagging process is done internally and continuously.

Committee Observations and Findings

The Committee noted that the Accounting Officer, in his own admission, failed to meet the requirements of Section 162(1) of the Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **Within three (3) months upon adoption of this report, the Accounting Officer should submit a report on the assets' tagging to the House.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

138. There were no material issues relating to effectiveness of internal controls, risk management and governance.

3. THE PRESIDENCY – VOTE 1011

REPORT ON THE FINANCIAL STATEMENTS

Mr. Kinuthia Mbugua, the Accounting Officer for the State House Comptroller (Vote 1011) appeared before the Committee on 6th June, 2022 to adduce evidence on the audited financial statement for the State Department of Interior (Vote 1011) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Ms. Susan Mwongera	-	Programme Coordinator
2.	Mr. Mwikamba Mgherey	-	Deputy Accountant General
3.	Mr. Joseph Biomdo	-	Director Legal Services
4.	Mr. Zedekiah Ogendi	-	Director, SCMS
5.	Mr. Samuel T. Maina	-	Deputy Accountant General, State House
6.	Mr. Joel K. Langatt	-	Senior Deputy Accountant General
7.	Ms. Irene C. Tulel	-	Programme Manager, National Counter Terrorism
8.	Mr. Shadrack M. Mwadime	-	Senior Accountant - Office of the Deputy President
9.	Mr. Shavanga Calvin	-	Senior Chief Finance Officer - Office of the DP
10.	Mr. Kang'ethe Thuku	-	Deputy Director General
11.	Mr. David W. Waweru	-	Chief Finance Officer
12.	Mr. Amos Nyakundi	-	Deputy Director Finance

And submitted as follows

Unmodified Opinion

139. There were no material issues noted during the audit of the financial statements of the Executive Office of the President.

Other Matter

140. Pending Bills

Note 21.1 to the financial statements reflects pending accounts payable of Kshs. 5,349,989,714 as at 30 June, 2021. The bills were not paid during the year under review but were instead carried forward to the financial year 2021/2022. 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 available resources.

Submission by the Accounting Officer

The Accounting Officer admitted that the Executive Office of the President incurred pending bills totalling to Kshs. 5,349,989,714 during the FY 2020/21 as disclosed in the notes of the financial reports, which were not settled during the year but were carried forward to the subsequent FY2021/22. These bills emanated from inadequate exchequer releases from both the National Treasury & Planning and the Nairobi City County Government (NCCG). The situation was catalysed by the prevailing economic conditions arising from the effects of COVID-19 pandemic and The National Treasury's tight framework fiscal policies.

However, out of the total pending bills declared, an amount totalling to Kshs. 1,900,643,083.41 was subsequently paid as a first charge to the budgetary allocation for the FY 2021/22. Further, the Executive Office of the President has continued to engage both the National Treasury & Planning and the NCCG for the provision of additional budgetary funding and adequate exchequer releases to clear the remaining pending bills.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer with regards to pending bills.

Committee Recommendation
The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of Section 68(2) (h) of the Public Finance Management Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
141. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
142. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS TECHNICAL ASSISTANCE TO ENHANCE THE CAPACITY OF THE PRESIDENT'S DELIVERY UNIT (ADB GRANT NO.5500155012902)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

143. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
144. Unsupported Imprest Claims
The statement of receipts and payments reflects expenditure of Kshs. 42,112,100 in respect of purchase of goods and services. Included in this figure is an amount of Kshs. 17,143,100 paid in respect of domestic travel and subsistence out of which Kshs. 8,997,700 relates to temporary

imprests issued without imprest warrants contrary to Regulation 91(2) of Public Finance Management (National Government) Regulations, 2015.

Submission by the Accounting Officer

The Accounting Officer submitted that the donor funded project for the Technical Assistance to Enhance the Capacity of the President's Delivery Unit (ADB Grant NO.5500155012902) was being implemented by the Presidents Delivery Unit, a department that was under the Executive Office of the President until the end of the FY 2019/20.

The functions of this Department were transferred from the Executive Office of the President Vote 1011 to the State Department for Interior and Citizenry Services Vote 1021 vide Executive Order No. 2 of 2019 for implementation and reporting.

Committee Observations and Findings

The Committee observed that the project implementation was transferred to State Department of Interior through Executive Order No. 2 of 2019.

Committee Recommendation

The Auditor General to ascertain status in the financial statements of the State Department of Interior in the subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

145. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

146. As required by the African Development Bank, I report based on the audit that the Project`s funds have been used in accordance with the conditions of Grant Agreement with due attention to economy, efficiency and effectiveness for the purposes for which they were provided. Further, the goods and services financed have been procured in accordance with the Grant Agreement and the Bank`s rules and procedures and necessary supporting documents, records and accounts have been kept in respect of all Project activities and adequate internal control to monitor expenditure and other financial transactions and ensure safe custody of assets exists.

UNICEF – KENYA GENERATION UNLIMITED (GenU) PROJECT (PROGRAMME NO. 2400/A0/A6)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

147. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

148. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

149. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA - EU PARTNERSHIP FOR THE IMPLEMENTATION OF THE NATIONAL STRATEGY TO COUNTER VIOLENT EXTREMISM IN KENYA - NATIONAL COUNTER TERRORISM CENTRE

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

150. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

151. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

152. There were no material issues relating to effectiveness of internal controls, risk management and governance.

4. STATE DEPARTMENT FOR INTERIOR AND CITIZEN SERVICES – VOTE 1021

REPORT ON THE FINANCIAL STATEMENTS

Eng. Dr. Karanja Kibicho, the Accounting Officer for the State Department of Interior (Vote 1021) appeared before the Committee on 10th May 2022 to adduce evidence on the audited financial statement for the State Department of Interior (Vote 1021) for the Financial Year 2020/2021. He was accompanied by the following officers:

1. Mr. Alex Muteshi - Director General Citizen Services & Immigration
2. Ms. Alice W. Gichu - Senior Chief Finance Officer
3. Mr. James K. Karori - Deputy Accountant General
4. Mr. Edward N Mbugua - Deputy Inspector General Kenya Police Service
5. Mr. Mwenda Njoka Government Printer
6. Mr. Stephen G Wamae - Supply Chain Management Service- SDC
7. Mr. David M Mutia - Senior Principal Finance Officer
8. Mrs. Elizabeth W Kiano - DIAG Internal Audit
9. Mr. Peter Mutua - Director Civil Registration
10. Ms. Gladys Mumbe - Principal Finance Officer
11. Mr. Ngari Githu - Supply Chain Management Service - DD
12. Mr. Stephen Ndege - Supply Chain Management Service - AD
13. Mr. Peter Kioko - Senior Accountant Internal Audit
14. Mr. Peter N. Muita - Chief Finance Officer
15. Mr. Dub Abudho - Personal Assistant to PS
16. Mr. Paul Mwongera - Principal Finance Officer

And submitted as follows:

Basis for Qualified Opinion

153. Variance between Financial Statements and Trial Balance Figures

A comparison of the financial statements and the Integrated Financial Management Information System (IFMIS) generated trial balance provided for audit revealed variances between the two sets of records on eighteen (18) account items as detailed below:

Account No.	Item Description	Financial Statements Balance-Kshs.	Trial Balance Figure-Kshs.	Variance-Kshs.
6510000	Special Accounts	0	3,899,599,805	(3,899,599,805)
6520000	Treasury Bank Accounts	0	85,281	(85,281)
6530000	Recurrent Bank Account	509,937,446	(408,575,188,720)	409,085,126,166

6540000	Development Bank Accounts	815,847,042	(5,083,766,907)	5,899,613,949
6550000	Deposit Bank Account	533,636,762	362,819,658	170,817,104
6580000	Cash in Hand	45,164,045	473,232,332,365	(473,187,168,320)
6710000	Domestic Debtors and Advances	0	545,040	(545,040)
6720000	Domestic Debtors and Advances	0	31,285	(31,285)
6740000	Other debtors and prepayments	0	(1,257,053,461)	1,257,053,461
6760000	Government Imprest	2,389,969	2,155,433,186	(2,153,043,217)
6780000	Suspense and Clearance Account	0	14,770,712,904	(14,770,712,904)
6790000	Other Current Assets	0	137,493,096	(137,493,096)
7320000	Deposits	533,636,762	10,053,228,283	(9,519,591,521)
7310000	Other Liabilities	0	3,472,192,790	(3,472,192,790)
7380000	Withholding Taxes	0	(293,312,653)	293,312,653
7390000	System Required Liabilities	0	(127,306,544,715)	127,306,544,715
9910000	Provisions	0	1,964,665,301	(1,964,665,301)
				34,907,339,488

Consequently, the accuracy and completeness of the balances for these account items as reflected in the financial statements for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statement and IFMIS Trial balance revealed several variances; this was occasioned by the challenges in the IFMIS bank auto-reconciliation particularly missing Bank Statements in the IFMIS system and balances brought forward from earlier years dating back from the financial year 2014/2015. The State Department is in the process of clearing the variance and a task force has been formed comprising of accountants from this State Department and the National Treasury to address how the balances will be cleared.

So far the taskforce has cleared the variances from financial year 2014/2015 up to financial year 2018/2019 and the exercise was to be completed by 30th June 2022.

Committee Observations and Findings

(i) The Committee noted that this matter was captured in the FY 2014/2015 and directed that the matter be cleared by the end of this Financial year of 30th June, 2022;

(ii) The Committee similarly 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;

(iii) In addition, the Committee observed that the Accounting Officer failed 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 Act 2012; and

(iv) A taskforce had been formed to clear the remaining variances.

Committee Recommendation

i) The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012;

ii) The report of the taskforce be availed to the Committee within one month of adoption of this report by the House.

154. Long Outstanding and Un-Reconciled Bank Balances

The statement of assets and liabilities as at 30 June, 2021 reflects total cash and cash equivalents balance of Kshs.1,904,585,295 which includes an amount of Kshs.1,859,421,250 in respect of bank balances and as reflected in Note 22A to the financial statements. However, included in the bank reconciliation statements were unreconciled items amounting to Kshs.8,200,943,214 that had been outstanding for over one year with some dating as far back as the year 2016 as indicated below:

Account	Amount Unreconciled - Kshs.
Deposit Account	35,805,105
Recurrent Account	6,101,519,574
Development Account	2,063,618,535
	8,200,943,214

Under the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 1,904,585,295 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the bank reconciliation statement has long outstanding balances relating to the period between 2016 to December 2020. The State Department has been able to clear some items as analyzed below.

Account	Original outstanding	Amount reconciled	Balance un-reconciled
Deposit Account	35,805,105.00	22,822,503.00	12,982,602.00
Recurrent Account	6,101,519,574.00	3,449,670,398.80	2,651,849,175.20
Development Account	2,063,618,535.00	1,771,218,198.80	292,400,336.20
	8,200,943,214.00	**5,243,711,100.60**	**2,957,232,113.40**

The reconciled items have been adjusted in the cash book accordingly and the State Department is in the process of reconciling the remaining outstanding items.

Committee Observations and Findings

(i) The Committee observed that the reconciliation process was ongoing;

(ii) The Committee further 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; and

(iii) The Committee similarly observed that the Accounting Officer failed 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.

Committee Recommendation

i) The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Article 229(4)(h) of the Constitution and Section 68 (2) (b) of the PFM Act, 2012;

ii) The Accounting Officer avails a reconciliation status within three (3) months of adoption of this report by the House.

Other Matter

155. Pending Bills

Records maintained by the State Department of Interior and Citizen Service indicates that bills amounting to Kshs.1,989,542,041 relating to the financial year 2020/2021 were not paid during the year under review but instead were carried forward to 2021/2022.

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 Accounting Officer admitted that the State Department had not paid pending bills amounting to Kshs. 1,989,542,041 relating to the financial year 2020/2021. These were in relation to refurbishment of National Police Service leased houses which were provisioned in the financial year 2021/22 and have since been paid.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Pending Bills.

Committee Recommendation

The Accounting officers must at all times ensure that pending bills are listed as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of section 68(2) (h) of the Public Finance Management Act, 2012.

156. Unresolved Prior Year Matters

In the previous year's audit report, several issues were raised under the Report on Financial Statements, Lawfulness and Effectiveness in Use of Public Resources, and Effectiveness of Internal Controls, Risk Management and Governance, respectively. Although management indicated in the progress on follow-up on prior year's auditor's recommendations that the matters had been resolved, the recommendations and resolutions by the Public Accounts Committee on the matters were not provided for verification.

Submission by the Accounting Officer

The Accounting Officer admitted that in the previous year's audit report, several issues were raised under the Report on Financial Statements, Lawfulness and Effectiveness in Use of Public Resources, and Effectiveness of Internal Controls, Risk Management and Governance, respectively. Although management had indicated progress on follow-up on prior year's recommendation, the report from the Public Accounts Committee on the matters is yet to be received to our office to confirm the same.

Committee Observations and Findings

The Committee observed that the issues were discussed during the examination of the State Department account for financial year 2019/20 and various recommendations issued.

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.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

157. Provision of Enhanced Comprehensive Group Life Cover

The National Police Service entered into a one-year contract with National Hospital Insurance Fund (NHIF) for provision of Enhanced Comprehensive Group Life Cover and Inclusion of Compensation under the Work Injury Benefits Act (WIBA) and Group Personal Accident Cover (GPA) for Members of the National Police Service and the Kenya Prisons Service from 1 January, 2021 to 31 December, 2021. The insurance policy was intended to cover the principal members if in employment and dependents at the commencement of the cover. The total agreed premium was Kshs. 2,295,594,440 with a total population of 131,816. Further review of the procurement documents for the insurance contract revealed that the Service initiated a direct procurement of the group life cover from NHIF without any justification for the procurement method adopted.

Analysis of the procurement process and implementation of the contract revealed the following issues:

157.1 Unsupported Reduction in the Quoted Premium

Review of the contract indicated that the NHIF had quoted an amount of Kshs. 8,103,918,659 as annual premium for the cover as tabulated below:

Serial No.	Category	Total Exposure (Kshs.)	Rate Applicable	Annual Premium (Kshs.)
1.	Group Life	750,882,759,947	5.5%	4,129,855,179
2.	Last Expense(M+6)	111,830,250,000	7%	782,811,750
3.	GPA Accidental Disability and Death (Permanent/Temporary) Loss of Income up to a Maximum of 2 years	750,882,759,947	2%	1,501,765,520
4.	WIBA	750,882,759,947	2.25%	1,689,486,210

	Total Annual Premium			**8,103,918,659**

Negotiation minutes indicates that the two parties agreed to a total annual premium of Kshs. 2,295,594,440. However, there was no agreed schedule of the adjustments made to the above schedule and rates applicable for each category and the extent of the risk exposure covered. Therefore, the basis for the reduction of the premium could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that it was true that the negotiating parties agreed to a total annual premium of Kshs. 2,295,594,440.00. There was no adjustment made to the rates applicable for each category. The rates applicable remained the same as in the tender document and in the contract. The negotiations agreement was in line with the available budget at the time.

Committee Observation
The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 & 2019/20 and recommendations not implemented.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

157.2 Delayed Settlement of Claims on Last Expenses

Review of the claims for last (funeral) expenses covered under the Comprehensive Group Life made in the year 2021 revealed that three hundred and seventy-four (374) claims of principal members, spouses and children totalling Kshs.66,650,000 were submitted to NHIF for settlement but had not been settled as at 31 December, 2021. It was not explained why NHIF had not settled the claims contrary to Clause 5 of the contract 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 directed in writing 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
The National Hospital Insurance Fund (NHIF) has partly paid some cases. The claims were being processed at NHIF and an analysis of the current status is as follows:

DETAILS	SUBMITTED TO NHIF	AMOUNT CLAIMED	NO. PAID	AMOUNT PAID	NO. NOT PAID	AMOUNT
PRINCIPAL	278	55,600,000	240	48,000,000	38	7,600,000
SPOUSE	29	4,350,000	24	3,600,000	5	750,000
CHILD	67	6,700,000	58	5,800,000	9	900,000

TOTAL	374	66,650,000	322	57,400,000	52	9,250,000

PAID CLAIMS

SN	P/F NUMBER	NAME	DATE OF DEATH		CLAIM DATE
1	1979108168	KOTOBO MOLU	15/04/2021	PRINCIPAL	28/09/2021
2	1980103260	RAPHAEL MAHIHU	06/04/2021	PRINCIPAL	21/04/2021
3	1980103781	JOHN WAMALWA MURUGU	09/05/2021	PRINCIPAL	28/07/2021
4	1981058785	SAMUEL BOIT KIRUI	25/06/2021	PRINCIPAL	05/07/2021
5	1981074642	KIBENGO THOMAS	08/03/2021	PRINCIPAL	05/04/2021
6	1982091419	FRANCIS MUKIRA GITUMA	02/01/2021	PRINCIPAL	05/01/2021
7	1982104028	CHRISTOPHER MUKHWANA	27/09/2021	PRINCIPAL	27/09/2021
8	1983008891	GRACE WANJIKU MWANGI	08/08/2021	PRINCIPAL	27/08/2021
9	1983023972	BEN MOSES CHANGULO	24/06/2021	PRINCIPAL	01/07/2021
10	1983024148	DANIEL GACHIBI MBUGUA	01/02/2021	PRINCIPAL	04/05/2021
11	1983025673	REUBEN MAHINDU ANYOSO	28/08/2021	PRINCIPAL	25/10/2021
12	1983043728	FRANCIS MWITI M'ARITHI	24/01/2021	PRINCIPAL	01/03/2021
13	1983050123	RICHARD OMENKE	06/04/2021	PRINCIPAL	15/06/2021
14	1984013580	WYCLIFFE SIEKISA MUTETEMI	20/01/2021	PRINCIPAL	26/01/2021
15	1984014594	WILLIAM SINGOE	12/05/2021	PRINCIPAL	19/05/2021
16	1984016986	EDWARD JACOB GICHOBI	27/04/2021	PRINCIPAL	06/05/2021
17	1984018514	CHARLES KURIA MWANGI	30/10/2021	PRINCIPAL	12/10/2021
18	1984019455	AUGUSTINE MWANGI KURIA	23/04/2021	PRINCIPAL	01/07/2021
19	1984019560	RICHARD OSORO NYAGETARI	19/05/2021	PRINCIPAL	26/05/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
20	1984039659	GEORGE WAWERU GACHOKA	30/04/2021	PRINCIPAL	21/06/2021
21	1984109755	SIMON KIMAIYO KIBOR	08/05/2021	PRINCIPAL	09/06/2021
22	1984112724	STEPHEN MBURU MWAURA	17/09/2021	PRINCIPAL	12/10/2021
23	1984116964	NZOMO KYALO	221/9/2021	PRINCIPAL	12/10/2021
24	1985019474	LEONARD NYANGESO	16/07/2021	PRINCIPAL	23/07/2021
25	1985051303	FRANCIS KIBORE	15/08/2021	PRINCIPAL	13/09/2021
26	1986004642	STEPHEN GITUMA MMBUI	28/02/2021	PRINCIPAL	04/05/2021
27	1986009032	SAMUEL KIHARA GICHUHI	12/02/2021	PRINCIPAL	12/02/2021
28	1986009236	JOHN MAINA GITHUI	09/01/2021	PRINCIPAL	28/01/2021
29	1986022412	JAMES LEKAKENY	04/03/2021	PRINCIPAL	01/07/2021
30	1986029511	DISMAS WANJALA WEKESA	13/08/2021	PRINCIPAL	24/09/2021
31	1986033722	NEGA MWITA NDERA	25/09/2021	PRINCIPAL	12/10/2021
32	1986036403	PAUL KIPKEMOI LANGAT	12/09/2021	PRINCIPAL	26/10/2021
33	1986036940	MOHAMED ALI JARSO	26/08/2021	PRINCIPAL	13/09/2021
34	1986089896	MOSES KANYI NJUGUNA	21/03/2021	PRINCIPAL	24/05/2021
35	1986091097	JOHN GEORGE GITHENGURI	06/08/2021	PRINCIPAL	16/09/2021
36	1986091518	GEORGE OMONDI GIBSON	11/02/2021	PRINCIPAL	18/02/2021
37	1986092386	ELIZABETH MULWA	31/01/2021	PRINCIPAL	24/02/2021
38	1986095669	PETER KABOCHU NJOGU	10/09/2021	PRINCIPAL	15/10/2021
39	1986114308	JOHN MUTHAMIA RUKARIA	06/01/2021	PRINCIPAL	15/02/2021
40	1986114780	IBRAHIM SALAT IBRAHIM	17/07/2021	PRINCIPAL	13/09/2021

PAID CLAIMS					
SN	P/F NUMBER	NAME	DATE OF DEATH		CLAIM DATE
41	1986115875	RICHARD ARAP SANG	18/02/2021	PRINCIPAL	04/05/2021
42	1986116229	FRANCIS SIROR	07/07/2021	PRINCIPAL	28/07/2021
43	1986116538	ISAAC WERUNGA WAFULA	24/05/2021	PRINCIPAL	24/09/2021
44	1986117869	STEPHEN BAKIRA	19/04/2021	PRINCIPAL	06/05/2021
45	1986118093	GEOFFREY KAGUTA MURIITHII	02/07/2021	PRINCIPAL	05/08/2021
46	1986118750	ABEL TUMA WAWIRE	06/03/2021	PRINCIPAL	21/06/2021
47	1986124840	RONALD MORANGA OSEKO	08/02/2021	PRINCIPAL	30/06/2021
48	1987013610	RICHARD LIMASIA KAPEL	13/09/2021	PRINCIPAL	15/10/2021
49	1987013610	RICHARD LIMASIA KAPEL	13/09/2021	PRINCIPAL	15/10/2021
50	1987015785	RAPHAEL MUYA LOCHEK	08/05/2021	PRINCIPAL	24/05/2021
51	1987039242	JOSEPH MUKUHI NDEGWA	17/03/2021	PRINCIPAL	13/03/2021
52	1987044344	MARK LOMEYAN KADO	26/02/2021	PRINCIPAL	08/03/2021
53	1987095670	THOMAS KAGIRI WAIGWA	29/04/2021	PRINCIPAL	23/08/2021
54	1988004193	JOEL KIRWA BIRGEN	29/01/2021	PRINCIPAL	15/06/2021
55	1988026072	DOUGLAS KING;OO MUTUA	09/02/2021	PRINCIPAL	19/02/2021
56	1988038281	BONIFACE SHAMBAS	27/04/2021	PRINCIPAL	04/06/2021
57	1988066933	ALFRED CHELELGO	15/03/2021	PRINCIPAL	08/03/2021
58	1988068082	ISAIAH UPUU ETIR	12/09/2021	PRINCIPAL	29/09/2021
59	1988099643	PANCRAS MWANGIGHI	20/01/2021	PRINCIPAL	20/05/2021
60	1988100012	ALEXANDER MWALUMA MWAMBUI	19/08/2021	PRINCIPAL	13/09/2021
61	1988100119	SAMUEL NYAMOSI	24/05/2021	PRINCIPAL	14/06/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
62	1989013292	RICHARD KIPROP LOYETTA	14/08/2021	PRINCIPAL	05/10/2021
63	1989016630	FRANCIS LOPEYOK LOKIEL	21/8/201	PRINCIPAL	27/09/2021
64	1989035804	REUBEN KIPNGETICH	21/03/2021	PRINCIPAL	21/04/2021
65	1989037995	PATRICIA KANINI MUNYWOKI	28/05/2021	PRINCIPAL	01/06/2021
66	1989071834	JUSTUS ONDIMU	10/03/2021	PRINCIPAL	10/04/2021
67	1989072123	GEOFFREY NDUNGA	15/03/2021	PRINCIPAL	25/03/2021
68	1989072717	PAUL KITUNE NZAU	12/05/2021	PRINCIPAL	17/06/2021
69	1989074311	MANASEH OKEMO OKADA	10/07/2021	PRINCIPAL	02/08/2021
70	1989076826	KENNEDY MAINA	13/03/2021	PRINCIPAL	19/04/2021
71	1989076826	WILLIAM MWANGI NDIRITU	03/05/2021	PRINCIPAL	07/05/2021
72	1989116838	JEREMIAH CHERUIYOT	26/06/2021	PRINCIPAL	10/06/2021
73	1989120722	JULIUS KIBET TONUI	20/07/2021	PRINCIPAL	13/09/2021
74	1989121702	NTAMOIYA OLE NKUITA	01/04/2021	PRINCIPAL	20/03/2021
75	1989137258	TIRUS KIRINGA MARECHO	25/05/2021	PRINCIPAL	03/08/2021
76	1989138026	CATHERINE RIMBERIA	11/09/2021	PRINCIPAL	05/10/2021
77	1990000935	JULIUS NKOITOI	22/06/2021	PRINCIPAL	04/08/2021
78	1990002987	LINUS MOTONYI	10/03/2021	PRINCIPAL	03/03/2021
79	1990003860	PAULO CHEMOIWO KIPTALLAM	30/05/2021	PRINCIPAL	13/09/2021
80	1990004515	GABRIEL NCHINIK LEIPELE	02/09/2021	PRINCIPAL	12/10/2021
81	1990091562	PHILEMON AYANGA AGORO	26/06/2021	PRINCIPAL	15/07/2021
82	1990116516	NAOMI KINUTHIA	08/01/2021	PRINCIPAL	02/02/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
83	1990122606	SIMON NTERERE	27/02/2021	PRINCIPAL	15/07/2021
84	1990123733	JULIUS KIMAIYO SUM	03/07/2021	PRINCIPAL	14/07/2021
85	1990125612	EMADAU TEBAKOL	17/01/2021	PRINCIPAL	21/01/2021
86	1990165777	JOSEPHAT KABIRU IRUNGU	20/06/2021	PRINCIPAL	29/07/2021
87	1991012139	GEORGE BUNDOTICH	08/01/2021	PRINCIPAL	05/01/2021
88	1991013321	BLACKWEL LELEKONG	21/03/2021	PRINCIPAL	17/05/2021
89	1991032163	STEPHEN MUTIIKI MBUI	20/08/2021	PRINCIPAL	26/10/2021
90	1991042671	PATRICK MURAGU GACUCU	24/05/2021	PRINCIPAL	24/06/2021
91	1991085263	PETER NJERU NDWIGAH	02/03/2021	PRINCIPAL	10/03/2021
92	1992012174	KENNEDY OMAYIO	19/05/2021	PRINCIPAL	02/06/2021
93	1992013489	FARIDAH KARIMI MOHAMED	07/07/2021	PRINCIPAL	23/07/2021
94	1992037344	ENOS KASISI	14/01/2021	PRINCIPAL	19/01/2021
95	1992043581	NICHOLAS GITHAMBO MAINA	13/04/2021	PRINCIPAL	04/05/2021
96	1992045216	SAMWEL KIPTARUS KOCHEI	19/03/2021	PRINCIPAL	22/04/2021
97	1992045397	HUMPREY GEORGE OWINO	14/07/2021	PRINCIPAL	09/08/2021
98	1992045779	JOHNSTONE K. MATHAUNA	24/08/2021	PRINCIPAL	22/09/2021
99	1993031286	CHARLES GITAHI	20/03/2021	PRINCIPAL	09/04/2021
100	1993053084	TERER NIXON KIPSANG	18/09/2021	PRINCIPAL	22/09/2021
101	1993066095	PAUL MAINA GAKUI	21/02/2021	PRINCIPAL	01/03/2021
102	1994010673	ISAIAH MUTHIANI MWANDIKWA	01/06/2021	PRINCIPAL	08/06/2021
103	1994023919	CHARLES KINYUA GITHINJI	10/09/2021	PRINCIPAL	15/10/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
104	1994027882	NAMI ROBERT LOSIKE	20/02/2021	PRINCIPAL	01/03/2021
105	1994046488	THOMAS OMINO	05/01/2021	PRINCIPAL	28/05/2021
106	1994047248	PETER ETABO LODUKAE	01/01/2021	PRINCIPAL	20/01/2021
107	1994047599	JOSHUA KATHURIMA IBIIRI	20/07/2021	PRINCIPAL	28/07/2021
108	1994047599	JOSHUA KATHURIMA IBIIRI	10/07/2021	PRINCIPAL	28/07/2021
109	1994047688	EDWARD GITONGA MUNENE	30/01/2021	PRINCIPAL	12/02/2021
110	1994047769	ROBIN SOGOTA	08/02/2021	PRINCIPAL	08/03/2021
111	1994067816	HUSSEIN RACHA ABALONI	29/05/2021	PRINCIPAL	21/06/2021
112	1994069583	RUBANO MUNENE MURIITHI	06/01/2021	PRINCIPAL	06/01/2021
113	1995037262	PAUL KIPKEMOI TERER	11/05/2021	PRINCIPAL	14/06/2021
114	1995038234	DOMINIC K CHEBOI	15/04/2021	PRINCIPAL	09/06/2021
115	1995049489	DANSTAN MARWA YAYA	16/06/2021	PRINCIPAL	23/06/2021
116	1995053200	JOSEPH KRALE KAKEREI	12/03/2021	PRINCIPAL	12/03/2021
117	1995076486	AMRAPHAEL MKALA	09/03/2021	PRINCIPAL	19/02/2021
118	1995077911	LOICE JEPCHUMBA	26/09/2021	PRINCIPAL	12/10/2021
119	1995079125	BARNABAS KIPKOECH	06/06/2021	PRINCIPAL	10/06/2021
120	1996062359	JOSEPH SANGEI MESHACK	10/06/2021	PRINCIPAL	16/06/2021
121	1996066573	BENARD GACHARA	24/02/2021	PRINCIPAL	08/03/2021
122	1996086125	CHRISTOPHER KIPYEGO MORONG	22/02/2021	PRINCIPAL	20/04/2021
123	1997047700	DAVID KIPSEREM	01/04/2021	PRINCIPAL	19/05/2021
124	1997050355	SIMON NDEGWA MBUTHIA	08/05/2021	PRINCIPAL	06/02/2021

PAID CLAIMS					
SN	P/F NUMBER	NAME	DATE OF DEATH		CLAIM DATE
125	1997055363	CASSIUS MADEGWAH	05/04/2021	PRINCIPAL	10/04/2021
126	1997056864	ELIMA MUSIMBI KIBANGI	02/03/2021	PRINCIPAL	09/03/2021
127	1997060091	EVANIC OTIENO OMOLLO	14/06/2021	PRINCIPAL	08/07/2021
128	1997066437	PAUL EYANAE EMESEK	17/02/2021	PRINCIPAL	21/06/2021
129	1997073515	GEOFFREY KIMUTAI CHEPKWONY	06/04/2021	PRINCIPAL	21/04/2021
130	1998018916	ZAKAYO MUGUTA	01/05/2021	PRINCIPAL	21/05/2021
131	1998026040	AUGUSTINE MASYA ALIGULA	17/06/2021	PRINCIPAL	22/07/2021
132	1998036388	EDWIN MWANGI	10/03/2021	PRINCIPAL	19/03/2021
133	1999011739	ERASTUS EKURUDI EMANIKOR	09/05/2021	PRINCIPAL	30/07/2021
134	1999013595	FREDRICK KIPKOSGEI SAMBU	18/02/2021	PRINCIPAL	25/02/2021
135	1999018595	BERNARD KAMAU	09/04/2021	PRINCIPAL	21/04/2021
136	1999022227	ALBERT KIMUTAI NGETICH.	11/06/2021	PRINCIPAL	05/07/2021
137	1999033375	FREDRICK MATUNDA NDUKO	03/08/2021	PRINCIPAL	27/09/2021
138	1999035068	ALBERT KIMATHI	23/03/2021	PRINCIPAL	27/03/2021
139	1999038082	JOHN MOGAKA ONSIERO	16/03/2021	PRINCIPAL	04/05/2021
140	1999038309	JAPHETH KIPNGETICH MUTAI	12/01/2021	PRINCIPAL	19/01/2021
141	2001004162	MIKE KEMBOI METO	17/02/2021	PRINCIPAL	24/02/2021
142	2001016177	SAMMY KAMITU MUSEMBI	08/01/2021	PRINCIPAL	11/02/2021
143	2001017092	IBRAHIM BONAYA	30/07/2021	PRINCIPAL	17/08/2021
144	2001029528	MARTIN MUCHANGI IRERI	12/08/2021	PRINCIPAL	13/09/2021
145	2002003965	MARK KIPTUL KEITANY	26/01/2021	PRINCIPAL	12/02/2021

PAID CLAIMS

SN	P/F NUMBER	NAME	DATE OF DEATH		CLAIM DATE
146	2002005967	JOSHUA KAMPEEN NTEERE	18/02/2021	PRINCIPAL	25/02/2021
147	2002006256	CHARLES OKETCH	12/03/2021	PRINCIPAL	10/04/2021
148	2002014542	NEHEMIAH KIPRONO TIREITO	24/04/2021	PRINCIPAL	04/08/2021
149	2002015904	EMMANUEL NATOO	28/09/2021	PRINCIPAL	12/10/2021
150	2002016625	KIPNGENO KOILLEGEN KIRUI	25/01/2021	PRINCIPAL	10/02/2021
151	2002021379	PAUL KIPLAGAT BARMASAI	05/01/2021	PRINCIPAL	18/02/2021
152	2002049042	NICHOLAS KIMARU TUM	16/05/2021	PRINCIPAL	27/08/2021
153	2002051879	SAMUEL KARUGA MUNENE	11/04/2021	PRINCIPAL	21/07/2021
154	2002057469	JANETH CHEMUTAI	08/08/2021	PRINCIPAL	23/08/2021
155	2002058651	NICKSON CHEPCHIENG KANDIE	18/07/2021	PRINCIPAL	27/07/2021
156	2003051377	MUTAI CHEBET	05/08/2021	PRINCIPAL	28/09/2021
157	2004025175	SEBATIAN SAJI OGOLA	13/04/2021	PRINCIPAL	17/05/2021
158	2004033063	JOSEPH MACHARIA	10/02/2021	PRINCIPAL	22/02/2021
159	2005008299	PURITY REBECCA MUTHONI	22/09/2021	PRINCIPAL	12/10/2021`
160	2005012379	ROBERT KIPLANGAT RUTO	21/09/2021	PRINCIPAL	22/09/2021
161	2006015223	ANDREW KIBET	23/03/2021	PRINCIPAL	01/04/2021
162	2006023836	JACOB K. KIPKORIR	03/04/2021	PRINCIPAL	21/04/2021
163	2006050809	PHENNY AKINYI RIANY	04/02/2021	PRINCIPAL	04/05/2021
164	2006052461	BONIFACE MITHAMO NGARAGARI	04/01/2021	PRINCIPAL	11/01/2021
165	2006055956	FRANCIS KYALO MULANDI	13/02/2021	PRINCIPAL	19/02/2021
166	2006062597	MUKTAR MAHAT HASSAN	24/06/2021	PRINCIPAL	24/06/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
167	2007083952	JANE ADIDA LOSUSU	21/02/2021	PRINCIPA L	01/03/3031
168	2007086578	DONFAN WANYAGA NJOROGE	27/07/2021	PRINCIPA L	27/08/2021
169	2007087320	CHARLES KOECH	04/04/2021	PRINCIPA L	04/04/2021
170	2007087671	HOSEA KIPLAGAT MELI	24/07/2021	PRINCIPA L	09/08/2021
171	2007094911	ANTONINAH CHEBET TOMEE	05/02/2021	PRINCIPA L	24/02/2021
172	2007102968	KELVIN AGUTU ONYANGO	01/06/2021	PRINCIPA L	05/07/2021
173	2007108621	ALFRED MUTHANGYA	25/03/2021	PRINCIPA L	25/03/2021
174	2007122188	NELSON MURANGIRI MUTHWAIRI	01/08/2021	PRINCIPA L	30/08/2021
175	2008053764	EMMANUEL PAMBALA	24/05/2021	PRINCIPA L	02/06/2021
176	2008059338	ISAIAH ODOYO WADE	06/02/2021	PRINCIPA L	18/02/2021
177	2008066979	MARTIN MUGAMBI	19/02/2021	PRINCIPA L	15/06/2021
178	2008068777	MOSES SEMEO WASILWA	26/04/2021	PRINCIPA L	18/05/2021
179	2008071576	PAUL MBUGUA KAMAU	01/09/2021	PRINCIPA L	15/09/2021
180	2008105024	ABDI MOHAMUD DAGANE	22/03/2021	PRINCIPA L	14/06/2021
181	2008110613	CHARLES NYANGWESO	10/09/2021	PRINCIPA L	29/09/2021
182	2008110613	CHARLES NYANGWESO	10/09/2021	PRINCIPA L	29/09/2021
183	2008110655	CLEOPHAS CHRISTOPHER ORODI	13/05/2021	PRINCIPA L	05/07/2021
184	2008125529	PETER KIPRONO	04/01/2021	PRINCIPA L	08/01/2021
185	2008127026	PATRICK MUNIKO MAGOIGA	11/08/2021	PRINCIPA L	16/09/2021
186	2008144159	AUSTIN KAVU DZUYA	06/04/2021	PRINCIPA L	04/05/2021
187	2008144387	JAMES BAIMPWI KILAA	04/09/2021	PRINCIPA L	24/09/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
188	2008163844	EVANS KIPROTICH CHESIRE	18/03/2021	PRINCIPAL	23/04/2021
189	2009014666	BARISA HUSSEIN GALGALO	26/08/2021	PRINCIPAL	13/09/2021
190	2009015743	BRUCE MWENDA KIBAARA	23/01/2021	PRINCIPAL	26/01/2021
191	2009018505	DOMINIC NYAGA NJERU	09/05/2021	PRINCIPAL	13/08/2021
192	2009020447	EVANS AMBANI AMATESHE	28/08/2021	PRINCIPAL	12/10/2021
193	2009026388	JOHN MWANGI MACHARIA	07/06/2021	PRINCIPAL	16/06/2021
194	2009035819	PETER MUNIARU NGUGI	16/08/2021	PRINCIPAL	27/08/2021
195	2011023613	DICKSON MUSEMBI	17/03/2021	PRINCIPAL	07/04/2021
196	2011028215	SAMUEL KARANI GICOBI	22/08/2021	PRINCIPAL	13/09/2021
197	2011038985	SAMMY NJUGUNA	31/03/2021	PRINCIPAL	09/04/2021
198	2011320959	MIRIAM WANJIKU MURURU	20/08/2021	PRINCIPAL	26/10/2021
199	2013006470	PAULINE MUNJALU	06/04/2021	PRINCIPAL	20/04/2021
200	2013031491	KENNEDY KIPRONO CHERUIYOT	16/05/2021	PRINCIPAL	29/07/2021
201	2013031491	KENNEDY KIPRONO CHERUIYOT	16/05/2021	PRINCIPAL	29/07/2021
202	2013040781	EZEKIEL KIPCHIRCHIR LIMO	31/07/2021	PRINCIPAL	10/08/2021
203	2013042589	ROBERT MUKUNZA MUTATI	10/05/2021	PRINCIPAL	18/05/2021
204	2013057540	MOURICE MULE MWANGANGI	10/01/2021	PRINCIPAL	13/01/2021
205	2013069102	HANDSON WAKISE MNGODO	06/04/2021	PRINCIPAL	24/05/2021
206	2013072923	AGNES ATIENO OUM A	16/03/2021	PRINCIPAL	19/03/2021
207	2015010985	SAMWEL W. WANJALA	18/02/2021	PRINCIPAL	01/03/2021
208	2015011480	JAMES SONIPA	23/06/2021	PRINCIPAL	06/10/2021

PAID CLAIMS					
SN	P/F NUMBER	NAME	DATE OF DEATH		CLAIM DATE
209	2015034123	BERNARD KIPYEGON KIBON	07/06/2021	PRINCIPAL	05/07/2021
210	2015049893	MAURINE ADHIAMBO OCHIENG	02/01/2021	PRINCIPAL	05/01/2021
211	2015083433	NASHON AWITI AMANGA	04/10/2021	PRINCIPAL	26/10/2021
212	2015119387	JEDIEL MUGUNA	09/03/2021	PRINCIPAL	08/04/2021
213	2017022236	HUMPREY MUTAMBI	26/02/2021	PRINCIPAL	19/03/2021
214	2017030672	KIPTUI KIPNGOK	16/04/2021	PRINCIPAL	04/05/2021
215	2017031259	DANCUN NYAMBATI	19/07/2021	PRINCIPAL	04/08/2021
216	2017031886	EVANS WANGILA SIMIYU	22/06/2021	PRINCIPAL	22/09/2021
217	2017041253	OMAR ABDALLA MATAMU	28/07/2021	PRINCIPAL	21/09/2021
218	2017055257	LEONARD OTIENO OJWANG	17/08/2021	PRINCIPAL	25/10/2021
219	2017061706	ABDIAZIZ MOHOMED IBRAHIM	07/06/2021	PRINCIPAL	28/06/2021
220	2017062218	MARK SILA KIMEU	15/02/2021	PRINCIPAL	02/03/2021
221	2017063408	PAUL WEISAKA THOMAS	24/05/2021	PRINCIPAL	05/08/2021
222	2017066016	ELIJAH KAIBIRIA	22/01/2021	PRINCIPAL	08/03/2021
223	2017085886	KELVIN ROBERT METHI	08/03/2021	PRINCIPAL	19/04/2021
224	2017092974	ALBANUS WAMBUA MUTISO	01/01/2021	PRINCIPAL	05/01/2021
225	2017099013	GILBERT KWEMBOI	13/08/2021	PRINCIPAL	05/10/2021
226	2018001742	PAUL KURIA KINYANJUI	16/03/2021	PRINCIPAL	09/03/2021
227	2018007115	BERNARD SULUNYE	09/03/2021	PRINCIPAL	10/04/2021
228	2018021000	PIUS NJIRU	06/05/2021	PRINCIPAL	27/05/2021
229	2018022283	NICHOLAS EWOI	02/01/2021	PRINCIPAL	19/01/2021

PAID CLAIMS					
SN	**P/F NUMBER**	**NAME**	**DATE OF DEATH**		**CLAIM DATE**
230	2018023644	NGENO EDWIN	10/04/2021	PRINCIPAL	20/05/2021
231	2018034718	YUSSUF HUSSEIN	15/05/2021	PRINCIPAL	28/05/2021
232	2018036883	JOSHUA NDUNGU	28/04/2021	PRINCIPAL	04/06/2021
233	2018039840	ANTONY MBINDYO JOHN	24/06/2021	PRINCIPAL	07/07/2021
234	2018041159	PETER MORACHA	15/07/2021	PRINCIPAL	09/08/2021
235	2018054305	EDWIN OTIENO MUHULA	24/06/2021	PRINCIPAL	08/07/2021
236	2018061897	AGEDIUS MOKUA	04/05/2021	PRINCIPAL	04/08/2021
237	2018071048	WYCLIFFE EREGAE	27/04/2021	PRINCIPAL	03/06/2021
238	2018075651	DUNCAN ALUKWE SHIKHULE	18/06/2021	PRINCIPAL	22/09/2021
239	2018093197	BENSON MWITA NJOROGE	21/07/2021	PRINCIPAL	02/08/2021
240	2018097508	HOSEA KIPCHUMBA	08/09/2021	PRINCIPAL	26/10/2021

Committee Observations and Findings

The Committee observed that the issue was discussed during the examination of the State Department account for financial year 2018/19 & 2019/20 and recommendations not implemented.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

157.3 Unsubmitted Quarterly Reports on Claims by NHIF

Review of the claim's records revealed that quarterly reports on claims and their status were not submitted contrary to Clause 3.1.5 of the contract which states that NHIF shall provide comprehensive report to the National Police Service and the Kenya Prisons Service on claims under this scheme every three months. It was therefore not possible to evaluate the performance of NHIF based on the claims paid, pending claims and any outstanding claim against the premiums paid by the client.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that Clauses 13.1 and 13.2 of the contract provided that the parties establish a standing committee. The standing committee was established vide letter Ref; MICNG/PROC/28/1 VOL.IX/ (204) dated 30th April, 2021. The Monitoring and Evaluation was conducted and report has been submitted. Sensitization and training programme submitted. However, NHIF has not submitted Quarterly Reports.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 & 2019/20 and recommendations not implemented.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

157.4 Compensations Claims under Work Injury Benefits Act (WIBA) Not Paid

The insurance contract provides eight (8) years gross compensation for death/illness Injury as a result of occupational causes under the Work Injury Benefit Act (WIBA) which shall be as a stand-alone policy and compensation based on gross salary. The contract provides that injury assessment shall be conducted in all NHIF Accredited hospitals and be approved by Directorate of Occupational Safety and Health (DOSH).

Review of compensation process followed by the Service to prepare claims revealed that the Service sent claim forms to NHIF and also sent Form 1 to DOSH. However, there were no clear guidelines on how NHIF was to process the claims once the NHIF received approval from DOSH. As a result, during the 2021 calendar year, the Kenya Police Service had thirty-eight (38) unpaid claims resulting from accidental death. No documentary evidence was provided on the status of the unpaid accidental death claims.

Further, although the Kenya Police Service provided details of injury claims under WIBA which the Service had sent claim forms to NHIF and notified DOSH, NHIF had not paid any injury claims from January 2021 and for the 2021 calendar year resulting in seven hundred and thirty-four (734) unpaid injury claims as of 31 December, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the National Police Service (NPS) has submitted cases to Directorate of Occupational Safety and Health. (DOSH) but response has not been received.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 & 2019/20 and recommendations not implemented.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

157.5 Failure to Provide Documents for Ex-gratia Claims under Provision of Comprehensive Medical Cover

The contract between the National Police Service and NHIF for provision of comprehensive medical cover for the Members of the National Police Service included a clause on ex-gratia benefits premium of Kshs. 200,000,000. Further, the ex-gratia claims should be approved by the standing committee of the client before any payment is made on any ex-gratia claim. The contract requires NHIF to submit to the standing committee quarterly report on all ex-gratia claims including the value, beneficiary, background and status of the claims among others. In addition, NHIF was required to submit back any unspent amount of ex-gratia at the end of the contract period.

Examination of the contract documents and payment vouchers provided for audit revealed that the State Department did not maintain a record of approved ex-gratia claims and payments for the period under review. Further, the Management did not provide NHIF quarterly reports on all ex-gratia claims incurred during the year under review.

Under the circumstances, the State Department may not have received value for money on premium paid to NHIF for comprehensive medical cover.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department has constantly requested NHIF to provide full accountability and submission of a detailed report on claims. Letters to NHIF on diverse dates have now been availed.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 & 2019/20 and recommendations not implemented.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

158. Stalled Project at Buna Police Station, Wajir County

The State Department entered into a contract for construction of Buna Police Station at a contract sum of Kshs.121,240,000 and sub-contracts for mechanical works at Kshs. 5,728,824.50, electrical works at Kshs. 18,380,698.80 and high, low level water tanks at Kshs. 8,783,015 all totalling Kshs. 154,132,538.30 with an expected completion date of November 2012. However, review of project records revealed that in November 2021 (9 years after the expected completion date) the project was yet to be completed. Consequently, the value for money for the abandoned project may not have been realized.

Submission by the Accounting Officer

The Accounting Officer admitted that the project has stalled resulting to deterioration and lack of value for money. The project has stalled due to budgetary constraints, this has led to delayed payments and hence delay in completion of the works. Funds for outstanding works have been proposed in the budget proposal for the financial year 2022/2023.

Committee Observations and Findings

(i) The Committee noted the explanation given by the Accounting Officer with regards to Stalled Project at Buna Police Station, Wajir County; and

(ii)The Committee further observed that the project received a budgetary provision of Kshs. 18 million in the FY 2022/23.

Committee Recommendation

The Committee recommends that the Accounting Officer should not initiate any new project in the FY 2023/24 until the completion of on-going projects. Further, the Accounting Officer should liaise with the National Treasury to allocate adequate resources for the completion of the stalled project.

159. Abandoned Construction Works of Laisamis Police Station

The State Department entered into a contract for erection and completion of Laisamis Police Station at a contract sum of Kshs. 105,365,412. The contract was expected to take seventy-eight (78) weeks which was extended to one hundred and sixty-seven (167) weeks and the revised completion date estimated to be 26 February, 2017. However, review of project records provided revealed that the contractor had abandoned the site without completion of the project and without any handing over. Further, the project had pending works including; paving, storm water drainage, landscaping, access road and parking, fencing and borehole.

In addition, on 05 February, 2018 the contractor forwarded a claim of Kshs. 59,239,669 over and above the contract sum bringing the total cost of the project to Kshs. 164,605,081 representing a 56% variation of the original contract sum. Although the matter is under arbitration, the process has not been concluded and the project remains incomplete. Consequently, the State Department may not have realized value for money from the project while the stalled building continues to deteriorate.

Submission by the Accounting Officer

The Accounting Officer admitted that the contractor abandoned site in the year 2017 citing under funding and delays caused by the sub-contractors. The contractor appraised the pending works at Kshs. 59,239,669.00 whereas the Project Manager's appraisal was at Kshs. 25,305,098 to which the Contractor did not agree with.

The Contractor opted for an arbitration process which commenced, however the chief state counsel in his letter ref. No. MICNG 4/10 dated 9th November, 2020 to PS Ministry of Interior and Co-ordination of National government advised as follows:

i. The Ministry as the client to steer the process and call for a meeting to address the gray areas towards resolution of the matter;

ii. The Contractor must of necessity be paid part of the outstanding dues (found to be due) on the principal of Uberima fides (utmost good faith and trust);
iii. The contractor to withdraw the pending arbitration; and
iv. Clear time frame for completion of the stalled works

The process was ongoing**.**

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to abandoned construction works of Laisamis Police Station was not satisfactory.

Committee Recommendation
The Committee recommends that the Accounting Officer shall within three (3) months of the adoption of this report, provide the Committee a status report on the arbitration process and completion status of the stalled works.

160. Stalled Construction of Police Station at Balambala in Garissa County
The State Department entered into a contract for the construction of Balambala Police Station at an initial contract sum of Kshs. 148,562,371 which was revised to Kshs. 179,719,530. The project commencement date was 14 May, 2012 with a contract period of twenty-four weeks (24) weeks. An audit examination of the project records revealed that although the project was expected to be completed within twenty-four weeks (24) weeks, it was yet to be completed as at the time of the audit in December 2021 (nine years later). Consequently, the incomplete building continued to deteriorate and value for money may not be realized.

Submission by the Accounting Officer
The Accounting Officer submitted that the project has stalled resulting to deterioration and lack of value for money. The project has stalled due to budgetary constraints, this has led to delayed payments and hence delay in completion of the works. The completion status is at 75% and requires Kshs. 31,157.159.20 to complete the project. This item has been proposed in the budget proposal for the financial year 2022/2023.

Committee Observations and Findings
(i) The Committee noted that the initial contract sum was revised upwards by 20.9% which was below the 25% ceiling set under Section 139(6) of the Public Procurement and Assets Disposal Act, 2015; and
(ii) The Committee further noted that the project had a budget provision of Kshs. 3,155,000.

Committee Recommendation
The Committee recommends that the Accounting Officer should not initiate any new project in the FY 2023/24 until the completion of the on-going project. Further, the Accounting Officer should liaise with the National Treasury to allocate adequate resources for the completion of the stalled project.

161. Stalled Construction of Nyanza South Headquarters- Migori County
Audit inspection of the State Department's projects in Suna East Sub County in Migori County in the month of November, 2021 revealed a stalled project for the construction of Nyanza South

Headquarters. The project stalled in 1991 and since then the office block has remained incomplete and as time passes, its structural soundness may deteriorate.

Examination of documents provided for audit indicated that the original contract sum for the project was Kshs. 609,471,291 and a variation order of Kshs. 92,064,029.63 resulting in a revised contract sum of Kshs. 701,536,029.63. Details of the payments made to date in respect of the stalled project were not provided for audit. The certificates issued by works officers supporting the payment were also not provided. It was therefore not possible to confirm the total amount paid for the project to date. No explanation was provided for the stalling of the project. Consequently, the public may not have derived value from the funds already spent on the project.

Submission by the Accounting Officer

The Accounting Officer submitted that the above project stalled in 1991. However, there have been efforts to revive the project in recent times. It was noteworthy that the office could not provide documents regarding the project execution because the implementation was being done by the Ministry of Provincial Administration and Internal Security at the time. The project Manager was the Ministry of Works Headquarters. This was due to the scope of works.

- ➢ The Parliamentary Committee on Administration and National Security visited the project site on 26th September, 2020 and recommended that the project be revived.
- ➢ The Project Manager, Ministry of Works Headquarters did a site visit on 29th September, 2020 and placed the project at 35% level completion but did not present the Bills of Quantities for the outstanding works.
- ➢ Further, another site visit was done Parliament's Departmental Committee on Administration and National Security by the on 4th December 2021. The following recommendations were done:-
    - A comprehensive status report to be done showing the Bills of Quantities for the entire project, total project cost, project progress and funds utilized so far.
    - A comprehensive Bill of Quantities for the outstanding works and costs to be done. The works to include the roof and the cost of completion per floor.
    - Works for the access road to be quantified and costed and be presented as part of the outstanding works.
    - In a letter Ref. No. CC/MOW.8/5/VOL.II/84 dated 7th December, 2021 a report was done about the visit and the same forwarded to the County Commissioner- Migori with two requests:-
        - i) To assist the office County Commissioner Migori, in the preparation of the Bills of Quantities for outstanding works
        - ii) To allocate funds once the Bills of Quantities have been drawn and approved.

The above recommendations are being followed up to ensure revival of the project.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to demonstrate efforts towards revival of the project.

Committee Recommendation

The Committee recommends that the Accounting Officer should not initiate any new projects in the FY 2023/24 until the completion of on-going projects. Further, the Accounting

Officer should liaise with the National Treasury to allocate adequate resources for the completion of the stalled project.

162. Irregular Procurement - Rehabilitation and Extension of Homa Bay County Commissioner's Residence

On 7 May 2020, the State department of Interior entered into a contract for rehabilitation and extension of Homa Bay County Commissioner's residence at a contract sum of Kshs. 11,500,000. A Physical verification of the project carried out in November 2021 revealed that the rehabilitation was completed and the project handed over. However, review of the project documents indicates that the 5% performance security bond was not secured as required by the contract conditions.

In addition, there was a contract variation amounting to Kshs. 6,496,916 representing 56.4% of the contract sum and hence raising the total project cost to Kshs. 17,996,916. No evaluation committee's recommendation on the variation were provided for audit verification.

Further, the variation was beyond the twenty five percent (25%) ceiling set under paragraph 139(6) of the Public Procurement and Assets Disposal Act, 2015 and hence would have required a separate tendering.

Submission by the Accounting Officer

i) Variation of Prices by Kshs. 360,150

The Accounting Officer submitted that the above contract price variation, there was a price negotiation process after contract award notification which resulted in the signing of form agreement dated 7th May, 2020 at contract price of Kshs. 11,500,000. Copies of notification of award dated 06/05/20 and acceptance letter dated 07/05/2020 were availed for perusal by the Committee.

ii) Lack of Performance Security Bond of 5%

The Accounting Officer submitted that there was no performance security bond provided. This was due to time constraint for closure of financial year which was only three weeks away, and based on proof of pervious similar works by practical completion certificates and financial statements provided, the contractor was therefore waived the bond but to quickly mobilize resources for the project. This confidence was further evidenced by this timely completion of the project.

iii) Variations of Contract by Kshs. 6,496,916.00

The Accounting Officer submitted that the variation of contract at 56% which was equivalent to Kshs. 6,496,916 only was due to the following aspects:

i) Changes on building materials different from the ones prescribed in the original BQS which included versatile iron sheets from pre painted G.30 and more timber for roofing.
ii) Solar panel heater system.
iii) Fitting and fixing of Curtains for all windows and doors.
iv) Overhead water tower systems.
v) Additional structure, ground and upper floors, at the back elevation.

Above changes, requested by the client to contactor, were therefore realized by project implementation committee on their second visit. The committee therefore, asked for joint measurements of public Works Officer and the Contactor for adoption. This was arguably the best alternative. If the implementation committee could have failed to adopt the variations, there was a likelihood fear of the contractor abandoning the site since he had committed his funds to above mentioned additional works.

Committee Observations and Findings

i. **The Committee noted that the project was varied beyond the 25% ceiling set under Section 139(6) of the Public Procurement and Assets Disposal Act, 2015. This is a violation of the Law; and**

ii. **The Committee also noted that the Accounting Officer failed to subject the contract to general and specific conditions including the confirmation of a performance security before the contract was entered into.**

Committee Recommendation

The Committee recommends the EACC investigates and recommends the possible prosecution of officers involved in this project, pursuant to breach of Section 176 of the Public Procurement and Asset Disposal Act, 2015.

163. Stalled Construction of Magunga District Headquarters – Homabay County

The State Department of Interior entered into a contract for the construction of Magunga District Headquarters offices to accommodate the District Commissioner and other government offices on 15 March, 2013 at a contract sum of Kshs. 8,541,416. An interim payment certificate No.1 dated 24 April, 2013 amounting to Kshs. 3,182,280 and release less the first retention money of Kshs. 404,303.75 was subsequently submitted by the contractor. However, review of the project records and physical inspection carried out in November, 2021 indicated that no works had been executed or certified for payment for since 2013, with the project having stalled.

Further, no evidence of budget provision for completion of the project has been done over the years despite a request made on 17 May, 2018 by Suba Sub County Works Officer through a letter references MOPW/SUB/DHQS/VOL1/15 addressed to the Deputy County Commissioner in Suba South Sub County. The letter included a cost estimate for the works amounting to Kshs. 12,864,444 required to complete the construction.

No explanation was provided for the stalling of the project for over eight (8) years. In the circumstances, the project has not been able to achieve its intended objectives. Inconsistencies between Bills of Quantities and Actual Work Done.

Submission by the Accounting Officer

The Accounting Officer submitted that the inconsistencies between Bills of Quantity and Actual Work done was a result of work instructions issued by project manager (Public Works) on use of red bricks internal walling instead of chiseled natural stone.

i) Stalled Project

The Accounting Officer submitted that the referred project has stalled for over eight (8) years. The remaining works is estimated to cost Kshs. 12,864,442.20 as indicated in Public works letter Ref No. MOPW/SUB/DHQS/VOL.1/15 of 15th May 2018. Funds for the completion of the project are being sourced from National Treasury.

Committee Observations and Findings

(i) The Committee observed that the project had a pending works totaling Kshs. 12,864,442.20 which had exceeded the contract sum of Kshs. 8,541,416; and

(ii) The Accounting Officer failed to provide the Committee with an explanation on the escalation in price of the project as well as communication with the Treasury for adequate funds to complete the project.

Committee Recommendation

The Committee recommends that the Accounting Officer liaise with the National Treasury to allocate adequate resources for the completion of the Magunga District Headquarters in the FY 2023/24. In doing so, National Treasury should carry out an audit on all stalled projects and submit a report to the Committee within six (6) months after adoption of this report.

164. Un-Occupied School of Leadership in Kiganjo Police College

The State Department of Interior entered into a contract for the construction of administration block for the School of Leadership at National Police College Main Campus Kiganjo at a total cost of Kshs. 96,589,523 but the building is yet to be occupied. Review of the project documents indicates that the contactor has not handed over the project due non-payment of an outstanding amount of Kshs. 27,500,000. Further, there was no budgetary provision for the office curtains, office and auditorium furniture, office equipment, dining hall furniture and equipment and kitchen equipment which according to the available records were estimated to cost Kshs. 22,000,000.

Non-payment of amounts due to the contractor may attract unnecessary penalties and interest raising the cost of the project. Further, the objective of the project may not have been achieved with the continued non-occupation of the building.

Submission by the Accounting Officer

The Accounting Officer admitted that the construction of the Administration block for the school of leadership was completed and due for handing over. However, the office has not been handed over by the contractor due to non-payment of outstanding amount of Kshs. 27,500,000 as tabulated below:

S/No.	Particulars	Amount (Kshs.)
1.	Contract Amount	96,589,522.80
2.	Paid Approved Certificates	69,089,522.00
3.	Pending Certificates	27,500,000

During the financial year 2020/2021, the College was issued with an AIE No. B115534 dated 17th February 2021 amounting to Kshs. 25,000,000 which was not funded hence the delay in paying the contractor.

In addition, the college was yet to be allocated funds for the office curtains, office furniture and equipment, Auditorium furniture and equipment, dining hall furniture and equipment and kitchen equipment estimated to be Kshs. 22,000,000.

Committee Observations and Findings

The Committee observed that the handing over has been delayed due to non-payment of an outstanding amount of Kshs. 27,500,000 owed to the Contractor.

Committee Recommendation

(i) The Accounting Officer should within three months (3) of adoption of this report, liaise with the National Treasury on allocation of adequate resources towards the ultimate completion and handover of the project to the State Department.

(ii) Within three (3) months upon adoption of this report, the Accounting Officer should report on the status to the Committee on status of occupation at Kiganjo Police College.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

165. Delay in Issuance of Passports

The Directorate of Immigration Service delivery charter indicates that issuance of a passports will require one to fourteen (1-14) days. However, audit inquiries and review of sampled applications indicated that the process was taking longer with some cases takings long as six months after the applications and payments are made. For instance, applications done in the month of March 2022 were being booked for biometric capture in August 2022 in Nairobi - more than five months after application and payments.

Further, there were notable delays in the final printing of the passports after the biometrics had been taken with some cases lasting for more than six months. This implies that the Department took up to one year to process a passport against the fourteen days provided in the service delivery charter. Although management explained the reasons for delay to be due to overstretched printer capacity, the actual waiting time for a passport is contrary to the Department's service charter.

Submission by the Accounting Officer

The Accounting Officer submitted that there has been delays in securing appointments for biometrics capture and printing of passports. The delay in securing the appointments for biometrics capture was caused by reduced appointments per day as a means to ensure social distancing in passports offices to mitigate the spread of COVID-19. Before enforcing service by appointment there were long queue of over 1,000 applicants coming to try their luck for an opportunity to submit applications.

Due to the high demand of passport services the current printers are overstretched. The Directorate is in the process of procuring High Capacity Printers to mitigate the issue.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Delay in Issuance of Passports.

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with the National Treasury to allocate adequate resources for the procurement of printers in order to clear the backlog of passports, in the FY 2023/24.

166. Obsolete Visa Stickers in Store

The Directorate of Immigration started issuing e-visa in January 2021 after a successful pilot phase. However, examination of the Department's records provided for audit indicated that several visa stickers of different types were still held in stock despite the fact that they have been rendered redundant. The details are as shown in the table below:

Item Description	Balance in store	
	As at 30 June 2021	As at January 2022
Single Journey Visa	667,900	667,900
Courtesy Visa Stickers	8,000	8,000
Transit Visa Stickers	46,900	46,900
Multiple Visa Stickers	346,850	346,850

No documentary evidence was provided on how the Department intends to dispose-off the visa stickers.

Submission by the Accounting Officer

The Directorate in 2019 ran out of stock for Single Journey Visa Stickers. This was before migration to issuing e-Visa online. To mitigate the shortage, the Directorate decided to utilize the Multiple Visa Stickers until the on-line applications, processing and issuance normalize. The East African Tourist Visas are still in use manually to enable the three (3) East African Countries of Kenya, Uganda and Rwanda to account for the sharing of the revenue accrued. The Directorate will however endeavor to dispose of those that are not in use. It is noted that the documents are security items in nature and require very elaborate disposal method.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Obsolete Visa Stickers in Store.

Committee Recommendation

The Committee recommends that the Accounting Officer formulates an elaborate disposal method within one (1) month after adoption of this report. Further, Accounting Officer should provide evidence of the disposal of the obsolete visa stickers within three (3) months after adoption of this report to the Committee.

167. Kenya Police Service Stores

167.1 Manual Stores Systems

A physical verification at the Kenya Police Service central stores within Nairobi indicated that items were purchased centrally from the headquarters and delivered before being distributed to the other stations throughout the country. It was however observed that the stores system of maintaining records was manual with a lot of paper work from one section to the next. It was also observed that stock taking could be cumbersome as the items were kept in various stores and hence the basic inventory principle of ‘First in First Out’ may not be applicable.

Considering that the stores are busy with many outlets and dealing in different items, no explanation was however provided for failure to automate the stores system in order to enhance controls and increase efficiency.

Submission by the Accounting Officer

The Accounting Officer submitted that the Department has a system of maintaining records in a manual system with a lot of manual paper work from one section to the next. The automation is indeed an essential component for efficient stores management as pointed out in this report.

Plans to digitize Police records including store records are ongoing. Digitization of the stores records was initiated by the National Treasury vide letter REF:MICNG/PROC/36/1 VOLL.11(56) dated 29th April 2021 and Ref: TNT/IFMIS/INT/099/A(46) dated 19th April 2021 which requested for the nomination of a stores person and submission of the name through their given email address for their necessary action. The occurrence book has started and to be followed by other records including stores records/Management. NPS/IG/SEC./1/2/14/1/VOL.II/31 dated 1st September, 2021 and date 2nd September, 2021.

Committee Observations and Findings

The Committee observed that the process of digitizing police records was ongoing.

Committee Recommendation

The Committee recommends that the Accounting Officer should provide the Committee with a status report on the digitization of police records within three (3) months after adoption of this report.

167.2 Obsolete Items in the Stores

Audit Inspection of the Kenya Police Service stores indicated that the Service had obsolete stock in the stores but did not provide the annual asset disposal plan. The inspection revealed bulky and outdated police uniform clothing material at the stores. The rolls of clothing materials were taking up a lot of storage space yet they were no longer in use.

Submission by the Accounting Officer

All the obsolete stores at the Service Central Stores have been forwarded to the Assets Disposal Committee for further action and the Accounting Officer has approved disposal of the same through burning vide letter Ref. No. MICNG/PROC/2/VOL.1(TY) (10) dated 22nd November 2021. The assorted uniform materials have since been dispose of through burning and a certificate prepared. Further, the outdated police uniform materials is held under safe custody in the stores an this was as a result of change to the new uniform and has been in use by the Service CMT Section to make overalls and dust coats for the various formations and field stations across the country.

Committee Observations and Findings

The Committee noted the explanation and the supporting documents given by the Accounting Officer with regards to obsolete items in the Stores.

Committee Recommendation

Within three (3) months of the adoption of this report, the Accounting Officer should report on the status of digitization of the Kenya Police stores to the Committee.

168. Safety Concerns in Nyayo House Building

Audit review on records relating to management of Nyayo House building revealed that it does not have designated toilets and washrooms for persons with disabilities. The washrooms have half walls adjacent to the doors, which makes it difficult for persons with disabilities using wheelchairs to access services. The building also lacks accessibility ramp to make it easily accessible to persons with physical disabilities who may not be able to use the stairs especially and whenever there is power failures and lifts are not functioning.

Further, firefighting appliances available in the building have not been serviced and tested for a long time. Some of the fire exits/escape stairways have been sealed off or permanently locked making them fully inaccessible in case of an emergency. In addition, trees root outside the building along the drainage lines have not been pruned or uprooted yet they can easily cause damage to the service lines and cause blockages.

Submission by the Accounting Officer

The Accounting Officer submitted that there are a number of repairs and renovations recommended by the Principal Secretary State Department for Housing and Urban Development in November 2019 and following which the County Commissioner Nairobi County requested the Ministry of Transport, Infrastructure, Public Works Housing and Urban Development for Public Works Region works office to came up with estimates, which were estimated to Kshs. 244,831,860.00 in their report dated 18th January, 2021. Due to the budgetary constraints, this amount could not be accommodated. However, a number of areas as pointed out have already been addressed as follows:

i)The Western end of the roof top was cleared of all the debris by the State Department who are occupying the 26th floor.

ii) The toilets for people with disabilities are being addressed together with the State Department responsible. The toilets on 6th floor have already been identified for conversion.

iii) The Regional Commissioner has already informed all the Departments responsible for these blockages to open and clean all the exits.

iv) The Forestry Services have already given the green light to prune the trees and cut or uproot those that can cause damage to the service lines and cause blockages. Arrangements have already been made with County Government officers to undertake this exercise.

v) The County Commissioner, Nairobi does not have any unserviceable vehicles, however there are some which are accident vehicles belonging to the Immigration Department and who have already been advised to deal with them as per the existing regulations to clear the parking lot.

vi) The rest of the repairs are major and require budgetary support from The National Treasury and therefore efforts are being made to see how best this could be accommodated within the tight fiscal space.

Committee Observations and Findings

(i) The Committee noted that the toilets for the People with Disabilities were on the 6th Floor and hence inaccessible; and

(ii) The Committee noted the Accounting Officer failed to address why the firefighting appliances available in the building had not been serviced and tested.

Committee Recommendation

i) The Committee recommends that the toilets for the People with Disabilities should be relocated to the ground floor;

ii) **The Accounting Officer should within three (3) months after adoption of this report provide the Committee with a report addressing the safety concerns in the Nyayo House building as well as the progress made to address the concerns raised in the audit query.**

REPORT ON THE REVENUE STATEMENTS

Basis for Qualified Opinion

169. Long Outstanding Arrears of Revenue

As disclosed in Note 7 to the Revenue statements, the statement of arrears as at 30th June, 2021 reflects arrears of Kshs. 673,804,197.00 which includes an amount of Kshs. 453,872,900.00 that has been outstanding for over two years as detailed below;

Aging analysis - Revenue arrears as at June 30, 2021				
Description	**Between 1-2 years**	**Between 2-3 years**	**Over 3 years**	**Total**
SGB-Security of Government Buildings		85,775,500	161,052,000	246,827,500
KPS-Kenya Police Service (Nairobi Area)		517,600	0	517,600
Certificate of good conduct (DCI)		0	206,527,800	206,527,800
Total		**86,293,100**	**367,579,800**	**453,872,900**

Submission by the Accounting Officer

The Accounting Officer submitted that the Statement of arrears of Revenue as at 30th June, 2021 reflects Kshs. 246,827,500.00 being outstanding arrears for KRA which was also raised in the audit report for the period 2019/2020 and the response availed and presented to the Public Accounts Committee. The said PAC report was adopted by the House on June 9, 2022. The amount of Kshs. 517,600 in arrears arose due to non-submission of revenue by UBA bank for provision of service by officers from Makadara sub county police commander SCPC. Ref; C/ORG/2/6/VOL III/136 dated 26/1/22 addressed to the permanent secretary interior through the deputy inspector general Kenya Police Service, hence the outstanding amount for two years.

The Accounting Officer further admitted that the Statement of arrears of Revenue as at 30th June 2021 reflects an amount of Kshs. 206,527,800.00 that has been long outstanding. This issue was raised in the audit report for the period 2019/2020 and the response availed and presented to the Public Accounts Committee. The State Department is currently waiting for the PAC report on the same.

Committee Observations and Findings

The Committee observed that the issue was discussed during the examination of the State Department audited financial statements for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

170. Wrong billing for Integrated Population Registration System (IPRS) Services

As disclosed in Note 2 to the revenue statements, the statement of receipts and disbursements for the year ended 30th June, 2021 reflects actual receipts of Kshs. 10,377,771,441.00 in respect to sale of goods and services out of which an amount of Kshs. 119,370,517.00 is indicated as verification fees.

Government agencies were billed for IPRS services during the year under review contrary to the exemption granted vide The National Treasury letter Ref. No. ZZ/MOF81/015 of 26 June, 2015. Further, the total amount billed for IPRS services including those from Government Agencies was recorded as verification fees and the amount transferred to IPRS Account. The IPRS billing system was not able to separate the amount billed for Government agencies and those charged to private agencies. As a result, unearned revenue of undisclosed amount was mistakenly transferred to revenue account and reported as verification fees.

Consequently, the accuracy of amount of Kshs. 119,370,517.00 reported as verification fees in the statement of revenue for year ended 30th June, 2021 could not be confirmed.

Submission by the Accounting Officer

The statement of receipts and disbursements and Note 2 to the revenue statements reflects Kshs. 119,370,517.00 as verification fees. The department over transmitted Kshs. 42,619,005.00 to CBK during the year in review above Kshs.76,751,512.00 being the actual revenue collected.

By design of IPRS system by the developer, it is not able to tell apart which entity is Private and which one is a Government Agency and due to this, it has become difficult to segregate the verifications in order to put aside government access from the private verification access which is chargeable.

In respect of that, the department is in the process procuring services from the system developer to improve on the workability of the whole system to be able to put a side government access from the private chargeable so as to represent the true and fair revenue collected. Hence, manually the department is currently not levying the Kshs. 5 (five shillings) on queries done by Ministries and Government Agencies since the system is unable to recognize them automatically on the returns.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to wrong billing for Integrated Population Registration System (IPRS) Services.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should provide the Auditor General with a status report on the corrective action done to improve the workability of the whole system.

171. Manual collection of revenue by civil registration service Department

Examination of records on revenue collection from birth and deaths by the civil Registration service revealed that the service continued to use manual system in the collection and accounting for revenue. Further, data for various categories of certificates issued during the financial year 2020/2021 was not provided for audit review.

As a result it was not possible to confirm the accuracy and completeness of the reported revenue of Kshs. 118,574,105.00 from registration of births and deaths for the year ended 30th June, 2021.

Submission by the Accounting Officer

The Civil Registration Service collects revenue using the manual system and this issue was raised in the audit report for the period 2019/2020 and the response availed and presented to the Public Accounts Committee. The State Department is currently waiting for the PAC report on the same. However, the National registry is domiciled at Hass plaza, which processes applications for births and death certificates nationally using records manually submitted from all registries operating country wide. The CRVSS system which is the main system meant to automate the civil registration operations is currently not linked to the E-citizen platform except one registry for Nairobi County domicile at ACK Bishops house.

Considering the registries are currently not automated, the National registry at Hass plaza is limited in processing clients applications through the online platform (CRVSS) hence not possible to collect revenue through e-citizen. However, the management is in the process of upgrading and rollout of the Civil Registration and Vital Statistics System (CRVSS).

Committee Observations and Findings

(i) The Committee noted that the State Department collects revenue from birth and deaths by the civil Registration service manually and thus is susceptible to leakages and losses; and

(ii) The Committee observed that the audit issue was discussed during the examination of the State Department's audited financial statements for FY 2019/20;

Committee Recommendation

The Accounting Officer should within three (3) months after adoption of this report provide the Committee with a report on the rollout of the Civil Registration and Vital Statistics System (CRVSS).

Other Matter

172. Budgetary Control and Performance

As disclosed in Notes 1, 2 and 3 to the revenue statements, the State Department for Interior and Citizen Services had budgeted for receipts totalling Kshs. 14,239,411,374 in the financial year 2020/2021. However, an amount of Kshs. 10,547,501,530 was collected resulting in an under-collection of Kshs. 3,691,909,844 or 26% of the budgeted amounts. Under collection of revenue adversely affected Exchequer releases, budget execution and the overall performance of the government programmes.

Submission by the Accounting Officer
The Accounting Officer submitted that this was due to a challenging operating environment, compounded by covid-19.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer with regard to Budgetary Control and Performance.

Committee Recommendation
The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
173. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
174. There were no material issues relating to effectiveness of internal controls, risk management and governance.

NATIONAL COHESION AND INTEGRATION COMMISSION

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
175. There were no material issues noted during the audit of the financial statements of the Commission.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
176. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
177. There were no material issues relating to effectiveness of internal controls, risk management and governance.

5. STATE DEPARTMENT FOR CORRECTIONAL SERVICES- VOTE 1023

REPORTS ON THE FINANCIAL STATEMENT

Ms. Safina Kwekwe Tsungu, the Principal Secretary and the Accounting Officer for State Department of Correctional Services (Vote 1023) appeared before the Committee on 25th May, 2022, to adduce evidence on the Audited Financial Statements for State Department of Correctional Services (Vote 1023) for the Financial Year 2020/2021. She was accompanied by the following officers:

1. Brigadier John K. Warioba - Commissioner General, Prisons
2. Ms. Mary Mbau - Secretary Probation & aftercare Services
3. Ms. Mary M. Ngugi - Director HRMD
4. Mr. James M. Nyabochoa - Director of Planning
5. Mr. Mwangi Daniel - Head of Accounting
6. Mr. Philip M. Gathuya - Senior Chief Finance Officer
7. Mr. Dan Obiero - Head of Infrastructure and Development KPS
8. Mr. Ogutu Leonard - Land Surveyor Kenya Prisons
9. Mr. Jackob Ogur - Logistics Officer Kenya Prisons

And submitted as follows:

178. Inaccuracies in the Statement of Cash Flow

The statement of assets and liabilities reflects balances of Kshs. 45,288,693 and Kshs. 4,123,762,684 in respect of accounts receivables and accounts payables, respectively as at 30 June, 2021.

A comparative analysis of balances reflected in the statement of assets and liabilities revealed that there were apparent increases of Kshs. 30,586,018 and Kshs. 3,99-9,809,517, respectively from the previous year's balances of Kshs. 14,702,675 and Kshs. 123,953,167. However, the statement of cash flows reflects an increase and a decrease of Kshs. 31,176,069 and Kshs. 3,296,042,415 for receivables and payables, respectively. The differences of Kshs. 590,051 and Kshs. 703,767,102 for receivables and payables, respectively between the two statements expected to tally have not been explained or reconciled.

In the circumstances, the accuracy of the increase and decrease of Kshs. 31,176,069 and Kshs. 3,296,042,415 for accounts receivables and accounts payables respectively reflected in the cash flows for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The State Department's statement of assets and liabilities reflected an increase in accounts receivable of Kshs. 30,586,018 while the statement of cash flow showed an increase of Kshs. 31,176,069. The difference of Kshs. 590,051 was as a result of district data that had not been accounted for at the time of preparation of the financial statements.

DISTRICT DATA 2020-2021			
SN	**ACCOUNT**	**STATION**	**AMOUNT KES**
1	0-1023-1023001201-00001001-0604049999-2210101-32605301-000	VOI PROBATION	22,900.00
2	0-1023-1023001201-00001001-0604049999-2210102-32605301-000	VOI PROBATION	12,940.00
3	0-1023-1023001201-00001001-0604049999-2210201-32605301-000	VOI PROBATION	4,100.00
4	0-1023-1023001201-00001001-0604049999-2210301-32605301-000	VOI PROBATION	37,711.00
5	0-1023-1023001201-00001001-0604049999-2210303-32605301-000	VOI PROBATION	112,000.00
6	0-1023-1023001201-00001001-0604049999-2210306-32605301-000	VOI PROBATION	68,000.00
8	0-1023-1023001201-00001001-0604049999-2211101-32605301-000	WUNDANYI PROBATION	15,600.00
9	0-1023-1023001201-00001001-0604049999-2211102-32605301-000	WUNDANYI PROBATION	22,800.00
11	0-1023-1023001201-00001001-0604049999-2211201-32605301-000	WUNDANYI PROBATION	94,000.00
12	0-1023-1023001201-00001001-0604049999-2211305-32605301-000	WUNDANYI PROBATION	180,000.00
13	0-1023-1023001201-00001001-0604049999-2220101-32605301-000	WUNDANYI PROBATION	20,000.00
14	0-1023-0000000000-00001001-0000000000-6780103-32605301-000	DISTRICT SUSPENCE	590,051.00

The Accounting Officer admitted that the State Department's statement of assets and liabilities reflected an increase in accounts payables of Kshs. 3,999,809,517 while the statement of cash flow showed an increase of Kshs. 3,296,042,415. The difference of Kshs. 703,767,102 is as analyzed in the table below:

Description	**Date**	**Cashbook Balance**
Recurrent Cash book balance	30th 06 2021	604,203,522.70
Development Cash book balance	30th 06 2021	12,060,018.90
Contractor Retention monies	08 07 2021	111,183,290.10
Total Amount		**727,446,831.70**
Unspent AIE surrendered to exchequer	09 11 2021	23,679,729.70
Balance		**703,767,102.00**

The amount of Kshs. 604,203,522.70 under recurrent vote was recouped by the exchequer and was included in the balance of Kshs. 618,325,283.70 as per transfer FT212042GKSO dated 23 July, 2021 as per the bank statement. This amount was taken by the National Treasury as per the end of financial year procedure.

The amount of Kshs. 12,060,018.90 under development vote was recouped by the exchequer on 23rd July, 2021. The retention money of Kshs. 111,183,290.10 was not recouped by the exchequer but is in the general deposit bank account at the central bank of Kenya account number 1000302078.

The balance of Kshs. 23,679,729.70 was surrendered by the State Department to the National Treasury vide FT21313GF2FF dated 9th November, 2021 from recurrent vote. The management entity cashbook reflect that the full amount was surrendered to the National Treasury as at the end of the year. The management has availed the annexures as listed and the same have been verified.

The following are the review comments:

- The amount of Kshs. 590,051 related to the expenditures incurred at various Correctional facilities Countrywide whose supporting documentation and summaries had not been received at the head office by 30th June 2021.
- The amount of Kshs. 703,767,102 has been explained and the relevant supporting documentary evidence has been provided and verified
- The amount of Kshs. 604,203,522.70 related to the cash balance as recorded in the recurrent accounting procedure.
- Similarly, the amount of Kshs. 12,060,018.90 related to the cash balance as recorded in the development cashbook. The full amount was surrendered to the National Treasury as per the end of the year accounting procedure
- The amount of Kshs. 111,183,290.10 was amount retained from payments to contractors for the various projects undertaken by the State Department for Correctional Services. The amount is still retained at the Central Bank Account number 1000302078
- The amount of Kshs. 23,679,729.70 was the surrender of the funds received after the closure of the financial year but relating to the year under audit.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer as not satisfactory as reconciliations should have been done on time.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**

ii. **The Accounting Officer must institute internal administrative action and conduct investigations on these inaccuracies and report to the Committee within three (3) month of adoption of this report.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

179. Collapsed Perimeter Wall at Shimo La Tewa Prison – Mombasa

The State Department for Correctional Services entered into a contract number CQS/D102/20/2016-2017 with a local contractor for the construction of a perimeter wall at Shimo La Tewa Prisons - Mombasa at a contract sum of Kshs. 24,850,993 on 4 April, 2017 by use of restricted tender as approved by the Accounting Officer on 23 January, 2017.

A letter of notification of award was issued to the contractor who accepted the offer on 3 April, 2017 with the contract signed on 4 April, 2017 contrary to Section 135(3) of the Public Procurement and Asset Disposal Act, 2015 which requires the contract to be signed within the period specified in the notification of award but not before fourteen days following the notification.

Further, although the scheduled contract period was a duration of sixteen (16) weeks from 4 May, 2017, the actual construction works commenced on 21 April, 2017, the works stalled on 23 December, 2017. It was later reported that on 24 July, 2018 at 1350 hours, 95 meters of the wall collapsed in the area between watch tower 2 and 3 as a result of which an officer manning the watch tower 2 at the time sustained injuries.

Although the construction works resumed later, the contractor abandoned the site when the works were 60% complete hence the project stalled. Records further indicated that the Prisons Department on several occasions raised concerns about the workmanship of the contractor but no action was taken by the State Department for Correctional Services or the project manager. As a result of poor workmanship and delays, another 130 meters of the second perimeter wall on the southern side collapsed on 25 July, 2021 at 11.45 hours as a result of which the security of the inmates and staff at the facility was compromised.

A site visits in October, 2021 confirmed that the collapsed wall was not reconstructed and the contractor was not on site. Detailed payments made to date were not provided for audit and Management has not provided adequate explanations for the anomalies noted.

Consequently, value for money from the expenditure in respect of the stalled project could not be ascertained.

Submission by the Accounting Officer

The State Department for Correctional Services entered into a contract REF No. CQS/D102/20/2016-2017 on 4th April 2017 with Trans border Enterprises Company Limited of P.O. BOX 6894-00622 Nairobi, for the proposed construction of perimeter wall at Shimo La Tewa Prisons, Mombasa at a contract sum of Kshs. 24,850,993 and that the award was given before the lapse of fourteen (14) days.

However, the State Department has noted the anomaly and commits to fully adhere to the laid down procurement laws and regulations in undertaking similar projects and contractual obligation in future. The State Department intends to retender in order to complete the project and secure the Prison facility.

The Accounting Officer admitted that actual construction works commenced on 21st April, 2017 and 1st certificate for payment worth Kshs. 16,951,385.68 was raised on 5th May, 2017 by Public Works in favor of Trans-border Enterprises Company Limited of Box no 68941-00622 Nairobi and paid on 30th June, 2017**.** A second payment certificate of Kshs. 4,970,262.10 was issued by public works and paid on 02 July, 2017 and a 3rd payment certificate of Kshs. 2,636,410.68 was issued by public works on 10th October, 2017 and paid on 26th June 2018.

The wall was constructed up to 60% completion and there after the contractor abandoned the site on 23rd December, 2017. Consequently, on 24th July 2018 at around 1350 hours, it was reported that 95 meters of the constructed wall collapsed raising question on the materials used and adherence to the structural engineer's instructions by the contractor among other issues. The officer, Shimo La Tewa Prison was instructed by the Commissioner General video signal ref: PRIS 20/92/VOL.I/140 dated 25th July, 2017 to pursue the contractor and ensure the collapsed wall is rectified and works done to the required standards.

The Project Manager later called a site meeting which deliberated and agreed that the contractor repairs the collapsed wall at no extra cost. However, after the reconstruction of the wall, it was later reported that the reconstructed section appeared weak and needed urgent reinforcement.

It was reported that on 25th July, 2021 at around 1145 hours, another portion of the perimeter wall under construction which was approximately 130m in the southern side of the Prison collapsed demolishing a section of inner wall, part of the roof of multipurpose and security watch tower.

The Commissioner General vide office letter REF: PRIS8/6/VOL.IV/24 dated 28th July, 2021 informed the Accounting officer, Cabinet Secretary Ministry of Interior, Works Secretary, State Department for Public Works, and Regional Works officer, Coast region on the incident and its subsequent security threat posed to the institution. The Principal Secretary State Department for public works responded vide office letter ref:BD118/GEN/VOL.I/83 dated 2nd August, 2021 and appointed a team of engineers to investigate the incidence, provide a report and way forward Though the team visited the site, no report has been availed.

Owing to the security threat posed by the collapsed wall to the institution which holds high risk offenders, the Commissioner General vide his various letters ref**:** PRIS/20/145/VOL.XIII/143, PRIS/1/15/VOL.III/130, PRIS/20/92/VOL.II/21, PRIS 20/145/VOL.XIII/147, PRIS 20/92/VOL.II/22 on diverse dates requested the Accounting officer, State Department for Correctional Services to reallocate funds from recurrent budget to address the eminent security challenge. The State Department took precautionary measures by providing an AIE number B 081854 amounting to Kshs. 4,674,425 to cater for emergency repairs on 10th January, 2022.

The management agrees that the wall collapsed after an amount of Kshs. 24,558,058.46 was spent on the project as shown below:

Date	Certificate No	Amount
21st April, 2017	1	16,951,385.68
02 July, 2017	2	4,970,262.10
26th June 2018	3	2,636,410.68
	TOTAL	**24,558,058.46**

After the collapse, a team of three officers from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works (State Department for Public Works) appointed by their PS to undertake a thorough inspection of the collapsed wall has so far not given any report on the possible causes of the failure and subsequent collapse of the wall under their supervision. Further the project manager has not provided a professionally advised to the State Department for Correctional Services on the way forward on this issue especially with regard to possible contractual remedies. So far, the wall has not been reconstructed as expected exposing the Maximum-Security Prison to serious security threat.

Committee Observations and Findings

- **(i) In allowing contractual obligation before the lapse of fourteen (14) days, the Accounting Officer admitted breach of Section 135(3) of the Public Procurement and Asset Disposal Act, 2015;**
- **(ii) The Committee observed the serious security risk the inmates and officers faced; and**
- **(iii) The Committee sought for the name, profile, certificate of incorporation including the names of directors of the said company which was not availed.**

Committee Recommendation

- **i) The Committee reprimands the Accounting Officer for failure to provide documents as requested;**
- **ii) The EACC to investigate the entire procurement process, the public officers and the construction firms involved in the construction of the perimeter wall at Shimo La Tewa Prison with a view to prosecution of those involved if evidence permits; and**
- **iii) The National Security Council to take note of the security situation at the prison and remedy it.**

180. Encroachment on Kitale Prison Land

Annex 2 to the financial statements on summary of fixed assets register reflects assets with historical total cost of Kshs. 2,469,958,224 as at 30 June, 2021. However, the balance excludes undetermined parcels of land spread all over the country whose details of value and ownership could not be determined. Records maintained by the State Department revealed that Legal Notice No.359 of 1943 and Legal Notice No.721 of 1961 established Kitale Main Prison and Kitale Medium Prison in a parcel of land measuring approximately 3000 acres and 159.01 acres respectively.

However, a field inspection carried out in October, 2021 at both Kitale Main and Medium Prison established that out of a total of 3,159.01 prison land, approximately 2,321.09 acres of the Kitale Main Prison farm land had been alienated and allocated to private individuals, among them senior government officials. Upon request by the State Department, the National Land Commission (NLC) through a letter dated 13 September, 2018, confirmed that Gazette Notice No.359, declared the plot in contention as prison land with effect from 1 April, 1943. The illegal alienation of prison's land has been a subject of litigation. However, the State Department for Correctional Services did not provide a detailed schedule of the land in dispute. In the circumstances, the completeness, ownership and security of the State Department's assets of Kshs. 2,469,958,224 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The State Department stated that as indicated by Audit Inspection Report that the land occupied by Kitale Main and Kitale Medium Prisons is occupied by a number of people and companies who acquired the disputed portion of prison land through illegal means thirty years ago. The Gazette Notice No. 359 of 1943 established Kitale Main Prison on 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 subject of court cases between Kitale Prison and other parties. To date approximately 2,321.09 acres of Kitale Main Prison Farm LR No. KAPKOI/MABONDE BLOCK 1/EX-PRISON-(LR2197/2/2) have been illegally alienated and allocated to private individuals.

The Accounting Officer admitted that encroachment and alienation of Kitale Main and Kitale Medium prison land has led to continued decrease in size of Prisons land. Additionally, the Prisons may be incapable of carrying out its correctional functions effectively due to encroachment of this Security / Protected Areas:

a. A comprehensive register of land held by Prison facilities countrywide containing station name, acreage and status was attached.

b. Kenya Prisons Service has collaborated with the National Land Commission together with the Ethics and Anti-Corruption Commission to recover the grabbed parcels of land from encroachers and the cases are ongoing.

c. The Department is in the process of documenting and valuing the Department's land.

The Prison land measuring 2321.09 acres is still in private hands. There are several court cases concerning this land in which the State Department is represented by the Attorney General's office. Although there is evidence that the Prisons Department is pursuing the illegally alienated land through legal means, the land in dispute is still occupied by private individuals and no determination of the court cases has so far been made on the ownership of the disputed parcels of land.

Committee Observations and Findings

The Committee observed that the Prison land measuring 2,321.09 acres remains occupied by private individuals to date.

Committee Recommendation

Within three (3) months upon adoption of this report, the Accounting Officer MUST use lawful measures to ensure those private individuals vacate the prison land and report to the Committee.

181. Leased and Grounded Ambulances

A field inspection conducted in October, 2021 revealed that, several leased ambulance vehicles deployed to various stations were grounded due to various mechanical problems. It was noted that the dealer takes unnecessarily long to respond to requests for repairing/replacing the vehicle spare parts after being notified by the Prison's Management resulting in inconveniences to the stations in case of an emergency.

The Principal Secretary State Department for Correctional Services wrote a letter reference number CONF/MOF/15/04/H/(49) on 25 June, 2018 to the Chief Executive Officer, URYSIA Kenya Ltd raising concerns on non-maintenance of Kenya Prisons ambulances. The Management of URYSIA Kenya Ltd did not address the issues. Further, the State Department did not pursue the matter thereafter resulting to lack of critical ambulance services in most Prisons despite the existence of a valid lease agreement between The National Treasury and URYSIA Peugeot Company.

In the circumstances, the inefficiencies may affect service delivery due to the loss in the use of the contracted services.

Submission by the Accounting Officer

The State Department for Correctional Services received 30 (thirty) Peugeot Boxers Ambulances in Phase III lease programme in the year 2016 and distributed them to various stations across the Country to be utilized for inmates' medical emergencies.

The Lease agreement was signed between the National Treasury (Leasing agent) and URYSIA Peugeot Company to provide efficient emergency operational services. The ambulances needed prompt routine maintenance which the Service provider failed to undertake as part of his lease obligation. Consequently, Kenya Prisons Service vide our office letter ref: T/2/VOL.IX/146 dated 20th June, 2018 submitted an array of complains to the National Treasury on the lack of prompt maintenance of the Leased Ambulances by URYSIA Peugeot Company which had been awarded contracts to maintain the vehicles.

On 25th June, 2018 The Principal Secretary to the National Treasury vide a copy of his letter Ref. CONF/MOF/15/04/H/(49) dated 25th June 2018, addressed to Chief Executive Officer, URYSIA Kenya Ltd and copied to the Commissioner General of Prisons raised complaints on non-maintenance of the Prisons ambulances. The letter by the National Treasury was not responded to by URYSIA Kenya Ltd.

On 25th October, 2021, the Commissioner General of Prisons wrote to the company requesting that the ambulance vehicles that had been grounded at their yard be repaired and handed over to Prisons to ensure continuity of ambulance services in Prison institutions vide office letter PRIS/3/13/VOL V/35 dated 25th October, 2021**,** but the letter has not been responded to by URYSIA Kenya Ltd to date.

The National Treasury and Arysia Kenya Limited who are the contracting parties have not sorted out the issue of the defective Peugeot Ambulances yet the Kenya public continues to pay for the lease.

Committee Observations and Findings

- **(i) The Committee noted that there was lack of a clear and effective communication channel between the Kenya Prisons Service and Urysia Kenya Ltd for reporting and addressing maintenance issues; and**
- **(ii) The Committed noted that the inefficiencies by Urysia Kenya Ltd may affect service delivery due to the loss in the use of the contracted services.**

Committee Recommendation

The Committee recommends that the Accounting Officer through the National Treasury should review the lease agreement between Urysia Kenya Ltd and the Government and report to the Committee within three (3) months after adoption of this report with a view to establish its value for money.

182. Excessive Stocks of Uniform Material (Cloth) in Store

The Prisons Department procured green barathea ceremonial fabric in the year 2016 at a cost of Kshs. 19,125,000. Audit verification conducted on 10 September, 2021 revealed that, fabric worth Kshs.15,674,212.50 representing 82 % of the total value of the material procured were still in stock and only fabric worth Kshs.3,450,787.50 had been issued for the intended purpose.

The continued storage of the excessive fabric may lead to losses from obsolescence and exposure to vagaries of weather.

Submission by the Accounting Officer

The State department stated that 15,000 metres of Barathea material was procured in 2016 which could only be issued to 4,285 officers whereas the Service had provisioned to issue to all officers (24,000). The Barathea material is utilized for stitching prison officers' ceremonial uniform. Each officer is required to be issued with one pair of ceremonial uniform. This prompted the Service to store the material while waiting for procurement of the balance in order to meet the needs. However due to budgetary constraints, the Service was unable to acquire the balance of the material.

A total of 2,706.5 metres had been issued at the time of the audit to officers participating in the National and International events, Burial ceremonies of deceased officers and emergency purposes. A total of 9,462.5 meters has been issued to Prison stations through the regional quarter masters to be issued on a need basis. Instances have arisen that have necessitated the Prison service to issue 649.5 meters of the materials to individual officers to attend to special events.

The balance of the material held at the Prison Headquarters quartermaster is 2,181.5 meters. The Prison Service has explained with evidence the circumstances under which the green Barathea material was kept in the store for a long time without issuance to the needy officers. Further, the green Barathea material found in the store has been distributed to various Prisons through their Regional Masters. There is only a balance of 2,187.5 metres retained to cater for emergencies like clothing of deceased officers during their burial as that is a requirement.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Excess Stocks of Uniform Material (Cloth) in Store was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

183. There were no material issues relating to effectiveness of internal controls, risk management and governance.

6. STATE DEPARTMENT FOR DEVOLUTION - VOTE 1032

REPORT ON THE FINANCIAL STATEMENTS

Ms. Teresia Mbaika, the Principal Secretary/Accounting Officer for the Department of Devolution appeared before the Committee on 23rd May 2023 accompanied by the following officers: -

1.	Ms. Mary Mwiti	-	Chief Executive Officer, Council of Governors
2.	Mr. Amos Omari	-	Assistant Accountant General
3.	Mr. Moses M. Macharia	-	Principal Accountant
4.	Ms. Joyce Chepkoech	-	Head of Fisheries Accounting
5.	Ms. Beatrice K. Kahiu	-	Head, Supply Chain Mgt. Services
6.	Mr. George Oyugi	-	Principal Finance officer
7.	Mr. Okopo Makoriwa	-	Head of Accounts
8.	Mr. Marvice Ogola	-	Ag. Director, Policy and Research
9.	Mr. Leonard Ngotho	-	Director, HRD.
10.	Mr. Alfolso Munyali	-	Ag. Devolution Secretary
11.	Ms. Osian Margaret	-	Deputy Director, Devolution Affairs/ PA
12.	Mr. Patrick Karanja	-	Ag. Director, Intergovernmental Relations
13.	Mr. James Kamau	-	Head, Supply Chain, COG.

and the following matters were deliberated;

Basis for Qualified Opinion

184. Compensation of Employees

As disclosed in Note 3 to the financial statements, the statement of receipts and payments reflects compensation of employees' balance of Kshs. 291,548,253 out of which an amount of Kshs. 178,484,023 and Kshs. 113,064,231 paid as basic salaries and part of personal allowances, respectively. However, examination of payments made through the Integrated Personnel Payroll Database (IPPD) system indicates that an amount of Kshs. 163,104,904 and Kshs. 128,019,802 were paid as basic salaries and other personal allowances resulting to a difference of Kshs. 15,379,119 and Kshs. 14,955,571 respectively. Consequently, the accuracy of compensation of employees' balance of Kshs. 291,548,253 reflected in the statement of receipts and payments for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry in the financial year 2020/2021 paid Kshs. 291,548,253 as compensation of employees.

The National Treasury allocates a consolidated estimate for Personnel Expenditure in every financial year. From this the State Department allocates its estimated expenditure for both basic salary and personnel allowances in the IFMIS system.

In the financial year 2020/2021 the state department had a shortfall for personnel emoluments amounting to Kshs. 27.44 million as communicated to the National Treasury via letter ref:

MDP/DD/FIN/VOLVI (13) dated 11th May 2021 on submission of Supplementary Estimates no. 2 for FY 2020/2021–vote 1032. This was occasioned by staff changes within the year as a result of promotions, appointments, transfers which were not anticipated during the budget for salaries and allowances in the beginning of the financial year.

However, there was a mismatch between the allocation for basic salaries and personnel allowances in the budgetary allocation in the Supplementary No.2. This led to under allocation for basic salaries and over allocation under personnel allowances

The over expenditure of Kshs. 14,955,571 on personnel allowances was due to extra costs under basic salaries which was paid under personnel allowances. The allocation for basic salaries in the budget was inadequate by Kshs. 15,379,119 hence the extra was charged under personnel allowances.

On the other hand, the over expenditure of Kshs. 15,955,571 on the personnel allowances was due to extra costs under basic salaries which was paid under allowances as vote for basic salaries had been exhausted. The Ministry however was within the budget allocation under overall expenditures for salaries and allowances.

The Accounting Officer further submitted that staff transfers of different cadres brought the distortion but they never exceeded the budget.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to reconcile the figures for ease of understanding the shortfall particularly on basic pay and personnel allowances.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

185. Use of Goods and Services

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects use of goods and services balance of Kshs. 877,989,107. Examination of records revealed the following:

185.1. Refund of Ineligible Expenditure

The balance includes an amount of Kshs. 760,645,302 in respect of other operating expenses, which further includes an amount of Kshs. 388,689,253 as refund to the World Bank, being project funds found to have been ineligible after World Bank review. The amount was meant for financing Western Kenya Community Driven Development and Flood Mitigation Project under Credit No.4287-KE.

An in-depth review by World Bank report submitted in March, 2017 to the Government revealed potentially ineligible expenditure amounting to Kshs. 388,689,257 affecting sixty-one (61) contracts evidencing probable fraud through submission of forged documents, such as bid securities, performance bonds, National Construction Agency registration documents, tax compliance as well as falsified prior working experience. A further nineteen (19) contracts had significant red flags of fraud and corruption, while fifty-four (54) contracts exhibited red flags of fraud but with significant gaps in the available evidence. Management has not explained how the ineligibility occurred and what action it has taken to ensure the culprits face consequences or how it intends to recover the amounts.

Submission by the Accounting Officer

The Accounting Officer submitted that Western Kenya Community Driven development and Flood Mitigation project was funded by the World Bank and was under the then Ministry of Special Programmes. The project implementation period was between August 2007 and March 2016. The residual functions of the Ministry of Special Programs were transferred to the Ministry of Devolution through re-organization of Government in May 2016 as per the Executive Order no. 1 of May 2016.

In August 2019, the World Bank carried out an in-depth review of the program which identified ineligible expenditure amounting to Kshs. 388,689,253.37. The World Bank wrote to the National Treasury to refund the above amount by end of January 2021 in order to forestall any remedial action by the World Bank against the Government of Kenya.

The National Treasury wrote to the State Department via letter ref DV/ES 1032/20/01 A (14) dated 7th January 2021 instructing the Ministry to rationalize its budget to cater for refund to World Bank Kshs. 388,689,253. The Ministry requested for additional funding to cater for this refund which was subsequently provided through Supplementary 1 in FY 2020/2021 and the refund was paid in May 2021.

The World Bank report was not forwarded to the Ministry for implementation of its findings but it was to the National Treasury. The Ministry requested the National Treasury to share the status of implementation of this report.

Committee Observations and Findings

The Committee concurred with the OAG that this was fraud.

Committee Recommendation

i) **The Accounting Officer should initiate disciplinary action on officers involved within one (1) month after adoption of this report;**

ii) **The EACC investigates the matter with a view of recommending for prosecution those involved.**

185.2. Unsupported Expenditure

Further, the balance of Kshs. 877,989,107 constitutes an amount of Kshs. 12,021,546 under domestic travel and subsistence out of which a balance of Kshs. 1,301,000 could not be confirmed as payment vouchers and other supporting documentation were not provided for audit review. In the circumstances, the propriety of the expenditure of Kshs. 389,990,253 included in use of goods and services balance of Kshs. 877,989,107 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the payment vouchers under domestic travel and subsistence were not verified during audit review exercise. This was because the payment vouchers were erroneously filed in different economic items amongst other payment vouchers that were provided to the auditors for review. However, the documents have since been retrieved provided to the auditors.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to submit the necessary information during the audit period as provided for under Section 62 of the Public Audit Act, 2015 and Section 68 (2) of the PFM Act 2012.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

186. Unsupported Transfers to Other Government Entities

The statement of receipts and payments reflects a balance of Kshs. 7,434,223,946 in respect of transfers to other Government entities which, as disclosed in Note 5 to the financial statements, includes an amount of Kshs. 4,600,000,000 being Kenya Devolution Support Programme transfers to thirty-eight (38) counties as level 2 investment grants following achievement of disbursement linked indicators, meeting the minimum access conditions and also minimum performance conditions. However, only five (5) counties confirmed having received the funds totalling to Kshs. 689,429,163, leaving a total of Kshs. 3,910,570,837 from thirty-three (33) counties not confirmed. Further, the balance includes an amount of Kshs. 2,115,000,000 which was transferred directly to the counties by The National Treasury for the Kenya Devolution Support Program and which was not supported with returns from the recipients to confirm receipt of the funds.

Consequently, the propriety and accuracy of the transfers to other Government entities expenditure of Kshs. 6,025,570,837 included under transfers to other Government entities balance of Kshs. 7,434,223,946 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry of Devolution had been implementing a four-year World Bank program (Kenya Devolution Support Program) to support County Governments in capacity building and investment grants.

In the year 2020/2021 Kshs. 2.115 billion was disbursed to all the forty-seven county governments in February 2021 from the National Treasury into the County Revenue Fund Accounts as level 1 capacity building grants. This was achieved as a result of disbursement linked indicator no. 7 on development of capacity building plans for FY 2020/2021 and implementation of previous Capacity Building plans.

The Accounting Officer also submitted that the Ministry has so far received confirmations of receipts of the stated funds from nineteen 19 County Governments while 28 counties have not responded. The Ministry have written reminders and made contacts with the relevant officers at various county governments, but still waiting for full compliance.

Further, Kshs. 4.6 billion was disbursed from the State Department in July 2021 as level 2 investment grants following performance assessment done by the Ministry. Thirty-eight county governments (38) met Minimum Access and Performance Conditions. The Ministry has received confirmations of receipts of the stated funds from 27 counties for level 1 grants and 15 counties for level two grants.

The Accounting Officer clarified that the State Department is following up with the remaining counties on the submission of confirmation of the receipt of the grants. The Ministry has sent letter to remind the remaining counties to submit the returns.

The Accounting Officer further submitted that the programme design meant that County Governments take responsibility for service delivery and value for money while the Department only takes responsibility that funds are mobilized within timelines and also provide technical support.

In addition, the Accounting Officer submitted that the programme achieved its objectives despite challenges particularly financial.

Committee Observations and Findings

i. **The Committee inquired why the agency was not releasing funds based on the level of programme implementation by counties. It was further noted that the programmes were done in 2021 but the letters were done in 2023;**
ii. **The Committee observed that there was no evidence by the counties on whether they received the funds added to the fact that there is no M&E provided to gauge the impact of the programme to counties;**
iii. **The Committee noted that the programme was a loan to GoK from the World Bank but a Grant to counties;**

Committee Recommendation

Within three (3) months after adoption of this report, the Accounting Officer should institute administrative measures to ensure Counties develop reporting structures on grants received and its utilization.

187. Unsupported Acquisition of Assets

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 10,335,141 in respect of acquisition of assets out of which an expenditure of Kshs. 7,649,441 was not supported with verifiable audit evidence. Consequently, the accuracy and completeness of the expenditures amounting to Kshs. 7,649,441 included under acquisition of assets balance of Kshs. 10,335,141 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry spent Kshs. 10,335,141 under acquisition of assets out of which Kshs. 7,649,441 was spent under feasibility studies, research, project preparation and project supervision. The expenditure was incurred towards research on UNDP project in the ministry-consolidating gains in devolution in Kenya.

The Accounting Officer also submitted that as per the International Public Sector Accountants Standards Board (IPSASB) financial statement reporting framework, the expenditures incurred under feasibility studies, research, project supervision and design are classified under acquisition of assets copy of the financial reporting template. However, the assessment report for the work done under research and project preparation have been availed to the auditors for their review.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to submit the necessary information during the audit period as provided for under Section 62 of the Public Audit Act, 2015 and Section 68 (2) of the PFM Act 2012.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

188. Inaccuracies in Cash and Cash Equivalents

As disclosed in Note 8A to the financial statements, the statement of assets and liabilities reflects cash and cash equivalents balance of Kshs. 204,845,006. The balance includes bank balance of Kshs. 202,959,524 which further includes project account balance of Kshs. 7,424,401. However, review of records indicated that the opening balance for Instruments for Devolution Advice and Support (IDEAS) Project Account is reflected as Kshs. 13,595,445 while the cash book reflected an amount of Kshs. 13,124,323 resulting to an unexplained difference of Kshs. 471,122. Further, the bank reconciliation 62 statement for deposit account with a balance of Kshs. 13,561,548 was not provided for audit review. Consequently, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 204,845,006 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that at the beginning of the FY 2020/2021, the bank balances under IDEAS project was Kshs. 13,595,445. The opening balance in the cashbook was Kshs. 13,124,323. The difference being payments posted in cash book as at closing period of 30th June 2020 and the bank statement of July 2020.

The difference of Kshs. 471,122 was a reconciling item in the bank reconciliation statement of June 30th 2020. However, reconciling figures were cleared in the reconciliation of July 2020. The bank reconciliation of the deposit account was provided to the auditors for verification.

Committee Observations and Findings

The Committee noted that this was bank reconciliation issue that should have been done on time.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **Within three (3) months upon adoption of this report, the Accounting Officer must institute internal administrative action and conduct investigations on these inaccuraries and report to the Committee.**

189. Unaccounted for District Suspense Account

The statement of assets and liabilities reflects an accounts receivables balance of Kshs. 59,820,046 which, as disclosed in Note 9 to the financial statements, constitutes salary advances and district suspense account balance of Kshs. 165,226 and Kshs. 59,654,820, respectively. However, the latter relates to Authority to Incur Expenditures (AIEs) issued to various County Commissioners for the transportation of relief food to the beneficiaries to the Sub-county level. The amounts could not be confirmed as no documents in form of returns were provided for audit review, to explain the requisition process, evidence of receipt by the respective recipients and the usage. Under the circumstances, the accuracy and existence of the reported accounts receivables balance of Kshs. 59,820,046 as at 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that in the State Department's reported statement of assets and liabilities an amount totaling Kshs. 59,820,046 was reported as District suspense. This amount relates to AIEs issued to various county commissioners for transport of relief food to the beneficiaries in the Sub County level.

The AIEs are accounted for at the end of the year by recognizing the resultant expenditure as per expenditure returns. The State Department has made several efforts by writing letters to the Principal Secretary, Interior towards submitting the Expenditure returns. So far the State Department has received returns totaling to Kshs. 26,083,360.00 from the County Commissioners and Deputy County Commissioners (DCCs) and more returns are expected.

The State Department is still engaging the Ministry of Interior and National Coordination for submission of the remaining expenditure returns for the funds disbursed, received and expended by the DCCs.

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer has not put enough effort to have this issue resolved; and**
ii. **The Committee noted that the Accounting Officer failed to submit the necessary information during the audit period as provided for under Section 62 of the Public Audit Act, 2015 and Section 68 (2) of the PFM Act 2012.**

Committee Resolution
The Committee reprimands the Accounting Officer and directs that within one (1) month of the adoption of this report, avail the names of the Deputy Commissioners who have not made expenditure returns.

190. Unsupported Accounts Balances
The statement of assets and liabilities reflects account payables balance of Kshs. 20,985,949 which, as reflected in Note 10 to the financial statements, is made up of deposits and IDEAS balances of Kshs. 13,561,548 and Kshs. 7,424,401, respectively. However, there were no details and breakdown provided to support the balance of Kshs. 13,561,548. Consequently, the accuracy and validity of the accounts payables balance of Kshs. 13,561,548 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the deposit account of the state department had a closing balance of Kshs. 13,561,548 comprised of retentions from contracts which had not been claimed, and provided an analysis of the amounts in the deposit account.

Committee Observations and Findings
The Committee noted that the Accounting Officer failed to submit the necessary information during the audit period as provided for under Section 62 of the Public Audit Act, 2015 and Section 68 (2) of the PFM Act 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer and directs that within one (1) month of adoption of this report, he prepares and submits supported account balances to the Committee.

191. Inaccuracies in Pending Bills

Note 16.1 and Note 16.2 – other important disclosures in the financial statements reflects pending bills totalling to Kshs. 385,782,680 which comprise of Kshs. 47,513,967 and Kshs. 338,268,713 in respect of pending accounts payables and other pending payables, respectively. However, the opening balance for other pending payables of Kshs. 338,268,713 differs with the balance of Kshs. 3,268,178,016 reflected in the audited financial statements for the previous year by Kshs. 2,929,909,303 which had not been reconciled. Further, Management did not provide documents to support the amount stated in the financial statements by a schedule showing how the prior year's pending bills were paid and their current status or provide an explanation for the non-payment of the pending bills. Consequently, the accuracy and validity of pending bills totalling to Kshs. 385,782,680 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry in the FY 2020/2021 reported pending bills amounting to Kshs. 338,268,713 and Kshs. 3,268,178,016 for FY 2019/2020. The Kshs. 2,929,909,303 relates to historical pending bills of contribution in lieu of rates owed to former defunct local authorities. During the verification of historical pending bills in the FY 2020/2021, the Kshs. 2,929,909,303 for Contribution in Lieu of Rates (CILOR) could not be adequately supported by documentary evidence e.g. demand notes, invoices.

The treasury therefore advised the Ministry to consider write off of the pending bills vide letter ref AG3/87/1/VOL.V(69) of February 2020. It is out of this advisory and lack of adequate support documents for the pending bill that the ministry dropped the Kshs. 2,929,909,303, CILOR debt pending further verification.

The National Treasury subsequently formed a Technical Committee composed of National Treasury, Ministry of Devolution, IGRTC, Council of Governors, Controller of Budget, Commission for Revenue Allocation (CRA), Ministry of Lands, to carry out in-depth verification of CILOR claims and give a report. The Technical Committee issued its report in November 2022 where the revised CILOR owed to County Governments was verified as Kshs. 13,119,281,744.

The State Department is in consultation with the National Treasury and intends to report the revised pending bill for CILOR of Kshs. 13,119,281,744 in the FY 2022/2023. The Accounting Officer further submitted that the National Treasury after receipt of the Technical Committee report wrote a cabinet memo recommending to the Cabinet for approval of the payment of the new CILOR debts to the county governments. The treasury is still awaiting Cabinet resolution on the matter before giving way forward on the payments.

Committee Observations and Findings

i. **Writing off the debt must have a no objection from the National Treasury which in this case was not availed; and**
ii. **The Committee noted that the State Department took over from the defunct local authorities.**

Committee Recommendation

Within three (3) months upon adoption of this report, the Accounting Officer avails an analysis on the amount of Kshs. 13 billion to the Committee.

Other Matter

192. 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 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 Circular Ref:AG.4/16/2 Vol.3(72) dated 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry appeared before Parliamentary Accounts Committee (PAC) in May 2022 for the audited accounts and Auditor General's report for F/Y 2019/2020. PAC has subsequently issued a report for implementation by the Ministry, and the Accounting Officer provided an implementation status report for the PAC recommendations.

Committee Observation and Findings

The Committee observed that the issues were discussed during the examination of the State Department audited financial statements for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

193. Irregular Payment of Demurrage Charges

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects use of goods and services balance of Kshs. 877,989,107 which includes an amount of Kshs. 760,645,302 in respect of other operating expenses. The balance includes an amount of Kshs. 75,560,800 which was paid through the Government Clearing Agency for onward payment to a company as demurrage charges arising from long delay in returning empty containers that had been used to deliver relief food supplies from the Government of the People's Republic of China and which could have been avoided had proper planning measures been put in place. Consequently, the value for money for the expenditure of Kshs. 75,560,800 paid for demurrage charges could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted in 2017 the President declared drought a National disaster in Kenya. This prompted the Government to put in place various measures to respond to the drought. As a result, Kenya also received humanitarian assistance from the United Nations, Non-Governmental organizations and rice donation from the People's Republic of China in 2018 worth Kshs. 1.2B in 300 containers.

All the logistics of the rice donation was done by the State Department. The rice donation came into the country through Maersk shipping line which facilitated logistics from China to Mombasa. The Government was expected to clear the various rice consignments and further distribute it to the needy populations.

The State Department for Devolution received the donated rice worth Kshs. 1.2 billion from the Chinese Government in 300 containers. The containers once at the port attracted daily demurrage charges on which accumulated a bill of USD 3.2 million (Kshs. 323.2 million).

At the time of receipt of the donations the State Department did not have budget for clearing of the demurrage charges, however the Ministry requested for funding from the National Treasury to clear the demurrage charges. The State Department negotiated with Maersk shipping Line Ltd and the debt was reduced to USD 700,000 (Kshs. 75.7 million). The Ministry was subsequently allocated funds in the Supplementary 1 budget of FY 2020/2021, and the payment was eventually made to clear off the debt.

Committee Observations and Findings

i. **The Committee noted the irregularity in expenditure of Kshs. 75 million;**
ii. **The Committee observed that the containers were at the port from 2018 to 2021.**

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **The EACC conducts investigations on the expenditure of Kshs. 75 million with a view of possible prosecution of those involved.**

194. Non-Compliance with the Public Procurement and Asset Disposal Act, 2015

The statement of receipts and payments reflects use of goods and services balance of Kshs. 877,989,107 under use of goods and services which, as disclosed in Note 4 to the financial statements, includes an amount of Kshs. 3,049,735 in respect of routine maintenance - vehicles and other transport equipment which further includes an amount of Kshs. 600,000 issued to an officer as standing imprest. Examination of supporting documents revealed use of imprest to make purchases that did not meet the thresholds for low-value procurements through carrying out procurement work that should ordinarily could have been done by procurement professionals and for activities which had not been included in the approved procurement plan. This was contrary to Section 107(a) of the Public Procurement and Asset Disposal Act, 2015 which provides that items procured on low value method are those items that are not procured on a regular or frequent basis and are not covered in framework agreement. Consequently, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that one of the mandate/functions of the State Department is to carry out capacity building in the counties. This involves regular travels to the County Governments for capacity building and Monitoring & Evaluation of County Projects. Sometimes vehicles breakdown while transporting officers in the field, this forces the State Department to incur costs on emergency repairs.

The Accounting Officer noted that the State Department currently has a fleet of old vehicles which are susceptible to frequent break downs. Due to budgetary constraints the State Department has been gradually replacing the fleet of old vehicles. The following is a summary of the number of vehicles and year of manufacture:

S/No.	**Year of Manufacture**	**No. of Vehicles**
1.	1999-2006	10
2.	2007-2016	13
3.	2016-2020	5
	TOTAL	**28**

Committee Observations and Findings

The Committee noted that the Accounting Officer flouted the Section 107(a) of the Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to adhere to procurement laws as required by Section 176 of the Public Procurement and Asset Disposal Act, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

195. Lack of Fixed Assets Register

Annex 3 - Summary of fixed assets register in the financial statements reflects assets with a cumulative historical cost of Kshs. 64,116,320 as at 30 June, 2021, However, the Department did not maintain a fixed assets register as required under Regulation 143 of the Public Finance Management (National Government) Regulations, 2015 and The National Treasury Guidelines as per Circular No. 5/2020 dated 25 February, 2020, which required all public entities to maintain a comprehensive register to protect public assets. Consequently, the existence of an effective assets management system capable of safeguarding and ensuring proper custody of the assets could not be established.

Submission by the Accounting Officer

The Accounting Officer submitted that as at 30th June, 2021 the State Department did not have a Fixed Asset Register. However, the department has initiated the preparation of its inventory of assets and has consequently started formulation of a Master asset register and work in progress.

In view of the foregoing, Motor vehicles lacking logbooks will be subjected to mechanical department for valuation so as to be able to depreciate or get a value for the motor vehicle and equipment. Other equipment lacking documents will also be subjected to the same process of valuation so as to finalize with the asset register fully.

Committee Observations and Findings

i. **The Committee noted that the State Department had started preparing the fixed assets register in 2023 as the Department did not have an asset register in place; and**

ii. **The Committee observed that the Accounting Officer failed to meet the 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. 64,116,320.**

Committee Recommendation

Within three (3) months after adoption of this report, the Accounting Officer should ensure that a complete fixed asset register is maintained pursuant to Regulation 143(1) of the PFM (National Government) Regulations 2015. Further, the complete asset register should be availed to the Committee for verification.

196. Lack of Audit Committee and Public Finance Management Standing 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 Accounting Officer submitted that in the year under review (FY 2020/2021), the State Department did not have an established internal audit committee. However, the process of establishment of the audit committee was initiated in the FY 2020/2021 where the activity was eventually put under the work plan of the internal audit department in the FY 2021/2022.

However due to changes and reorganization of government, the activity was not finalized. in the FY 2021/2022 the state department was under the Ministry of Devolution and ASALs. In the year 2022 through Executive Order No. 1 of 2022 the State Department of ASAL was moved to the Ministry of Public Service, Social Protection and the State Department renamed to Ministry of Devolution.

The Accounting Officer also submitted that under the current government structure the State Department of Devolution is domiciled at the office of the Deputy President. The State Department has initiated processes to establish the audit committee in the FY 2023/2024.

During the Financial Year under review, the State Department did not have the Public Finance Management Standing Committee in place. However, the committee has since been appointed and is now operational, and copy of the appointment letter has been availed for audit review.

Committee Observations and Findings

The Committee observed that the Accounting Officer admitted the absence of the audit committee in the State Department and thus a breach of the Law.

Committee Recommendation

The Committee reprimands the Accounting Officer, and directs that he institutes an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012, within three (3) months of adoption of this report.

DONOR FUNDED PROJECT INSTRUMENTS FOR DEVOLUTION ADVICE AND SUPPORT (IDEAS) PROJECT – CREDIT NO.KE/FED/024/230

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

197. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

198. Budgetary Control and Performance

During the year under review the Instruments for Devolution Advice and Support Project had an expenditure budget of Kshs.396,485,699 against an actual expenditure of Kshs.244,554,990 resulting in net under expenditure of Kshs.151,930,709 (or 38%) as summarized below:

Details	Budget (Kshs.)	Actual (Kshs.)	(Excess)/Shortfall (Kshs.)	(Excess)/ Shortfall %
Purchase of goods and services	15,759,760	3,111,044	12,648,716	80
Transfer to other Government entities	370,725,939	238,383,946	132,341,993	36
Compensation of employees	10,000,000	3,060,000	6,940,000	69
Total	**396,485,699**	**244,554,990**	**151,930,709**	**38**

From the analysis above, it is evident that the Programme under spent on their budget by Kshs. 151,930,709 (38%) this may have a negative impact on implementation of planned activities and service delivery to stakeholders. There is need for proper planning to avoid instances of idle funds.

Submission by the Accounting Officer

The Accounting Officer submitted that there was underutilization that led to a variance of 80% and 60% on absorption of funds under purchase of goods and compensation of employees. This was occasioned by the contract period for the programme estimate 2 (PE2) under the (Instruments for Devolution Advice and Support) IDEAS financing agreement having lapsed in October 2020.

Due to the expiry of contract period for programme estimate 2, no new expenditure or commitments would be allowable and legible under the terms of the contract and therefore only the ones that were for the period were payable.

The Accounting Officer also submitted that there was under absorption of funds by 36% on budget utilization on transfer of grants to other government entities. This was occasioned by the following issues: -

i. There was delay in transmitting the funds from the donor, European Union (EU) to the recipient county of Kisumu. The processing of the request for transfer of funds was done during the FY 2020/2021 but funds were received in the CRF (County Revenue Account) on 7th July 2021; and

ii. Being a conditional grant, there is a provision for expenditure verification process to be undertaken and submitted to the donor, EU by an independent audit firm appointed by the donor to certify that earlier released funds were properly applied. Due to this requirement, Laikipia County had not completed the expenditure verification exercise with the independent audit firm appointed by the donor to be able to access the funds within the financial period of FY 2020/2021.

The Accounting Officer clarified that the two Counties of Kisumu and Laikipia were funded in the subsequent financial year of 2021/2022 after meeting all the requirements and undergoing expenditure verification exercise.

In conclusion, the Accounting Officer stated that the objective of the (LED) Local Economic Development project under IDEAS has been achieved by closure of the contractual period in September 2022. The entire beneficiary Counties have now received their grants and projects implemented.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

199. Unresolved Prior Year Issues

The Project's audited financial statements for the year ended 30 June, 2020 reflected several unreasonable matters that were highlighted therein. However, contrary to the reporting requirement set by the Public Sector Accounting Standards Board, the Management has not disclosed the progress made in resolving the prior year matters.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department appeared before Public Accounts Committee for the audit report of FY 2019/2020, where the committee gave recommendations for implementation. The Ministry has implemented the committee recommendations and prepared an implementation status report.

Committee Observations and Findings

The Committee observed that the issue was discussed during the examination of the State Department audited financial statements for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

200. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

201. Internal Audit Committee

According to Regulation 174(1) of Public Finance Management Regulations, 2015 each national government entity is supposed to establish an Audit Committee to perform various roles which includes among others the understanding and assessing the overall risks the entity is facing and reviewing the adequacy of internal controls that management has put in place regarding financial control, accounting systems and reporting. However, during the period under review, the project did not have an Audit Committee as required by law. In the absence of an Audit Committee, effective oversight, risk assessment and governance could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that in the FY 2020/2021, the State Department did not have an established internal audit committee. However, the process of establishment of the Audit Committee was initiated in the FY 2020/2021 where the activity was eventually put under the work plan of the internal audit department in the FY 2021/2022.

However due to changes and reorganization of government, the activity was not finalized. In the FY 2021/2022 the State Department was under the Ministry of Devolution and ASALs. In the year 2022 through Executive Order No. 1 of 2022 the State Department of ASALs was moved to the Ministry of Public Service, Social Protection and the state department renamed Ministry of Devolution.

The Accounting Officer also stated that under the current government structure, the State Department of Devolution is domiciled at the office of the Deputy President. The State Department has initiated processes to establish the audit committee in the next FY 2022/2023.

Committee Observations and Findings

The Committee observed that the project was not audited by the internal audit function as required.

Committee Recommendation

The Committee reprimands the Accounting Officer, and directs that he institutes an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012, within three (3) months of adoption of this report.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

202. As required by the Financing Agreement between the European Commission and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AN AGENCY UNDER THE STATE DEPARTMENT FOR DEVOLUTION

KENYA SYMBIOCITY PROGRAMME-SIDA NO.51110060 - COUNCIL OF GOVERNORS
REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

203. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects Kshs. 278,653,337 and Kshs. 189,029,067 in respect to amounts received and cumulative amounts paid to date respectively. The funding summary on page 'v' to the financial statements reflects Kshs. 278,636,457 and Kshs. 184,165,097 resulting in unreconciled variances of Kshs. 16,880 and Kshs. 4,863,970 respectively. In the circumstances, the accuracy and completeness of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that statement of receipts reflects Kshs. 278,653,337 and Kshs. 189,029,067 respect to amounts received and cumulative amounts paid to date paid to date respectively. It is also true that the funding summary page 'V' to the financial statements reflects Kshs. 278,636,457 and Kshs. 184,165,097 resulting in unreconciled variances of Kshs. 16,880 and Kshs. 4,863,970 respectively.

The amount of Kshs. 4,863,970 relates to retention payments whereas Kshs. 16,880 is a miscellaneous receipt amounts which were adjusted in the financial statements for the year. These adjustments were reflected in the statement of Payments and Receipts, Statement of Financial Asset and Liability and Statement of Cash flow.

The adjustment was inadvertently omitted to be reflected in the funding summary page to the financial statement. However, this was corrected in the subsequent financial report for the year ended 30th June 2022.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to explain the inaccuracies in the financial statements.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **The Accounting Officer must institute internal administrative action and conduct investigations on the inaccuracies and report to the Committee within three (3) month of adoption of this report.**

Other Matter

204. Budgetary Control and Performance

During the year under review, the Kenya Symbiocity Programme had an expenditure budget of Kshs. 157,120,299 against an actual expenditure of Kshs. 64,089,152 resulting in under expenditure of Kshs. 93,031,147. It is evident that Kshs. 93,031,147 (or 59%) of the budget was not spent on the Programme resulting in negative impact of planned activities and service delivery to stakeholders.

Submission by the Accounting Officer

The Accounting Officer submitted that 59% of the budget was not spent as at 30th June 2021. This is due to the nature of the projects implemented in the pilot Counties which were infrastructural in nature and which required preparation and project design as well getting environmental impact assessment license before commencement of the infrastructural projects in the respective County Governments.

The projects could not be implemented on time due to the challenges brought about by the COVID-19 pandemic which resulted in lock down and working from home, the programme activities faced a slow pace of implementation and thus could not be completed as envisaged since its implementation required physical presence.

However, during the financial year ending 30th June 2022, the budget abortion for the program was at 100% absorption with all the planned activities for the program implemented.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis of Conclusion

205. Irregular Procurement of Consultancy Services

Note 3 to the financial statements reflects Kshs. 57,346,802 in respect to purchase of goods and services which includes change project consultancy expense amounting to Kshs. 55,479,798 that also includes payment of Kshs. 320,000 to consultancy services company for environmental and social impact assessment (ESIA) in Mbita Town, Homabay County paid before the implementation of Kenya Symbiocity Programme.

However, the the procurement of Consultancy Services for ESIA was undertaken through request for quotation contrary to Section 116(1)(b) of the Public Procurement and Assets Disposal Act, 2015 on procurement of professional services which is predominately intellectual or advisory in nature. Further, there were no technical proposals submitted by 68 bidders and the entity did not undertake technical evaluation of bids, an indication that there was no basis for award of these works to the consultancy services company. In the circumstances, it is not possible to confirm that the value for money was obtained in an expenditure totalling Kshs. 320,000 for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the environmental impact assessment service for Mbita Symbiocity project choice of procurement method was through request for quotation. Section 105 (b) of the Public Procurement and Disposal Act 2015 states 'A procuring entity may use a request for quotations from the register of suppliers for a procurement if— the procurement is for goods, works or non- consultancy services that are readily available in the market; On the other hand, Section 116 (2) allow a procuring entity to use a request for proposals in combination with other methods of procurement under this Act.

Due to the threshold involved and the fact that Environmental and Social Impact Assessment is a regulated professional service, the choice of method was appropriate since the evaluation criteria captioned preliminary evaluation and financial evaluation thus eliminating the need for technical evaluation. Further, the terms of reference included public sensitization and training as key deliverable to the services required.

Consequently, the Bids were solicited from prequalified supplier through the request for quotation template with an attachment of the terms of reference. Four (4) bids were received and evaluated and the winning bidder awarded accordingly at a total cost of Kshs. 320,000. Therefore, the process undertaken was competitive, fair and transparent and it upheld the principles of Public Procurement.

Committee Observations and Findings

i. **The Committee noted that it was not clear whether the TOR was restricted to training or environmental impact;**

ii. **The Committee noted that not all the requirements of procurement were met as there was no technical evaluation. Further, the Accounting Officer failed to provide the minutes of the evaluation committee.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to adhere to procurement laws as required by Section 176 of the Public Procurement and Asset Disposal Act, 2015.

206. Procurement of Working Tools and Stationeries in Kisumu County

Note 3 to the financial statements reflects Kshs. 57,346,802 in respect to purchase of goods and services which includes an amount of Kshs. 55,479,798 relating to change project – consultancy that further includes payment of Kshs. 187,240 through payment voucher No.072 dated 2 February, 2021 in respect of a limited company for supply and delivery of assorted working tools and stationeries in Kisumu County. Although three (3) bidders responded to request for quotation, the tax compliance certificate for a bidder was invalid as it had expired, and therefore, an award was based on two (2) bids. In the circumstances, it is not possible to confirm that the value for money was obtained in payment of Kshs. 187,240 incurred on purchase of assorted working tools for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the bids were solicited from 3 prequalified bidders for supply and delivery of assorted working tools and stationeries. The three (3) bids were received and from the evaluation two bidders failed at mandatory evaluation stage for failure to attach or attaching invalid certificates.

Bidder 1 did not attach certificate of registration and pin certificate while Bidder 2 attached an invalid tax compliance. Therefore, one bidder (bidder 3) proceeded for financial scrutiny and was awarded for supply of the bided goods in line with provisions under Section 106 –2 (b) & (d) of the Public Procurement and Asset Disposal Act 2015 which states (b) "the request shall be given to as many persons as necessary to ensure effective competition and shall be given to at least three persons, unless that is not possible; (d) at Least three persons shall submit their quotations prior to evaluation". In view of the above, the award was based on evaluation of all 3 bids who responded to the request for quotation.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion

207. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

208. As required by the financing agreement between the Swedish International Development Cooperation Agency and the Government of Kenya dated 9 April, 2015, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Programme's financial statements are in agreement with the accounting records and returns.

7. STATE DEPARTMENT FOR DEVELOPMENT OF THE ARID AND SEMI-ARID LANDS (ASALS) - VOTE 1035

REPORT ON THE FINANCIAL STATEMENTS

Mr. Idris Salim Dokota, the Accounting Officer and Principal Secretary for the State Department for Arid and Semi-Arid Lands and Regional Development appeared before the Committee on 14th February 2023, 18th April 2023 and 25th May 2023 accompanied by the following officers:

1.	Mr. Hared Adan	–	CEO, NDMA
2.	Dr. Anne Kinyua	–	Coordinator, World Bank Project
3.	Ms. Anne Kariithi	–	Director HRM and Development
4.	Mr. Daniel Mwangi	–	Head of Accounts
5.	Mr. Wilfred Omari	–	Project Manager
6.	Mr. James Malombe Sakwa	–	Deputy Head of Accounts
7.	Mr. Isaac Githu	–	Secretary Social Programmes
8.	Mr. Kennedy Kimuyu	–	Director Administration
9.	Ms. Sarah Mauta	–	Project Accountant
10.	Mr. Kigen Kieti	–	Senior Deputy Director Supply Chain
11.	Mr. Beldine Omollo	–	Chief Finance Officer
12.	Dr. Alfred Mungai	–	DA RDEV
13.	Mr. David Mamati	–	Procurement Specialist
14.	Mr. Douglas Njeru	–	Regional Director, HRM and Development
15.	Mr. Wanjiku Manyatta	–	Acting DRD
16.	Mr. Tom M. Odundo	–	DAG – RD
17.	Mr. Paul W. Masinde	–	Chief Finance Officer, ASALs

The Following matters were deliberated on as per the Auditor General's qualified opinion and various conclusions arrived at:

Basis for Qualified Opinion

209. Unsupported Grants and Transfers to Other Government Entities

The statement of receipts and payments reflects an amount of Kshs. 5,067,335,408 relating to transfers to other government entities out of which only a total amount of Kshs. 4,975,568,408 which constitute Kshs. 4,067,568,408 to the National Drought Management Authority and Kshs. 908,000,000 to Kenya Development Response to Displacement Impact Programme (KDRDIP) could be confirmed. The balance of Kshs. 91,767,000 transferred and received by the National Drought Management Authority was not supported. Consequently, the propriety, accuracy, completeness and occurrence of Kshs. 91,767,000 transferred to the National Drought Management Authority in the year ended 30 June, 2021 could not be ascertained.

Submissions by the Accounting Officer

The Accounting Officer averred that the statement of receipts and payments reflects an amount of Kshs. 5,067,335,408 relating to transfers to other Government entities being transfers to National Management Authority (NDMA) and to Kenya Development Response to Displacement Impact

Project (KDRDIP). According to the State Agencies records, the variance between the receipts at NDMA and payments was Kshs. 8,750,000 and the total amount transferred to NDMA was Kshs. 4,150,585,408.

Committee Observations and Findings

i. **The Committee observed the failure to sufficiently respond to the query by the Accounting Officer to account for the use of Kshs. 91,767,000 disbursed as at the time of the audit;**

ii. **The Committee further observed that the amounts in question as being Unsupported Grants and Transfers to other Government Entities were reversed and there was no dispute; and**

iii. **The Committee also observed that the Accounting Officer provided a schedule of transfers to NDMA detailing exchequer releases, bank statements and confirmation letter from NDMA showing the funds received by the Authority for the year ending 30th June, 2021.**

Committee Recommendation

The Committee recommends that the matter is resolved.

210. Accounts Payables – Deposits

The statement of assets and liabilities reflects a balance of Kshs. 10,654,930 relating to accounts payables- deposits where the same has been disclosed in Note 8 to the financial statements as being retention monies for contracts undertaken and complete. Although the breakdown of Kshs. 10,654,930 has been provided in Appendix 5 to the financial statements, details of the constructions undertaken and their contracts that form the basis of the settlement were not provided for audit verification. In addition, it is not clear why the retention amounts have remained unpaid despite the long period that have lapsed since they were held some dating back to March, 2014. Consequently, the accuracy and validity of the accounts payables- retentions balance of Kshs. 10,654,930 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of assets and liabilities reflected a balance of Kshs. 10,654,930 relating to accounts payables – deposits where the same has been disclosed in note 8 to the financial statements as being retention monies for contracts undertaken and completed. He further submitted that the said amount has been outstanding because the claimants have not presented their supporting documents for payment.

Committee Observations and Findings

The Committee observed that the Accounts payables – Deposits amounts had been partially paid and the remaining balance was yet to be settled.

Committee Recommendation

The Accounting Officer should report to the Committee the status of identifying and settling the pending deposit amounts with the outstanding claimants within thirty (30) days of adoption of this report.

Other Matter

211. Budgetary Control and Performance

The summary statement of appropriation - recurrent and development combined reflects final receipts budget and actual on comparable basis of Kshs. 8,736,173,586 and Kshs. 7,797,801,775 respectively resulting to an under-funding of Kshs. 938,371,811 or 11% of the budget. Similarly, the Department expended Kshs. 7,797,351,637 against an approved budget of Kshs. 8,736,173,586 resulting to an under-expenditure of Kshs. 938,821,949 or 11% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submissions by the Accounting Officer

The State Agency accepted that there were material differences between approved budget and actual receipts of exchequer of 11% resulting in a difference of Kshs. 896,335,784. This refers to under expenditure on the total budget.

Committee Observations and Findings

The Committee noted the explanation and documents submitted by the Accounting Officer.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

212. Pending Bills

The pending bills amount of Kshs. 34,253,871 as at 30 June, 2021 comprise of Kshs. 29,258,465 outstanding in the current financial year 2020/2021 and Kshs. 4,995,406 outstanding from prior years which were not settled in the year under review. Failure to settle bills in the year to which they relate will adversely affect the implementation of the subsequent year's budgeted programs as the pending bills form a first charge to that year's budget provision signaling poor budgetary performance.

Submissions by the Accounting Officer

The Accounting Officer submitted that the State Department had pending bills totaling to Kshs. 34,254,871. The pending bills comprised of Kshs. 28,733,465 outstanding in the financial year 2020/2021 and Kshs. 4,995,406 outstanding from previous years that were not settled. Apart from the historical pending bill which was verified and submitted to the National Treasury, the rest of the bills were paid under first charge in the financial year 2021/2022.

Committee Observations and Findings

The Committee observed that there was progressive settlement of the pending bills. Despite this, there were historical bills dating back to the year 2014.

Committee Recommendation

i. **The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of section 68(2) (h) of the Public Finance Management Act, 2012.**

ii. The Accounting Officer should report to the Committee the status of settling all the pending bills amounts of the State Department in three (3) months after adoption of this report.

213. Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning circular.

Submissions by the Accounting Officer

The Accounting Officer agreed that there were unresolved issues related to previous audit reports but committed that the issues would be resolved once the related recommendations are implemented.

Committee Observations and findings

The Committee observed that the Accounting Officer failed to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning circular.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

214. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

215. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECT

KENYA DEVELOPMENT RESPONSE TO DISPLACEMENT IMPACTS PROJECT (IDA CREDIT NO.6021-KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

216. Cash and Cash Equivalents

216.1. Sub-Counties' Projects Bank Accounts

The statement of financial assets as at 30 June, 2021 reflects Kshs. 145,125,454 in respect of cash and cash equivalents which excluded Kshs. 1,357,901,780 held in various project implementing groups' bank accounts across the five implementing Sub-Counties which were not utilized as at 30 June, 2021 as per their returns and as disclosed below:

Component one disbursements

	DISBURSEMENT (KSHS.)	AMOUNT UTILISED (KSHS.)	BALANCE AS AT 30/06/2021
Daadab	262,846,931	81,020,077	181,826,854
Fafi	219,986,292	56,229,803	163,756,489
Lagdera	166,527,163	35,170,726	131,356,427

Component two disbursements

	DISBURSEMENT (KSHS.)	AMOUNT UTILISED (KSHS.)	BALANCE AS AT 30/06/2021
Daadab	148,362,100	7,195,402	141,166,698
Fafi	139,500,000	74,868,000	64,632,000
Lagdera	100,530,198	2,219,275	98,310,923

Component three disbursements

	DISBURSEMENT (KSHS.)	AMOUNT UTILISED (KSHS.)	BALANCE AS AT 30/06/2021
Daadab	157,500,000	77,934,651	79,565,349
Lagdera	99,000,000	47,460,500	51,539,500
Wajir south	364,549,563	0	364,549,563
Turkana west	81,197,966	0	81,197,966
TOTAL	**1,740,000,213**	**382,098,433**	**1,357,901,780**

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 145,125,454 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Kshs. 1,357,901,780 represented amounts that had been transferred to Community Development Project Committees (CPMCs) and Community Groups Management Committees (CGMCs) bank accounts for implementation of already identified and costed sub-projects. The Projects as per the Financing Agreement and the Community Operation Manual are implemented through the Community Driven Development (CDD), as per project design and community manual. The same was noted and recognized in the subsequent Financial Statement for FY 2021/2022 as prior year adjustment.

Committee Observations and findings

i. **The Committee noted that the Accounting Officer failed to reconcile Kshs. 1,357,901,780 during the time of audit; and**
ii. **The Committee further noted that the Accounting Officer however had submitted revised financial statements for review and verification.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office.

216.2. Unpresented Cheques

The statement of financial assets reflects cash and cash equivalents balance of Kshs. 145,125,454 and an annexure of unpresented cheques totaling Kshs. 887,120,153 for the four bank accounts in three regional stations as analyzed below as at 30 June, 2021;

ACCOUNT NAME	ACCOUNT NUMBER	CHEQUE NUMBERS	AMOUNT (KSHS.)
Turkana Grant	1273370635	Various	6,000,000
Garissa credit	1238357954	Various	801,465,940
Turkana credit	1238459889	Various	75,925,456
CBK Account credit	1000462264	Various	3,728,757
TOTAL			**887,120,153**

However, the unpresented cheques for Turkana grant and Garissa credit totalling to Kshs. 807,465,940 were raised in the name of the regions whereby the details of the specific payees or groups were not provided for audit review. Further, the dates when the specific cheques were raised during the year under review were also not provided for audit review. It was therefore not possible to establish the identity of stale cheques. In the circumstances, the propriety and validity of the payment totalling Kshs. 807,465,940 for unpresented cheques and accuracy of cash and cash equivalents totalling Kshs. 145,125,454 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The State agency averred that the unpresented cheques for Turkana and Garissa totaling to Kshs. 807,465,940 were raised in the name of regions as payees as a banking arrangement with the paying bank, and the paying instruction and the details of the specific payees or groups were attached. The PS provided payments and details of beneficiaries for Turkana and Garissa and the specific copies of cheques showing the dates when they were issued.

Committee Observations and findings

i. **The Committee observed that the Accounting Officer breached Section 9 (1) (e) of the Public Audit Act, 2015 by failing to provide accurate records and other supporting documents;**
ii. **The Committee however observed that accurate records were subsequently provided, reviewed and verified.**

Committee Recommendation
The reprimands the Accounting Officer for failure to provide audit documentation on time.

217. Inaccuracies in the Financial Statements

217.1. Statement of Receipts and Payments

The statement of receipts and payments reflects total cumulative receipts to-date of Kshs. 4,687,251,535 while the project information and overall performance - source of funds at Note 1.7 to the financial statements shows amount received to-date of Kshs. 4,019,788,004 giving an unexplained variance of Kshs. 667,463,531.

Submission by the Accounting Officer
The Accounting Officer submitted that the statement of receipts and payments reflected total cumulative receipts to date of Kshs. 4,687,251,535 while the project information- source of funds table shows the amount received to date of Kshs. 4,019,788,004 giving a variance of Kshs. 667,463,531. The cumulative figure of Kshs. 667,463,531 was inadvertently omitted in the project information- source of funds table, the error was corrected and evidenced in the subsequent year's financial statements 2021/2022.

Committee Observations and Findings

(i) The Committee noted that the Finance Department was not diligent in reconciling discrepancies in the financial statements;

(ii) The Committee noted the omission of Kshs. 667,463,531 in the Financial Statements which was due to Finance Department's negligence; and

(iii) The Committee further noted that the balances have now been reconciled and confirmed by the Office of Auditor General.

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

217.2. Special Account Statement

The special deposit account movement schedule at Note 7(A) to the financial statements reflects A/c No.1000567278 (for Grant No. TF0A7762) and A/c No.1000462264 (for Credit No.6021-KE). The two disclosed account numbers differ with respective special accounts statements Nos.1000411384 and 1000353988 at Appendix 7 to the financial statements. However, no explanation was provided to explain the source of the difference. Further, the special account statement annexed to the financial statements reflects donor amounts withdrawn totaling Kshs. 3,311,256,594 (USD. 30,363,813), while the statement of receipts and payments reflects loan from external development partners of Kshs. 3,308,061,239. The difference of Kshs. 3,195,355 was not explained or supported. In the circumstances, the accuracy, validity and completeness of the financial statements could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer
The Accounting Officer submitted that the special deposit account movement schedule at Note 7(A) to the financial statements reflected A/C NO.1000567278(for Grant No. TFOA7762) and A/C No.10004622264 (for Credit No. 6021-KE). The two disclosed account numbers differ with respective special accounts statements Nos. 1000411384 and 1000353988 in Appendix 7 to the

financial statements. However, no explanation was provided to explain the source of the difference.

The Special Deposit Account Movement Schedule at Note 7(A) to the financial statements was adjusted to reflect the correct A/c no's as. -1000411384 for Grant No. TF0A7762 and A/c no. 1000353988 for Credit No.60210-KE, and this is evidenced in the subsequent year's Financial Statement 2021/2022.

The Accounting Officer also submitted that the Special Account Statement annexed to the financial statements reflected a donor amount withdrawn totaling Kshs. 3,311,256,594 (USD 30,363,813), while the statement of receipts and payments reflected loan from external development partners of Kshs. 3,308,061,239. The difference of Kshs. 3,195,355 arose due to fluctuation in the exchange rate between 30th November 2020 and 27th May 2021 where receipts totaling Kshs. 3,308,061,239 was received from the Project Designated USD Account to the Project Designated Kenya Shilling Account**.**

In addition, the Accounting Officer submitted that the exchange rate varies with the timings, the withdrawal application is prepared using (FIFO) method, first-in first-out and funding of the disbursements is by the prevailing market rate, different exchequer receipts release and the exchange rates.

Committee Observations and Findings

(i) The Committee noted that the State Department demonstrated negligence by incorrectly naming bank accounts;

(ii) It was further noted that the the Office of Auditor General had confirmed that bank accounts were named correctly in the subsequent year.

Committee Recommendation

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

Other Matter

218. Budgetary Control and Performance

The statement of comparison of budget and actuals amount as at 30 June, 2021 reflects total payments final budget of Kshs. 3,521,930,282 against actual expenditure amount of Kshs. 3,289,030,366, giving a budget utilization of 93%. Further audit review of the expenditures incurred indicated that there was budget under-absorption on specific items as detailed below:

Budget absorption

AUDIT COMPONENTS	CURRENT YEAR FINAL BUDGET (KSHS.)	ACTUAL EXPENDITURE (KSHS.)	VARIANCE	% ABSORPTION OF ACTUAL FUNDS
Basic wages	481,886,056	332,277,303	149,608,753	69%
Hospitality, supplies & services	35,000,000	19,464,219	15,535,781	56%

Fuel, oil & lubricants	25,000,000	15,407,740	9,592,260	62%
Other operating expenses	290,500,000	156,828,713	133,671,287	54%
Routine maintenance – other assets	329,000,000	259,701,258	69,298,742	79%
Purchase of vehicles	30,000,000	24,365,001	5,634,999	81%
TOTAL	**1,191,386,056**	**808,044,234**	**383,241,822**	**68%**

The overall absorption of 68% on the above listed items means that, the citizens did not get the value for money due to the delayed implementation of projects.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the project had a total budget of Kshs. 3,521,930,282 against actual expenditure amount of Kshs. 3,289,030,366, giving a budget utilization of 93%. The specific reasons for the underutilization are given in the table below.

Budget Absorption					
Audit components	**Current year final budget Kshs.**	**Actual expenditure Kshs.**	**Variance Kshs.**	**% Absorption of actual funds**	**Explanation**
Basic wages	481,886,056	332,277,303	149,608,753	69%	Under expenditure is attributed to casual wages due to incomplete works under component 2 (LIPW), geared towards land reclamation through irrigation, use of flood water after the rains for agricultural production through spate irrigation, land restoration through afforestation, agroforestry and tree enrichment planting, grass re-seeding and increased vegetation cover which was not achieved by the time of audit due to lack of rains.
Hospitality, supplies and services	35,000,000	19,464,219	15,535,781	56%	See note below.
Fuel, Oil and lubricants	25,000,000	15,407,740	9,595,260	62%	See the note below.

Other Operating expenses	290,500,000	156,828,713	133,671,287	54%	See the note below.
Routine maintenance and other Assets	329,000,000	259,701,258	69,298,742	79%	See the note below.
Purchase of vehicles	30,000,000	24,365,001	5,634,999	81%	The initial budget was to purchase Toyota Prado VXL, but according to the market survey undertaken, it revealed that Nissan Patrol was Lower priced and met the technical specifications, hence the final cost of the purchased vehicle turned out to be lower than the budget.
Total	**1,191,386,056**	**808,044,234**	**383,341,822**	**68%**	

In addition, generally, the transfer of the project from The Presidency Cabinet Affairs to the State Department for ASALs in the FY 2020/2021 in the month of September 2020 caused delay in operationalizing the new project bank accounts, and transferring of funds from the old account to the new account.

The Accounting Officer further submitted that the project is a Community Driven Development (CDD) where the communities are required to come up with their work plan, identify the prioritized needs, execute their budget and also account for the funds by submitting the accountabilities to the NPIU through the county project coordinator. The project implementation is also done under government procurement stipulated guidelines which are very lengthy processes and takes time to complete. Most of the project community beneficiaries are challenged by illiteracy and the project implementations process is done by the Communities through assistance of the Community Project Management Committees (CPMCs), Community groups Management Committees (CGMCs) and Project implementation steering team (PIST) as it is factored in the Community Manual.

In that regard, the Accounting Officer reiterated that the communities delayed in submitting the accountabilities documents leading to the delay in the release of funds. The project is funded as a loan and disbursement is through advances, therefore delayed accountabilities resulted to delayed utilization of funds by the community beneficiaries leading to under absorption of funds cutting across some of the budget items.

Committee Observations and Findings

(i) The Accounting Officer failed to provide evidence for the expenditure totaling Kshs. 290,500,000;

(ii) The Committee also raised concerns on why budgeting of vehicles was based on brands rather than the specification of the vehicles; and

(iii) The Committee noted that casuals were paid through M-PESA and have a register of M-PESA statements at every site which is managed by the community.

Committee Recommendation

i. **The Committee directs the Accounting Officer to furnish the Auditor General with a detailed list of the items that are included in Other Operating Expenses and certified MPESA statements as evidence of payments to casual workers within one (1) month of the adoption of this report;**
ii. **The Committee also directs the Accounting Officer to give an explanation in one (1) month of adoption of this report as to why they chose to purchase certain brands over others; and**
iii. **The Committee further directs the Accounting Officer to provide the Committee a list of projects implemented under this programme and their location, including the amount allocated for each project within one (1) month of the adoption of this report.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

219. Withholding Tax and Retention Fees

Examination of payment vouchers reveals that withholding tax and retention fees were not deducted from some contractors that were paid a total of Kshs. 82,941,270. However, no explanation was provided for failure to deduct Kshs. 4,976,476 and Kshs. 8,294,127 in respect of withholding tax and retention fees respectively. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the project design gave responsibility to the community project management committees to implement the sub-projects planned. The management committee however lacked the capacity to manage the procurement process leading to omissions in deducting the withholding tax and retention fees on some of the contractual payments. To address these shortcomings Community Groups Management Committees and Community Projects Implementations Committees were trained on all the requirements of project management and implementation and are now compliant in terms of the requirements of taxation and retentions regarding procurement of works.

Committee Observations and Findings

i. **The Committee noted that the State Department was not able to account for the amounts that were supposed to be deducted as withholding tax;**
ii. **The Committee observed that the Accounting Officer had not made any effort to recover the amounts that were not deducted; and**
iii. **The Committee also observed that the State Department did not have a professional officer seconded to assist the community in the process of deducting the withholding tax and retention fees.**

Committee Recommendation

i. **The Committee directs the Accounting Officer to provide the Committee evidence of training for the Community Groups Management Committee and Community Implementation Committees within one (1) month of the adoption of this report; and**

ii. **The Committee directs the Accounting Officer to report to the Committee on the measures taken to recover the amounts that were not deducted as withholding tax within one (1) month of the adoption of this report.**

220. Works Procurement Project Files

A review of project files having details of the projects works done showed that the projects' files for works amounting to Kshs. 48,545,210 did not have contractor's mandatory requirements at the time of award which includes tax compliance certificates, National Construction Authority (NCA) registration certificates, tender evaluation minutes as required by the Public Procurement and Asset Disposal Act, 2015 Section 68(2) (d) (iii) which states that the records of a procurement process shall include the proceedings of the opening of tenders, evaluation and comparison of the tender proposals or quotations including the evaluation criteria used as prescribed. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the mandatory requirements for contract projects' files for works amounting to Kshs. 48,545,210 was not availed for verification. However the contractor's mandatory requirements of tax compliance certificates, National Construction Authority (NCA) registration certificates, tender evaluation minutes and procurement officer's professional opinion for the paid contracts have now been assembled and availed.

Committee Observations and Findings

The Accounting Officer failed to provide procurement files as required by Section 68(2) (d) (iii) of the Public Procurement and Asset Disposal Act, 2015 for audit verification.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015; and**
ii. **The Committee directs the Accounting Officer to furnish the Committee with the requisite documents within one (1) month of the adoption of this report.**

221. Management of Information System

The project management, on behalf of KDRDIP, entered into a contract which agreement on 25 March, 2019 with a consultancy services company to design, develop, install, operationalize and capacity build KDRDIP staff on Management Information System (MIS) at a contract price of Kshs. 29,156,005 with a contract expiry date of 30 September, 2021.

The contract's terms of reference contained in Appendix A of the contract which provides in Section 13, under terms of payments, that 50% of the contract amount, being 80% cumulatively, shall be paid against acceptance by the client of all deliverables including among others, a working system and training of users. As at the time of audit in October, 2021, and considering that the 80% of the contract amount of Kshs. 29,156,005 had been paid by 30 June, 2020, the system could not provide expected reports and information, especially financial information which continued to be relayed/ provided in manual form. Under the circumstances, it was not possible to confirm that the value for money was obtained from an expenditure totaling Kshs. 29,156,005 paid during the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that all the MIS Modules were developed and are operational namely Finance, Procurement, Safeguards, Component Specific, and M&E. All modules with data are printable as was demonstrated by our ICT Officer during the review. The system is able to produce reports such as Vote-book status, M&E reports and Project status reports.

By the time of audit, the Accounts module though developed had not been uploaded with data due to capacity gaps within PFMA County teams which has been addressed. The consultant finalized operationalization of the system and has been assisting the team beyond the 6 months' time at no extra cost. The State Department embarked on the re-training Programme to ensure the PFM officers in the County have adequate capacity to comply with submitting financial returns through MIS. As at the end of January 2022 the FM module has been fully uploaded and now reports can be generated. The MIS is fully functional and users are interacting with it for familiarization and data capture.

Committee Observations and Findings
The Committee noted the explanation and documents provided by the Accounting Officer.

Committee Recommendation

(i) **The Committee directs the Accounting Officer to collaborate with the ICT authority to ensure compliance with government security measures; and**
(ii) **The Committee directs the Accounting Officer to furnish the Committee with a report on the compliance of the system to government security measures within three (3) months of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

222. Internal Audit and Audit Committee

The State Department hosting the project does not have an established audit committee and an approved internal audit charter and although the internal audit work plan for the financial year 2020/2021 had been prepared it was not implemented. This is in contravention of the Public Finance Management (National Government) Regulations, 2015, of Regulation 160(1) which provides that an internal auditor shall review and evaluate budgetary performance, financial management, transparency and accountability mechanisms and processes in national government entities towards providing independent assurance that the Project's risk management, governance and internal control processes are operating effectively. In the circumstances, the effectiveness of the internal controls, risk management and overall governance for the project could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department hosting Kenya Development Response to Displacement Impact Project did not have an Audit Committee in place to provide oversight and approve Audit Charter and work plan.

However, the State Department had an Audit Committee with State Department for Public Service, Gender, Senior Citizens Affairs and Special Programmes, which the Department used as they belonged to the same Ministry. Going forward the Department undertook to constitute their own state department audit committee subject to availability of funds. In the meantime, the state department will rely on the Audit Committee established at the State Department for East Africa as they are in the same Ministry.

Committee Observations and Findings

(i) **The Committee noted that the State Department lacked its own Internal Audit Committee. However, the Accounting Officer committed to establishing its own Internal Audit Committee;**

(ii) **The Committee observed that the State Department had developed an audit charter and an internal audit work plan, but these have not yet received approval.**

Committee Recommendation

The Committee reprimands the Accounting Officer and further directs the apointment of an independent audit committee within three (3) months as required by Section 73 (5) of the Public Finance Management Act 2012 and Regulation 174 (1) and (8) of the PFM Regulations 2015, and the approval of the audit charter and internal audit work plan.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

223. As required by International Development Association (IDA) and Danish International Development Agency (DANIDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

8. MINISTRY OF DEFENCE- VOTE 1041

REPORT ON THE FINANCIAL STATEMENTS

Dr. Ibrahim M. Mohamed, the Principal Secretary and Accounting Officer Ministry of Defence (Vote 1041) appeared before the Committee 2nd June, 2022 to adduce evidence on the audited financial statement for the Ministry of Defence (Vote 1041) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Lt. Gen. Francis Omondi Ogolla	-	Vice Chief of Defence Force
2.	Mr. Joel K. Ngolekong	-	Supply Chain Management
3.	Brig. D. F. Mc'Okech	-	Chief of Audit DHQ
4.	Mr. Julia W. Nganga	-	Chief Finance Officer
5.	Mr. Electina W. Wainaina	-	Deputy Account General
6.	Brig. Yvonne Kerubo Kirui	-	Kenya Defence Forces
7.	Brig. Sammy Kipngetich	-	Kenya Defence Forces
8.	Mr. Gerald F. Sakwa	-	Parliamentary Liaison Officer

And submitted as follows:

Unmodified Opinion

224. There were no exceptional issues during the year under consideration. Therefore, the ministry had a clean audit opinion.

Other Matter

225. Contingent Liabilities

As disclosed in Note 15.2 to the financial statements, the Ministry of Defence had contingent liabilities totalling Kshs. 2,536,677,187 as at 30 June, 2021, an increase of Kshs. 1,115,539,542 or 79% from the previous year`s balance of Kshs. 1,421,137,645. The contingent liabilities relate to fifty-nine (59) court cases still pending in various courts. The balance of Kshs. 2,536,677,187 is still outstanding, subject to an outcome of court determination of the fifty-nine (59) civil cases.

Submission by the Accounting Officer

The ministry stated that the bills arise from various claims wherein the Attorney General is sued on behalf of the Ministry of Defence. As at 30 June 2021, the contingent liabilities could be classified into nine (9) categories; breach of contract, claims for medical compensation, constitutional petitions, land claims, malicious prosecution, road traffic accident claims, unfair dismissal, claims for injury and violation of nights.

The Ministry being dissatisfied with some judgments has challenged the pronouncements in appeals which are at various stages of being processed. Until the legal remedies available to the Ministry are exhausted, some of the judgments remain pending. A case in point is HCC NO. 401 of 2011 & 38 of 2011 Torino Enterprises & Adenaquil Developers, Kenneth Boit and 560 others Vs AG for Kshs.1.530 B which was reported as contingent liability as at 30 June 2021, and has now been appealed successfully in favour of the Ministry of Defence.

The current procedure in place is that, once the Ministry has received notification of judgment that is due for settlement subject to exploring all legal remedies. The Ministry must obtain authorization in writing from the Attorney General and thereafter the National Treasury to settle the payment.
The ministry has continued to settle the judgments that are not contested or where negotiated settlements are agreed upon with the judgment creditors thereby incrementally reducing the contingent liability. Of the 59 cases disclosed as contingent liabilities as at 30 June 2021, a number of 6 cases have been settled in full or partially to the tune of Kshs. 19,730,988.10.

Some of the awards the courts pronounce are colossal necessitating request to the National treasury for special allocations to settle the same. Such allocations are readily availed owing to the constraint with limited funds. This is the case with Nairobi HC Misc. App. No. 41 of 2016 Kay Construction Vs AG where the state department has negotiated the amount due from the 721.1M to Kshs.500.0m.
The Ministry continues to mitigate against this risk by ensuring compliance to avert being sued and actively litigating the matters filed against the Ministry to aver adverse orders.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Contingent liabilities is satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

226. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion

227. There were no material issues relating to effectiveness of internal controls, risk management and governance

REPORT ON THE REVENUE STATEMENTS
Unmodified Opinion

228. There were no material issues noted during the audit of the revenue statements of the Ministry.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

229. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

230. There no material issues relating to effectiveness of internal controls, risk management and governance

9. MINISTRY OF FOREIGN AFFAIRS - VOTE 1052

REPORT ON THE FINANCIAL STATEMENTS

Dr. Korir Sing'oei, PhD., EBS, the Principal Secretary and Accounting Officer for the State Department of Foreign Affairs appeared before the Committee, on 3rd February 2023, accompanied by the following officers:

1. Amb. Joseph Vungo, MBS – Director, Legal Affairs
2. Mr. James Aloyo – Senior Chief Finance Officer
3. Amb. Josphat K. Maikara, MBS – Senior Foreign Service Advisor
4. Mr. Vincent Kirwa – Senior Deputy Accountant General
5. Amb. Margaret Gachuru – Director, Assets
6. Mr. Kenneth Karani – Head of Procurement
7. Mr. John Gitu – Director, Human Resource Management
8. Ms. Serah Lutta – Head, Internal Audit
9. Mr. Billy Mathu – Personal Assistant to PS

and submitted as follows;

231. Cash and Cash Equivalents

As disclosed in Notes 10A and 10B to the financial statements, the statement of assets and liabilities as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs. 1,345,509,377. However, the cash book balances for the Headquarters recurrent vote and some Missions varies with the ledger balances supporting the financial statements as indicated below:

	Cashbook balance (Kshs.)	**Ledger Balance (Kshs.)**	**Variance (Kshs.)**
Los Angeles	143,328	108,898	34,430
Washington	44,908	3,353,710	(3,308,802)
H/Q Recurrent vote	51,168	26,900	24,268

As a result of the above unexplained and unreconciled variances, the accuracy of the cash and cash equivalents balance of Kshs. 1,345,509,377 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that at the time of audit there were variances between the figures reflected in the cash book and ledger balances for Los Angeles, Washington and Headquarters (Recurrent) for the year under review. The Ministry has reconciled the ledger balances to the cashbook balances, which were correctly carried to the financial statements initially.

The Accounting Officer reiterated that the details of the corrected ledger balances have been availed for audit review.

Committee Observations and Findings

The Committee observed that the variances between the ledger balances and the cashbook balances were belatedly reconciled as submitted by the Accounting Officer.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to keep proper financial records, as prescribed under Section 197 (1) (k) and (l) of the PFM Act, 2012.

Other Matter

232. Pending Bills

Financial statements reflect pending bills of Kshs. 264,979,240 as at 30 June, 2021. The bills were not paid during the year under review but were instead carried forward to the financial year 2021/2022. 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 Accounting Officer submitted that the pending bills for the Ministry stood at Kshs.264,979,240 as at 30 June 2021. These bills were processed in IFMIS and loaded into the Internet Banking platform awaiting exchequer release from the National Treasury. The National Treasury was unable to release the expected exchequer by closure of the 2020/2021 Financial Year, thus forcing the Ministry to carry forward the bills to the financial year 2021/2022.

The Ministry, at the commencement of 2021/2022 Financial Year, verified the bills and settled the same as 1st charge on the 2021/2022 Financial Year's budget in accordance with the financial regulations. The Accounting Officer lamented that the failure to release funds at the required financial year distorts the budget of subsequent years.

The Accounting Officer informed the Committee that the Ministry carried out a verification exercise on the legitimacy of the pending bills and confirmed that Kshs.12,949,550 was an ineligible expenditure hence not paid. He also informed the Committee that Kshs.18,293,886 wasn't declared in time hence carried forward to the 2021/2022 Financial Year and subsequently paid.

The Accounting Officer endeavored to settle the State Department's obligation on time and that he would address pending bills conclusively while acknowledging some of the historical challenges like exchequer releases which were beyond his control.

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer did not submit the required responses and supporting documents to the Auditor General in time; and**
ii. **The Committee observed that the Accounting Officer was taking inordinately long in settling pending bills.**

Committee Recommendations;

i. **The Committee directs the Accounting Officer furnishes the Committee with the documents for verification within one (1) month of the adoption of this report;**

ii. **The Committee directs the Accounting Officer to facilitate the settling of verified pending bills within three (3) months of adoption of this report;**
iii. **The Accounting Officer must institute internal administrative action and conduct investigations on the officers that processed the claims worth Kshs.12,949,550 without due process and proper documentation and report to the Committee within three (3) month of adoption of this report.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

233. Overdrawing of Deposits Cash Book and Irregular Charge of Expenditure

During the financial year 2018/2019, the Ministry received contributions amounting to Kshs. 746,577,947 from various stakeholders in support of Sustainable Blue Economy Conference (SBEC). The amount was received and paid into the Ministry's deposits bank account. In that year, an amount of Kshs. 487,681,149 was spent on SBEC activities leaving a balance of Kshs. 258,896,798. In the financial year 2019/2020, an amount of Kshs. 319,661,265 was also spent toward the SBEC activities thereby overdrawing the deposits cash book by Kshs. 60,764,467.

The deposits cash book remained overdrawn by Kshs. 60,764,467 until the financial year 2020/2021 when the Ministry refunded the full amount to the deposits account by irregularly charging the expenditure in respect of SBEC activities to recurrent vote under compensation of employees Kshs. 48,850,000 and use of goods and services Kshs. 11,896,467. However, there were no budgetary provisions for SBEC activities in the financial year 2020/2021. The expenditure was, therefore, incurred in contravention of Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015, which requires the Accounting Officer to ensure that public funds entrusted to his care are properly safeguarded and are applied only for the purposes for which they were intended and appropriated by the National Assembly. The Management was, therefore, in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry received Kshs. 746,577,947 into the deposit account for the Sustainable Blue Economy Conference (SBEC) during the financial year 2018/19 from various partners. Total payments for SBEC for the 2018/19 FY amounted to Kshs. 487,681,149 leaving a balance of Kshs. 258,896,798 SBEC funds in the deposit account to be utilized in the subsequent financial year on SBEC outstanding payments.

At the commencement of the 2019/20 Financial Year, the Ministry spent a total of Kshs. 319,661,265 from the deposit account thereby overdrawing the SBEC funds available in the deposit account by Kshs. 60,764,467. The total payment of Kshs.319,661,265 comprised the following: -

DETAILS	AMOUNT (KSHS.)
SBEC outstanding payments (SBEC funds available in deposit account)	258,896,798
Total payments made from the deposit account	319,661,265
Amount overdrawn from deposit account	**60,764,467**

The Ministry, during the financial year 2020/21 constituted a taskforce to investigate the overdrawn amount. The taskforce findings observed that the overdrawn amount of Kshs.60,764,467 were payments made that were recurrent in nature and recommended a refund from recurrent vote to the deposit account to plug the deficit that was occasioned by the overdrawal. The Ministry therefore, utilized funds in the recurrent vote for 2020/21 FY to refund the amounts overdrawn from the deposit account as recommended by the taskforce.

The Accounting Officer reiterated that the Kshs. 60,764,467 payments, being pending bills, formed first charge on the Ministry's subsequent Financial Year's budget, chargeable on related budget items. The PS submitted that the cost estimates for the two conferences changed significantly due to the number of participants among other issues that were not predictable.

Committee Observations and Findings

- **(i) The Committee observed that the Accounting Officer did not seek for an approval of overdrawing and charge on different vote from Parliament within two months of expenditure contrary to Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015;**
- **(ii) The Committee noted that the Accounting Officer failed to exercise budgetary control measures as contemplated under Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015;**
- **(iii) The Accounting Officer failed to provide details of the taskforce formed to investigate the overdrawn amount including their names, designations, terms of reference, their duration, the appointing authority, allowances paid and whether there was a budget for it; and**
- **(iv) The Accounting Officer failed to provide a breakdown of how the Kshs. 60,764,467 overdrawn from deposit account was spent.**

Committee Recommendation

- **i. The Accounting Officer should provide a report on the details of the taskforce formed to the Committee within three (3) months of adoption of this report; and**
- **ii. The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.**

234. Government Properties

Audit inspection of some of the Kenyan Missions abroad in November, 2021 revealed several unreasonable matters in relation to use, maintenance, security and management of government properties as indicated below:

234.1. Failure to Insure Government Properties in New York

The Government of Kenya owns five properties in New York. One of the properties is housing the chancery and the consulate while the other four are residential properties. However, the properties did not have any insurance cover to mitigate against losses in case of disaster. The foregoing omission is contrary to Section 79(2)(c) of the Public Finance Management Act, 2012 which requires a public officer, within his area of responsibility, to ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property including application of best efforts to prevent any damage from being done to the financial interests of the national government.

Submission by the Accounting Officer

The Accounting Officer submitted that at the time of audit, insurance covers/certificates for the properties owned by the Kenyan Government in New York were not available in the Mission file for audit as they were either under processing or in custody of the contractors. Insurance covers for the three Kenyan owned residential properties in New York had been applied for and were under processing as at the time of audit - the certificates were obtained soon thereafter. An insurance cover for the Chancery (3rd floor, 866 UN Plaza) was secured under the refurbishment contract which was being implemented during the audit exercise but there was a gap in payment of premium due to exchequer delays.

The Accounting Officer informed the Committee that the ambassador's residence located at 5275 Arlington Road, New York, is not insured since it is earmarked for demolition to pave way for redevelopment as recommended by Treasury but the Ministry was not able to secure funding from Parliament. He further submitted that the relevant supporting documentation have since been availed for audit review.

Committee Observations and Findings

The Committee observed that its 2018/19 report which provided guidelines for Kenya's overseas Government properties was not implemented.

Committee Recommendation

- **i. The Committee directs the Accounting Officer to provide a copy of the refurbishment contract in one (1) month of adoption of this report;**
- **ii. The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.**

234.2. Kenya House - New York

The property in New York sits on approximately two (2) acres of land and has a residential building known as Kenya House – New York. The property is the designated official residence of the Kenyan Ambassador to the United Nations in New York. The house has been vacant for over ten (10) years despite being the designated official residence while the Ambassador lives on a leased property for which the Government is paying an annual rent of Kshs. 23,310,000. In addition, the Mission incurs annual maintenance expenses of Kshs. 120,000 and an estimated annual utility cost of Kshs. 868,289 on the unoccupied property. As a result, the Government has been incurring avoidable expenses or losses totalling approximately Kshs. 24,298,289 per annum due to failure to ensure that the official residence is occupied by the Ambassador.

Submission by the Accounting Officer

The Accounting Officer submitted that Kenya House, the official Ambassador's residence in New York, was constructed in the 1970s. Over the years, the property fell into disrepair and eventual dilapidation due to obsolete systems of plumbing, heating and cooling which resulted in high maintenance costs. During the 2014/15 Financial Year, bids were invited for comprehensive renovation of the building, but only one bid was returned, quoting a price of USD3,000,000.00. At that price, the refurbishment of the residence was considered not economically viable.

The Ministry organized for an inspection of the property by the Directorate of Public Works in the Financial Year 2015/2016. The Report from Directorate of Public Works indicated that renovation of the property would be uneconomical. It also noted that the property had ceased to be suitable, and recommended disposal of the same. This report was forwarded to The National Treasury during the 2015/2016 FY with a request for approval to dispose the property.

In response, The National Treasury recommended that the property be retained for redevelopment with apartments for staff or for revenue generation, and that funding for purchase of an alternative Ambassador's residence be sourced during the Sector Working Group process for preparation of the 2018/19 and the subsequent Financial Year's budgets.

It should be noted, however, that the Ministry's budget as allocated at the Sector level has not been adequate to either proceed with the recommended redevelopment, either or with the purchase of an Ambassador's residence. The budget availed has been utilized to carry out comprehensive renovations of the staff houses as well as the Chancery. The Ministry has planned for a provision in the budget for FY 2023/2024 to commence consultancy work towards redevelopment of the property.

Meanwhile, the property is currently being utilized to house diaspora events, seminars and conferences for which the Mission would otherwise pay a high cost to hire venues. In addition, the Mission is considering temporary leasing of the grounds as the state department awaits allocation of an adequate budget for redevelopment. The Accounting Officer reiterated that the location is not the right address for chancery but will be good for apartments.

Committee Observations and Findings
The Committee observed that the property was still in a dilapidated state and currently undergoing renovations.

Committee Recommendation
The Committee recommends the Accounting Officer to avail a cost-benefit analysis with its budget and identify where Kenya House-New York would be put up and present the report to the Committee within three (3) months after adoption of this report.

234.3. Washington DC

The Kenya Government owns five properties in Washington DC as indicated below:

	OCCUPANT	**NATURE**
1	Embassy office - Chancery	Non-residential
2	Ambassador's residence	Residential
3	Vacant	Residential
4	Finance Attaché	Residential
5	Vacant	Residential

The Kenya Mission in Washington DC has eleven (11) home-based staff. The Ambassador and the Finance Attaché are officially housed while the Deputy Chief of Mission is living in his own house. The other eight (8) members of staff are housed in leased premises where the Mission pays a monthly rent ranging between US $3,100 (Kshs. 310,000) and US $3,750 (Kshs. 375,000) per month for each house.

The two vacant residential houses are six bedroomed house which has remained unoccupied for three (3) months and a three bedroomed house which has been unoccupied for more than one year. In addition, the Mission incurs approximated expenditure of US $ 88,926.89 (Kshs. 8,892,689) per annum on utility and cleaning of the compounds.

Had the vacant properties been fully utilized, the Government would have saved a total of Kshs. 13,842,689 comprising of rent of Kshs. 3,720,000 per annum being paid for one of the local staff who should have occupied the three-bed roomed house and rent for three months of Kshs. 1,230,000 paid for the Deputy Ambassador had he occupied the six bedroomed house and expenditure of Kshs. 8,892,689 on utility and cleaning of the compounds.

Submission by the Accounting Officer

The Accounting Officer submitted that the two vacant staff houses reported in the Audit Report had indeed been vacant due to various defects. With regards to one of the vacant houses located at 4453 29th Street, the property had been vacated to make way for repair works. The Mission was in the process of terminating the lease of a property that was occupied by one of the officers who was to move into the GOK house, but unfortunately a tree fell and damaged the roof of the house, broke the entrance and electrical cables. The insurance cover for the properties provides for such eventualities. The insurance Company therefore took over the property for the required repair works. A contractor was procured by the Insurance Company but the process took longer than was expected due to Washington DC Permit processes. The renovations were completed by 30th September 2022 and one of the home-based officers took occupation of the same from that date.

The second staff house located at 6228 32nd street, was vacated in May 2021 when it's mechanical/plumbing, electrical and cooling infrastructure failed thus requiring major renovation works to be undertaken on it before hand. Obtaining the Washington DC permits and procuring the contractor to undertake the refurbishment has taken long but has eventually been concluded. The House handing over to the contractor was to be done in January 2023 and the refurbishment works were expected to be completed by May 2023. With the cuts effected in the Ministry's 2022/23 Financial Year's Supplementary I development Estimates, however, the refurbishment completion will be delayed to next Financial Year.

Committee Observations and Findings

The Committee observed that government properties abroad were not being maintained well as the two vacant residential houses had been vacant and in deplorable state.

Committee Recommendation

The Committee directs the Accounting Officer to provide a report on the occupancy, the renovation and repair works as well as the budgeted and actual costs incurred on the property within one (1) month after adoption of this report.

234.4. Purchase of Chancery – Geneva

The Kenyan Mission in Geneva entered into an agreement with Pi Morillon SA in the year 2020 for purchase of land at Swiss CHF 4, 641,765 (Kshs. 547,728,270) and building at Swiss CHF 11,208,235 (Kshs. 1,322,571,730). The valuation report done by the Ministry of Lands and Physical Planning dated 5 April, 2019 had the following wrong details regarding the property:

DESCRIPTION	VALUATION REPORT	ACTUAL POSITION
Title number	Plot No. 5785, mission 5	Plot No. 5816, Mission 6
Size of land	1500 square metres	2150 square metres
Services quoted	- Gas pipeline - 24 hour security	Non-existent services on the ground
Land	Plot on level ground	Plot is on a hilly ground
Plot boundaries	Marked with masonry wall fence	No masonry wall fence
Proposed construction	Five double storey house	One single storey house
Market	Sales comparable to valuation	No document for the market value

In addition, the address of the Chancery was not indicated in the valuation report. In view of the errors noted in the valuation report in relation to the actual position observed, the accuracy and reliability of the report could not be confirmed.

Submission by the Accounting Officer

i.Title Number and address

The Accounting Officer submitted that the Chancery for the Kenya Permanent Mission to the United Nations in Geneva was acquired as a turnkey project, comprising purchase of land and proposed development. The entire development which is referred to as '***The House of Missions***" was divided into five portions that were solely offered to diplomatic Missions. The initial title number for the entire plot was 5785. After sub-division, a unique plot number was generated for each plot. For Kenya, the individual plot number generated is **plot number 5816**, **Mission No. 5**. Therefore, the valuation report was correct to indicate that the initial plot no. was 5785(Part) Mission 5. After sub-division, Mission 5 (Kenya) got its own plot No. as 5816 with its own address, which is Allee David-Morse 6.

ii) Size of Land

The Accounting Officer submitted that the Valuation Report by the Ministry of Lands indicates that the area is 1,214 square metres approximately. This is the area of the building as documented in the sale and purchase agreement, which indicates that the purchase is of a plot of **size 2,150 square metres** with granted building rights of **1,214 square metres.**

iii) Services quoted - Non-existence of a gas pipeline and 24-hour security at the Chancery

The Accounting Officer submitted that the valuation report indicated that water, electricity, gas and sewer are within the neighborhood for connection to the property. Other services include a 24-hour security provided by a private security firm and tarmac roads. The Valuation Report therefore indicated that the gas pipeline existed within the neighborhood of the chancery and not at the chancery itself. As regards the 24-hour security, this was at the time provided by the contractor to provide security for the construction site.

iv) Land

The Accounting Officer submitted that the valuation report indicated the plot is a square shaped, level plot on mixed soils. He also clarified that the land that the Chancery sits on is level ground bordering a raised area to the rear.

v) Plot Boundaries
The Accounting Officer submitted that the Valuation Report indicated that boundaries are marked with masonry wall fence while access is via a double hinged wooden gate. He also clarified that at the time of valuation, the contractor was on site and excavation works had begun and therefore, it is the contractor that had marked the boundaries with masonry wall fence and provided for access via a double hinged wooden gate before commencement of the construction as required by law. The contractor's boundary wall was replaced with a fence made of metallic bars and chain link/barbed wires.

vi) Proposed Construction
The Accounting Officer submitted that the Valuation Report indicated a proposed construction of five (5) blocks of double storey houses collectively referred to as 'House of Missions.' The report further indicated that the valuation only considered the land element with respect to Mission 5 (Kenya). As indicated in the Valuation Report, the development comprises a block of five properties each double storeyed. Only one double storeyed property (Mission 5) belongs to Kenya Mission.

vii) Market Value
The Accounting Officer submitted that the valuation by the Ministry of Lands and Physical Planning indicated that in order to arrive at the current Market Value of the property, the Ministry adopted the Sales Comparable Approach to valuation. This implies that the Valuation Report provides the Open Market value of the property at CHF 4,856,000 which is derived using the Sales Comparable Approach.

Committee Observations and Findings

(i) The Committee visited the project in June 2023 and observed that it was completed within contract period with no variation of costs. The property was located in an ideal location;

(ii) The Committee observed that the response by the Accounting Officer and further engagements with the Permanent Representative (PR) of the Republic of Kenya to the United Nations in Geneva, Ambassador Dr. Cleopa Mailu, were satisfactory.

Committee Recommendation
The matter was marked as resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion

235. There were no material issues relating to effectivess of internal controls, risk management and governance.

10. STATE DEPARTMENT FOR VOCATIONAL AND TECHNICAL TRAINING- VOTE 1064

REPORT ON THE FINANCIAL STATEMENTS

Dr. Margaret W. Mwakima, the Principal Secretary and Accounting Officer for State Department for Vocational and Technical, Training (Vote 1064) appeared before the Committee on 11th May, 2022 to adduce evidence on the Audited Financial Statements for the State Department for Vocational and Technical, Training (Vote 1064) for the Financial Year 2020/2021. She was accompanied by the following officers.

1. Mr. David Yatich Kipkemoi - Secretary Administration
2. Mr. Antony Masinde - Chief Finance Officer
3. Mr. Elicanal Mosiori - Director Human Resource Management
4. Mr. Tom Mulati - Ag. Director TVET
5. Mr. John Macharia - Head of Accounting Unit

And submitted as follows:

Basis for Qualified Opinion

236. Unreconciled Bank Balances

The statement of assets and liabilities as detailed in Note 10A as at 30 June, 2021 reflects bank balances of Kshs.167,630,436. As previously reported, the comparative bank balance of Kshs.187,133,948 had various project bank balances which differed with the balances reflected in the respective financial statements as follows:

Project	Bank Balance as per the Financial Statements of the State Department (Kshs.)	Bank Balance as per the Financial Statements of the project (Kshs.)	Variance (Kshs.)
ADB	3,354,258	Nil	3,354,258
KIDDP	26,342,444	26,159,554	182,890
EASTRIP	72,009,480	71,945,910	63,570
Total			**3,600,718**

The closing balance therefore included unexplained and unreconciled opening balance variance of Kshs. 3,600,718.

Further, the bank reconciliation statement for Account Number 1000302577 had payments in cash book not in the bank statement of Kshs. 375,555,436. Included in the balance are payments to staff amounting Kshs. 90,146,668 paid between 26 and 30 June, 2021 all of which have not been included in the outstanding imprest though there is no evidence the activities were undertaken before the year end. In the circumstance, the accuracy and completeness of the bank balance of Kshs.167,630,436 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that during preparation of the State Department financial reports, the bank balances had reflected an amount of 3,354,258 being bank balance in the AfDB project bank account, though the account had been closed by the National Treasury. The amount has since been reconciled as shown in the Central Bank of Kenya Certificate. The State Department is pursuing a formal letter from The National Treasury to show the movement of funds.

This is however a repeat paragraph from the financial year 2019/2020 which was discussed by Parliamentary Accounts Committee and the State Department is still awaiting direction on the same from the committee.

The Accounting Officer further submitted that state that Kshs.90, 146,668 were various payment vouchers (FO 20) to institutions and staff for capitation and service gratuity, and not outstanding impresty to staff. The above transactions which were outstanding in the bank reconciliation statement as at 30 June 2021 were subsequently cleared by 13 July 2021 as per the bank statements. Copies of duly authorized and approved payment vouchers and bank reconciliation statements have since been provided to auditors for verification. Also a schedule indicating the dates that the transactions were cleared in the bank was availed for perusal by the Committee.

Committee Observations and Findings
The Committee observed that the issues were discussed during the examination of the State Department account for financial year 2019/2020 and recommendations not implemented.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

237. Misclassification of Transactions in the Ledger
The supporting ledgers provided for audit revealed the following misclassification of expenses.

Account Name	**Amount (Kshs.)**	**Correct General Account**
Communication	1,018,560	Printing, Advertising
Training	170,000	Hospitality
Rentals and Produced Assets	1,815,333	Utilities
Total	**3,003,893**	

In the circumstance, the accuracy and completeness of the financial statements could not be confirmed.

Submission by the Accounting Officer
Partial correction journals have since been posted in the IFMIS system to reflect a true and fair view of the financial statements. For the balances, the State Department will do a prior year adjustment in FY 2021/2022 so as to clear as per the table below:

Account Name	Amount (Kshs.)	Amount cleared	Balance to clear-FY2021/2022	Correct General Account
Communication	1,018,560	1,018,560	0	Printing, Advertising
Training	170,000	170,000	0	Hospitality
Rentals and Produced Assets	1,815,333	1,526,102	289,231	Utilities
Total	3,003,893	2,714,662	289,231	

Committee Observations and Findings

(i) 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; and

(ii) The Committee further observed that the Accounting Officer failed 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.

Committee Recommendation

i. **The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012; and**
ii. **The Accounting Officer should always 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.**

238. Unreconciled Compensation of Employees

The statement of receipts and payments reflects compensation of employees of Kshs.6,174,004,258 which is a variance with the amount reported in the integrated Payroll and Personnel Database (IPPD) summary of Kshs.6,171,887,634 resulting in an unreconciled and unexplained variance of Kshs.2,116,624. Further, included in the compensation of employees amount of Kshs.6,174,004,258 is Kshs.5,063,658 paid as overtime allowance to staff and Kshs.8,851,948 paid in respect of leave commutation by staff which was not reported with the necessary approvals of justification.

Additionally, the compensation of employees amount of Kshs.6, 174,004,258 includes payments totaling Kshs.11,871,140 that have been described as salary reimbursements for which no supporting documents or explanations were provided for audit review.

In the circumstances, the accuracy and completeness of the compensation of employees of Kshs. 6,174,004,258 could not be confirmed.

Submission by the Accounting Officer

Following the transfer of Trainers from Teachers Service Commission vide TSC/ADm/192A/Vol.IX/47 dated 27th July 2018 (Circular 17/2018), and the recruitment of 3,000 new trainers the volume of work for the State Department increased tremendously. The volume of work increased beyond the existing administrative staff that did not expand despite the expanded mandate. In addition, officers have continued to retire without replacement.

During the year under review, the State Department was involved in various activities and programmes towards the re-opening of Institutions after the COVID-19 closure of schools. The State Department is also involved in the infrastructure developments in various TVET Institutions across the Country. These programmes involve activities of monitoring the development projects and processing of reports and a lot of paper work in the office. The officers in HRM&D division were involved in processing transfer of service documents, posting of the trainers, processing of reporting letters from the respective Institutions where the trainers were posted, processing of their salaries and personal numbers and opening of personal files. This forced the officers to work beyond the normal working hours.

In view of above, the officers in job group 'J' and below were recommended by their respective Heads of Department for consideration for payment of overtime allowance. The recommendation was tabled before Ministerial Human Resources Management Advisory Committee for approval. The Committee approved and copies of minutes were provided for perusal by the Committee.

The amount of Kshs. 8,851,948 was paid in respect of leave computation by staff for the FY2020/2021. Following the transfer of Technical Education functions from TSC to the State Department vide TSC/ADm/192A/Vol.IX/47 dated 27th July 2018 (Circular 17/2018), the programmes and activities for the State Department expanded tremendously without the corresponding expansion of the Administrative and Technical Staff to march the expanded mandate. This has led to lean staff being over stretched with work and therefore unable to utilize their leave days. The activities were further increased due to the programmes and activities towards the re-opening of Institution after closure due to COVID-19.

It was important to note that the officers applied for their leave as provided by service regulations. However, they could not be release for leave due to exigencies of duty. It is on this basis that the Cabinet Secretary approved Commutation of leave for cash for the officers. It is worth noting that only 130 officers whose leave was commuted against a complement of 6,500 of the approval and leave applications forms were provided to the Committee for ease of reference.

The variance of Kshs. 2,116,624 in the IPPD is due the payment of salary and allowances that were done outside IPPD through payment vouchers to the employees due to various reasons below:

- The recruited officers were posted and reported to their respective Institutions. The personal numbers which are processed through the State Department for Public Service delayed due to the new UPN system which is interactive between the new employee, the State Department for Vocational and Technical Trainers and the State Department for Public Service. In some cases, the personal numbers took a while before being finalized. But the officers were already at their duty station working hence deserved payment of arrears.
- Promotions of officers in job group 'K' to 'L' which was long overdue as they belong to Common Cadre and ought to have been promoted on completion of three years as per their Scheme of Service at TSC. This was caused by the delay of transfer of service documents from Teachers Service Commission to the Ministry. Serving Teachers transferred from TSC before obtaining personal numbers. TSC stops their salaries before presenting the documents for processing of personal numbers.
- The promotions were approved by Ministerial Human Resource Management Advisory Committee vide Minute No. 3/10/2021 (1) of the Meeting held on 15th April, 2021.

- Nine (9) officers who were on contract had their salary stopped due to non-compliance of public officers Ethics Act by not declaring their income assets and liabilities within the prescribed period. By the time their matter was resolved their contract period had expired and they could therefore no be reinstated to the IPPD payment. It was therefore necessary to pay any outstanding salary to them through the voucher.
- Four (4) officers were cases of salary underpayment due to wrong date of birth captured in IPPD detected when processing pension documents. The date of birth acceptable for pension processing is the date declared by the officer in his/her application for employment Form (PSC 2 or TSC Appt 1). There are instances where the date of birth in the officer's ID differs from the one declared in the employment application form. This can lead to underpayment as in the four cases. When such is detected then the officer is paid the difference through voucher since he/she can't be reinstated into the payroll.
- Four (4) cases were paid a token of Kshs.50,000 according to section D16 of the Human Resources Policies and procedures manual for public service 2016 which states that '*The Government shall provide a token contribution of Kshs.50,000 to defray funeral expenses for a deceased officer, one spouse and up to four (4) children aged twenty-five (25) years and below*:

A schedule of the payments of Kshs. 2,116,624 is as indicated in the table below:

	Name of Officer	**P/NO:**	**Amount**	**Remarks**
1	PETER MALA ONYANGO	1987123015	147,561.35	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
2	TIMOTHY NYARERA ONGUBO	1984143360	240,829.15	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
3	EVANS MBUCHI KINUTHIA	1989150674	209,109.30	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
4	CHARLES NDEGWA NGANGA	1984143524	154,162.73	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
5	NJERI WANJOHI	1981157964	173,033.00	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
6	DANSON MATIRU	1987123039	104,999.96	Salary stopped due non-compliance and reinstated after the officer had reached end of contract

7	MARTIN OMONDI OKUDO	1985105746	143,203.20	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
8	TOBIAS OTIENO OWINO	1985105602	122,679.30	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
9	ABEL MONYENYE	1989150650	168,641.71	Salary stopped due non-compliance and reinstated after the officer had reached end of contract
10	JOHN KIMANI WATHANGA	1985105640	195,894.00	SALARY UNDERPAYMENT detected during preparation of pension documents
11	KEZIAH MAINA MUTHONI	19830993231	83,950.00	SALARY UNDERPAYMENT detected during preparation of pension documents
12	RICHARD ANYOKA TINEGA	20088908849	50,000.00	DEATH token as per the HR Manual
13	ELIJAH MWANIKI	1985102308	84,878.56	SALARY UNDERPAYMENT detected during preparation of pension documents
14	BENARD WABWIRE	2008104400	17,570.00	Being payment of one month salary advance.
15	ADOW O.WARLANE	1989149606	70,111.70	SALARY UNDERPAYMENT detected during preparation of pension documents
16	ADOW O.WARLANE	1989149606	50,000.00	DEATH token as per the HR Manual
17	JOSIAH NJIRU	1993037818	50,000.00	DEATH token as per the HR Manual
18	ISSACK ABDDIRAHAMAN ALI	1994072659	50,000.00	DEATH token as per the HR Manual
	Total		**2,116,624**	

The amount of Kshs.11,871,140, indicated in the notes to the financial statements as payment of salary reimbursement relates to personal allowances paid as part of salary but was included in payments of salary reimbursements schedule as per the new reporting PSAB template for the year 2020/2021. This has since been corrected and transferred back to personal allowances paid as part of salary.

The below table indicates how the notes to the financial statements for compensation were presented in the new public sector accounting board template which were presented on 30th September 2021 to the Office of the Auditor General.

Details	2020-2021	2019-2020
	Kshs.	**Kshs.**
Basic salaries of permanent employees	4,197,459,485	3,466,918,339
Basic wages of temporary employees		993,523,401
Personal allowances paid as part of salary	1,976,544,773	620,877,009
TOTAL	6,174,004,258	5,081,318,749

The below table shows the corrected extract of the note 5 to the financial statements showing the Kshs. 11,871,140 as personal allowances paid as part of salary and not personal allowances paid as reimbursements.

Details	2020-2021	2019-2020
	Kshs.	**Kshs.**
Basic salaries of permanent employees	4,197,459,485	3,466,918,339
Basic wages of temporary employees	-	993,523,401
Personal allowances paid as part of salary	1,876,037,423	620,877,009
Personal allowances paid as reimbursements	-	-
Employer Contributions Compulsory national social security schemes	649,800	-
Employer Contributions Compulsory national health insurance schemes	99,857,550	-
TOTAL	6,174,004,258	5,081,318,749

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer failed to prepare and keep proper accounting records and thus in contravention of Section 68 (2) (b) of the PFM Act, 2012; and**
ii. **The Committee further observed that the Accounting Officer failed 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 Act 2012.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012.

239. Use of Goods and Services

The statement of receipts and payments reflects and as disclosed in Note 6 of the financial statements use of goods and services amount of Kshs. 1,465,900,314. The following anomalies were observed in respect of these payments.

239.1 Unsupported Utilities, Supplies and Services

Note 6 of the financial statements reflects utilities, supplies and services payments amounting to Kshs.5, 925, 183. However, an amount of Kshs.3,240,260 related to District expenditure was not supported by respective utility bills and proof of actual payments. Further, the supporting ledger includes an amount of Kshs.1,009,810 that has been described as correction of electricity expenditure charged in wrong account which has not been supported by duly approved journal vouchers. No explanation has been rendered in supporting the adjustment.

Under the circumstances, accuracy and completeness of utilities, supplies and services expenditure of Kshs. 4,250,070 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that Note 6 in the financial statements reflects utilities, supplies and services expenditure amounting Kshs. 5,925,183. The amount of Kshs. 3,240,260 related to District expenditure. Accountability of AIEs issued to County Directors is done at the district treasuries. At the Ministry level, expenditure returns is received, accounted and captured in the IFMIS system.

The State Department has since written letters to the respective county Directors to demand for copies of payment vouchers duly supported, authorized and stamped "paid' to be forwarded to headquarters for audit verification. The account analysis schedule reflecting Kshs.1,009,810 as electricity expenditure charged in wrong account has since been corrected as per journals.

Committee Observations and Findings

- **(i) The Committee observed that an adjustment has since been made to correct expenditure charged in wrong account;**
- **(ii) However, the Committee observed that copies of payment vouchers are yet to be availed for audit review; and**
- **(iii) The Committee also observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012.

239.2 Unsupported Rental of Produced Assets

Note 6 of the financial statements reflects rental of produced assets of Kshs.39,442,747 which includes Kshs.2,056,560 in respect of rental payments for District offices that has not been supported by lease agreements of the respective District offices.

Under the circumstances, accuracy and completeness of rental of produces assets expenditure of Kshs. 2,056,560 could not be confirmed.

Submission by the Accounting Officer
Accountability of AIEs issued to County Directors is done at the district treasuries. At the Ministry level, the expenditure returns is received, accounted for and captured in the IFMIS system. However, The State Department has since written letters to the respective county Directors to demand for copies of payment vouchers duly supported, authorized and stamped "paid' for Kshs.2,056,560 and copies of lease agreements to be forwarded to headquarters for audit verification.

Committee Observations and Findings

(i) The Committee observed that copies of payment vouchers are yet to be availed for audit review;

(ii) The Committee further 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;

(iii) In addition, the Committee also observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012.

239.3 Misclassification and Unsupported Training Expenses
Note 6 of the financial statements reflects training expenses of Kshs.59,725,113 included in this amount are allowances to staff amounting Kshs.14,963,448 which do not relate to training activities. Management did not provide supporting evidence and authority for the reallocation of funds. This was contrary to section 43 of public finance management Act 2012.

In addition, the training expenses includes AIEs issued on 28 June, 2021 to various Districts amounting to Kshs.943,380 that had not been surrendered as at 30 June, 2021 though fully expensed in the financial statements. Under the circumstances, the accuracy and completeness of the allowances and AIEs amounting to Kshs. 15,906,828 in respect of training expenses could not be confirmed.

Submission by the Accounting Officer
Under Section 43 (2a) and (3) of the PFM act 2012, The Accounting Officer for the State Department is allowed to reallocate funds as below if need be:

2) An accounting officer for a national government entity, other than a state corporation may reallocate funds between programs, or between sub –votes, in the budget for a financial year if:
(a) There are provisions in the budget of a program or sub-votes which are unlikely to be utilized.
(3) Regulations made under this Act may provide for the reallocation of funds within sub-votes or programs.

Under The Public Finance Management (National Government) Regulations, 2015, The Accounting officer for the State Department is allowed to reallocate funds as below if need be:

48. (1) For purposes of section 43(3) of the Act, Accounting officers, may authorize reallocation of funds within programmes or sub-votes provided that:

(a) This does not affect the total voted provision;
(b) The provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized.

Accountability of AIEs issued to County Directors is done at the district treasuries. At the Ministry level, the expenditure returns are received, accounted for and capture in the IFMIS system. However, The State Department has since written letters to the respective county Directors to demand for copies of payment vouchers duly supported, authorized and stamped "paid' to fully account for Kshs.943,380 to be forwarded to headquarters for audit verification.

Committee Observations and Findings

(i) The Committee observed that copies of payment vouchers are yet to be availed for audit review;

(ii) The Committee further 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; and

(iii) In addition, the Committee also observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012.

239.4 Unsupported Specialized Materials and Services Expenditure

Note 6 of the financial statements reflects payments in respect of specialized, materials and services amount of Kshs.1,150,718,245. Included in this amount are payments for two projects amounting to Kshs.1,143,096,785 in respect of direct payments made to an international supplier by financing bank for supply of goods that were purportedly delivers to various TVET institutions.

However, the expenditure was not supported by a financing agreement even though management indicates there was one signed on 5 September, 2013 and an addendum on 5 may, 2016 and there has been no audited accountability statements for the projects since inception. Further, the project activities have not been supports by approved work plans and procurement plans.

In addition, the payments for specialized materials and services included Imprest surrenders by staff in respect of travel allowances amounting to Kshs. 4,240,200 that could not be matched to any activities related to the procurement of specialized materials and services and the surrender documents to supports the travels were not provided for audit review. Under the circumstances, accuracy, completeness and validity of specialized materials and services expenditure of Kshs. 1,150,718,245 could not be confirmed.

Submission by the Accounting Officer

The Kenya China Project contract was signed on 5th September, 2013 with addendum signed on 25th May, 2016. The funding was for the purchase of technical training equipment in selected TVET institutions. The documents that are available for the Project in support of the loan commitments include the Contract document, the Financing Agreement and payment vouchers totaling Kshs.1,054,551,634 for the FY 2020/2021 which were availed for audit verification.

The Equipment were supplied in batches and after delivery of a batch, the Supplier would submit an invoice for payment. The State Department would process the invoice and capture the expenditure through IFMIS system. The payment voucher was then submitted to the National Treasury for onward submission to EXIM bank to pay the supplier.

The State Department role ends with the submission of the payment voucher to the National Treasury and therefore the same can only be confirmed by the Resource Mobilization Department at The National Treasury, who can provide the disbursement schedule from Exim bank.

The State Department has written to the National Treasury to provide the payment schedule for audit verification.

Committee Observations and Findings

(i) The Committee noted the explanation and documents given by the Accounting Officer with regards to Specialized Materials and Services; and

(ii) However, the Committee further observed that there was need for the Accounting Officer to avail disbursement schedule from Exim Bank and submit to the Office of the Auditor General for audit review.

Committee Recommendation

i. The Committee reprimands the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015;

ii. The Committee directs that the Accounting Officer furnishes the Committee with the documents for verification within one (1) month of the adoption of this report.

240. Unconfirmed Transfers to Other Government Units - Current Grants

The statement of receipts and payments and as disclosed I Note 7 to the financial statements reflects transfers to other government units of Kshs. 11,858,364,762 which includes current rants of Kshs. 8,777,167,048. Included in this amount are payments made on 30 June 2021 amounting to Kshs. 28,301,560 in respect of verification of trainees' enrolment data in technical institutions.

However, no details of the institution where the amounts were transferred to. In addition the expenditure has not been supported by a work plan, budgetary allocation, institutions to be visited and a report after the verification exercise and proof of actual travel to verify the trainees.

In the circumstances, the validity of the trainees' expenditure of Kshs.28,302,560 for the year end 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The internal audit department gave a proposal in line with the annual work plan to undertake a verification of trainee enrollment data in the technical institutions to identify risks, determine compliance with the laid down guidelines and recommend measures to strengthen management of capitation grants. There are 192 technical institutions served under the State Department for

Vocational and Technical Training. It was proposed that the verification be undertaken in phases starting with the 1st phase of 50 institutions from financial year 2018/2019 when the first capitation funds were released to financial year 2020/2021 which was the current year.

In the Internal Audit work plan, it was envisaged that this exercise was to be conducted in the fourth quarter. A report on the verification activity, list of institutions visited, work plan and proof of actual travel in form of work tickets have been provided.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015; and

(iii) However, the Committee observed that the explanation given by the Accounting Officer with regards to Transfer to Other Government Units – Current Grants was now satisfactory.

Committee Recommendation

The Accounting Officer must at all times ensure that fully reconciled financial statements are submitted to the Auditor General pursuant to Section 68 (2) (k) of the PFM Act, 2012.

241. Unconfirmed Transfer to Other Government Units - Capital Grants

The statement of receipts and payments and as disclosed in Note 7 to the financial statements reflects transfers to other government units of Kshs.11,858,364,762. Included in this amount is Kshs. 3,081,197,714 in respect to transfers to other levels of government – capital grants. The amount further includes Kshs. 2,710,510,124 disbursed during the year to institutions to undertake various projects for construction of technical vocational colleges throughout the country. However, management did not provide evidence in support of receipt of the funds by implementing institutions.

In addition, the amounts were expensed at the point of disbursement. The receiving institutions did not prepare accountability statements expenditure summaries, progress certificates to support payments and project progress status report in support the utilization of the funds.

In the circumstances, the accuracy, completeness and validity of the capital disbursements amount of Kshs.2,710,510,124 could not be confirmed.

Submission by the Accounting Officer

Due to the huge number of projects being implemented by the State Department, the ministry adopted the mentor-mentee approach. Under this approach, the State Department disburses funds to institutions that have been identified as mentors who are mandated to oversee the financial management and actual contract management of the project. The State Department undertakes periodic monitoring and evaluation to establish progress and status of the project.

Committee Observations and Findings

(i) **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;**

(ii) **The Committee also observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.**

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**

ii. **The Committee reprimands the Accounting Officer for failure to keep proper accounting records as prescribed under Section 197 (1) of the PFM Act, 2012.**

242. Unreconciled Transfer to Other Government Units - Appropriations-In-Aid

The statement of receipts and payments and as disclosed in Note 7 to the financial statements reflects transfers to other Government units amount of Kshs. 8,777,167,048. The current grant included Appropriation-In-Aid received amounting to Kshs. 1,404,367,307 which differ with the amount disclosed as other revenues receipts under the statement of receipts and payment of Kshs. 2,336,089,461 resulting to an unexplained and unreconciled variance of Kshs. 931,722,154.
In the circumstances, the accuracy and completeness of the Appropriation-In-Aid of Kshs. 2,336,089,461 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Appropriation –In-Aid totaling to Kshs.2,336,089,461 comprises of item 1420300 totaling to Kshs.42,139,648 and Item 1420200 totaling to Kshs.2,293,949,813. The un-reconciled variance of Kshs.931, 722,544 was due to wrong narration of the description in the account analysis schedule for current grants. The correct narration is “Appropriation in Aid” (AIA) collections by the various Institutions and not quarterly allocations as indicated in the schedule. This has since been rectified and the revised and the unreconciled AIA amount of Kshs.931,722,544 has been reconciled and schedule provided for audit verification.

Committee Observations and Findings

(i) **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; and**

(ii) **The Committee further observed that the Accounting Officer failed 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 Act 2012.**

Committee Recommendation

The Committee reprimands the Accounting Officer for financial misconduct as prescribed under Section 197 (1) of the PFM Act, 2012.

243. Unsupported Acquisition of Assets - Construction of Buildings

The statement of receipts and payments and as disclosed in Note 9 to the financial statements reflects acquisition of assets of Kshs.,750,041,645. Included in this amount are payments in respect of construction of buildings amounting to Kshs.730,165.945. The payments further included an amount of Kshs.722,131,333 in respect of contractors undertaking constructions at various Technical Training Institutions. The payments did not have supporting documents in form of expenditure summaries, procurement procedures and project periodic architect's valuation certificates provided for audit verification. In the circumstances, the validity of expenditure of Kshs. 722,131,333 on construction of buildings could not be confirmed.

Submission by the Accounting Officer

The construction of buildings amounting to Kshs.722,131,333 in the financial reports for the year ended 30 June 2021 has now been supported with a schedule showing the names of payees, the amounts disbursed, interim certificate paid, and the individual project for which the constructions are budgeted for. Also availed in support of the above expenditure are copies of payment vouchers, project progress reports, copies of valuation reports, tender documents and minutes, tender award letters, inspection and monitoring minutes/reports and site meeting reports.

Committee Observations and Findings

(i) 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; and

(ii) The Committee also observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for financial misconduct as prescribed under Section 197 (1) of the PFM Act, 2012.

244. Unsupported Proceeds from Foreign Borrowings

The statement of receipts and payments reflects Proceeds from Foreign Borrowings of Kshs.1,868,679,733. Included in this amount is the Kenya China Projects amount of Kshs.1,054,551,634 which related to payments made directly to the suppliers lending Bank. However, the Management did not provide in support of the payments and inspection and acceptance reports for the goods or services rendered. In the circumstance, the accuracy and completeness of proceeds from foreign borrowings of Kshs. 1,054,551,634 could not be confirmed.

Submission by the Accounting Officer

The Kenya China Project was signed on 5th September, 2013 with addendum signed on 25th May, 2016. The funding was for the purchase of technical training equipment in selected TVET institutions. The documents that are available for the Project in support of the loan commitments include the Contract document, the Financing Agreement and payment vouchers totaling Kshs.1,054,551,634 for the FY 2020/2021. The Equipment were supplied in batches and after delivery of a batch, the Supplier would submit an invoice for payment. The State Department would process the invoice and capture the expenditure through IFMIS. The payment voucher was then submitted to the National Treasury for onward submission to EXIM bank to pay the supplier.

The State Department role ends with the submission of the payment voucher to the National Treasury and therefore the same can only be confirmed by the Resource Mobilization Department at The National Treasury, who can provide the disbursement schedule from Exim bank. The State Department has written to the National Treasury to provide the payment schedule.

Committee Observations and Findings

The Committee observed that there is need for the Accounting Officer to avail disbursement schedule from Exim Bank and submit to the Office of the Auditor General for audit review.

Committee Recommendation

The Committee directs the Accounting Officer to furnish the Committee and the Auditor General with the disbursement schedule from Exim Bank within one (1) month after the adoption of this report.

245. Over Disbursement of Capitation due to use of Unverified Data

Review of records by the Kenya Universities and Colleges Central Placement Service revealed that the student enrollment was 182,388. Analysis of the data revealed that twenty-seven (27) were non-citizens, 18,307 did not provide index numbers and 2,726 were duplicates leading to 161,328 validated students. However, enrollment numbers provided by the Service were not used for disbursement purposes resulting to over disbursement of Kshs. 28,005,000. Management did not provide explanations on why reconciliation of student data was not done.

In the circumstance, the accuracy and completeness of the disbursement of Kshs. 28,005,000 as capitation could not be confirmed as a proper charge to public funds.

Submission by the Accounting Officer

When processing Capitation for eligible students, the State Department relies on data from KUCCPS. Regrettably, the excess amounts were due to inadequate interpretation of data from KUCCPS. It is hereby confirmed that the excess payment was recovered from Kericho TTI. For the remaining six institutions recoveries are ongoing as per notification letters to the Principals.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Over Disbursement of Capitation due to use of Unverified Data.

Committee Recommendation

The Committee directs the Accounting Officer ensures recoveries from the six institutions within three (3) months after the adoption of this report.

246. Disbursement of Capitations to Institutions during the Lockdown Period

The statement of receipts and payments and as disclosed in Note 7 to the financial statements reflects transfers to other Government units of Kshs.,11,858,364,762. Included in this amount are transfers to National Government entities–current grants of Kshs. 8,777,167,048 which further includes an amount of Kshs. 2,528,002,500 disbursed during COVID-19 lockdown when students were not in session. In the circumstance, the disbursements of Kshs.,2,528.002.500 was not a proper charge to public funds.

Submission by the Accounting Officer

It was true that the amount of Kshs. 2,528,002,500 was disbursed to the institutions in the FY2020/2021. When the COVID-19 Pandemic struck Kenya in March 2020, the Government made a decision to close all learning institutions in the Country. In the State Department of

Vocational and Technical Training, our TVET Institutions were all closed in 15th March 2020. This was the third quarter of the FY 2019/2020. Due to the uncertainty regarding the pandemic, the National Treasury failed to remit the fourth quarter capitation of the FY 2019/2020 yet our institutions had ongoing commitments and obligations to settle. This greatly affected the financial position of the bulk of our institutions especially the newly established institutions which heavily rely of capitation.

The capitation is disbursed to cater for the operational costs of TVET institutions. These are fixed costs and are not dependent on the presence of trainees in the institutions. In view of this, in the FY 2020/2021, despite absence of trainees due to the COVID-19 pandemic, institutions had to meet the following fixed costs:

1. Payment of salaries for Permanent and pensionable administrative staff. These are staff that are employed by the Governing Councils/ Board of Governors (BOG) and are not in the payroll of the Ministry. They also had to pay Trainers whose contracts had yet to expire, casual workers involved in general maintenance of the institution premises, security guards etc.
2. There are utility costs that have to be paid on monthly/quarterly basis such as electricity, water and ongoing contractual obligations that have been entered with service providers such as internet subscriptions, rent payments for institutions with town campuses, rental payments for hostels that accommodate students especially NYS trainees admitted in TVET institutions etc.
3. Online Learning-To facilitate establishment and operationalization of online learning, Institutions would require to procure additional computers, enhance bandwidth for internet connectivity, employ additional ICT officers and train Trainers on the use of online platforms.
4. Registration of KNEC Exams-On 28th September, 2020. H.E The President issued guidelines on the imminent re-opening of schools during the COVID-19 Conference at KICC and in the revised calendar, it was decided that candidates that were to sit for July and September KNEC Exam series were the first cohort to be allowed to resume classes. Therefore, payment of KNEC exam fees was an obligation that had to be met.

In addition, the Ministry of Health issued COVID-19 Protocols which were mandatory for reopening. These included constructing of additional classrooms to meet social distancing requirements, purchasing of PPEs, sanitizers, masks, soaps, fumigation of institutions, erecting additional water tanks at various points, and even payment of salaries for a resident nurse.

In the FY 2020/2021, as the Ministry was making plans on resumption of learning, a survey was done by TVETA to find out the readiness of our institutions to resume learning. It was established that the majority of our institutions were not ready and would require additional resources to meet the COVID-19 protocols. Since the Government did not provide a budget for COVID intervention measures, therefore capitation was disbursed to address the mandatory Ministry of Health (MoH) COVID-19 protocol requirements. The State Department has however written to all the institutions that received disbursement during that period to provide expenditure statements for audit verifications.

Committee Observations and Findings

The Accounting Officer failed to avail the expenditure statements and other supporting documents and thus in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **The Committee directs the Accounting Officer to furnish the Auditor General with the returns schedule for audit review within one (1) month of the adoption of this report.**

247. Budgetary Control and Performance

The State Department had an approved receipts budget of Kshs.24,686,934,728 against actual receipts of Kshs.20,327,644,262 resulting to an under funding of Kshs.4,358,290,466 or 18%. Similarly, the State Department had an approved expenditure budget of Kshs.24,686,934,728 against an actual expenditure of Kshs.20,312,283,149 resulting to under absorption of Kshs.4,373,651,579 or 18%. The Management attributed the under-funding and the under-absorption to delayed exchequer releases. 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 it was true that State Department had an approved receipts budget of Kshs. 24,686,934,728 against actual receipts of Kshs.20,327,644,262 resulting to an under funding of Kshs.4,358,290,466 or 18%. Similarly, the State Department had an approved expenditure budget of Kshs.24,686,934,728 against an actual expenditure of Kshs.20,312,283,149 resulting to under absorption of Kshs.4,373,651,579 or 18%. The underfunding and the consequent under expenditure is attributed to under provision of exchequer during the period under review despite several requisitions to The National Treasury.

Committee Observations and Findings

The explanation given by the Accounting Officer with regard to the Budget Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

248. Unresolved Prior Year Audit Matters

In the audit 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, and Report on Effectiveness of Internal Controls, Risk Management and Governance. 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 matter was addressed and resolved by the Committee in its report for the financial year 2019/2020.

Committee Observations and Findings

The matter was resolved by the Committee in its report for the year 2018/2019.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

249. Management of Imprests
The State Department issued imprests totalling Kshs. 15,192,007 to staff before surrendering the previous ones. This is contrary to Regulation 93(8) of the Public Finance Management (National Government) Regulations, 2015 which provides 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 from his or her salary. The Management of the State Department was in breach of the law.

Submission by the Accounting Officer
The Kshs. 15,192,007 was fully recovered (surrendered) and the management has put in place measures to ensure that no officer will be issued with another imprest before surrendering the previous one.

Committee Observations and Findings
The explanation given by the Accounting Officer with regard to management of imprest was noted, as measures had already been taken and imprest recovered in full.

Committee Recommendation
The Accounting Officer should maintain a complete imprest register detailing; payee, imprest warrant number, date of issue, due date and date of surrender, as provided in Regulations 52(1)(j) and 93(4)(c) of the PFM (National Government) Regulations, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

250. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS

KENYA ITALY DEBT FOR DEVELOPMENT PROGRAM (KIDDP)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
251. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
252. Budgetary Control and Performance
The statement of comparative budget and actual amounts reflects a final budget of Kshs. 34,694,945 against an actual of Kshs. 16,321,108 resulting to an under expenditure of Kshs. 18,373,837 or 53%. In addition, the budget of Kshs. 34,694, 945 was higher than the available

funds which amounted to Kshs. 26,159,554, yet there was no evidence of funding being provided by GOK to cover the excess budget. In the circumstance, the citizens have not received services as planned as a result of the slow implementation of the project.

Submission by the Accounting Officer

It is true that there were same errors in the financial statements and has since been corrected in the revised financial statement.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regard to the Budget Control and Performance.

Committee Recommendation

The Accounting Officer must at all times ensure that fully reconciled financial statements are submitted to the auditor general pursuant to Section 68 (2) (k) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

253. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

254. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

255. As required by the Agreement in the Form of Exchange of Letters – Kenya Italy Debt for Development Program, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, 89 were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Program's financial statements are in agreement with the accounting records and returns.

SUPPORT TO TECHNICAL VOCATIONAL EDUCATION AND TRAINING FOR RELEVANT SKILLS DEVELOPMENT PROJECT - PHASE II (LOAN NO.2100150033295)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

256. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

257. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

258. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

259. As required by African Development Fund I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA SKILLS FOR TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (EASTRIP) IDA LOAN CREDIT NO. 6334-KE

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

260. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

261. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

262. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

263. As required by International Development Association, based on the audit procedures performed, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

PROMOTION OF YOUTH EMPLOYMENT AND VOCATIONAL TRAINING IN KENYA 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

Unmodified Opinion

264. There were no material issues noted during the audited of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

265. Procurement and Payment for Consultancy Services

The State Department for Vocational Technical Training contracted consultancy services and paid of Kshs. 29,955,681 during the year under review. However, the State Department requested for assistance from KfW in undertaking procurement of consultant on 22 August, 2017 and then advertised for the consultant on 29 August, 2017. This was done before the project financier was identified.

Further, a tender Agent based in Germany was engaged on an unidentified date to undertake the evaluation on behalf of was the State Department. 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. 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 Financing Agreement on 21 February, 2020.

The notification of award was made on 17 July, 2018 to the successful consultant based in Germany and the contract was signed on 9 September, 2020 which was more than two years after notification of award. 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. In addition, the payments were made to the local Company who did the invoicing even though they were not party to the contract and there was no apparent contractual obligation.

Under the circumstances, the compliance with Public Procurement and Disposal of Asset Act, 2015 could not be confirmed since the evaluation was done by a third party whose procurement, appointment and terms of engagement including any contractual obligations were not supported for audit verification. Further, the validity of contract with local Company and the payments made in respect of the contract could not be ascertained as the local Company was not part of the consortium at bidding for the service.

Submission by the Accounting Officer

It is true that the Tender Agent based in Germany is contracted by Kreditanstalt Fur Wiederaufbau Bank, (KfW) who is the financier of the project. The state department wishes to state the following;

i. 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. The Consulting agreement between the Tender Agent and the KfW bank have been availed, itemizing the terms of reference, remuneration and contractual obligations of each party.

ii. The Tender Agent initiated the procurement process in August, 2017 in line with the KfW procurement guidelines 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 Cooperation that each beneficiary institution possesses a title deed. The resolution to this issue was protracted and lasted from 2017 to 2020. 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 as per the availed evidences of correspondences and land title deed.

iii. 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 i.e. NIRAS Gruppen A/S. The details of shareholding structures have now 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 have been availed.

Committee Observations & Findings

The Committee observed that the contract was curiously executed by a Kenyan company after the tender was won by a German company that had outbid other Kenyan firms. This seemed as designed to defeat due process as the financier, procuring agent and eventual successful bidder were all Germans. The submission that the Kenyan firm that executed the tender was affiliated to the German successful bidder was unconvincing.

Committee Recommendation

The Committee recommends that the EACC conducts investigations into the procurement process.

266. Exclusion of Consultant from Paying Taxes

The Contract for provision of consultancy services between Kenyan registered the local consultant and the State Department of Vocational and Technical Training signed on 9 September, 2020 at clause 2.4 obligated the State Department to obtain exemption from taxes, duties, levies and other charges that are legally prescribed in the Country. The State Department requested for tax exemption from The National Treasury on behalf of the Contractor on 30 August, 2021 which was yet to be granted. In their response for exemption, on 10 September, 2021, The National Treasury on 10 September, 2021 requested by State Department to apply for exemption indicating the consultancy fee for which the exemption is being sought. No evidence has been provided in support of the application or the granting of the exemption by the relevant authorities.

Submission by the Accounting Officer

It is true that the State Department of Vocational and Technical Training wrote a request to the National Treasury for exemption of VAT (Value Added Tax) for all project procurement of works and supplies. The same was granted by Kenya Revenue Authority through The National Treasury. However, all the consultants under this development project pay withholding income taxes before any direct payment is effe by the KFW bank as per the availed income tax payment slip samples by Niras Africa Limited (Consultant), EPCO Builders Limited (contractor) and AHK Services Eastern Africa Limited- Consultant. These documents were presented to the Office of Auditor General for review.

Committee Observations and Findings

The Committee observed that during the audit, the Accounting Officer failed to provide supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendations;

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office and sanctions the Accounting Officer under the provisions of Section 62 of the Public Audit Act, 2015

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

267. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

268. As required by Kreditanstalt fur Wiederaufbau, (KfW) I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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 (IDA LOAN NO. 6334-KE) – MERU NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

269. Acquisition of Assets

Note 8 to the financial statement reflects an amount of Kshs. 21,118,019 in respect to acquisition of non-financial assets. Included in this figure is an amount of Kshs. 15,210,000 relating to purchase of vehicles and other transport equipment. This relates to procurement of two motor vehicles for the project use, registration numbers KCT 789Y (Toyota Hilux, double cabin) and KCT 850Y (Nissan patrol) at a cost of Kshs. 8,650,000 and Kshs. 6,560,000 respectively which were delivered and received by the project management. However, at the time of the audit in October, 2021 vehicle KCT 850Y (Nissan patrol) logbook had not been received, fourteen (14) months after the receipt of the motor vehicles. In the circumstances, the certainty and ownership of Kshs. 6,560,000 incurred on acquisition of non-financial assets as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The logbook for vehicle KCT 850Y (Nissan patrol) had not been received as at October 2021 due to delay in issuing at the National Transport and Safety Authority (NTSA) but the state department received it later on 30th November 2021 as per the availed confirmation and log book copies.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to ensure that proper mechanisms are instituted to maintain assets in the State Department.

Committee Recommendations;

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**
ii. **The Committee directs the Accounting Officer to furnish the Committee with the log book for vehicle KCT 850Y (Nissan patrol) within three (3) months after the adoption of this report.**

Other Matter

270. Budgetary Control and Performance

270.1. Revenue Analysis

The Project final approved budget for the year ended 30 June, 2021 reflected receipts of Kshs. 116,000,000 while the actual receipt was Kshs.115,000,000 resulting in an under collection of Kshs.1,000,000. The Project failed to meet its target receipt by Kshs.1,000,000 which may be an indication of improper planning on its budget making process. There is need for the project to re-look at its budget making process with a view to planning a realistic budget to achieve its intended objectives.

270.2. Expenditure Analysis.

The Project statement of comparison of budget and actual amounts: recurrent and development for the year ended 30 June, 2021 reflects an approved expenditure budget of Kshs. 116,000,000 and an actual expenditure of Kshs. 89,143,885 resulting to an under expenditure of Kshs. 26,856,115. The under spending of the budget by Kshs. 26,856,115 represents equivalent services budgeted for but not delivered to the residents of Kenya. There is need, therefore, for the Management to relook at its budgeting mechanism with a view to focusing on priority areas which will improve service delivery to the residents of Kenya.

Submission by the Accounting Officer

The budget under expenditure was a result of lengthy procurement processes where by the end of financial year procurement processes initiated during the year were still ongoing hence not yet paid for. The project implementing unit shall re-look at the budget making process with a view to planning a realistic budget to achieve the intended objectives.

Committee Observations and Findings

The Committee noted the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance.

Committee Recommendation

The Accounting Officer should ensure that there is a realistic revenue target and comprehensive forecasting when preparing revenue projections and expenditure outlays.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

271. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

272. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

273. As required by the International Development Association (IDA), I report based on my audit that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA SKILLS TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (EASTRIP) – GRANT/CREDIT NO. IDA 6334- KE - KISUMU NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

274. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

275. Budgetary Control and Performance

275.1. Budget Performance

During the year under review, the project had a final budget of Kshs.299,233,337 to implement various activities out of which only Kshs. 89,549,031 was expended resulting to under absorption of Kshs. 209,684,306 or approximately 70% of the approved budget. Although the Management attributes the under absorption to COVID-19 which slowed down the activities of the project, the Management has not provided measures being put in place to ensure that the planned activities that were not implemented are taken care of so that the project achieves its objectives as planned.

Submission by the Accounting Officer

The project became effective in 27th September 2019. However, the disbursement of funds to the EASTRIP implementing centers in Kenya was on 20th February 2020. Soon after this, COVID-19 pandemic struck the world. The budget was rolled over to the financial year 2021/2022 and utilized. All the activities not implemented in the FY 2020/2021 were captured in the budget and implemented. The original budget for 2021/2022 was KES 300,000,000 but was amended to Kes 509,122,906 and approved by the council to cater for the activities not implemented

275.2. Unauthorised Expenditure - Lack of an Approved Annual Workplan & Budget

During the year under review, the Management implemented the project without an approved annual work plan. The documents provided during the audit to support the workplan approvals indicated that the Board of Management signed off the Annual Work plan for 2020/2021 financial year on 9 September, 2021 which was more than two months after the end of financial year and after the implementation had been undertaken for the whole year. Further, as at the time of this audit in October, 2021, the same plan had not been approved by the National Project Steering Committee as required by Section I B of Schedule 2 of the Financing Agreement. Although the Management has explained that the delay in signing of the annual workplan was due to the delay in the constitution of the National Steering Committee, there is no evidence that the activities to be implemented were agreed on between the Kisumu National Polytechnic and the Financier as required by Section IB (2) of Schedule 2 of the Financing Agreement.

Submission by the Accounting Officer

The COVID-19 lock down was lifted on Saturday 1st May 2021, allowing for a reopening of schools and public institutions in Kenya. The National Steering Committee was therefore not constituted in time due to the strict health advisory given by the government until May 2021.

In the meantime, The Kisumu National Polytechnic has been implementing the Strategic Investment Plan approved by the Association (World Bank), and the annual budget and work plan approved by the council. The Implementation Plan incorporating the activities which were not completed in year one has now been availed.

Committee Observations and Findings

The Committee noted the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

276. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

277. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

278. As required by International Development Association and the Project Grant/Credit Number IDA-6334-KE, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA SKILLS TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (CREDIT NUMBER: IDA 6334-KE) – KENYA COAST NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

279. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

280. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

281. There were no material issues relating to effectiveness of internal controls, risk management and governance.

11. STATE DEPARTMENT FOR UNIVERSITY EDUCATION AND RESEARCH- VOTE 1065

REPORT ON THE FINANCIAL STATEMENTS

Amb. Simon Nabukwesi, the Principal Secretary and the Accounting Officer for the State Department for University Education and Research (Vote 1065), appeared before the Committee on 21st April, 2022 to adduce evidence on the Audited Financial Statements for the State Department for University Education and Research (Vote 1065) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Mr. Simon Mugambi	-	Chief Finance Officer
2.	Mr. Dan Mesis	-	Senior Deputy Director
3.	Mr. James M. Kiburi	-	Deputy Director Secretary
4.	Mr. Robert A. Samuel	-	Assistant Accountant General - HAU
5.	Ms. Diana M. Mutisya	-	Senior Principal Finance Officer
6.	Ms. Ann Mwangi	-	Principal Accountant

And submitted as follows:

Basis for Qualified of Opinion

282. Cash and Cash Equivalent – Unsupported Payments to Staff

The statement of financial assets and liabilities reflects a balance of Kshs.151,634,556 under cash and cash equivalents. However, the bank reconciliation statement as at 30 June, 2021 reflects payments in the cash book not in bank statement amounting to Kshs.75,585,300 which includes payments to various officers made on 30 June, 2021 amounting to Kshs.7,202,480. However, the amounts have been directly expensed although it should have been included in the outstanding imprest. The activities in respect of payments were not supported by the approved work plan and no details were provided for audit review indicating when the activities being paid for were undertaken.

Further, included in the amount of Kshs.7,202,480 were payments totaling Kshs.1,827,180 being claims paid to staff for various official duties undertaken. However, the payments were not supported by approvals for officers to spend own money and submit reimbursement claims. Consequently, the validity of the payments in cash book not in bank statement amounting to Kshs. 7,202,480 could not be confirmed. In the circumstances, the accuracy of the cash and cash equivalents balance of Kshs. 151,634,556 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the payments to officers on 30 June 2021 amounting Kshs.7,202,480 relates to approved expenditure for activities undertaken before 30, June 2021 but had not been settled because of delay in release of funds by the National Treasury. These claims were processed and paid when funds were received. The activities to which the claims were paid had been approved in the work plan. The payment vouchers with all the supporting details and the period when the activities were carried out have since been verified by auditors. Copies of workplan and payment vouchers have now been availed.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

283. Unsupported Payments on Rentals of Produced Assets

The statement of receipts and payments reflects an expenditure of Kshs. 171,886,718 under use of goods and services which, as disclosed in Note 5 to the financial statements, includes an amount of Kshs. 46,069,098 in respect of rental of produced assets. The schedule in support of the expenditure includes an amount of Kshs. 29,149,081 relating to payment of rent arrears for office space and service charge at Teleposta Towers. However, there was no signed lease agreements to support the amounts paid.

Further, a rent demand invoice dated 7 January, 2021 reflected an amount of Kshs. 30,844,081 comprising of outstanding amounts of Kshs. 27,409,081 and Kshs. 3,435,000 in respect of rent and service charge respectively, which differs with the reported amount of Kshs. 29,149,081 resulting to unexplained and unreconciled variance of Kshs. 1,650,000. Consequently, the accuracy, authenticity, occurrence, and rights and obligations of the payment made by the Management in respect of rental of produced assets amounting to Kshs. 29,149,081 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Payment of rent for office space and service charge of Kshs. 27,409,081.00 for offices occupied by the Ministry staff at Teleposta towers was paid based on the lease agreement signed between the state department and the landlord. The signed lease agreement supporting payment of rent has been verified by the auditors. Copies of these payments were availed for perusal by the Committee.

The invoice of Kshs.3,435,000 for car park was reconciled with the landlord and agreed that the amount payable was Kshs.1,740,000 as per the car park charges statement from the landlord. Copies were provided for perusal by the Committee.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

284. Unauthorized Motor Vehicle Repairs

The statement of receipts and payments reflects an expenditure of Kshs.171,886,718 under use of goods and services which, as disclosed in Note 5 to the financial statements, includes an amount of Kshs.7,672,305 in respect of routine maintenance-vehicles and other transport equipment. The latter balance includes payments of Kshs.1,612,518 and Kshs.636,200 that relate to services that were delivered in the prior years. However, the paid bills were not included in the previous year pending bills and were therefore not part of the 2020/2021 budget. The Management did not provide supporting documentation for approval of the additional budget or reallocation in compliance with the Public Finance Management Act, 2012. Under the circumstances, the regularity of the expenditure of Kshs.2,248,718 included in routine maintenance-vehicle and other transport equipment for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the bills amounting to Kshs.1,612,518 and Kshs.636,200 relating to services that were rendered in prior years were verified and cleared for payment in the year under review. These bills were settled in the financial year 2020/2021 as first charge as per Circular No 12/2020 (Ref: ES/03 'P'(32) dated 23rd June 2020 on guidelines for implementation of the Financial Year 2020/2021and the Medium Term Budget issued by the Cabinet Secretary, The National Treasury. The payment vouchers have been availed to auditors and verified.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to pending bills.

Committee Recommendation

The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of Section 68(2) (h) of the Public Finance Management Act, 2012.

285. Unconfirmed Transfers to Private Universities

The statement of receipts and payments reflects an expenditure of Kshs.70,296,430,177 under transfers to other Government units which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.2,729,791,600 in respect of transfers to private Universities for 59,368 government sponsored students. Further, the transfers include amounts of Kshs.28,511,777 and Kshs.48,859,704 disbursed to two (2) Universities based at Kisumu County and Machakos County, respectively. However, confirmations from the two (2) beneficiary institutions reflected amounts of Kshs. 27,681,294 and Kshs. 56,510,098 respectively, resulting to an unreconciled total variance of Kshs.6,819,910. Under the circumstances, the accuracy and completeness of transfers to private Universities of Kshs. 2,729,791,600 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Great Lakes University of Kisumu included in their confirmation an amount of Kshs.8,289,914.10 received on 24 August, 2021 (for the financial year 2021/2022) instead of Kshs.9,120,398 received on 28 June, 2021.The university has since reconciled the amount as per the now availed confirmation letter totaling to Kshs.28,511,777. The confirmation has been verified by auditors. Lukenya University also included in their confirmation an amount of Kshs.14,206,155.70 received on 23 August, 2021 (for the financial year 2021/2022) instead of Kshs.6,555,761 received on 14 September, 2020.The university has since reconciled the amounts as per the now availed confirmation letter totaling to Kshs.48,859,703.70. The confirmation has been verified by auditors.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

286. Capital Grants to Government Agencies

286.1 Unsupported Disbursements

The statement of receipts and payments reflects transfers to other Government units of Kshs.70,296,430,177 which, as disclosed in Note 6 to the financial statements, includes Kshs.2,561,890,710 in respect to capital grants to Government Agencies. During the year under review, a total of Kshs.2,315,075,027 was disbursed to Universities for various projects. However, the disbursements to the projects was not supported by expenditure summaries, valuation certificates and project status report to indicate progress of the projects. Further, monitoring and evaluation reports carried out by the State Department on the implementation of the projects by the Universities were not provided for audit review. In the circumstances, the accuracy, validity and propriety in utilization of capital disbursements totaling Kshs. 2,315,075,027 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department is implementing projects at various universities that were approved by the National Treasury and the National Assembly and uploaded to the IFMIS. These projects are at various stages of completion. Kshs.2,315,075,027 was disbursed as capital grants to public universities as per the approved budget for the financial year 2020/2021.

The Vice Chancellors and Principals of these institutions are the Accounting Officers implementing these projects. They are the ones who have procured the contractors whom they pay based on the approved valuation certificates and work done. They maintain books of accounts including the expenditure summaries which are audited independently by the Auditor General and their reports forwarded to the National Assembly. These officers are therefore responsible for prudent management of transferred grants and all resources allocated to their institutions.

The Public Finance Management Act 2012 and Public Finance Management Regulations 2015 Paragraph 52(1)(e) requires that funds budgeted as grants for transfer be issued by 15th day of every quarter. The National Treasury Circular No.12/2020 dated 23rd June, 2020, (Paragraph No.18) on Guidelines for Implementation of FY 2020/2021 Budget further required Accounting Officers to ensure compliance to the PFM Act, 2012 and Regulations, 2015 by ensuring that funds are transferred to field programmes and projects and SAGAs not later than 15th day of each quarter through the IFMIS system.

The Ministry did not carry out monitoring and evaluation of the said projects because of budgetary constraints.

286.2 Wasteful and Unauthorized Legal Costs

The statement of receipts and payments for the year ended 30 June, 2021 reflects transfers to other Government units of Kshs.70,296,430,177 which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.2,561,890,710 in respect to capital grants to Government Agencies. Included in the latter balance is a payment of Kshs.2,563,452 to the State Law Office for onward transmission to an advocate in respect of accrued interest for a court judgement on case number 240 of 2015 in which the State Department defaulted in awarded payment. However, there was no evidence of inclusion of the costs in the budget for the financial year under review or justification of charging the payment under capital grants. Further, the payment had not been included as a pending bill in the financial statements for earlier years thus its validity could not be established. In the circumstances, the accuracy and regularity of the expenditure of Kshs. 2,563,452 legal fees for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that this liability arose from a court case No. 240 of 2015 and it had to be settled to caution the Accounting Officer from being committed for contempt and to also ensure that the Government does not lose more in terms of interest that would have subsequently accrued. The Ministry requested the National Treasury for additional funding to settle the claim. The National Treasury advised the State Department to consider reviewing the approved budget and identify areas of expenditure that can be foregone to create fiscal space for this requirement. This explains why the development vote was used to settle the claim and also to ensure that the Accounting Officer is not cited for contempt of court for failure to pay.

The payment was not recognized as a pending bill because it had not been cleared for payment by the Attorney General in the Financial Year ended 30 June 2020. Documents supporting the payment have now been availed and verified by the auditors.

Committee Observations and Findings

The Committee noted the submission and explanation provided by the Accounting Officer.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015;**
ii. **The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame;**
iii. **The Accounting Officers must at all times ensure that they prepare estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of Section 68 (2)(h) of the Public Finance Management Act, 2012.**

287. Use of Goods and Services

The statement of receipts and payments reflects an expenditure of Kshs.171,886,718 under use of goods and services which, as disclosed in Note 5 to the financial statements, includes an amount of Kshs.3,828,346 in respect of foreign travel and subsistence. However, the entire amount Kshs. 3,828,346 related to domestic travel and allowances paid to staff for non-foreign travel activities. Further, the expenditure of Kshs.171,886,718 under use of goods and services includes an amount of Kshs.6,646,753 relating to hospitality supplies and services which includes an amount of Kshs.1,898,900 paid as allowances to officers for undertaking their daily duties. Under the circumstances, the accuracy and propriety of the expenditure totaling Kshs. 5,727,246 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the State Department had requested for re-allocation of funds as per letter Ref: MOE/11/1(146) and circular Ref:MOE/11/1(235). The National Treasury advised the State Department to utilize available balances in order to clear the negatives that resulted from the budget cuts during supplementary I and II budget revision.

The State Department utilized Kshs.1,898,900 as allowances to the members of the standing committee on the administration of the international scholarships whose membership was drawn from the state department, agencies and the ministry of foreign affairs. The committee is charged with the responsibility of advertising scholarships declared by foreign countries, shortlisting of the applicants, interviewing, and nominating the successful candidates for the award of the scholarships. The appointment letters for the committee members have been forwarded to the auditors and verified.

Committee Observations and Findings

The Committee observed that the submission and explanation belatedly provided by the Accounting Officer eventually addressed the audit query.

Committee Recommendation

The Committee however admonishes the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

288. Other Grants and Transfers – Irregular Payment of Allowances

As disclosed in and Note 7 to the financial statements, the statement of receipts and payments reflects Other Grant and Transfers amounting to Kshs.252,156,072 which relates to scholarships awarded by the State Department. However, the amount includes payments amounting to Kshs.7,692,235 paid as allowances for other activities that are not scholarships.

Under the circumstances, the accuracy and validity of other grants and transfers amounting to Kshs. 7,692,235 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the State Department had requested for re-allocation of funds as per letter Ref: MOE/11/1(146) and circular Ref: MOE/11/1(235)**.** The National Treasury advised the State Department to utilize available balances in order to clear the negatives that resulted from the budget cuts during supplementary I and II budget revision.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

289. Budget and Budgetary Control

The summary statement of appropriation - recurrent and development combined indicates that the State Department budgeted for receipts amounting to Kshs.92,198,406,430. However, actual receipts amounted to Kshs.83,061,859,870 resulting in a shortfall of Kshs.9,136,546,560 or 10% of the budgeted amount. The shortfall was mainly attributed to low realization of the budgeted AIA which had a shortfall Kshs.8,778,039,893. Similarly, the State Department had budgeted to spend a total of Kshs.92,198,406,430. However, actual payments amounted to Kshs.83,058,727,533 resulting in an under expenditure of Kshs.9,139,678,897 or 10%. The under expenditure mainly occurred under use of goods and services. The shortfall and under absorption implies that the State Department's planned activities were not realized in the year under review.

Submission by the Accounting Officer

The Accounting Officer submitted that the under collection of receipts was majorly caused by under collection of AIA by Public Universities due to COVID-19 pandemic which led to closure of the institutions. Decline in enrolment of self-sponsored students in these institutions also led to under collection of AIA. The Accounting Officer further submitted that the under expenditure was majorly caused by under collection of AIA by Public Universities and SAGAs due to COVID-19 pandemic which led to closure of the institutions. Decline in enrolment of self-sponsored students in these institutions also led to under collection of AIA.

Committee Observations and Findings

The Committee noted the submission and explanation provided by the Accounting Officer.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

290. Compensation of Employees

290.1 Irregular Payment of Special Duty Allowance

The statement of receipts and payments reflects an expenditure of Kshs.209,477,209 under compensation of employees which, as disclosed in Note 4 to the financial statements, includes an amount of Kshs.68,378,859 being personal allowances paid as part of salary. Included in personal allowance paid as part of salary is an amount of Kshs.1,264,120 paid as special duty allowance to twenty-four (24) officers between February and June, 2021. However, thirteen (13) of the twenty-four (24) officers were paid the special duty allowance for six months starting March, 2020. This is contrary to Section C.15 of the Public Service Human Resource Policies and Procedures Manual, 2016, which states that the payment of special duty allowance will not be payable to an officer for more than six (6) months. Under the circumstance, the regularity of special duty allowance of Kshs. 1,264,120 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that according to the Human Resource Policies and Procedures Manual 2016 C15, when an officer is called upon to perform duties of a higher post, he shall be paid Special Duty Allowance at the rate of fifteen per cent (15%) of the Officer's basic salary. The payment of special duty allowance recommended by the Human Resource Management Advisory Committee and approved by the Authorized Officer as per minutes of Ministerial Human Resource Management Advisory Committee which have been availed to auditors and verified.

On the issue of thirteen Officers who had been paid the allowance in the year 2019/2020 the Officers had been called upon to perform the duties of the higher posts. The higher positions had not been filled by the relevant authorities therefore they continued to perform those duties. Due process of paying them was followed as per the minutes.

290.2 Entertainment Allowance

The expenditure of Kshs.68,378,859 in respect of personal allowances paid as part of salary includes an amount of Kshs.172,800 paid to two (2) officers' in job group "R" and" S" as entertainment allowance. This is contrary to Paragraph C.12 of the Public Service Human Resource Policies and Procedures Manual, 2016 which states that entertainment allowance is payable to officers in job group "T"," U"," and V". Further, the payment of the entertainment allowance was not approved by the Salaries and Remuneration Commission (SRC). Under the circumstances, the State Department is in breach of the Human Resource Policies and Procedure.

Submission by the Accounting Officer

The Accounting Officer submitted that Kshs.172,800 was paid to two (2) Officers who are State Counsels deployed from the Attorney General's Office. To ascertain that the Officers merit for the allowance, the circular letter from the Office of the Directorate of Personnel Management dated 12th September, 2000 to Solicitor General approving payment of this allowance has been availed. The circular supporting payment of this allowance has been verified by auditors.

290.3 Unapproved Positions in the Establishment

A review of the staff establishment record made provided for audit review, indicated that the State Department had a staff strength of 163 officers placed in the 70 different designations/positions. However, a comparison with the Public Service Commission approved establishment for the State Department revealed that 31 designations/positions held by 131 officers were not approved by the Public Service Commission. This is contrary to Paragraph 5.0 of the Public Service Commission, circular referenced PSC/SEC/93/37/Vol. IV/37 dated 30 July, 2018 which states that the Commission should establish and abolish offices in the public service. Proposals on review of the staff establishment should all be approved by the Commission in consultation with the Authorized Officer. Under the circumstances, the salaries and benefits paid to the 131 officers for the period they occupied those unauthorized positions did not constitute a proper charge to public funds.

Submission by the Accounting Officer

The Accounting Officer submitted that the Public Service Commission reviewed the Organizational Structure and Staff Establishment of the State Department vide the letter reference PSC/5/2/(4) of 12th May,2021. After the review, the staff Establishment was reduced from 250 to 116 thus causing the above scenario. The State Department wrote to the Public Service Commission by letter Ref No.MOHEST/CONF/1/4 VOL II(112) dated 21st December 2021 requesting for a review for the staff Establishment to increase authorized establishment to 328 and the state department is waiting for the commission's response on the matter.

Committee Observations and Findings

The Committee observed that the submission and explanation belatedly provided by the Accounting Officer eventually addressed the audit query.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

291. Proposed Construction of Design and Manufacturing Block at Dedan Kimathi University of Technology

The statement of receipts and payments reflects transfers to other Government units of Kshs.70,296,430,177 which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.2,561,890,710 in respect to capital grants to Government Agencies. Included in the latter balance is an amount of Kshs.90,000,000 paid to a contractor implementing the Project. The project duration was twenty-four (24) months commencing on 5 July, 2020 and ending on 5 July, 2022. However, only one certificate for work done of Kshs.113,881,398 or about 12.25% has been approved an indication that the project has delayed and its completion by 5 July, 2022 is doubtful. The project delay has also denied services to the intended users.

Submission by the Accounting Officer

The Accounting Officer submitted that the contractor took over the site and noted adverse site conditions which necessitated redesigning of the foundation from a raft to a piling foundation. Works was suspended due to adverse ground conditions from 23rd September 2021 to 3rd January 2022. Piling Works commenced on 3rd January 2022 and was scheduled for completion on 28th April 2022. Due to the above effects, the contractor had proposed that the project completion date be revised to 31st July 2023 as per minutes.

Committee Observations and Findings

The Committee observes that the Accounting Officer did not provide an update as at the time of writing this report.

Committee Recommendation

The Committee recommends that the Accounting Officer provides a status update to the Committee within three (3) months of adoption of this report.

292. Delayed Completion of Projects

Review of records revealed that sixty-one (61) Projects with a cost of Kshs.56,505,466,339 were being funded by the State Department. The planned completion dates for six (6) projects was 30 June, 2019, eighteen (18) projects had a completion date of 30 June, 2020 while nine (9) projects had a completion date of 30 June, 2021. However, all the thirty-three (33) projects with a cumulative expenditure of Kshs.7,524,206,477 had not been completed by December, 2021. Under the circumstances, the intended users have not obtained any benefits from the projects.

Submission by the Accounting Officer

The Accounting Officer submitted that there were budget cuts (budget rationalization) on development funding for the last three financial years. This has slowed down implementation of the projects and affected the completion rates, hence delaying the completion dates.

In the FY 2020/2021 the development budget was rationalized by Kshs.2 billion as per copy of Vote D1065, State Department for University Education, Revised Development Expenditure Estimates 2020/2021. The ministry had requested the National treasury for additional funding to facilitate completion of these projects.

Committee Observations and Findings

The Committee observes that the Accounting Officer did not provide an update as at the time of writing this report.

Committee Recommendation

The Committee recommends that the Accounting Officer provides a status update to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

293. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS

SUPPORT TO ENHANCEMENT OF QUALITY AND RELEVANCE IN HIGHER EDUCATION, SCIENCE AND TECHNOLOGY PROJECT (ID ON. P-KE-IAD-001-LOAN AGREEMET NO.2100150027993)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified opinion

294. Inaccuracies in the Financial Statements

Review of financial statements presented for audit for the year ended 30 June, 2021 under the project information and overall performance for the current year contradicts the previous year's information as it shows the cumulative receipts have declined from 28,184,468 unit of accounts to 27,270,803 unit of accounts yet the statement of receipts and payments reflects receipts of Kshs. 61,795,785 that should have increased the cumulative receipts in donor currently. Consequently, the accuracy of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the government of Kenya was granted a Loan of 28,000,000 (Units of Account -UA) from the African Development Bank (ADB). To date the bank has disbursed UA 27,270,803 which has been utilized by the project in implementing its activities. The project received Kshs.61,795,786.35 in the financial year 2020/2021 which is equivalent to

UA 418,985.46. the amount was paid to suppliers and is included in the total amount of loans accessed to date (UA 27,270,803).

The figure of UA 28,184,468 included in the project information and overall performance (Source of funds) section in the financial statements of the financial year 2019/2020 was erroneous as the Government of Kenya had not received any additional funding under the loan. The total amount of the loan still stands at UA 28,000,000. The unspent balance to be cancelled is UA 729,198**.**

The opening balances for purchase of specialized plant, equipment and machinery have been restated hence reconciling the donor and project account as per the statement of account from the donor which has been verified by auditors.

Committee Observations and Findings

The Committee noted with concern the inability of the State Department to perform basic accounting functions.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**

ii. **The Accounting Officer must institute internal administrative action on responsible officers and report to the Committee within one (1) month of adoption of this report.**

295. Defects and Delays in Delivery of Equipment to Various Universities

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects an expenditure of Kshs.61,795,785 under acquisition of non-financial assets which includes an amount of Kshs.47,697,805 relating to purchase of specialized plant, equipment and machinery. As previously reported, the Project entered into supply contracts with various vendors for supply 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, 2021, the Project's cumulative expenditure from 2013/2014 financial year on procurement of specialized plant, equipment and machinery totaled Kshs.2,617,434,820 from. However, records provided for audit revealed that the project was expected to end by 30 June, 2021 and that equipment totalling Kshs.112,598,346 was rejected by the respective Inspection and Acceptance Committees. The 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 the suppliers, 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, it is not possible to confirm the accuracy of the cumulative expenditure of Kshs.2,617,434,820 reported under purchase of specialized plant, equipment and machinery as at 30 June, 2021. In addition, the Project may not have been completed by the expected date of 30 June, 2021 delaying service delivery to the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that the issue of rejected equipment has been handled by the Public Accounts Committee in the Financial reports of the project for the financial years 2016/17, 2017/18, 2018/19 and 2019/2020 and the committee has pronounced itself that the explanations provided by the Ministry was reasonable and therefore the issues were resolved.

Committee Observations and Findings

The Committee noted that this matter was discussed in the FY 2016/17, 2017/18, 2018/19 and 2019/2020 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.

Other Matter

296. Budgetary Control and Performance

The Statement of comparative budget and actual amounts reflects similar figures for final budget and actual expenditure on comparable basis of Kshs. 256,634,610 and Kshs. 73,165,955 respectively resulting to under collection and under-expenditure of Kshs. 183,468,655 or 71% of the budget for the year. Consequently, the project activities may not have been implemented as planned delaying service delivery to the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that the budget for the financial year 2020/2021 was Kshs. 240,000,000. This budget was however, only availed under supplementary 11 budget which was available to the Project in the Month of June, 2021.

Due to slowing down of most activities occasioned by COVID 19 pandemic, a number of activities were constrained and could not be completed in time and this caused the under absorption of the budget.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

297. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

298. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

299. As required by the African Development Fund and financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project financial statements are in agreement with the accounting records and returns.

ESTABLISHMENT OF KENYA ADVANCED INSTITUTE OF SCIENCE AND TECHNOLOGY (KAIST) PROJECT NO. KEN-4

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

300. Acquisition of Asset

The Project's financial records show that the project has been ongoing for four (4) years since the signing of the loan agreement on 28th December, 2017 and accumulated expenditure amounting to Kshs. 1,843,831,137. However, site visit made on 7 October,2021 revealed that there is nothing tangible on the ground in terms of construction of any form. Further, it was noted that despite there being no evidence of activities on the ground, the financial records reflected buildings and structures valued at Kshs. 461,135,997.00.

Notwithstanding the delay in implementing for the Project the Government of Kenya as per the requirement of Article 1 Section 1.02 on general terms and conditions of the loan agreement, ought to have made four (4) semi-annual consecutive repayments of the loan on February, 2020, August, 2020, February, 2021, and August, 2021. It is evident that there is interest being charged on loan even though there is no tangible benefit there from money received by the Project. Although the Management indicated that the Contractor has taken over the site, subsequent to the auditors visit on 7 October 2021, no site handover report was provided to support the commencement.

Submission by the Accounting Officer

The Accounting Officer submitted that during the said project site visit, the Auditors from the Office of the Auditor General were accompanied by the project coordinator. The contractor was on site putting up the temporary offices and excavation of the ground for the construction of the project. The payment of Kshs.461,135,997 was for the development of designs for the project. The designs were completed and approved and the consultant was paid as per the contract. This expenditure was capitalized and captured in the Financial Statements under building and structure instead of being classified as work in progress. This error will be corrected in the financial statements of the Financial Year ending 30 June 2022.

Out of Kshs.1,843,831,137, Kshs.1,382,695,140 was paid in the financial year 2020/2021 (as per the terms of the contract) being advance payment of 20 percent of the contract sum (Kshs.1,300,564,388) which was paid to the main contractor on 30th June 2021 as per the payment voucher and Kshs.82,130,752 being payment for the designs. The contracts for the consultancy, the main contractor and the quarterly progress report have been verified by the auditors.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide a plausible reason for the delayed execution of the project.

Committee Recommendation

The Committee directs the Accounting Officer to provide a status report on the completion of the project within three (3) months of adoption of this report.

301. Purchase of Goods and Services

The statement of receipts and payments and Note 3 of the financial statements reflect purchase of goods and services amounting to Kshs. 77,779,821. However, consultancy services paid from the Project funds amounting to Kshs. 24,135,000 related to construction of physical science laboratories phase 1 which is a different Project. Further, the fuel and lubricants expenditure amounting to Kshs. 8,151,530 charged to project expenditures yet the motor vehicles were used by the Ministry officials. In addition, the routine maintenance of other assets amounting to Kshs. 3,368,275 was charged to the Project yet it owns no assets. Also, the domestic travel cost of Kshs. 24,661,068 could not be linked to Project activities. Consequently, the accuracy and validity of payment in respect to purchase of goods and services amounting to Kshs. 77,779,821 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that KAIST project is implemented by the Ministry of Education through the State Department for University Education and Research. The project implementation committee consist of members who are also officers of the Ministry.

i. The payment of Kshs. 24,135,000 in relation to construction of physical science laboratories phase 1 was made from the government of Kenya component of KAIST project budget since the budget for the physical labs phase 1 project was not sufficient. The state department utilized Kshs. 24,135,000 from KAIST project to clear the pending payment due to the contractor to avoid accumulation of interests and penalties. The state department had requested for reallocation of funds from KAIST project to the Physical labs phase1 through supplementary 11 budget project. This reallocation was approved by the National assembly in June 2021.

ii. The fuel and lubricants expenditure amounting to Kshs.8,151,530 charged to the project expenditures related to the expenses for the motor vehicles that were being utilized to carry out project activities by the ministry officials. The payment vouchers supporting the purchase of fuel and other documents supporting the consumption of fuel have been verified by auditors.

iii. The routine and maintenance expenditure amounting to Kshs.3,368,275 that was charged to the project relates to the repairs and maintenance of motor vehicles which were involved in the project activities. Payment vouchers and relevant supporting documents have also been verified by auditors.

iv. The state department started the process of developing the curriculum for KAIST University to facilitate application for accreditation by the Commission for university education during the financial year under review. A proposal for the establishment of KAIST University was developed. Part of Kshs.23,661,068 was utilized to cater for the domestic travelling expenses for officers who were involved in carrying out the above activities. Kshs.6,244,770 was utilized as reimbursement to KONZA Technopolis Development Authority (KoTDA) who is the agency appointed to manage and coordinate preliminary activities for establishment of KAIST University to cater for travelling and subsistence expenses they incurred.

The project also procured the main contractor during the year under review, the bids were evaluated, the contract was negotiated and review of architectural designs were also done during the year under review. The costs incurred in these activities also form part of travelling and subsistence allowances of Kshs. 23,661,068. The payment vouchers supporting the expenditure have been verified by the auditors.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer, although provided late after audit.

Committee Recommendation
The Committee admonishes 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.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

302. Project Motor Vehicles
The Project Management unit procured two high-end vehicles with a total value of Kshs.25,030,030 for use by the project in executing project activities. However, the vehicles were not used for project activities but were used by Ministry's officials for non-project activities. This is contrary to Public Finance Management Act, 2012 section 72.(1)(3) which states that, the accounting officer for a National Government entity shall not loan or transfer assets to any person or organization or permit any person or organization to use assets for purposes other than carrying out the functions of the entity, except in accordance with an Act of Parliament enacted pursuant to Article 227 of the Constitution.

Further, the use of the motor vehicles also contravenes Regulation 139.(1) Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer of a national government entity shall 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 movement and conditions of assets can be tracked. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that two project vehicles were procured for the project activities and were being used by the Ministry officials while undertaking the project activities. The state department has taken full responsibility and has ensured that internal control systems exists for these vehicles, preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse as per the prevailing government regulations.

Committee Observations and Findings

The Committee observed that the Accounting Officer's explanation was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

303. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

304. As required by Economic Development Cooperation Fund Loan Agreement No.KEN-4 I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

EASTERN AND SOUTHERN AFRICA HIGHER EDUCATION CENTERS OF EXCELLENCE (ACE II) PROJECT (CREDIT NO. 5798-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

305. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

306. Loss of Project Vehicle

As previously reported, and as disclosed in Annex 2- the Summary of Fixed Assets to the financial statements reflects a balance of Kshs.26,165,933 in respect of acquisition of non-financial assets on page 25, out which Kshs.22,180,900 relates to purchase of vehicles and other transport equipment. Available information indicates that the management acquired a project vehicle-Toyota Fortuner Registration No.GK B193V at a cost of Kshs.8,355,900 in May, 2019. However, physical verification and motor vehicle records revealed that the vehicle was missing. The Project Management explained that the vehicle was stolen, within days after purchase, in a carjacking incident and this was reported to the police.

In the circumstance, the Accounting Officer may not have put adequate measures to safeguard project assets and consequently the citizens will not derive value from this vehicle.

Submission by the Accounting Officer

The Accounting Officer submitted that this matter was responded to in our response to the report of the Auditor General on the financial statements of the Financial Year ended 30 June, 2019, tabled before the Public Accounts Committee in its sitting of 15th October 2021. The State Department is waiting for the recommendation of the committee for implementation.

Committee Observations and Findings

The Committee noted that this matter was discussed in the 2018/19 and a recommendation issued therein.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

307. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

308. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

309. As required International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project’s financial statements are in agreement with the accounting records and returns.

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

Unmodified Opinion

310. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

311. Budgetary Control and Performance

During the year under review, the project had an approved budget of Kshs.140,745,572 and actual receipts of Kshs.205,306,488 to implement various activities. Out of the receipts, an amount of Kshs.97,352,344 or approximately 47% of the total receipts was expended resulting to under absorption of Kshs.107,954,144 or approximately 69% of the approved expenditure.

The Management attributed the under absorption to low enrolment of foreign students, late accreditation of courses due to COVID-19 restrictions which slowed down the activities of the Project, delayed procurement of equipment and delays in receipt of other foreign grants. The low absorption of funds clearly indicates some of the planned project activities were not implemented and this would lead to delayed project implementation. The Management indicated that the project shall be implemented as planned through a nonfunded extension of the project of one year. However, no documentary evidence was provided in support of the request or approval for the extension.

Submission by the Accounting Officer

The one-year extension of the Project was granted due to the negative effects of the COVID-19 pandemic which disrupted the planned project activities. The communication on the extension was done by the World Bank vide a letter dated 19th July, 2021 and Aide Memoire on the Virtual Technical and Advisory Meeting (June 7-11, 2021) and Regional Steering Committee Meeting (June 17-18, 2021).

Now availed were the Aide Memoire for the two meetings as evidence. Please refer to Paragraph II of the Aide Memoire that shows the Key Project Data and has the revised Project Closing Date of December 31, 2023. Kindly also refer to the first bullet on page 2 of the letter from the World Bank dated 19th July 2021 which states as follows:

> ***"The counter-signed amendment letters have now been received from all eight participating countries, thus concluding the Project restructuring, which has enabled disbursement as per the revised allocations for DLRs and project extension by 12 months…."***

The COVID-19 pandemic led to delays in implementation of the project activities due to restrictions in travel and other measures that were taken to stop and contain the spread of COVID-19. However,despite these delays, the project has strived to complete the planned activities within the envisagedtimelines. As at the close of the financial year ended 30th June 2022, the Project had achieved an overall DLRStatus of 89%.

Table D in the financial statements shows the DLR Status of the respective DLRs that were set for the Project as per the signed contract, with 11 out of the 15 targets having a percentage achievementof 80% and above.

The project had an approved budget of Kshs. 144,731,861 and actual receipts of Kshs. 225,609,176 to implement the activities for the year. The variance between the budget and the actual receipts was due to late receipt of Kshs. 87,051,520 in the last quarter towards the end of the financial year, which the project could, therefore, not absorb within the year due to the short duration between receipt of the funds and the close of the financial year. Consequently, the funds were incorporated in the budget for the financial year 2022-2023 in order to absorb them as required.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

312. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

313. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

314. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

AFRICA CENTRE OF EXCELLENCE (ACE II) IN PHYTOCHEMICALS, TEXTILES AND RENEWABLE ENERGY (PTRE) PROJECT (IDA CREDIT NO. 5798-KE) – MOI UNIVERSITY

REPORT ON THE FINANCIAL STATEMENTS
Unmodified Opinion

315. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

316. Budgetary Control and Performance

The Africa Centre of Excellence in Phytochemicals, Textiles and Renewable Energy (PTRE) Project budgeted to receive and spend a total of Kshs. 347,524,796 in implementation of Phytochemicals, Textiles and Renewable Energy (PTRE) projects during the financial year ended 30 June, 2021. However, budget utilization during the year was as follows:

Receipts /Payments	Budget (Kshs.)	Actual (Kshs.)	Difference (Kshs.)	Utilization %
Total Receipts	347,524,796	167,920,595	179,604,201	48%
Total Payments	347,524,796	151,099,847	196,424,949	43%

The under absorption is an indication that not all planned projects and programmes were implemented by the Africa Centre of Excellence as planned in the financial year.

Management Response

Key project data that states the project revised closing date is December 31st, 2023. It also indicates the original closing date of December 31st, 2022.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

317. Single Sourcing for Accreditation Services

The statement of receipts and payments reflects purchase of goods and services of Kshs. 105,798,067 which include education capacity and development impact expenses of Kshs. 6,919,398 as disclosed under Note 11.4 to the financial statements. Included in the education capacity and development impact expenses of Kshs.6,919,398, is a payment of Kshs.1,063,078 to a firm to carry out accreditation of two programs, PhD in Textile Engineering and PhD in Energy Studies vide Tender Number MU/RFP/02/2019-2020 dated 7 January, 2020. However, perusal of the tender file availed for audit showed that, although five tender documents were sent out, only one bidder responded and the project management went ahead to evaluate the only bidder, instead of cancelling the advertisement and making another advert for at least three bidders to respond in order to procure the service at a competitive price.

Submission by the Accounting Officer

Five firms were offered to bid through restricted tendering and one bidder responded. The Public Procurement and Asset Disposal Act, 2015 and its Regulations, 2020 are silent in the process of evaluating the only one responded bidder. In this case, the best practice and as provided in the general procurement manual from Public Procurement Authority enables the procurement evaluation committee to process the only received bid as per the tender criteria and within the approved budget estimates.

This was the case with the procurement of M/S Aqas Agency for Quality Assurance, Cologne Germany, for the provision of International Accreditation of PhD programmers under ACEII-PTRE. There was no reason within the law to give the responsive bidder for the cancellation/ termination of the tender process.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

318. There were no material issues relating to effectiveness of internal controls, risk management and governance.

12. STATE DEPARTMENT FOR EARLY LEARNING AND BASIC EDUCATION – VOTE 1066

REPORT ON THE FINANCIAL STATEMENTS

Mr. Julius Juan, the Principal Secretary and the Accounting Officer for the State Department of Early Learning and Basic Education (Vote 1066), appeared before the Committee on 12th May, 2022 to adduce evidence on the Audited Financial Statements for the State Department for Early Learning and Basic Education (Vote 1066) for the Financial Year 2020/2021. He was accompanied by the following officers:

1. Mr. Paul Kibet - Director of Education
2. Mr. Stephen N Muthuma - Senior Principal Finance Officer
3. Mr. Abdi Mowlid Abdi - Deputy Director DSNE
4. Mr. Brian Kusimba - Director ICT
5. Mr. Moses K Mwangi - Assistant Director Education
6. Ms. Regina Kanayi - Director Supply Chain Management
7. Mr. E. Mukira Gichigo - Deputy Accountant General

And submitted as follows:

Basis for Qualified Opinion

319. Subsidies

As disclosed in Note 7 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2021 reflects subsidies to Public Corporations of Kshs. 59,543,457,045. The following anomalies were noted in respect of disbursement to schools;

319.1 The subsidies to Public Corporations include subsidies to 9,024 Secondary Schools amounting to Kshs. 36,739,481,231. However, the data on the number of students per school per county at any time of disbursement could not be verified. The reason for non-verification was due to inability to access the student enrollment data in the National Education Management Information System (NEMIS) as a result of restrictions by the management. The failure to grant access to the system contravenes Section 9(e)(i) of the Public Audit Act, 2015 which states that without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out his or her duties effectively, the Auditor-General, or an officer authorized for the purpose of this Act, shall have powers of unrestricted access to (i) all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution; (ii) any property or premises used or held by State Organs or public entities covered by Article 229 (4) of the Constitution and subject to audit under this Act. It was therefore not possible to validate the data used for disbursement of subsidies to schools.

Submission by the Accounting Officer

The Accounting Officer submitted that the auditors were given the responsibility of a Super user to access the system. However, the State Department has realized that the system could not generate some of the specific reports that the auditor required. The system is being reengineered to incorporate tailored reports as per emerging requirements.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to subsidies was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

319.2 The management disbursed Kshs. 57,029,236,841 as subsidy for free day Secondary School. However, the disbursement schedule Included payments amounting to Kshs.137,084,111 made to 225 Secondary Schools whose bank account numbers format differed significantly from the format of bank accounts for banks supported by the national banking system. In addition, there was no confirmation receipts from the benefiting schools. It was therefore not possible to confirm whether the schools bank account numbers were correctly captured and the concerned received the funds.

Submission by the Accounting Officer
When NEMIS started, schools were the source of information. Schools were allowed to enter their bank account numbers. The bank accounts in question are accounts that have commas, special characters among others. Some of these errors in the bank accounts of some of the banks are corrected by the banks during disbursement. Since no rejections had been received in this regard, the state department had assumed that all bank accounts are correct.

The discrepancies appear to recur in each disbursement within the financial year under review because rejections had not been received from the banks so it was assumed that the accounts were correct. Having been notified by the auditors in this regard, the bank accounts for the schools noted by the auditors have since been corrected on NEMIS.

Committee Observations and Findings
The Committee observed that the accounts for the mentioned schools have since been corrected.

Committee Recommendation
The Committee recommends that the matter is resolved.

319.3 The capitation disbursement report provided for audit verification included an amount of Kshs. 8,284,401 that was disbursed to schools that had same bank accounts numbers even though the names and sub county of the schools were different indicating an error in the funds transmission. The anomaly was not explained and there was no evidence of refunds provided to indicate correction of the error.

Submission by the Accounting Officer
In the July 2020 capitation, some schools were noted to have the same bank accounts. The error occurred during keying of bank accounts on NEMIS by schools. Upon disbursement, the state department received rejections from banks. The correct bank accounts were determined and provided to the banks for crediting of the funds.

S/no	School	Incorrect A/C	Correct account

	Gakoe	0360279621897-KCB-Thika	1102113263-KCB Thika
	Olesharo	0360279621897-Equity bank Narok	0360279621897-Equity bank Narok
	Kangaru Mixed	000000000-Coop-Kutus	01139035262400 Coop- Kutus
	Misemwa	000000000-National bank-Kitale	010250023191900-National bank -Kitale

Correction of the accounts has been done on NEMIS.

As for Magutu (UIC MZ4E) and Magutu Girls (UIC J7JK), one school was a duplicate of the other. Both MAGUTU and MAGUTU GIRLS is the same schools but funds were not remitted to MAGUTU (UIC MZ4E). The school was double entered in the NEMIS system and one has since been deleted.

Committee Observations and Findings
The Committee observed that necessary adjustments on the data has since been made in NEMIS.

Committee Recommendation
The Committee recommends that the matter is resolved.

319.4 The management disbursed amount totaling Kshs. 638,435,316 to secondary schools in October 2020. The amount comprised of 3808 schools in respect of operation account and 3810 schools in respect of tuition account. Although the management explained the amount were as a result of some schools that had not received their earlier capitation monies for reasons that they had not updated form one admissions data in the NEMIS system together with unexplained loss of data in the system, the basis of identification of the beneficiary schools were not supported by any documentation in form of claims from the benefiting schools or evidenced by any duly approved management report or exception report from the system to indicate that the benefiting schools had not received the earlier disbursement.

Further, a sample of the schools included in the list receiving this disbursement had been included in the schools that had received their regular disbursement on time and therefore the payment was a duplication. The management did not provide explanation for the anomaly.

In addition, payments made to 31 schools were made to bank account whose format did not conform to the National banking system of coding and although the Management of the schools receiving capitation funds are required to upload an acknowledgement receipt in the system, as evidence of receipt of funds in the school's bank account, none of the listed schools raised an acknowledgement receipt in the system.

Submission by the Accounting Officer

Schools operate within an academic year and they continuously update their data on NEMIS. Variance in data is as a result of natural attrition, transfers and update of records especially for learners who initially had no birth certificates but obtain these documents in the course of the year. When schools closed due to COVID-19 in March of 2020, some had not completed registering form one students on NEMIS. The amount of Kshs. 638,435,316 to secondary schools in October 2020 was due variance in the enrolment owing to some schools having not updated their data on time.

The basis for identification of the beneficiary schools was complaints that were received from the affected schools. ICT department had provided data from NEMIS showing schools data in August and October 2020.

It was true that some schools that had been included in this disbursement had received the regular disbursement. However, on the disbursement for the whole year, (i) the enrolment for the disbursement of October 2020 is low because it is only the variance being provided (ii) Because it is the variance being considered, a school will appear in both October and July disbursement if it had a variance to be compensated (iii) the total of enrolment in July and October does not exceed the enrolment for the subsequent disbursements.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to disbursement to secondary schools was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

319.5 The subsidies to Public Corporations include an amount of Kshs.22,140,000 paid to 82 secondary schools in the Arid and Semi-Arid land (ASAL) areas each receiving Kshs.270,000. Management explained that the money was meant for the support of the needy students in the ASALs. However, no documentation was provided to support the basis of identification of the needy schools. Further, no policy guidelines or directives were provided to support the commitment and payment of these funds by the Ministry. In addition, there was no acknowledgement of receipt of these funds from the benefiting schools.

In the circumstances, the accuracy and validity of subsidies to Public Corporations of Kshs.59,541,584,343 could not be confirmed.

Submission by the Accounting Officer
The fund is provided to selected secondary schools found in counties classified and gazette as Arid and Semi- Arid Lands. The fund is meant to mitigate the effects of drought and supplement the school's budget. The fund is also intended to enhance equity and improve access and quality of secondary education.

The identification of the schools is done by the County Education Board (CEB) and names forwarded to the ministry headquarters. Policy Document detailing the criteria of disbursement has now been availed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to subsidies to secondary schools in ASALs was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

320. Transfer to Other Government Units

The statement of receipts and payments reflects transfers to other Government units of Kshs. 26,249,256,281. The following observations were noted with regard to these transfers.

320.1 During the year under review the management disbursed a total of Kshs.834,403,799 to 1,933 schools which shared the same Teachers Service Commission school identification numbers even though the name of the schools and the resident sub counties were different. The management did not explain the cause of the anomaly.

Submission by the Accounting Officer

At inception of FPE, schools were identified using TSC codes. By then, some public primary schools were not registered with the Ministry of Education.

The TSC code used to identify schools as follows:

- First 3 digits representing the county
- Next 3 digits representing the sub-county
- Last 3 digits representing the specific schools

Those schools which were registered yet to receive their TSC codes were captured using the first 6 digits (representing the county and the sub county), followed by the word NEW as they awaited to be issued with the school code. The Department has since rectified the anomaly in the FPE disbursement system and all schools have unique TSC codes.

Moreover, all Public primary schools receiving FPE are now duly registered by the Ministry of Education and have been assigned NEMIS codes. The FPE disbursement system has now been reconfigured to ensure that it will always include the schools' NEMIS codes as one of the identifying codes for all schools. The list of the schools queried and their NEMIS codes have been availed.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Transfer to other Government Units was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

320.2 The transfers to other Government units balance includes Kshs. 7,759,910,950 disbursed to primary schools. The guidelines for disbursement include a condition that the school holds a uniquely identifiable bank account in a reputable bank. However, it was observed that disbursement totaling Kshs.2,690,020 were made to 12 primary schools that shared the same bank account numbers in NEMIS system implying there could have been duplication in disbursement. No explanation for this discrepancy has been made.

Submission by the Accounting Officer

All the queried schools ‘’that have similar ‘’ bank account numbers bank with the Kenya Commercial Bank. Information obtained from the Relations Manager, KCB and the Public Sector, the bank indicates that the problem could have arisen when the banks’ branches were not fully digitized. Individual branches were given a book with listed account numbers and the branch would allocate the account numbers to customers upon requests for new accounts. Since the same record was not shared with every branch, it was possible to have the same account number being shared by different customers in different branches, but the differentiator was the branch code which had to be used in every transaction.

The system has since been changed when the bank became fully digitized. Currently, the account numbers are system generated, eliminating the possibility of the same numbers being generated twice. The old account numbers were interlinked with the newly generated account numbers. Thus, even when the department continued to use the old generation account numbers, schools have been receiving their money.

Going forward, the Department has written to the bank so that it can be given a list of all new school bank accounts so as to replace the old system account numbers from the records. A copy of a letter signed explaining this and giving the new bank account numbers that have been assigned to the schools whose accounts were queried has now been availed. In addition, please find bank statements from the schools whose accounts were queried for the year 2021.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Schools with Bank Accounts that have been queried was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

320.3 During the year, the special needs schools were paid an amount of Kshs. 684,722,561. However, the enrolment data used reflected variances in the number of students used as a basis for disbursement computation of the disbursement. The disbursement for the period January to March 2021 was Kshs.98,049,471 comprising of two disbursements. The first disbursement was in respect of 17,508 pupils which amounted Kshs. 56,773,571 while the enrollment for top-ups or second disbursement was based on 17,946 pupils and amounted to Kshs. 41,275,800. The variance of 438 pupils has neither been explained nor reconciled.

Submission by the Accounting Officer
The State Department disbursed SNE grants to Special Needs Schools in 4 quarters in the FY 2020/2021. It also disbursed FPE Top-Up to schools once in the month of March the same year. In January/February, 2020, the Ministry requested the Regional Directors of Education (RDEs) to provide data on enrolment in the SNE institutions. The Ministry also conducted field visits for enrolment verification in March 2020. Both data was received, analyzed and used to update the 3rd Quater grants which was prepared on 12th January 2021. The FPE top-up disbursement schedule had already been prepared in August 2020, therefore did not have the changes. Consequently, the variance of 438 pupils arose due to the update of the enrolment.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Disbursement to Schools with Special Needs was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

320.4 The balance includes transfers to foreign missions amounting to Kshs. 305,691,659. However, no documentation was provided to support the transactions arising from the foreign stations except unsupported statement of expenditures amounting to Kshs. 261,601,128.

Submission by the Accounting Officer
The balance from foreign missions, are normally recovered during the year by deducting the outstanding amounts from subsequent disbursement in the succeeding year as per the Pay Advises.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer with regards to transfers to foreign missions.

Committee Recommendation
The Committee recommends that the matter is resolved.

320.5 The transfers to other Government Units include transfers to other Government Entities amounting to Kshs. 19,692,518,327 which further include recurrent and capital grants to thirty-two (32) Primary Teachers Training Colleges and four (4) Diploma Teachers Training Colleges amounting to Kshs. 394,686,400 and Kshs. 70,200,000 respectively. However, the colleges have not confirmed receipts of these transfers in any way. Further, no accountability statements for these transfers by the colleges have been provided to confirm that the funds were applied for the intended purpose in line with the approved budget. The Colleges have never prepared financial statements for audit required by Public Audit Act 2015.

In the circumstances, the accuracy and validity of transfers for Government Units of Kshs. 26,249,256,281 could not be confirmed.

Submission by the Accounting Officer
It was true that there were thirty-two (32) Primary Teachers Training Colleges and four (4) Diploma Teachers Training Colleges. However, out of the 32 Primary Teachers Training Colleges, only 29 were funded. Teacher training colleges are self-reporting institutions as from 2020-2021 Financial year. Financial statements to these institutions are available at the Ministry of Education for audit and confirmation.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to disbursements to Teachers training colleges was not satisfactory as Teachers Training Colleges Financial Statements are audited.

Committee Recommendations

i. **The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office; and**

ii. **The Committee recommends the Auditor General to audit the financials of the teachers training colleges.**

321. Receivables-outstanding Imprest and Clearance Accounts

As disclosed in Note 12 to the financial statements, the statement of financial assets and liabilities reflects amount receivables – outstanding imprest and clearance accounts balance of Kshs.154,469,857. The following observations were noted:

321.1 The balance includes Kshs. 44,090,531 in respect to eight education offices outside the country. However, the amounts due from these offices were not supported by bank reconciliation, cash books and bank statements. Further, although the foreign missions had unqualified balances brought forward from the previous year, the amounts have not been accounted for in the movement to arrive at the closing year balances.

Submission by the Accounting Officer

Education attaches in foreign mission are given funds in form of AIEs and actual payments are effected in their various mission stations. The expenditure returns are sent to the ministry as per the foreign mission regulations. Payment vouchers have also been provided for examination.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not submit the expenditure returns contrary to Section 62 of the Public Audit Act, 2015.

Committee recommendations

The Committee reprimands the Accounting Officer pursuant to Section 74 of the PFM Act for failing to submit a timely response to the Auditor General.

321.2 Accounts receivable balance also includes balance from Teacher Service Commission of Kshs. 9,537,963. However, the reported balance differs with the corresponding balance in the teacher service commission financial statement balance of Kshs. 45,738,914 leading to unexplained variance of Kshs. 36,200,951.

Under the circumstances, the accuracy and existence of accounts receivables balance of Kshs. 154,469,857 as at 30th June 2021 could not be ascertained.

Submission by the Accounting Officer

Teachers Service Commission is a full- fledged entity which receives funds from various entities including the state department. The entity reports and is audited independently. During the year under review the Ministry disbursed Kshs. 99,868,709.40 to TSC. As at the end of the financial year they gave their expenditure returns and bank reconciliation which gave rise to a balance of Kshs. 9,537,963.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Account Receivable Balance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

322. Compensation of Employees

The statement of receipts and payments reflects an expenditure of Kshs. 3,732,621,411 incurred on compensation of employees while data from the human resource department and IPPD indicates expenditure of Kshs. 3,503,860,093 with a resultant variance of Kshs. 288,761,318. The reconciliation between the two sets of balances revealed an expenditure of Kshs. 125,783,113 paid by foreign offices in respect of temporary employees which was not supported. Further the reconciliation revealed payment to adult education teachers amounting to Kshs. 12,813,569 that was also not supported.

Under the circumstances, the accuracy and validity of the compensation of employees' expenditure totaling to Kshs. 3,732,621,411 for the year ended 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

Education attaches in foreign mission are given funds in form of AIEs for employee compensation to carter for the following:

- Foreign service allowance
- Medical insurance
- Social security fund contributions
- Local support employees

Actual payments are effected in the various mission stations and expenditure returns sent to the ministry as per the foreign mission regulations. Payment vouchers have also been provided for examination. Further to the above, County and sub-counties Adult offices receive funds in form of AIEs to compensate part time Adult Education teachers and in turn submit expenditure returns.

Committee Observations and Findings

The Committee notes that the State Department experiences a delay in the receipt of these expenditure returns from the mission stations.

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with all related offices and streamlines expenditure returns, and ensures prompt submission.

Other Matter

323. Budgetary Control and Performance

The summary statement of appropriation – recurrent and development combined reflects final receipts budget and actual on comparable basis of Kshs. 97,156,731,800 and Kshs.96,589,049,499 respectively, resulting in the under receipts of Kshs. 567,682,301 or 0.5% of the budget. Similarly, the State Department spent Kshs. 94,541,008,850 out of the approved expenditure budget of Kshs. 97,156,731,800 resulting in under expenditure of Kshs. 2,615,722,950 or 2.6% of the budget. The under receipt of the budgeted funds and under-expenditure constrained execution of planned activities and delivery of services by the State Department.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that there was a short fall in the receipts as reflected in the financial statements. This was as a result of having received less exchequers to the tune of Kshs. 453,256,286, failure of the donor to spend Kshs. 100,000,000 and uncollected AIA to the tune of Kshs. 14,426,015. Further to these, this was a period when the country was facing the second phase of COVID-19 and hence exchequers were not forthcoming due to poor performance of the economy. In addition, some of the entities that collect Appropriation In Aid from offering conference facilities were not able to collect due to lockdown that affected the hospitality sector.

Consequently, due to insufficient receipts, the department could not execute some of the planned activities.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Budgetary Control and Performance.

Committee Recommendation

The Accounting Officer must ensure programmes are adequately funded and can be implemented within the stipulated time frame.

324. Pending Bills

Note 19.1 and Note 19.2 to the financial statements indicates that the State Department had pending bills totaling Kshs.6,313,285 as at 30th June 2021. Management did not explain why the bills were not settled during the 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

It was true that the State Department had pending bills to the tune of Kshs.6,313,285. This arose due to insufficient exchequer making it difficult to settle the bills. The same was treated as a first charge in the 2021-2022 financial year and therefore already settled.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Pending Bills.

Committee Recommendation

The Accounting officer must at all times ensure that pending bills are listed as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of Section 68(2) (h) of the Public Finance Management Act, 2012.

325. Delayed Exchequer Releases

Exchequer issues totaling Kshs. 1,219,201,876 were received in the bank account of the State Department during the month of June 2021 as detailed below:

Date Funds Received in the Bank Account	Amount (Kshs.)
03 June 2021	336,212,338
14 June 2021	471,910,800
21 June 2021	15,015,749
24 June 2021	396,062,987

Total	**1,219,201,876**

The delay in Exchequer releases may have resulted in low absorption of the budget thus negatively affecting timely implementation of the program of the State Department and provision of services to the public.

Submission by the Accounting Officer

This was a period when the country was facing the second wave of COVID-19 and hence exchequers were not forthcoming due to poor performance of the economy. Further to the above there was also change in the school calendar which necessitated request for large sums at the end of the year which doubled as the start of the academic year.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Delayed Exchequer Releases.

Committee Recommendation

The National Treasury should ensure programmes are adequately funded and can be implemented within the stipulated time frame.

326. Unresolved Prior Year Matters

Various prior year audit issues remained unresolved as at 30 June 2021. Management has not provided reasons for the delay in resolving the prior year audit issues.

Committee Observations and Findings

The Committee noted that this matter remains unresolved.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

327. Procurement of Computers

During the year, a total of Kshs. 199,920,000 was paid to a firm for supply and delivery of 2,040 computers to two hundred (200) secondary schools in all the 47 Counties. The following anomalies were observed:

i) The Management used an expired framework contract from the State Department of Information, Communication and Technology dated 07 October 2018 which expired on 07 November 2019.

ii) There were no minutes of the committee adopting the use of procurement process of another entity.

iii) There was no executed supply contract or agreement between the State Department and the supplier to actualize the supply. This contravenes Section 135(1) of Public Procurement and Asset Disposal Act, 2015.

iv) The Local Purchase Order was issued on 03 September 2020 with a validity of 30 days. The supply was however made on 25 May 2021 which was more than eight months after the expiry of LPO validity. There was no evidence of extension of

LPO validity. This contravenes Section 139(1) and (2) Public Procurement and Asset Disposal Act, 2015.

v) The 2,040 computers were delivered to the State Department's store and distributed to 200 secondary schools across the forty-seven (47) counties. However, the basis of identification and selection of the benefiting schools was not documented and provided for audit review.

Consequently, the Management is in breach of the law.

Submission by the Accounting Officer

i. In regard to the procurement of computers for Secondary Schools, the Department used framework contract from Ministry of ICT as a directive given by Office of the President through circular Ref no: OP/CAB.9/1A dated 23rd February 2018. The framework agreement from State department of ICT and Microscan Technologies Lt expired on 7th November 2019. However, the State department of ICT vide letter dated 4th November, 2019 renewed the framework agreement for a period of one year up to 8th November, 2021.

ii. The contract from the ICT ministry was valid and was adopted by the department through the professional opinion as the accounting officer approved the process.

iii. Ministry of Information, Communication and Technology (ICT) was mandated to develop and issue guidelines for Frameworks contracting as required by Public Procurement and Regulatory Authority (PPRA) Circular No. 6/2010 for the purposes of managing price, quantity, quality and standards in the acquisition of ICT equipment and services. MDAs procured Computer type 1 as per the User department specifications (needs) in line with its set budget for that year. As per the directive only one supplier was contracted to supply each category of the ICT items and hence it was not possible to carry out mini competition.

iv. The LPO NO.1505 was issued on 4th September, 2020 and before the expiry of the same the supplier sent a commitment letter indicating that there would be delay of the computers as this was a huge order**.** Therefore, the procurement process was in line with the Public Procurement and Asset Disposal Act, 2015 where value for money and quality products was achieved through use of a contractor derived from an open tender process by another Government mandated entity thus the Ministry could not duplicate the same by advertising for its tender of which it was not allowed based on the directive from the Office of the president.

v. This is in line with vision 2030 that identifies education as a natural platform of equipping the citizenry with ICT skills requisite for a middle-income state. The department based on the following Criteria for disbursement

- Beneficially schools are identified by the CEB and;
- Must be a public secondary school
- Must NOT have previously benefitted from any public ICT integration funding.
- Must have an available permanent and secure classroom to be converted into a computer laboratory.
- Must have access to reliable electric power source.
- Preference is given to schools which do not have functional ICT facilities

- The Government through MoE procures computers and uninterrupted power supply (UPS) on behalf of the schools.
- Through the Sub County Director of Education (SCDE), principals of beneficially schools are asked to come for the equipment in the ministry headquarters.
- Principals of schools acknowledges the receipt of ICT equipment in writing to the Principal Secretary MoE and copies to the **CDE** and **SCDE.**

Committee Observations and Findings

(i) The Committee observed that the explanation given by the Accounting Officer with regards to procurement of computers was not satisfactory.

(ii) There was a framework contract by the State Department of Information, Communication and Technology and not Framework agreement.

(iii) The Accounting Officer was in breach of Section 135(1) and Section 139(1) and (2) of Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation

The Committee recommends that EACC investigates the procurement process.

328. Un-Procedural Acquisition and Payments of Desks

The statement of receipts and payments reflects an expenditure on transfer to other Government units of Kshs.26,249,256,281. The balance includes an expenditure of Kshs.1,897,135,000 received from the National Treasury to fund schools' infrastructure on protocols set up by the Ministry of Health on social distancing due to the Covid-19 pandemic, and to stimulate the economy by providing job opportunities to the local artisans. To achieve these, the State Department engaged artisans from all the counties in selected schools to supply seventy (70) desks and fifty (50) lockers to primary and secondary schools respectively, for each school selected.

The following observations were made:

i) Details on how the needs assessment was identified was not provided and social distancing in secondary schools could not have been achieved through an increased number of lockers without the corresponding increase in the number of classrooms or students' population.

ii) Procurement records to ascertain value for money, quality of the supplies, how uniform prices were arrived at in the Counties and competition among the artisans were not provided for audit review.

iii) A total of Kshs.10,214,400 was paid to staff from the State Department Headquarters as daily subsistence allowances to monitor the distribution of the desks and lockers to their respective destinations in all Counties notwithstanding that the State Department has established offices in all the Counties and the staff in these offices could have been used with minimal or no costs. This expenditure of Kshs.10,214,400 was therefore against Section 79(2b) of the Public Finance Management Act, 2012 which states that a public officer employed in a National Government state organ or public entity should ensure that resources within the officer's area of responsibility are used in a way that is lawful and authorized and is effective, efficient, economical and transparent.

iv) Authority to Incur Expenditures (AIEs) totaling Kshs.1,897,135,000 dated 01 October 2020 were sent to all forty-seven (47) counties but funding was not affected and instead, actual payments were centralized at the Head Office using a Safaricom application not prescribed by The National Treasury. No explanation was provided for using a private application instead of using IFMIS being the national payment system as per the Public Financial Management Act, 2012.

Under the circumstances, the Management was therefore in breach of law.

Submission by the Accounting Officer

The state department would wish to respond as follows;

i) The procurement method, which was used was community participation under section 108 of PPAD, Regulation 2020.

ii) There was no needs assessments exercise since it was an emergency caused by the COVID-19 pandemic and one of the recommended protocols of the inter-agency task force was 1.5 metre distance.

iii) The Accounting Officer delegated authority for procurement to be done at Sub County level and records are readily available for examination verification. The price was a fair view of the prevailing market price.

iv) The work involved was enormous and tedious that involved concerted effort. Further to this, procurement process was done by the field officers therefore there was need for independence in monitoring the same.

v) The payment application used (MPESA) was meant to empower community through social economic development. The payment mode was a policy directive based on the success of Kazi mtaani initiative success. In addition, the government was targeting the deserving artisan who had been directly affected by the pandemic.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Un-procedural Acquisition and Payments of Desks was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

329. Use of Expired Contract-Service of Lifts in Jogoo House

As disclosed in Note 6 to the financial statements, the State Department spent a total of Kshs.22,011,337 on routine maintenance – other assets. The State Department had entered into a three (3) year contract with a firm for Kshs.4,284,720 beginning 01 July 2017 and ending 30 June 2020. However, after the expiry of the contract on 30 June 2020, no new contract was entered into or extension granted. The State Department continued to pay the firm from 01 July 2020 to 30 April 2021 without any contract and therefore an amount of Kshs. 1,734,822 was paid irregularly. Under the circumstances, the regularity of Kshs. 1,734,822 paid as routine maintenance other assets for the year ended 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

It was true the contract expired on 30th June, 2020. The Contract for lifts is managed by State Department for Public Works (SDPW) and the SDELBE was waiting for official communication from project manager, and lift being essential services the service provider continue until another contract is in place.

However, Lifts provide essential services and should be maintained at all time to avoid any eventualities or life-threatening risks to the public. In this regard, the conditions of the contract as outlined in the tender document clause 31.1 which stated that" the contractor remain on site and continue to offer services until another contract is signed". Thus, based on this, the project manager vide letter 28th January, 2021 extended the contract to 30th April, 2021. The new contract was signed on 4th june.2021.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Use of Expired Contract-Service of Lifts in Jogoo House.

Committee Recommendation

The Committee recommends that the procuring agent ensures renewals of service contracts promptly, before expiry.

330. Use of Expired Lease Agreements

As disclosed in Note 6 to the financial statements, the State Department incurred an expenditure of Kshs. 158,824,241 in respect to rentals of produced goods which includes an amount of Kshs. 30,198,837 in respect to the payment of rental facilities, service charge and parking fees for offices of the State Department of Basic Education. However, payments totaling Kshs. 5,368,886 for rent, service charge and parking and Kshs. 1,736,495 for rates, all totaling Kshs. 7,105,381, were made on the basis of an expired lease agreement with the Kenya Reinsurance Corporation that had lapsed on 28 February, 2021. Under the circumstances, the regularity of Kshs. 7,105,381 paid as rental facilities, service charge and parking for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

It was true that the Lease agreement for Kenya reinsurance premises had expired. A request for renewal was made to the state department of housing. The new Lease agreement is now in place awaiting registration by the state department of housing.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Use of Expired lease Agreements.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures renewals of lease agreements promptly, before expiry.

331. Transfers to Other Government Units

The statement of receipts and payments reflects an expenditure of Kshs. 26,249,256,281 in respect of transfers to other Government units which, as disclosed in Note 8 to the financial statements, includes an amount of Kshs.4,256,588,506 relating to Capital Grants to Government Agencies and other levels of Government. The amount includes disbursement of infrastructure grants in form of Economic Stimulus funds to secondary schools amounting to Kshs.1,504,057,600.

The following anomalies were noted;

i. There was no documented basis on how the amount of funds for each of the recipient was determined to justify the disbursements from receiving schools, Bill of Quantities duly approved by County Works Officer and approved plan of the facility to be funded.
ii. The disbursements to 15 National schools amounting to Kshs.185,000,000, were not supported by official applications and approved budget for the schools.
iii. The disbursement of infrastructure grants of Kshs.287,557,600 to 113 National schools and Kshs.1,031,500,000 to 480 schools under Extra-County and Sub-County categories were not supported by official applications from the receiving school, Bill of Quantities duly approved by county works officer and duly approved plans of the facility to be funded except for six that submitted the application only.
iv. Two (2) schools that submitted applications for funding had requested Kshs. 6,141,272 and Kshs. 4,172,056 respectively but they were awarded Kshs. 10,000,000 each. There was no justification for the enhanced disbursement as no approved Bills of Quantities and building plans were provided by the applicant.

The award of infrastructure funds to schools without application letters, justification and accountability documents was in breach of the State Department disbursement guidelines that advocates for fairness, equitability and accountability.

Submission by the Accounting Officer

The disbursements done to schools were based on requests submitted by leaders such as Members of Parliament on behalf of their schools and from the schools themselves. In the year under review, there were schools that were submerged by the rising waters of lakes Baringo and Victoria that required support. In total, six(6) schools were affected.

The Ministry of Education started the upgrading of extra county schools to National status to ease the pressure on the 18 original national schools in 2011. The number of National schools was increased from the traditional 18 to 104 and not 113. This therefore meant that there was need to support these schools to upgrade their infrastructure to accommodate more students and to reflect their national status. There is a budget every year to support these schools and disbursement in targeted to a number each year. In FY 2020/2021, Kshs. 185,000,000 was disbursed to 15 National schools among them was Mama Ngina Girls in Mombasa (Kshs. 50,000,000) which is being relocated to Shanzu.

The disbursement of Kshs. 1,031,500,000 (Tranche 1) and Kshs. 287,557,600 (Tranche 2) went to all categories of schools. There was disbursement to Mangu and Mama Ngina of additional Kshs.10,000,000 and Kshs.20,000,000 towards meeting the presidential directive for Mangu and supporting the ongoing relocation for Mama ngina Girls. Other schools such as Ogande Girls and St. Francis Mangu were also allocated funds to meet part of presidential directives. The other institutions were allocated funds based on requests by schools and those done by leaders on their behalf.

Ruiru Girls submitted a proposal for Kshs. 20 Million, which was the appliacation used to disburse the Kshs. 10 Million. There was an earlier BQ submitted by the school for Kshs. 6.1 million which was captured by the audoitors. The state department has since provided the correct application. In

Lamu County, the Ministry is developing a school known as Lamu Bargoni High School. This follows a request from the community to put up a school at Baragoni. Implementation started in FY 2020/2021 with an initial allocation of Kshs. 15,000,000. Since the school is under construction, it did not have a duly appointed principal to play the role of the accounting officer. As such the Principal Secretary designated Witu Mjini Secondary School as the mentoring institution and so that the principal of the school plays the role of accounting officer for Lamu Bargoni High School. Witu Mjini secondary had requested infrastructure support of Kshs. 5,000,000. However, this was not granted but Kshs. 10,000,000 in Tranche 1 for Lamu Bargoni High School was disbursed through the school and another Kshs. 5,000,000 in tranche 2.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Transfer to other Government Units is satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

332. Lack of Audit Committee

The term of the Audit Committee came to an end in October, 2020 and a new Audit Committee was not appointed hence rendering limited oversight and governance over the ministerial activities. The financial statements were also not reviewed and approved by the Committee before being submitted for audit. In the circumstance, oversight and effectiveness of internal controls in the State Department could not be confirmed.

Submission by the Accounting Officer
It is true that there was no Committee since the mandate of the former had expired. However, a new committee had since been appointed.

Committee Observations and Findings

i. **The Committee observed that the Accouting Officer admitted the absence of the audit committee in the State Department and thus a breach of the Law.**
ii. **The Committee further noted that the State Department committed to establishing its own Internal Audit Committee.**

Committee Recommendation
The Committee reprimands the Accounting Officer for operating without an audit committe as required by Section 73 (5) of the Public Finance Management Act 2012.

DONOR FUNDED PROJECTS

KENYA PRIMARY EDUCATION DEVELOPMENT PROJECT (GRANT NO. TFO18863)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

333. Purchase of Goods and Services- Consultancy Services

Note 12.4 to the financial statements includes and amount of Kshs.37,600,000 in respect of consultancy. The amount includes payments amounting to Kshs.6,300,000 made to a consultant at a rate of Kshs.525,000 per month. However, the contract provided in support of the payments, signed on 2nd November, 2017, was for a period of four months and for a lumpsum payment of Kshs.3,997,350 and hence not valid to support the payments. No evidence was provided to support the basis of payment of Kshs.525,000 per month.

In the circumstances, the accuracy of purchase of goods and services as at 30th June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Ministry of education State Department of Early Learning and Basic Education through the Kenya Primary Education Development PRIEDE Project, a World Bank project acknowledges Auditor General's report (2020-2021). The Ministry also acknowledges observations in regard to the above contract provided in support of payments of the above contract for a period of four months for lumpsum of KES 3,997,350 and the basis of payment of 525,000 per month. The Ministry wishes to state that it recruited and signed a Six month's renewable contract dated 2nd November 2017 with Dr. Samuel Siringi for development of Communication strategy for lumpsum of KES 3,150,000 (Kenya Shillings Three Million One Hundred Fifty Thousand Shillings which became effective the same date. The contract had been under renewal/extensions after World Bank approval/No Objections.

The Ministry now clarifies that KES 3,997,350 in the Contract was erroneously captured in the contract as the total contract amount. The amount was actually the consultant's proposed costed financial proposal which was negotiated and reviewed to KES 3,150,000 for duration of six months to align it to the client's budget thereby making the monthly consultant's fee to be KES 525,000 (Kenya Shillings Five Hundred Twenty-Five Shillings Only) for the same duration. The negotiated price was reached after the consultant agreed to drop some of the proposed deliverables i.e., cost of hiring consultation worKshs.op, costs during worKshs.ops and costs for documentary shooting.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Purchase of Goods and Services-Consultancy Services.

Committee Recommendation

The Committee recommends that the matter is resolved.

Emphasis of Matter

334. Unreconciled Special Account Statement

The statement of receipt and payments for the year ended 30th June, 2021 reflects proceeds from domestic and foreign grants totalling to Kshs. 764,770,270 as further disclosed under Note 12.2 of the financial statements. However, the corresponding account balance reflected in the special account statement as at 30th June, 2021 amounting to Kshs. 732,441,683 resulting to an unexplained variance of Kshs. 32,328,587.

Submission by the Accounting Officer

During the financial year 2020/2021, the project received a total of Kshs. 764,770,270 from the National Treasury inform of exchequer releases. The variance of Kshs. 32,328,586.74 was caused by exchequer release of Kshs. 32,310,000 which was received in project account on 22nd June 2021. Was not reflected in the special account statement provided to the auditors for verification by The National Treasury and also a foreign exchange loss of Kshs. 18,586.74.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Unreconciled Special Account Statement.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

335. Budgetary Control and Performance

The Project's final budget for the year under review totalled Kshs. 1,175,000,000 and actual expenditure totalled Kshs. 766,078,770 resulting to an under-expenditure of Kshs. 408,921,230, equivalent to 35% of the budget. The under-absorption of the approved budget meant that many of the Project's activities planned for the year were not implemented. As a result, attainment of the Project's goals may not be possible.

Submission by the Accounting Officer

The overall absorption of the project was only 65% due to the COVID-19 pandemic and the related protocols. Most of the project activities that required worKshs.ops and training of teachers and monitoring of project interventions at the school level could not be undertaken and were deferred to the financial year 2021/2022 due to the long closure of schools and the related COVID-19 protocols. This resulted to a reduction of the 2020/2021 approved work plan budget by 19%.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

336. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

337. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GOK/ UNICEF EDUCATION FOR YOUNG PEOPLE PROGRAMME

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

338. Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs.1,078,280. However, the bank reconciliation statement as at 30 June, 2021 reflected payments in bank statements not recorded in cash book amounting to Kshs.503,350 in respect of outward payment and whose nature has not been disclosed. In view of the above, the completeness and accuracy of the cash and cash equivalents of Kshs. 1,077,215 reflected in the statement of financial assets as at 30 June, 2021 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

The Committee observed that the explanation given by the Accounting Officer with regards to Inaccuracies in Cash and Cash Equivalents is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

339. Accumulated Surplus

The statement of receipts and payments reflect an accumulated surplus of Kshs.325,249,171 while the statement of financial assets reflects a net asset balance of Kshs.1,077,215. The two balance should always be equal for the project. No reconciliation has been provided for Audit verification to explain the variance.

Under the circumstances, the accuracy of the financial statements as at 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

The discrepancies is due to external funding by UNICEF through direct payments and no sufficient documents are availed to support the same.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Accumulated Surplus is reasonable.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter
340. Prior Year Matters

Several issues were raised in the audit report of the previous year. However, 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 Circulars.

Submission by the Accounting Officer

S/No	Issue	Observation and auditors recommendation	Management comments	Focal point person to resolve the issue	Status	Time frame
1.	Cash and cash equivalents	Validity of cash and cash equivalents could not be confirmed- revise the FS	Necessary adjustments made.	HAU	Resolved (PAC Report 2017/18	30th June 2019
2.	Unsupported Cumulative Expenditure	No supporting documents for direct payments	Accounting officer to engage UNICEF in developing implementation guidelines.	HAU	Not Resolved	30th June 2020
3.	Unapproved Excess expenditure	No Evidence of Aprroval of excess expenditure by the National Treasury	UNICEF overspent on direct payments	HAU	Resolved (PAC Report 2017/18)	30th June 2020
4.	Non Availability of Key Project Information	Key project documents not availed for Audit	UNICEF programs coordinated at the NT and change from time to time	HAU	Resolved (PAC Report 2017/18)	30th June 2020
5.	Programme Progress Reports	Progress reports not Availed for Audit Review	UNICEF supports most of its programmes directly and do not avail report on program progress	HAU	Resolved (PAC Report 2017/18)	30th June 2020

Committee Observations and Findings

The Committee noted the progress made by the Accounting Officer in ensuring prior year matters are dealth with.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures resolution of all outstanding prior year matters within one (1) month of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

341. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

342. Lack of Key Programme Information

As previously reported, Management did not avail the design report, implementation manual, GoK/UNICEF policies, annual work plan and activities report for audit review. In the forgoing, it has not been possible to ascertain if the Programme met the expectations of the citizens as outlined in the GoK/UNICEF Country Programme Action Plan, 2014 -2016.

Submission by the Accounting Officer

The Accounting Officer submitted that the UNICEF programs coordinated at the National Treasury and change from time to time.

Committee Observations and Findings

The Committee noted that the issue was marked as resolved as the PAC report 2017/18 and subsequent House resolution.

Committee Recommendation

The Committee recommends that the matter is resolved.

SECONDARY EDUCATION QUALITY IMPROVEMENT PROJECT (CREDIT NO. 61380 KE)

Basis for Qualified Opinion

343. Unreconciled Proceeds from External Development Partners

The special account statements for the year ended 30 June, 2020 reflected proceeds from external development partners of Kshs. 350,207,487. However, the statement of receipt and payments for the year reflected proceeds from loans from external development partners totalling Kshs. 345,520,825 resulting to variance of Kshs. 4,686,662 between the two set of records.

Submission by the Accounting Officer

Special account balances are maintained at the National Treasury. The amount of Kshs. 345,520,825 is what was disbursed from exchequer during the financial year ended 30, June 2021. The difference is a result of exchange rates.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Special Account Statements is satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

344. Project performance

During the year under review, the external development partners released Kshs.2,508,632,985 while only Kshs.842,462,321 was utilised resulting to an under absorption of Kshs.1,666,170,664 or 66.42%. This implies some of the project activities were not implemented and Further the project duration was for a period of six (6) years from 2017 to 2023 therefore as of time of audit 71% of the project timeline had lapsed yet critical infrastructural works was yet to start. This would negatively impact on the achievement of project goals.

Submission by the Accounting Officer

The Ministry of Education with support from the World Bank is implementing a six-year project- Kenya Secondary Education Quality Improvement Project (SEQIP) during the period 2017-2023 at a cost of Euro 175.5 Million (USD 200 Million equivalent). The funding is aimed to help the country in addressing the challenges that lead to education wastage through high dropout rate of learners in the Upper Primary grades 7 and 8 and low transition of learners from primary to secondary education and particularly girls. Therefore, the project's focus is on improving completion of a full cycle of quality basic education on retention and transition in Upper Primary and Secondary Education for children living in vulnerable and marginalized areas. The project targets 7,852 public primary schools and 2,147 secondary schools selected from 30 counties and 110 Sub-counties that are educationally and economically disadvantaged.

Project Development Objective

The Project Development Objective (PDO) was to improve student learning in secondary education and transition from primary to secondary education in targeted areas.

1.2: Key Performance Indicators

Average student test score in science subjects at form 2 at public schools in targeted sub-counties
Average student scores in mathematics at form 2 at public schools in targeted sub counties and
Transition rate from primary to secondary in targeted sub counties

During the year under review, the SEQIP Implementation team was able to achieve the following:

Component	Sub-component	Achievement
Component 1: Improving Quality of Teaching in Schools in the Targeted areas	Subcomponent 1.1: Reducing teacher shortage	Recruitment of 10 % additional 747 and 157 teachers recruited in September 2020/2021 by third party verification agency Recruitment of 10 % additional 374 and 634 teachers recruited in September 2020/2021 by third party verification agency
	Subcomponent 1.2: Enhancing teacher	Training of heads of institutions and remaining 25,000 teachers of SME on SBTSS.

	professional development	
	Subcomponent 1.3: Provision of textbooks	10,770 textbooks brailed and 42,546 textbooks printed. Distribution is complete Distribution of assistive devices for 2,145 learners with special needs and disabilities (HI=774, VI= 1,000 and PI=371) is complete.
Component 2: Improving Retention in Upper Primary School and Transition to Secondary School in the Targeted Area	Subcomponent 2.1: Improving school infrastructure	Bids evaluated and awaiting signing of contract
	Subcomponent 2.2: Improving retention in upper primary school and transition to secondary school of poor and vulnerable students	Identified and supported 9000 beneficiaries for cohort 1 in 2020 and 9000 beneficiaries for cohort 2 in 2021 thus achieving Trained 7715 Gender Champions from the targeted primary school and 224 chiefs from the 110 targeted sub-counties on how to address gender-based and students violence issues. Distributed sanitary pads to all public primary schools in the SEQIP targeted Sub-Counties. Rolled out advocacy, social support and gender sensitization activities in the 110 project targeted sub-counties. Conducted community dialogues in the 110 targeted Sub-Counties
Component 3: System Reform Support	Subcomponent 3.1: Development and introduction of a competency-based curriculum	18 Grade 4 curriculum designs developed and disseminated. 18 Grade 5 curriculum designs developed and disseminated. 18 Grade 6 designs developed and disseminated. 23 Grade 7 curriculum designs developed. Facilitator training manuals for training CSOs, Head teachers and field education officers on CBC grade 4 and 5 are reviewed 170,000 Grade 4 CSOs, Head teachers and field officers trained on CBC Online teacher orientation on CBC and ICT integration in schools is ongoing Framework and M&E tools developed by a multi-agency team and used in monitoring CBC Grades 4 and 5

		Monitoring of CBC implementation in Grades 4 and 5 done.
	Subcomponent 3.2: Strengthening of national system for monitoring learning progress and national examination	Developed Quality Assessment Tools for Regular Learners and Learners with Special Needs for MLP Grade 3 for 2020 and 2021 Developed a CBA portal for use in delivery of assessment tools to schools and capture of learner scores for Grade 3 and 4 Maintenance and upgrading of CBA portal for Grades 3, 4, 5 undertaken Conducted Grade 6 pilot study and report finalised. Purchase of 60 Security laptops for KNEC officers & data bundles completed and issued to staff.
Component 4: Project Management, Coordination, And Research and Monitoring and Evaluation	Subcomponent 4.1: Project management, coordination, and communication	Social Assessment conducted in the 15 Sub Counties from the nine (9) purposively sampled Counties. Additional Social Assessment for the Cherangany community A Social Assessment Report and 13 VMG Plans were developed, validated, approved by the Bank and disclosed.
	Subcomponent 4.2: Research and monitoring and evaluation	Virtual joint Implementation support mission conducted

The project Implementation Team was not able to achieve the set targets for the year under review because of challenges as tabulated below:

Challenges

S/No.	Challenges	Components Affected
	The outbreak of COVID- 19 Pandemic	The outbreak of COVID- 19 pandemic affected the following implementation of the following interventions; Training of teachers and gender champions Development of Curriculum Materials Mentorship for the Scholarship beneficiaries School- based Teacher Support System
	Activities being put in abeyance affecting most of the interventions being implemented by MoE	Implementation of the advocacy, Social Support and gender sensitization Construction of Classrooms, Laboratories and sanitation facilities

	Litigation issues resulting to a court order stopping some activities being implemented by TSC and delay for the KICD activities.	Roll out of the Teacher Professional Development Procurement of assistive devices.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Project Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

345. Suspended Infrastructural works

The Ministry of Education is implementing the Kenya Secondary Education Quality Improvement Project with support from the World Bank. The Project runs for 6 years from 7th December, 2017. The Project's Development Objective is to improve student learning in secondary education and transition from primary to secondary education, in the targeted areas. The targeted beneficiaries are 7,852 public primary and 2,147 secondary schools from 110 sub-counties across 30 counties that are educationally and economically disadvantaged. This entails improving the quality of teaching in targeted areas, retention in upper primary school and transition to secondary school in targeted areas, system reform support and project management, coordination, monitoring and evaluation. The chronology of events, procedures and eventual suspension of the implementation is detailed as below:

Review of the project procurement processes revealed that the evaluation of bids was done after 83 days of the closure and opening of the bids. This contravened section 80(6) of the public procurement and assets disposal Act, 2015 which stipulates that evaluation must be done within 30 days of the opening of the tender. Further, the evaluation committee made corrections and amendments to some of the bids which was contravention of section 82 of the public procurement and assets disposal Act, 2015 which prohibits correction of errors and amendment by a tender evaluation committee. Two of the evaluation committee members registered discontent to the amendments of bids and declined to sign the evaluation report but the report was signed without addressing the dissenting views. The procurement process had directly utilised Kshs. 6,260,000 and unqualified man hours before the stoppage of the contracting process. There is risk of potential loss of amounts should the project be repeated.

Futher, as at 30 November, 2021 the contracts were yet to be signed consequent upon which the project risks cost overruns (monetary and otherwise) as a result of contracts taking too long before they are signed. The risk includes expiry of the bids (the quoted prices- Bill of quantities) which had a validity timeline of 180 days. Expiry of the bid securities which were for one year period.
The possibility of the tender being declared to be a mis- procurement by the world bank. Legal tussles between the contractors and the Government, Section 45.4 of the bid documents states, until a forms contract is prepared and executed, the letter of acceptance shall constitute a biding contract". (Letters of acceptance were sent to the beneficiaries on 18 December 2020). Costs of processing the tender that include advertisement / addendums of Kshs. 716,832. Tender Evaluation Kshs. 5,543,800 totalling to Kshs.6,260,632 may end up being sunk costs. Claims arising from the contractors failure to obtain contracts on time inorder to start implementation. To date the contracts with service providers have not been signed and the infrastructure component remain unimplemented.

In the circumstance, I could not confirm whether project achieved value for money on the funds disbursed during the year.

Submission by the Accounting Officer

(i) The evaluation of the bids was done after 83 days of closure and opening of the bids. This contravened Section 80 (6) of the Public Procurement and Asset Disposal Act, 2015 which stipulates that evaluation must be done within 30 days of the opening the tender**.** The tender for the Construction of classrooms, Laboratories and Sanitation facility was advertised in the local dailies on 25th February, 2020 and was to close on 31st March, 2020 . However, due to COVID pandemic it was extended to 23rd June, 2020.

The evaluation exercise was carried out from 3rd July, 2020 to 22nd July, 2020 at Kenya School of Government, Embu. The Bid Evaluation Report (B.E.R) was submitted to the World Bank upon which it was issued interim comments on 18th August, 2020 .Thereafter several corrections and reviews proceeded up to 25th October 2020 when the bank gave a " NO OBJECTION" to the report. Therefore, it took 83 days to get the final approval (no objection) by the World Bank.

However, the initial evaluation as indicated was undertaken within the 30 days after opening of the tender (23rd June to 22nd July, 2020) as required by the Public Procurement and Asset Disposal Act, 2020.

(ii) The evaluation committee made corrections and amendments to some of the bids which

as in contravention of Section 82 of the Public Procurement and Assets Disposal Act, 2015 which prohibits corrections of errors and amendment by a tender evaluation. The exercise as per the advertisement was undertaken in compliance with the World Bank's "Procurement Regulations for IPF Borrowers- Procurement in Investment Project Financing" 2016 ("Procurement Regulations"), and the instructions in the Tender Documents using the criteria enumerated in Instruction To Bidders (ITB) 11.1 and section 111-Evaluation and Qualification criteria.

(iii) The World Bank in its review of the report through their interim responses dated 18th August

and 8th September, 2020 reiterated that the evaluation had to be conducted as instructed in the bid document under Instruction To Bidders section 31 and the errors corrected accordingly. The instructions in the tender document read partly under section "31.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors and 31.2 Bidders shall be requested to accept the correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid."

Therefore, as guided by both the Bid document and the World Bank Procurement regulations the evaluation committee checked for arithmetic errors and those bidders found with errors were notified accordingly and they accepted the errors as per the requirements.

(iv) Two of the evaluation committee members registered discontent to the amendments of

the bids and declined to sign the evaluation report but the report was finalized without addressing the dissenting views. The Eight Member Evaluation Committee for the Construction of Classrooms, Laboratories and Sanitation facilities appointed undertook the evaluation and signed the 1st report however, after review by the World Bank two members did not sign the subsequent reports which required us to check for arithmetic errors and correct them accordingly where necessary. The two members had dissenting views due to the correction of arithmetic errors.

(v) The world bank in their response dated 8th September, 2020 guided that the evaluation had to be conducted as instructed in the bid document under Instruction To Bidders clause 31 and the errors corrected accordingly. The two members were basing their dissenting views on the Public Procurement and Asset Disposal Act, 2015 (PPADA,2015) whereas the evaluation process was being conducted using the World Procurement rules and procedures. This is a donor-funded project by World Bank and when there is a conflict between an International Agreement and the National Procurement Act, the proceedings of the agreement prevail as cited in the PPADA, 2015 Section under section 6 on conflict with international agreements**.**

(vi) The procurement process had directly utilized Kshs.6,260,000 and unqualified manhours before the stoppage of the contracting process. There is risk in potential loss of the amounts should the project be repeated. The final report given a "no objection" by the World Bank and approved by the Accounting Officer vide a professional opinion dated 4th November, 2020.All bidders, both successful and unsuccessful, were issued with the notification of the intention to award on 6th November, 2020. After the lapse of the appeal period and all debriefs issued to concerned bidders, the 26 successful bidders were issued with letters of acceptance notifying them of the awards on 18th December, 2020. The Ministry's commitment to enhancing access, retention and transition to all school–age children and learners in Basic Education has been demonstrated through accelerating its efforts of achieving 100% transition for children from Primary to Secondary in the year 2021.

In addition, taking into account the need for a seamless transition to both Junior and senior Secondary education which is aligned to the Project Development objective of enhancing transition from Primary to secondary education and the requirements for infrastructure for the support of Competency Based Curriculum [CBC], the Ministry found it necessary to realign and rationalize the list of beneficiary schools before the contracts could be signed. This demanded a national coordinated approach at fostering inter-generational equity in access to education for all Kenyan children including those beyond the scope of SEQIP project.

It was for this realignment and rationalization exercise that the project activities and infrastructure in particular were held in abeyance. Upon completion of the exercise of the list, the contracts were ready for signing which has so far been done. The contractors are ready to take the sites from 13th May, 2022.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Suspended Infrastructural Works was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

346. Non-Compliance with Budget

The approved Project's total budget for the year ended 30 June, 2021 was Kshs. 611,669,353 against which expenditure totalling Kshs. 1,432,603,439 was incurred resulting to over-expenditure of Kshs. 820,934,086 or 234% of the budget. Management has not disclosed the source of the additional funds or the reason for the overexpenditure, and has not provided documentations in support of authorization of the additional budget. No approvals in line with Public Finance Management Act, 2012 for additional budget were availed for audit review and therefore the legality of the expenditure could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Kenya Secondary Education Quality Improvement Project (SEQIP) had a final budget of Kshs. 611,669,353 and actual expenditure of Kshs. 1,432,603,439. The project had opening balances of Kshs. 1,066,566,689 in the Proposed Secondary Education Quality Improvement Account and Kshs. 766,034,024 in the State Department for Basic Education 6138KE (DLI) account which were carried forward from the previous financial year. During the financial year ended 30 June 2020, the project received an exchequer receipt of Kshs. 345,520,825. Therefore, the project had total revenue amounting to Kshs.2,178,121,538.

Committee Observation and Findings;
The Committee noted that the Accounting Officer failed to offer satisfactory explanation as regards authority to spend.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to seek approval through re-voting.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

347. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA GPE COVID-19 LEARNING CONTINUITY IN BASIC EDUCATION PROJECT GPE GRANT NUMBER TFB 3336

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

348. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

349. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

350. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

351. As required by International Development Association, Global Partners of Education, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

13. STATE DEPARTMENT FOR POST TRAINING AND SKILLS DEVELOPMENT – VOTE 1068

REPORT ON THE FINANCIAL STATEMENTS

Dr. Margaret W. Mwakima, the Principal Secretary and Accounting Officer for State Department for Vocational and Technical, Training (Vote 1064) appeared before the Committee on 11th May, 2022 to adduce evidence on the Audited Financial Statements for the State Department for Vocational and Technical, Training (Vote 1064) for the Financial Year 2020/2021. She was accompanied by the following officers.

1.	Mr. David Yatich Kipkemoi	-	Secretary Administration
2.	Mr. Antony Masinde	-	Chief Finance Officer
3.	Mr. Elicanal Mosiori	-	Director Human Resource Management
4.	Mr. Tom Mulati	-	Ag. Director TVET
5.	Mr. John Macharia	-	Head of Accounting Unit

Unmodified Opinion

352. There were no material issues noted during the audit of the financial statements of the State Department.

Other Matter

353. Pending Bills

Note 13 to the financial statement reflects pending bills totaling Kshs.1,070,500 as at 30 June, 2021. Management has not explained why the bills were not settled during the year when they occurred and the State Department is at risk of incurring additional significant interest and penalties with continued delay in making payments. Failure to settle bills during the year to 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 Section 42 (1)(b) of the Public Finance Management (National Government) Regulations 2015, requires debt service payments to form first charge. Pending Bills totaling Kshs. 1,070,500 as at 30 June 2021 have been disclosed in the financial statements. These bills were received by the Department in late June for various conferences held at KITI (Kenya Industrial Training Institute). The Budgetary Allocation was significantly reduced for the various items in hospitality and conferences needed to settle these bills. The bills had to be settled in 2021/2022 financial year as the first charge and the proof of payment has been availed to your office for perusal.

The net surplus indicated of Kshs. 115,252 relates to salary advanced in the year of Kshs.74,375 that remained unpaid as at 30th June,2021 and the cumulative unspent balances of Kshs.40,877 which were later remitted to the National Treasury.

Committee Observations and Findings

The Committee noted the explanation provided by the Accounting Officer with regard to pending bills.

Committee Recommendation

The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of section 68(2) (h) of the Public Finance Management Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

354. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

355. There were no material issues relating to effectiveness of internal controls, risk management and governance.

14. MINISTRY OF HEALTH- VOTE 1081

REPORT ON THE FINANCIAL STATEMENTS

Ms. Susan Mochache, the Principal Secretary and Accounting Officer for the Ministry of Health (Vote 1081) appeared before the Committee on 24th May, 2022 to adduce evidence on the Audited Financial Statements for the Ministry of Health (Vote 1081) for the Financial Year 2020/2021. She was accompanied by the following officers:

1.	Ms. Peninah Njugunah	-	Deputy Accountant General
2.	Dr. Kelly Oluoch	-	Chief Executive Officer
3.	CPA CS Joseph K. Koech	-	Deputy Accountant General
4.	Ms. Joan A. Achieng	-	Assistant Accountant General
5.	CPA, CS Ken Nyamolo	-	Ag. Chief Executive Officer NACC
6.	Mr. Fredrick Omiah	-	Senior Registered Nurse
7.	CPA Samuel K Maiyu	-	Finance Officer
8.	Mr. Terry Ramdhan	-	Chief Executive Officer KEMSA
9.	Mr. David Ngugi	-	Head Supply Chain Management
10.	Mr. Samuel K Maiyu	-	Finance Officer
11.	CPA Polly Maingi	-	Deputy Accountant General
12.	Ms. Auce Wangui	-	Head Administration
13.	Ms. Vivian Mboga	-	Administration - MOH
14.	Ms. Siza Wanyela	-	Accountant MTRH
15.	Mr. Dennis Sang	-	Director Grants Management MTRH
16.	Mr. Limo Obed	-	Program Manager MTRH
17.	Ms. Caroline Ndungu	-	Personal Assistant
18.	Ms. Rose Ndana	-	Accountant
19.	Mr. Benard Kuria	-	State Counsel

And submitted as follows

Basis for Qualified Opinion

356. Inaccuracies in the Financial Statements

356.1 Misclassification of expenditure

Review of the financial statements indicates that an amount of Kshs. 3,370,487,640 shown in the table below was misclassified;

Item	Where Classified	Correct Classification	Amount Kshs.
Direct Purchase of Goods and Services	Grants and transfers to other government agencies	Use of goods and services	2,703,332,518
Overpaid Salary Recoveries	Receipts	Receivables - decrease	10,151,132
Research, COVID-19 Response, Allowances and Other Supplies	Acquisition of Assets	Use of goods and services	424,774,914

Item	Where Classified	Correct Classification	Amount Kshs.
Social Security Benefits	Compensation of employees	Transfer to other Government Agencies	25,000,000
Living Allowance for MOH doctors in Cuba	Compensation of employee	training expenses	20,901,888
Payment of Allowances to Employees	Rentals of produced assets	Compensation of employee	5,385,000
Disbursement of Capital Grants to Kenya Medical Supplies Authority	Purchase of Specialized Plant, Equipment and Machinery	Grants and transfers to other Government Entities	180,942,188
Total			**3,370,487,640**

Management has not given justification or explanations of misclassifications.

Submission by the Accounting Officer
The Accounting Officer admitted that the financial statements indicated some misclassified items whose reasons are explained in the schedule.

356.2 Financial Statements and Vote Book Variances
The statement of receipts and payments reflects total payments of Kshs. 92,999,398,612 while vote book revealed Kshs. 92,865,306,603 resulting to un- reconciled variance of Kshs. 134, 092,009. In addition, included in the vote book expenditure of Kshs. 92,865,306,603 is unexplained negative Kshs. 36,847,803 narrated as payments of Basic Salary for Civil Service which understates expenditure in the vote book. In the circumstances, the accuracy and completeness of the above balances included in these financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting officer admitted that there was a difference between expenditure recorded in the vote-book and that in the financial statements because of the component of salary that was not captured in IFMIS amounting to Kshs. 141,592,062. The balance of Kshs. 7,500,000 was created by wrong capture of vote-book balance as Kshs. 92,865,306,603 instead of Kshs. 92,856,806,603.

Analysis of the differences in the Vote book and the Financial Statements
It is also true that the vote-book records a figure of Kshs. 36,847,803 as negative expenditure; that was caused by credits against the salary account posted to the wrong administrative program whereas in the financial year, the relevant program was 0404049999. The credits were incorrectly posted to an old program 0401049999. However, this doesn't affect the net expenditure on the item 2110101-basic salaries under which the credits were to be made (i.e. the expenditure reported under basic salaries remains the same). The credits are highlighted as follows;

DESCRIPTION	PAYEE	AMOUNT
BEING LIFTING OF RECEIPTED GOVERNEMNT LIABILITY REFUNDS VIDE RECEIPT NOs 10810002895, 2896 AND 2713	1,220,340.45 AND 5,876,142.75 OF 30TH MARCH 2021, AND 23,213 OF 9TH FEB 2021	7,119,696.20
BEING LIFTING OF RETURNED SALARIES AS PER SCHEDULE		29,683,700.05

TOTAL		36,803,396.25

Committee observations and Findings

The Committee observed that the Accounting Officer failed to prepare and submit clear and comprehensive annual financial statements to the Auditor General within three (3) months after the end of each financial year pursuant to the provisions of Section 81(3) of the Public Finance Management Act, 2012.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.

357. Omitted Rental and Disposal of Assets Income

As disclosed in Note 5 to the financial statements, the statement of receipts and payments reflects other revenues of Kshs. 3,520,703,654. However, this amount excludes an amount of Kshs. 14,695,110 in respect of rental income recovered from housed employees through the payrolls and another amount of Kshs. 5,672,500 being receipts from disposal of thirty-eight (38) vehicles. Consequently, the accuracy and completeness of other revenues of Kshs. 20,367,610 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

Any Rental income recovered from housed employees through the payroll is usually remitted to the Ministry of Housing and thus does not form part of revenue for the Ministry. In the Financial Year under review, there were no vehicles disposed. The thirty-eight (38) vehicles indicated by the auditor were disposed in the Financial Year 2019/2020.

Committee Observation and Findings

The explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Accounting Officer should always 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.

358. Cash and Cash Equivalents

As disclosed in Note 12A to the Financial Statements, the statement of assets and liabilities reflects bank balances of Kshs. 919,612,980. Examination of records revealed the following unreasonable matters:

358.1 Undisclosed Bank Balances

The bank balance excludes an amount of Kshs. 844,649,218 in respect of three (3) bank accounts under Kenya Italy Debt for Development (KIDDP) Kshs. 30,112,829, Ministry of Health Equalization Fund Kshs. 583,596,178 and Tobacco Control Fund Kshs. 230,940,211. In addition, these bank balances have not been reported separately in the respective Funds financial statements.

Submission by the Accounting Officer

The Accounting Officer admitted that the bank balances reported excludes an amount of Kshs. 844,649,218 in respect of three (3) bank accounts under Kenya Italy Debt for Development (KIDDP) Kshs. 30,112,829; Ministry of Health Equalization Fund Kshs. 583,596,178; and

Tobacco Control Fund Kshs. 230,940,211. This was due to the following reasons as analysed: In regard to the Kenya Italy Debt for Development of Kshs. 30,112,829**,** the project ended and was closed. The balance indicated was from counterpart funding by the Government of Kenya. The funds are still held to pay contractors' withheld money and clearing charges that the government owes.

In the case of Tobacco control Fund of Kshs. 230,940,211**,** the funds indicated were not utilised during the financial year since the fund administrator had not been appointed. In relation to Health Equalization Fund of Kshs. 583,596,178 the expenditure on the fund was stopped by a court injunction in the Financial Year 2019/2020 on 5th November 2019. The matter is yet to be concluded.

Committee Observations and Findings

(i) 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; and

(ii) The Committee similarly observed that the Accounting Officer failed 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 Act 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

358.2 Customer Retention Money

The customer deposit bank account with a balance of Kshs. 141,913,154 was used to make payments of Kshs. 82,957,521 being transfers to other government agencies and Kshs. 13,430,757 for salary payments. These payments do not relate to customer deposits and should not have been paid from the retention money account. In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs. 919,612,980 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The breakdown of the Kshs. 13,430,757 is as follows;

i. A sum of Kshs. 10,646,543.00 had previously been credited to the customer deposit account being imprest recoveries from employees' salaries. However, on full surrender, the officers were refunded their dues from the deposit account.

ii. A sum amounting to Kshs. 1,473,029.00 was statutory deductions from employees' emoluments that had previously been deposited to the customer account due to lack of bank details and were later paid out after receiving the details.

iii. An amount to the sum of Kshs. 827,185.00 was customer retention money which was later released after meeting the obligations that were tied to the sum.

iv. A sum of Kshs. 520,000.00 was a payment to the Radiation board, being funded by receipts deposited to the deposits account by the radiation board.

The breakdown of the Kshs. 82,957,521 is as follows;

A sum of Kshs. 68,155,229.00 was payments made for goods and services on behalf of the Radiation Board but not a direct transfer to the board. All receipts and payments were channelled to the Ministry's deposit account before the board was incorporated as Kenya Nuclear regulatory Authority (KENRA); hence the payments. A sum of Kshs. 4,160,366.00 was refunds to unsuccessful bidders who had previously applied for tenders. The initial receipts were done in the deposit account and thus they were being refunded from the same.

A sum of Kshs. 3,141,151.00 were deductions of un-surrendered imprests, fines and surcharges collected in the Financial year 2017/2018 that were now being remitted to the National treasury as collection of government revenue. A sum of Kshs. 7,500,767.00 were deductions of un-surrendered imprests, fines and surcharges collected in the Financial year 2019/2020 that were now being remitted to the National treasury as collection of government revenue.

Committee Observation and Findings
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
The Committee recommends that the matter is resolved.

359. Un-reconciled Compensation of Employees

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects compensation of employees' amount of Kshs. 13,325,664,987 while analysis of the IPPD and manual payrolls revealed Kshs. 13,517,682,185 resulting to un-explained nor reconciled variance of Kshs. 192,017,198. Further, compensation of employees includes Kshs. 141,592,062 described as "June 2021 Uncaptured Salary" that remained unexplained. In the circumstances, accuracy and completeness of compensation of employees' balance of Kshs. 13,325,664,987 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that there was a discrepancy between the figure reported in the financial statements and the manual records cited by the auditor of Kshs. 192,017,198.34. The transactions that caused the discrepancies have been analyzed in the detailed analysis in the schedule. The Accounting Officer further admitted that a figure of Kshs. 141,592,062 out of the expenditure of Jun-2021 salary was not captured in IFMIS due to budget limitation. The analysis of Kshs. 141,592,062 has been provided.

Committee Observation and Findings
The Committee noted that the Accounting Officer failed to provide complete financial records including statements of assets and corresponding IFMIS 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 2012

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.

360. Un-reconciled Scholarships and Other Educational Benefits

As disclosed in Note 8 to the financial statements, the statement of receipts and payments reflects transfers to other government units balance of Kshs. 66,946,401,966 out of which Kshs. 38,883,795 was transfers to the Ministry of Health office in Geneva. The office is classified as Semi-Autonomous Government Agency (SAGA) yet it is not self-reporting. However, analysis of bank statements revealed disbursements of Kshs. 41,998,224 resulting to un-explained nor reconciled variance of Kshs. 3,114,429. In the circumstances, propriety, accuracy and completeness of transfers to other government units balance of Kshs. 38,883,795 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that funds were transferred to the Ministry of Health Office in Geneva and that the funds were classified as Transfers to Semi-Autonomous government Agencies yet the office is not self-reporting. However, these funds are usually channeled through the Ministry of Foreign Affairs which is a self-reporting entity. Total funds disbursed amounted to Kshs. 41,998,224 and not Kshs. 38,883,795.

Committee Observation and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Un-reconciled Scholarships and Other Educational Benefits is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

361. Unsupported Expenditure on Drug Rehabilitation Centre

As disclosed in Note 11 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 296,066,798 in respect of purchase of specialized plant, equipment and machinery. Included in the amount is an amount of Kshs. 17,700,000 being payment for drug rehabilitation center at Coast General Hospital. However, the corresponding Bill of Quantities, tender evaluation report and contract were not provided for audit review. Further, the attached interim certificate did not quantify the preliminaries and work done. In the circumstances, the propriety of payment of Kshs. 17,700,000 for drug rehabilitation center at Coast General Hospital for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the tender documents used to procure the construction of the drug rehabilitation center at the Coast General Hospital were not provided at the time of audit. However, the contract documents have since been provided for audit review. The quantified preliminaries for work done have since been provided for audit review.

Committee Observations and Findings

The Committee noted the failure by the Accounting Officer to submit the tender documents during the audit contrary to Section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.

362. Unsupported Contract Variation

As disclosed in Note 11 to the financial statements, the statement of receipts and payments reflects construction of buildings balance of Kshs. 332,010,654. Included in the construction of building expenditure is an amount of Kshs. 71,501,307 paid for the construction of bunkers and supporting supra structures to house linear accelerators in Nakuru, Garissa and Mombasa. The contractor was paid an amount of Kshs. 56,230,711 in 2018/2019 and Kshs. 314,301,957 in 2019/2020 bringing total payments to Kshs. 442,033,975 as at 30 June, 2021. The initial contract sum was Kshs. 356,000,479 but on 05 June, 2020 was varied by Kshs. 29,061,067; and on 30 September, 2020 by Kshs. 57,820,544. However, variation was not supported by request for contract variation by the contractor and bid documents were not provided for audit. In the circumstances, the propriety, accuracy and completeness of the construction of building expenditure totaling Kshs. 57,820,544 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The procurement for the Construction of Bunkers and Supporting Supra Structures to House Linear Accelerators in Nakuru, Garissa and Mombasa was awarded at a tender sum of Kshs. 356,000,437.00. The contract was varied twice, initially at an amount of Kshs. 29,061,067 and then Kshs. 57,820,543.50. Regulation 132 (5) b of the PPADR 2020 defines contract variation as "a change to the price, completion date or statement of requirements of a contract to facilitate adaptations to anticipated events or changes in requirements". Regulations 132 (1) of PPADR 2020 states that Contract variations or amendments envisaged under section 139(1) (b) of the Act for goods, works and services may either emanate from procuring entity on its own volition or from the contractor because of circumstances that were not foreseen during project design.

The variation of the contract in this case was an initiative of the client for better functioning of the facility as per Status Report Item 05:02:02**.** Section 151 (2) e of the PPADA 2015 provides one of the functions of the contract management team appointed by the accounting officer to include… 'review any contract variation requests and making recommendations to the respective tender awarding authority for considerations and such reviews for variation shall be clearly justified by the technical department in writing backed by supporting evidence and submitted to the head of the procurement function for processing'.

In this case, the contract variation was initiated by the project management team as evidenced by the Principal Secretary State Department for Public Works letter dated 8th September 2020 and the project status report dated 24th August 2020.

Committee Observation and Findings

The Committee observed that the State Department flouted Section 176 of the Public Procurement and Asset Disposal Act, 2015 as observed by the auditors.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to adhere to procurement laws as required by Section 176 of the Public Procurement and Asset Disposal Act, 2015.

363. Unsupported GAVI Vaccines

As disclosed in Note 7 to the financial statements the statement of receipts and payments reflects a balance of Kshs. 10,217,138,555 in respect of use of goods and services which includes specialized materials and services of Kshs. 1,875,001,340. Included in the expenditure is Kshs.

300,000,000 being payment for the procurement of vaccines to meet the GAVI co-financing agreement requirements. It was noted that this budget item had been capped as a procurement and required approval from The National Treasury for any transfers to be made. However, a request made by the Ministry seeking this exemption was not responded to, implying no approval was granted. In the circumstances, the propriety of Kshs. 300,000,000 being payment for the procurement of vaccines to meet the GAVI co-financing requirement for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

Kenya is required to make annual contributions to UNICEF which is the international agency for procurement and distribution of vaccines globally. For the FY 2020/21, the budgeted contribution amounting to Kshs. 300,000,000 was captured in a procurement item (vaccines and sera). Due to capping of procurement items in IFMIS, the Ministry requested the National Treasury to uncap the item to enable the transfer of funds. The uncapping of the item was done at the National Treasury and the Ministry was able to transfer the funds.

Committee Observation and Findings

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

364. Unsupported Medical Drugs Drawing Rights

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 1,875,001,340 on specialized materials and services. The amount includes Kshs. 51,000,000 being transfers to Kenya Medical Supplies Authority (KEMSA) to enable the Hospitals to get drawing rights for drugs on need basis. However, a ledger for this arrangement indicating the opening balance, disbursements to KEMSA for the year, number of drugs drawn in the year and outstanding balance was not provided for audit review. Only an Authority to Incur Expenditure (AIE) was attached to the payment voucher. In the circumstances, the accuracy, propriety and completeness of Kshs. 51,000,000 transfers for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Ministry issued an AIE of Kshs. 51,000,000 to KEMSA forwarded vide letter Ref. MOH/FIN/1/A VOL.III (472) dated 14th May 2021 to facilitate drawing of medical consumables by Mathari Hospital for the FY2020/21 in order to ensure continuity in service provision. However, there was a delay in release of exchequer which was received in July, 2021. This meant that the hospital could not make any withdrawals in the FY2020/21 as planned but currently this is being processed.

Committee Observation and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendations;

The National Treasury must at all times endeavor to disburse funds allocated to the Ministry in good time to facilitate the smooth running of activities.

365. Unsupported Legal Charges

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 1,875,001,340 on specialized materials and services. The amount includes an amount of Kshs. 11,349,544 paid to Solicitor General for case number 626 of 2017. However, the expenditure is not supported by the Attorney General advisory on the same and Court ruling details were also not attached to the voucher. In the circumstances, the propriety, accuracy and completeness of Kshs. 11,349,544 legal charges for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Ministry was sued in the case no.626 of 2017. The matter was heard and judgment delivered on 17th October 2019 after the Attorney General filed a defense on behalf of the Ministry. The court awarded the plaintiff special damages amounting Kshs. 11,349,544.30. The AG vide letter Ref. No.AG/JRP/MOH/220/17 dated 5th December 2019, outlined the details of the court ruling and advised the Ministry to pay the claims.

Committee Observation and Findings

The Committee observed that the explanation given by the Accounting Officer is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

366. Unauthorised Expenditure on Purchase of Specialized Plant, Equipment and Machinery

As disclosed in Note 11 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 296,066,798 on purchase of specialized plant, equipment and machinery. The Ministry paid Kshs. 9,000,000 for supply and delivery of HPV DNA sample collection kits whose budget Kshs. 5,000,000 was resulting to over expenditure of Kshs. 4,000,000. Further, seven dental accessories with a budget of Kshs. 239,000 were purchased at Kshs. 1,965,324 resulting to over payment of Kshs. 1,726,934. In addition, cancer equipment and consumables budgeted for Kshs. 20,341,000 were purchased at Kshs. 37,560,231 resulting to over payment of Kshs. 17,219,231. In the circumstances, the propriety of Kshs. 22,946,165 over expenditure on purchase of specialized plant, equipment and machinery for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Public Procurement and Asset Disposal Act, 2015 Section Part VI, section 53 subsection 53(2) states that '*An Accounting Officer shall prepare an annual Procurement Plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process'.*

The procurement of HPV DNA Sample Collection kits was captured in the procurement plan for financial year 2019 – 2020 at an estimated cost of 5,000,000. During procurement, ten bidders were invited to quote for the item. M/s Bephat Enterprises was the lowest evaluated bidder at a unit cost of 900,000 totaling to 9,000,000. Prior to approval by the Accounting Officer, a Market Survey was done that pegged the cash unit price at 650,000 per unit totaling to 6,500,000. This information is captured on the approved professional Opinion No. MOH/14/01/2019-2020. This procurement was initiated and executed at a time when the World was being ravaged by COVID-

19. This posed a very serious logistical problem in terms of production, distribution and shipment prices of items increased globally. The price quoted and awarded for this item was therefore within the market range obtaining then.

Committee Observation and Findings
The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

367. Undisclosed Project Costs

As disclosed in Note 11 to the financial statements, the statement of receipts and payments reflects construction of buildings of Kshs. 332,010,654 out of which Kshs. 101,085,000 was for construction works in four (4) medical training colleges. However, these projects were not budgeted under the Kenya Medical Training College as the implementing government agency but were budgeted separately and paid directly to the individual colleges. Further, details of these projects including procurement process, total project cost, payment vouchers, project duration and the project implementation status were not provided for audit review. Consequently, propriety of the expenditure of Kshs. 101,085,000 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The National Assembly approved additional funding of Kshs. 101,085,000 towards construction of 4 medical training colleges during the supplementary Estimates No.1 for FY 2020/21. The funds were voted separately in order to ring-fence them for the 4 specific colleges. The funds were transferred to the Director, Kenya Medical Training College because the campuses are centrally managed by the College.

Committee Observation and Findings
The Committee noted that the Accounting Officer failed to provide the Auditor General with the relevant information pursuant to Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendations;
The Committee reprimands the Accounting Officer for failure to perform duties bestowed upon the office.

Emphasis of Matter

368. Budget Execution

The summary statement of appropriation: recurrent and development reflects final budget of Kshs. 121,748,688,866. However, the following observations were made:

368.1. Budgetary Control and Performance
As reflected in the summary statement of appropriation: recurrent and development combined, the Ministry's actual receipts amounted to Kshs. 93,850,411,784 against budgeted receipts of Kshs. 121,748,688,866 resulting into a shortfall of Kshs. 27,898,277,082 (or 23%). The Ministry's actual expenditure was limited to the receipts realized. The under-funding affected the planned activities and may have impacted negatively on the service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer admitted that as reflected in the Summary statements of appropriation recurrent and development combined, the Ministry's actual receipts amounted to Kshs. 93,850,411,784 against budgeted receipts of Kshs. 121,748,688,866 resulting into a shortfall of Kshs. 27,898,277,082 or 15%. The Ministry's actual expenditure was limited to the receipts realized. The underfunding was as a result of the delays by the respective donors to give returns for direct payments e.g. BADEA, GAVI.

Committee Observation and Findings

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

368.2 Over Expenditure on Budgeted Items

Included in the total expenditure of Kshs. 92,999,398,612 is Kshs. 5,688,186,817 in respect to forty-nine (49) expenditure items whose budget amounted to Kshs. 3,401,184,419 resulting to over expenditure of Kshs. 2,287,002,398. This contravenes Regulation 52(1) (b) of the Public Finance Management (National Government) Regulations, 2015 which states that 'AIE holders shall be made to understand that the limit to which they may spend is that prescribed by the Authority and not their expectations, however justified this may seem.

Submission by the Accounting Officer

The Accounting Officer admitted that actual expenditure for FY 2020/21 was Kshs. 92,999,398,612. This expenditure was the summation of all expenditures incurred at different periods of the Financial Year. The over expenditure was caused by budget cuts in the supplementary estimates which happened after the expenditure had been incurred. The National Treasury authorized re-allocations to offset the negative balances caused by the reductions in the Supplementary Estimates no.2. In overall, the Ministry did not exceed the budget approved by the National Assembly.

Committee Observations and Findings

The Committee observed that the Accounting Officer contravened Regulation 52(1) (b) of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

369. Exchequer Release Not Supported by Appropriations-in-Aid

As disclosed in Note 8 to the financial statements, the statement of receipts and payments reflects grants and transfers to other government entities of Kshs. 66,946,401,966 out of which Kshs. 14,753,450,055 is exchequer support to eight (8) Semi-Autonomous Government Agencies with Nil appropriations-in-Aid. However, this support was provided without determining the revenue raising measures of these Institutions contrary to Paragraph 37 of the National Treasury Circular No.16/2020 dated 26 August, 2020 which states that the sector working groups should critically analyse the revenue generating potential of SAGAs in their respective sectors.

Submission by the Accounting Officer

The Accounting Officer admitted that at the time of submission of the Financial Statements, all Appropriations-In-Aid had not been duly captured. The Appropriations-In–Aid from these Agencies have since been captured and updated in the financial statements.

Committee Observation and Findings

The Committee noted that the Accounting Officer failed 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 Act, 2012.

Committee Recommendations;

The Committee reprimands the Accounting Officer for financial misconduct as prescribed under Section 197 (1) of the PFM Act, 2012

370. Non-Payment of Pending Bills

As disclosed under Note 20 to the financial statements, pending bills totalling to Kshs. 41,789,113,924 were not settled during the year but were instead carried forward to financial year 2021/2022. 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. My opinion is not modified in respect to the above matters.

Submission by the Accounting Officer

The Kshs. 41billion worth of pending bills relate to court awards and Legal fees, some ruled in court, for which funding was not provided in the budget. Because of the significance of the amount, they have therefore remained pending over the years. The matter was discussed in the Public Accounts Committee appearance on 19th of May 2021 and the Committee recommended that the Ministry's Legal Department drafts a proposed amendment bill on the civil cases that aim at curbing the interest rates and any other relevant matter that may facilitate the Committee to follow up with State Law Office. The recommendations were submitted to the committee.

Committee Observations and Findings

The Accounting Officer failed to provide a breakdown of the Kshs. 41 Billion.

Committee Recommendation

The Accounting Officer to within a month of adoption of this report for a taskforce/ committee to audit and negotiate the awards with a view of the awardees forfeiting interest.

Other Matters

371. Terminated Loan Agreements

The Ministry signed two (2) loan agreements with Arab Bank for Economic Development in Africa for the construction of Wajir and Rongai hospitals of Kshs. 1,250,000,000 with the Ministry expected to provide additional funding of Kshs. 550,000,000 all totalling Kshs. 1,800,000,000. The Wajir hospital start date was 07 January, 2012 ending on 13 August, 2021 while that of Rongai was to start on 09 March, 2013 ending on 9 March, 2021. However, the payments that have been made to date revealed that both projects had not commenced as at 30 June, 2021. Management indicated that the loan agreements had been cancelled but details of the loan, repayment terms, reasons and consequences of the cancellation were not provided. This is despite the Ministry allocating Kshs. 640,000,000 towards the projects which have remained unutilized.

Submission by the Accounting Officer

The construction of Wajir and Rongai Hospitals was allocated funding in FY 2020/21 budget. However, due to cancellation of financing by the respective donors, the budgets were removed in Supplementary estimates No.I for FY 2020/21. It should therefore be noted that the Government did not withdraw any funds from the financiers of the two projects.

Committee Observations and Findings

(i) The Committee observed that the explanation given by the Accounting Officer did not explain reasons for loan cancellation;

(ii) The Committee further 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; and

(iii) The Committee similarly observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to keep proper financial records as prescribed under Section 197 (1) (k) and (l) of the PFM Act, 2012.

372. Signing of Agreement Without Budgetary Allocation

The Ministry entered into a 'Commitment Undertaking' on 26 May, 2021 to procure ten million (10,000,000) doses of Johnson and Johnson vaccine at a price of USD.10 per dose totalling to USD. 100,000,000 (Kshs. 10,967,000,000). However, only a budgetary allocation of Kshs. 7,613,217,632 had been approved resulting to over commitment of Kshs. 3,353,782,368. At the time of the audit in December 2021, the country had received 23,279,820 vaccines with only 1,552,800 vaccines being purchased from Johnson and Johnson and balance of 21,727,020 being donations. Under the circumstances, it is not clear whether the commitment undertaken was beneficial to the government.

Submission by the Accounting Officer

The Ministry on behalf of Government of Kenya entered into a 'Commitment Undertaking' with the African Vaccine Acquisition Trust (AVAT) as observed. This was a requirement for the member states of the African Union to secure vaccines from the Johnson and Johnson and it was meant to provide a firm commitment that a member state will procure a minimum number of Vaccine doses. This was important to guarantee Kenya access to the vaccines despite the global shortage as a result of supply constraints amid high demand by countries in order to vaccinate their populations against COVID-19 and save lives. Having signed the Undertaking, the National Treasury provided the requisite budget to make the deposit and the balance was to be provided as and when the consignments are delivered based on Kenya's requirement considering the available vaccines stocks.

It should be noted that the GoK has so far expended Kshs. 2,007,694,528 and any further budgetary commitments will be made on need basis. Currently, only 30% of the Kenyan population is vaccinated against COVID-19 and therefore more vaccines will be required to vaccinate the remaining population.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to the signing of agreement without budgetary allocation was unacceptable.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to adhere to Section 44 (2) (a) of the Public Procurement and Asset Disposal Act, 2015 that requires an Accounting Officer to ensure that procurement of goods, works and services of a public entity are within the approved budget of that entity.

373. 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 and The National Treasury's Circular Ref. AG.4/16/2 Vol.3 (72) dated 30 June, 2021.

Submission by the Accounting Officer

This was discussed in the parliamentary Accounts Committee appearance on 30th November 2021.The Ministry is awaiting the PAC Report.

Committee Observation and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2019/20 and recommendations not implemented.

Committee Recommendations;

The Committee reprimands the Accounting Officer failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

374. Failure to Prepare Financial Statements

The following financial statements were not prepared and presented for audit as required by the respective laws.

Financial Statements	Amount-Bank Balance 30 June, 2021 Kshs.	Applicable Law

Tobacco Control Fund	230,940,211	Section 8 (3) (a) and (b) of the Tobacco Control Act, 2007 requires the officer administering the Fund to cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund and submit the same to the Auditor-General in respect of each financial year
Kenya Health Human Resource Advisory Council	62,216,554	Section 43 (3) of the Health Act, 2017 states that the Council shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Council together with a statement of income and expenditure during the year; a statement of the assets and liabilities of the Authority as of the last day of that year; a cash flow statement for the financial year; and any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.
Kenya Health Professions Oversight Authority	52,127,276	Section 59 (3) of the Health Act 2017 states that the Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Authority together with a statement of income and expenditure during the year; a statement of the assets and liabilities of the Authority as of the last day of that year; a cash flow statement for the financial year; and any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.
Construction of a Cancer Centre in Kisii Level 5 Hospital	9,993,800	section 4.01 of the loan agreement requires the borrower to keep separate accounts for the project and have them audited by the Auditor-General or an independent auditor appointed by the Auditor-General. However, no financial statements in respect of this project were prepared contrary to the loan agreement
Total	**124,337,630**	

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

Submission by the Accounting Officer

The Accounting Officer admitted that the following financial statements were not prepared and presented for audit as required by the respective laws. This was due to various reasons as indicated in the table below.

Financial Statements	Amount- Bank Balance 30 June, 2021 Kshs.	Applicable Law	RESPONSE
Tobacco Control Fund	230,940,211	Section 8 (3) (a) and (b) of the Tobacco Control Act, 2007 requires the officer administering the Fund to cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund and submit the same to the Auditor-General in respect of each financial year	The bank statements were not available in the internet banking portal but have since been made available for review. These shall be accounted for in the subsequent financial years.
Kenya Health Human Resource Advisory Council	62,216,554	Section 43 (3) of the Health Act, 2017 states that the Council shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Council together with a statement of income and expenditure during the year; a statement of the assets and liabilities of the Authority as of the last day of that year; a cash flow statement for the financial year; and any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.	This is a semi-autonomous government agency whose board is yet to be gazetted. However, since the entity had no board in the financial year 2020/21, they utilised their funds from the Ministry's head quarter vote. The funds were accounted for and audited for with the Ministry's Financial Statements. No funds were transferred to the organisation.
Kenya Health Professions Oversight Authority	52,127,276	Section 59 (3) of the Health Act 2017 states that the Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Authority together with a statement of income and expenditure during the year; a statement of the assets and liabilities of the Authority as of the last day of that year; a cash flow	This is a semi-autonomous government agency whose board was gazetted on 25th March 2022 gazette notice No. Vol. CXXIV-No. 53. However, since the entity had no board in the financial year 2020/21, they utilised their funds from the Ministry's head quarter vote. The funds were accounted for and audited for with the Ministry's Financial Statements. No funds

		statement for the financial year; and any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.	were transferred to the organisation.
Construction of a Cancer Centre in Kisii Level 5 Hospital	9,993,800	section 4.01 of the loan agreement requires the borrower to keep separate accounts for the project and have them audited by the Auditor-General or an independent auditor appointed by the Auditor-General. However, no financial statements in respect of this project were prepared contrary to the loan agreement	These funds were not transferred to any institution but were utilised from the Ministry's vote and audited together with other expenditures that were incurred at the Ministry's level.
Total	**124,337,630**		

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer failed to prepare complete financial statements;**
ii. **The Committee further noted that the Accounting Office failed to reconcile and submit to the Auditor General necessary supporting documents as prescribed under Section 68 (2) of the PFM Act 2012; and**
iii. **The Committee noted with concern incapacity of officers in the finance department.**

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office; and**
ii. **The Accounting Officer must institute internal administrative action on responsible officers within one (1) month of adoption of this report.**

375. Capacity Building Training on Mental Health Champions

As disclosed in Note 8 to the financial statements, the statement of receipts and payments reflects current grants government agencies and other levels of government of Kshs. 42,998,971,347 which includes Kshs. 20,000,000 for psychological support to health workers. This amount was meant to cushion frontline health care workers in all forty-seven (47) counties during the COVID-19 pandemic for a period of three (3) months with effect from April, 2020.

However, the amount was paid on 30 June, 2021 to Kenya Medical Training College to implement the program about one year after the validity period. Further, the program activities entailed holding brief sessions with counsellors daily, having a dedicated line with tele-counselling for health workers, psychological support to families of health workers who turn positive of COVID-19, expansion of psychological support to cover all employees and citizenry and to develop targeted messages on COVID-19 to reach all citizenry through mass and social media. However, there was no evidence that the Institution utilized the funds to undertake the stated activities in all forty-seven (47) counties. This contravenes paragraph 4.2.2 (iii) of the Guidelines on Managing Training in the Public Service, 2017 which requires all applications of course approval be accompanied by a letter of admission to a recognized training institution complete with fees structure and/or a detailed proforma invoice and course duration; and extracts of approved minutes of the Ministerial Human Resource Management and Advisory Committee meeting recommending the training. In the circumstances, the Ministry was in breach of the law.

Submission by the Accounting Officer

It was not possible for the Ministry to carry out the capacity building training due to the following reasons;

- The funds were received late in the last quarter of the Financial Year and adequate time was required for the development of an implementation framework.
- The allocation was given as a grant to the ministry and transferred to K.M.T.C to implement the programme.

Please note that the implementation framework has now been developed and a team has been constituted comprising officers from the Ministry's Mental Unit, Mathari Hospital and K.M.T.C to implement the programme in all the forty seven (47) counties.

The training will be implemented in two faces, i.e.

1st phase: A three (day) psychosocial support training module development workshop for a team of trainers identified from among the Ministry establishment to train selected county healthcare workers to be mental health champions.

2nd phase: To involve ten (10) teams who will travel concurrently to all the 47 Counties.

Despite the delay, there is still need for psychosocial support to health workers since the psychological impact related to Covid -19 are still with us. In addition the support will also prepare health care workers to deal with future pandemics.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to the Capacity Building Training on Mental Health Champions was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

376. Emergency Medical Treatment Fund

Note 9 to the financial statements reflects emergency relief and refugee assistance of Kshs. 1,595,904,537. However, the Ministry has not established an emergency medical treatment fund to provide for unforeseen situations. In addition, the Ministry did not have policy guidelines, maintenance standards and coordination mechanisms for provision of emergency healthcare in the event of unforeseen calamity. This is contrary to Section 15(1) (x) of the Health Act, 2017 which states that the national government Ministry responsible for health shall establish an emergency medical treatment fund for emergencies to provide for unforeseen situations calling for supplementary finance. In the circumstances, the Ministry was in breach of the law.

Submission by the Accounting Officer

The Ministry wishes to clarify that this is not a fund. The Ministry in collaboration with other government line Ministries plays a critical role in responding to Emergencies and disasters as guided by National Disaster Response plan 2014.

To operationalize Section 15(1) (x) of the Health Act, 2017, the Ministry developed Emergency Medical Care (EMC) Policy 2020-2030. The Policy was launched in 2021 and a national steering committee appointed to provide stewardship in establishment of Emergency Medical Treatment Fund. A technical working group was also constituted to implement decisions made by the steering committee. One of the key milestones in the process towards establishment of the fund was development of the Emergency Medical Care Guidelines which were finalized early this year.

The Ministry is also mandated to respond to disease outbreaks whenever they occur in line with Integrated Disease Surveillance and Response Strategy (IDSR). The country has faced various disease outbreaks including: Leishmaniasis, Yellow fever, COVID-19, Measles, Dengue Fever, Chikungunya among others. In response to the outbreaks, the Ministry undertook the following:

i. Through KEMSA, procured and distributed medical and laboratory supplies.

ii. Provided technical assistance to the affected Counties through deployment of national multi-disciplinary teams.

iii. Developed and distributed Information, Education and Communication (IEC) materials.

iv. Supported County Emergency operation Centres (EOCs) to enhance coordination of response efforts.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to the Emergency Medical Treatment Fund was satisfactory as the emergency medical care guidelines had been developed.

Committee Recommendation

The Committee recommends that the matter is resolved.

377. Unjustified Use of Restricted Tendering

As disclosed under Note 11 to the financial statements, the statement of receipts and payments reflects acquisition of assets balance of Kshs. 886,174,137 out of which Kshs. 33,016,760 is refurbishment of buildings. The amount includes Kshs. 14,074,730 for office renovations at Afya House paid to two (2) contractors. Management used restricted tendering to procure refurbishment works awarded at Kshs. 38,316,644. However, the nature of the works did not meet the conditions set for use of restricted tendering under Section 102 of the Public Procurement and Asset Disposal Act, 2015 and no explanations were given for not using open tendering. In the circumstances, the Ministry was in breach of the law.

Submission by the Accounting Officer

The 7th Floor Project was requisitioned and bills of quantity done in March 2021, tenders issued to ten prequalified NCA registered contractors, and tender documents opened on 27th April 2021. Evaluation was done and contract awarded at Kshs. 8,411,275.00

The 6th Floor Project was requisitioned in May 2021 and Bills of Quantity done in the same month with tenders issued to ten prequalified NCA registered contractors; and tender documents opened on 28th May 2021. Evaluation was done and the contract awarded at a tender sum of Kshs. 29,905,369.

The procurement was done under Section 102 (b) (1) of the Public Procurement and Asset Disposal Act 2015(PPADA) and the enabling regulations. These procurements were in strict adherence to 2nd Schedule- Threshold Matrix that sets the maximum threshold of restricted tender under Sec 102(b) at Kshs. 30,000,000.00 and Regulation 89 (2) of the PPADR 2020.

In both cases, ten different NCA Registered contractors prequalified by the State Department for Public Works were invited to bid as per Public Procurement and Asset Disposal Regulations 2020 89 (5) which states - 'Where restricted tendering is used pursuant to Section 102(1)(b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list maintained as provided under Sections 57 and 71 of the Act or otherwise as permitted under section 56 of the Act.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to the Unjustified Use of Restricted Tendering was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

378. Compensation of Employees

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects compensation of employees' balance of Kshs. 13,325,664,987 whose audit revealed the following observations:

378.1 Unremitted NSSF Contributions

Records availed for audit revealed that the management failed to deduct and remit National Social Security Fund contributions amounting to Kshs. 4,808,600. This is contrary to Section 19 (1) and Section 20 (1) of the National Social Security Fund 2013 which requires every employer who, under a contract of service, employs one employee or more shall register with the Fund as a contributing employer and shall, register his employee or employees, as members of the Fund and pay to the Pension Fund in respect of each employee in his or her employment. In the circumstances, the Management is in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that Kshs. 4,808,600 was not remitted since it was not deducted from the employees due to system failure. The system is configured to automatically effect statutory deductions on staff salaries. The issue of unremitted NSSF contributions arose out of failure of the IPPD system to make deductions on some categories of staff contrary to what is expected of the system during processing of the payroll. The Ministry has taken the necessary action towards correction of the anomaly and the issue has been fully addressed. The deductions are currently being effected for the respective cadres.

Committee Observations and Findings

(i) **The Committee observed that the issue on unremitted NSSF Contributions was as a result of system error; and**

(ii) **The Committee observed that the explanation given by the Accounting Officer was satisfactory.**

Committee Recommendation

The Committee recommends that the matter is resolved.

378.2. Unremitted Pension Contributions

Analysis of the payrolls revealed that pension contribution amounting to Kshs. 16,678,328 for seven hundred and three (703) employees below the age of 45 years who were engaged on permanent and pensionable terms was not deducted and remitted. Therefore, management had not fully implemented the Defined Contribution Scheme as directed by the Head of Public Service through circular Ref. No. PO/CAB.1/8A dated 20 November, 2020. In the circumstances, the Management is in breach of the law.

Submission by the Accounting Officer

The Ministry has been working on the issue and by the end of June, 2021, it was only thirty officers (30) out of the 703 whose pension contribution had not been remitted and the problem has been fully addressed. The implementation of Defined Benefit scheme was centrally effected in the IPPD system by the Ministry of Public Service. However, it was realized later that the system did not effect the pension deductions for all employees as expected. The system assigned some of the employees the old GOK pension code instead of the code for the Defined Contribution Pension Scheme. This affected seven hundred and three (703) employees below the age of 45 years.

Committee Observations and Findings

The Committee observed that issues on Unremitted Pension Contributions was as a result of System Error

Committee Recommendation

The Committee recommends that the matter is resolved.

379. Delayed Construction of a Cancer Centre in Kisii Level 5 Hospital

As disclosed in Note 11 to the financial statements, the statement of receipts and payments reflects construction of buildings of Kshs. 332,010,654 out of which Kshs. 9,993,800 was for the construction of a Cancer Centre at Kisii Level 5 Hospital. The project was through a loan agreement signed on 03 June, 2015 between the Republic of Kenya (Borrower) and Arab Bank for Economic Development in Africa (BADEA) of USD. 10,000,000 with the government expected to provide additional funding of USD. 2,800,000 totalling to USD. 12,800,000 (or Kshs. 1,280,000,000). The project duration was six (6) years from 10 August, 2016 to 10 August, 2022. However, as at 30 June, 2021 about five (5) years after the start date, the project was less than 1% complete with only Kshs. 9,993,800 having been spent. Total loan amount disbursed since the inception of the project has also not been stated. In the circumstances, continued funding from the donor is not guaranteed and the project is likely to stall.

Submission by the Accounting Officer

The Kisii Cancer Treatment Centre project is co-financed through funding from the Arab Bank for Economic Development in Africa (BADEA), Saudi Fund for Development (SFD) and the Government of Kenya with an estimated project cost of Kshs. 2.28 billion. The loan agreement provides for the engagement of a consultant to design and supervise the construction and equipping of the cancer treatment centre.

Progress to-date

I. **June 2015**: Signing of loan agreement between BADEA and GOK
II. **April 2017:** Signing of loan agreement between SFD and GOK
III. **November 2019:** Signing of contract between Schon and Associates Company Limited (the Consultant) and Ministry of Health for provision of consultancy services regarding designs, tendering and supervision of construction works and installation of equipment.

December 2019: Site handover to the Consultant

IV. **January-February 2020:** The consultant conducted feasibility assessments, topographical and geo-technical surveys and environmental impact assessment.
V. **March 2020:** Submission (by the consultant) of the Preliminary Project Brief and Project Inception report to PIU.
Project Implementation Work Plan was revised and submitted to BADEA and SFD for their no-objection
VI. **April- July 2020:** Development of Preliminary and Schematic project designs and equipment specifications by the Consultant
VII. **August 2020:** Joint PIU/Consultant reviewed Schematic designs and approved for final detailed designs.
VIII. **October 2020:** Submission of detailed architectural designs to the PIU. Designs were reviewed by the Kenya Nuclear Regulatory Authority and approved
IX. **November 2020:** Joint PIU/Consultant retreat held to review the detailed architectural designs, consolidated project Master List for tax exemption, Bill of Quantities and draft Tender Documents
X. **December 2020:** The Final Design Report submitted to the 2 financiers for their review and no-objection. Report consisted of:
   a. Detailed design drawings
   b. Final specifications and Project Master List
   c. Final Bills of Quantities
   d. Cost estimate based on final Bill of Quantities
   e. Updated project implementation plan
XI. **January 2021:** BADEA reviewed the draft tender documents and requested
XII. **February 2021:** No-objection received from BADEA.
XIII. **April 2021:** No-objection received from SFD
XIV. **May-July 2021:** Finalization of tender documents and criteria for evaluation as well as tax exemption master list.
XV. **August 2021:** Tender advertisement
XVI. **November 2021:** Tender closing
XVII. **January 2022:** Tender Evaluation

XVIII.April 2022: No objection sought from the Donor

Causes of Delays and Mitigation measures

	Challenges	Mitigation measures
1.	Initial two-year delay in the signing of loan agreements by SFD that delayed the onset of the project.	Request for extension for the loan effective period was granted by both BADEA and SFD to expire December 2021 and December 2023 respectively. BADEA loan extension is awaited.
2.	Unprecedented long period for preparation of tender documents and Equipment specifications occasioned by Covid-19	Done

Committee Observations and Findings

The Committee observed that the explanation and the supporting documents given by the Accounting Officer with regards to Delayed Construction of a Cancer Centre in Kisii Level 5 Hospital was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

380. Demurrage Charges

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects Kshs. 1,875,001,340 on specialized materials. The amount includes Kshs. 30,444,254 being demurrage charges incurred due to delay in port clearance; Kshs. 7,091,793 was payment to transporters while Kshs. 2,171,587 related to other service providers on medical donations. In the circumstances, the value for money on donations and avoidable demurrage charges for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

After the COVID-19 outbreak, various measures were put in place to control the spread of the pandemic in the country. Among the measures was provision of Personal Protective Equipment to frontline health care workers involved in handling COVID-19 patients. Kenya received various donations from the international community as assistance to the country in the fight against the pandemic and thereby bridged the gap in the short supply of PPEs worldwide. The clearing cost for these commodities were not factored in the FY2020/21 budget as the outbreak occurred after the budget had been appropriated and thereby delays in payment of clearing charges were unavoidable.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Demurrage Charges was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

381. Mathari National Teaching and Referral Hospital (MNTRH)

381.1 Encroachment

The Ministry owns a parcel of land No.42/13/97/3 which houses Mathari Teaching and Referral Hospital measuring approximately 34.3 hectares. Physical verification revealed the land was partially fenced by Nairobi Metropolitan Services (NMS). However, no documentary evidence was provided to support this explanation. It was observed that an undisclosed developer has erected a temporary fence on the unfenced portion of the land.

Submission by the Accounting Officer
The Accounting Officer admitted that Ministry of Health owns a parcel No. 42/13/97/3 which houses Mathari National Teaching & Referral Hospital measuring approximately 34.3 Hectares. Part of the said land is partially fenced by Nairobi Metropolitan Services for temporary use and thus the land has not been encroached. The hospital has since secured a title deed for the whole piece of the land.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Encroachment was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

381.2 Relocation of the Hospital

Available records indicate the hospital will be relocated to new location in Ngong, Kajiado County where a Modern Neuropsychiatric National Teaching and Referral Hospital will be established at a cost of Kshs. 5,000,000,000 over a two-year period. According to the proposal, the parcel of land measuring 34.3 hectares will be exchanged by a new parcel of land in Ngong measuring 81.69 hectares. However, the terms of the exchange have not been spelt out clearly stating whether the parcel will remain in the custody of the Ministry and consideration of land values for the two (2) parcels that are being exchanged.

Submission by the Accounting Officer
The government has provided 200 acres land in Ngong' area, Kajiado County for relocation of Mathari National Teaching & Referral Hospital for construction of new Neuro-Psychiatry hospital.

The proposed relocation is on government land and does not therefore amount to exchange of land. The Ministry will retain the two parcels of land.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer with regards to relocation of the Hospital.

Committee Recommendation

The committee recommends that the Accounting Officer avails a ststus report on the relocation exercise within three months of adoption of this report.

381.3 Renovation Works

Physical verification in the month of December, 2021 revealed ongoing renovation works at the hospital valued at Kshs. 74,178,392. However, the rationale of the on-going renovation works despite the planned relocation after two years could not be confirmed.

Submission by the Accounting Officer

Ongoing renovation works are geared toward ensuring the hospital offer health services to the citizens as envisaged in the constitution. These renovations include; routine maintenance of floor repairs, construction of a waiting bay, modernization of kitchen, construction of walk ways, fencing among other renovations. Construction of the new facility in Ngong may takes longer than the 3 years expected and the hospital still needs to continue offering services hence the renovations. It is critical to note despite the growth in the hospital workload which has tripled over time, the hospital infrastructure has remained static thus stretching the already old and worn out buildings.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Renovation Works.

Committee Recommendation

The Committee recommends that the Accounting Officer prepare and submit a report to the Committee detailing progress of works and amounts appropriated and expensed in the project within three (3) months after adoption of this report.

381.4 Missing Title Deed

The Ministry is not in possession of title deed for the parcel of land that the hospital sits on instead only allotment letter was provided to confirm ownership. In the circumstances, the value of money and ownership of the land could not be established.

Submission by the Accounting Officer

The Ministry through the hospital board has managed to secure the title

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Missing Title Deed was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

381.5 Outstanding NHIF Dues

A scrutiny of the records held by the Hospital revealed that the Hospital has accumulated over Kshs. 135 Million since 2016-2019 which is owed to them by the National Hospital Insurance Fund (NHIF).

Submission by the Accounting Officer

The Accounting Officer admitted that NHIF owed the hospital Kshs. 134,725,700 at the time of audit (FY 2016-2019). The hospital has put in place an ad-hoc committee comprising of staff from

MNTRH and NHIF as a measure to address the issue of debt with NHIF. The constituted committee has been working and so far, payments amounting to Kshs. 9,446,600 have since been remitted to the hospital leaving a balance of Kshs. 123,056,600. Going forward, the issue will not recur since the current NHIF System is electronically programmed with biometrics as security verification.

Committee Observations and Findings

The Committee noted the failure by the ad-hoc committee and the Accounting Officer to ensure that Kshs. 123,056,600 is remitted within reasonable time.

Committee Reccommendation;

The Committee reprimands the Accounting Officer for failure to institute appropriate measures to collect the specified revenue from NHIF.

381.6 Dilapidated Sections of Administration Block

Some sections of the hospital building have ceiling boards worn out and loosely hanging and walls are broken posing danger to staff occupying the respective offices. To this extent, Regulation 139(1) of the Public Finance Management (National Government) Regulations, 2015 which states that the accounting officer of a national government entity shall take full responsibility and ensure that proper control systems exist for assets and that (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse; (b) movement and conditions of assets can be tracked has not be complied with.

Submission by the Accounting Officer

The hospital management is committed to rehabilitating the old and dilapidated administration block and one of the buildings is now fully renovated and allocated to finance and accounts department with the desired securities in place for an accounts office.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Dilapidated Sections of Administration Block. However, the Committee noted that no timeline was provided for completion.

Committee Recommendations

The Accounting Officer should within three months (3) of tabling and adoption of this report, liaise with the National Treasury on allocation of adequate resources towards the ultimate completion of the project.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

382. Compensation of Employees

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects compensation of employees' balance of Kshs. 13,325,664,987 whose audit revealed the following observations:

382.1. Weakness in Processing of Manual Payroll

Analysis of compensation of employees revealed payment of Kshs. 4,171,978,129 that was processed through manual payrolls (Excel). However, there were twenty (20) duplicate identification numbers, twelve (12) duplicate bank accounts shared by twenty-six (26) employees and two hundred and sixty-eight (268) staff were remunerated both as Universal Health Care (UHC) contract staff and UHC contract intern.

Submission by the Accounting Officer

The Ministry wishes to state that the monies erroneously paid because of the above weaknesses have started being recovered through various methods. The weakness in processing of the manual payroll is due to the following factors:

a.) Duplicate Identification numbers

The problem has been addressed through enrolling the interns and short term contracts staff into the Integrated personal and Payroll Data (IPPD) system since January, 2021. Previously, payment of stipend and salaries was done through a manual process of capturing data in an excel sheet which was not accurate. Please note that no funds were lost in the process.

b.) Duplicate bank accounts

The issue has since been addressed through payroll refinement and by paying salaries and internship stipend through the IPPD system. Please note that all payments are now done through the IPPD and not by separate vouchers.

c.) Remuneration of UHC 3 Years contractual staff both in UHC 1 Year Interns and Clinical Interns (Diploma)

The problem was resolved and those who earned a double pay were recovered appropriately. Currently, there are no healthcare workers receiving a double pay under the UHC. County Governments recruited healthcare workers on a three (3) years contract for the UHC programme. However, some of those who were recruited had been engaged by the Ministry and were still serving as interns. These interns failed to tender their resignation and continued earning an internship stipend alongside the UHC salary. When this was realized, salaries of the concerned officers were stopped to allow for refinement of the payroll and verification of the correctness of the records.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Weakness in Processing of Manual Payroll was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

382.2 Weakness in Processing of Integrated Payroll and Personnel Data (IPPD) Payroll

Analysis of IPPD payrolls revealed that one hundred and ninety-two (192) duplicate bank accounts and six hundred and ninety-three (693) employees were earning below a third of their basic pay.

Submission by the Accounting Officer

This is due to the following factors:

a.) Duplicate bank accounts

The Ministry has since addressed the matter and as at June, 2021; bank details of all the one hundred and fifty one (151) affected officers had been correctly restored. This was a result of erroneous capturing of bank accounts details during the transition from the Manual payroll to IPPD. The department had details of over 10,000 employees on the Manual payroll that were successfully migrated to the IPPD. Please note that no funds were lost as a result of the duplicate bank accounts.

b.) One third rule

The problem came about during implementation of the change in PAYE rates in January, 2021; the introduction of a contribution of 2% of one's basic salary towards their pensions; expiry of tax exemptions for officers living with disabilities in the ministry and the recovery of imprest that had not been surrendered. This affected a number of employees' net salaries lowering them to below the required one third (1/3) threshold. As at June, 2021, a total of 63 officers in the Ministry were earning less than a third of their salaries as shown here below:

No. of officers	Reason
2	PLWDs whose tax exemption certificates had expired.
49	Implementation of the new PAYE rate in January,2021
14	Implementation of the contribution of 2% of the officers basic salaries towards their pensions
2	Deduction of imprest that had not been surrendered
4	Deduction towards payment of government rent arrears.
13	Recovery of overpayment of Health extraneous allowances.

The Ministry has continued to advice the affected officers to consider addressing their financial obligations through other sources rather that their salaries so that they do not commit their salaries below 1/3 as required by law.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Weakness in Processing of Integrated Payroll and Personnel Data (IPPD) Payroll was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

382.3 Transition from Manual to IPPD Payroll

In the year under review, the Ministry operated manual payroll from July, 2020 to December, 2020 for eight thousand six hundred and twenty-two (8,622) Universal Health Care (UHC) staff on a three (3) year contract. However, two hundred and two (202) UHC interns and two hundred and forty-eight (248) registered clinical officers were not assigned payroll numbers on transiting to IPPD. Consequently, the checks during transition from manual to IPPD payrolls were weak.

Submission by the Accounting Officer

Two hundred and two (202) UHC interns and two hundred and forty-eight (248) registered clinical officers were not assigned payroll numbers due to the following reasons:-

Over two hundred (200) staff in the manual payroll already had existing payroll numbers which they did not declare when they were engaged. These numbers required reactivation and the process takes some time slightly over a month. A separate process of reactivation was initiated and the numbers were successfully reactivated and loaded to the payroll.

There was a number of staff who also resigned during the transition period. Salaries for some UHC staff in Lamu and Taita Taveta counties were stopped in January, 2021 on account of participating in an unprotected strike. Consequently, generation of personal numbers for the officers was halted to allow for finalization of the disciplinary process. The internship period for some diploma clinical officer interns and UHC interns started lapsing during the transition period and therefore it was not necessary to proceed with the generation of payroll numbers for them. These categories of interns were paid through a voucher.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Transition from Manual to IPPD Payroll was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

383. Lack of Training Needs Assessment

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects use of goods and services of which includes Kshs. 465,121,890 on training expenses out of which Kshs. 214,211,848 is for tuition fees and allowances for employees. However, these trainings were conducted without a training needs assessment identifying performance gaps and linking the trainings to closing such gaps. This is contrary to Paragraph 3.0 of the guidelines to managing training in public service 2017 which states that "As per the Human Resource Development policy and other Human Resource Management & Development guidelines in the public service, planning for training shall be guided by the outcome of training needs assessment and shall be designed in line with identified performance gaps linking training to closing of such gaps. Training will be planned to upgrade core competencies, knowledge, skills and attitudes of public servants, with the aim of enhancing service delivery." In the circumstances, trainings may not be aligned to performance gaps.

Submission by the Accounting Officer

Taking cognizant of COVID-19 challenges that could not allow a comprehensive Training needs analysis, the ministry carried out a review of the training needs assessment report of 2015. It was noted that some of the projected training interventions were still relevant in addressing current issues affecting the Ministry. The reviewed training needs report informed the current training needs that were relevant in addressing existing capacity gaps.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to conduct a Training needs analysis in order to identify the current level of competency, skill or knowledge within the Ministry and thus no value realised in Kshs. 214,211,848.

Committee Recommendations

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.**
ii. **The Committee instruct the Accounting Officer to conduct a Training needs Assessment for the Ministry and report to the Committee within three (3) months after adoption of this report.**

384. Summary of Fixed Assets

Annex 4 to the financial statements for the year ended 30 June, 2021 reflects summary of fixed assets register historical cost of Kshs. 2,198,541,403 (2020 – Kshs. 1,312,367,266). The following observations were made;

384.1 Fixed Assets Register

The Ministry did not maintain a fixed asset register to record the assets acquired and no valuation was done for the existing assets. Therefore, the balances and nature of the fixed assets disclosed were not supported with sufficient purchase details, unique identification numbers (title documents numbers).

Submission by the Accounting Officer

The Ministry is in the process of developing and maintaining an updated comprehensive register of fixed assets. A list of the fixed assets has been generated and valuation is underway.

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. 2,198,541,403.

Committee Recommendation

The Committee reprimands the Accounting Officer.

384.2 Residential Housing Units

The summary of fixed asset register includes land and building of Kshs. 516,616,229. However, this balance excludes two hundred and thirty-five (235) housing units at Mathari Teaching and Referral Hospitals whose values has not been disclosed.

Submission by the Accounting Officer

The MNTRH land houses 235 (two hundred and thirty-five) residential housing units which are currently managed by the Ministry of Housing (under Landlord-Tenant) agreement for civil servants. These houses are maintained and serviced by the Ministry of Housing as landlord, and its utilities i.e., Water Bills and Electricity Bills are segregated and distinct from the Hospital Side.

The Ministry is liaising with the State Department of Public works for the valuation of the two hundred and thirty five (235) housing units in Mathari Teaching and Referral Hospital. Since the hospital is now a parastatal, the process of taking over the housing units from the Ministry of Housing for use by Health Workers at Mathari is on-going.

Committee Observations and Findings

The Committee observed that the process of taking over the 235 housing unit was ongoing.

Committee Recommendation

The Accounting Officer should ensure that the two hundred and thirty-five (235) housing units at Mathari Teaching and Referral Hospitals whose values had not been disclosed be included in the fixed asset register balance.

384.3 Logbooks not in Custody of the Ministry

The summary of fixed asset register reflects transport equipment balance of Kshs. 36,544,320. Available records indicate a list of two hundred and seventy-four (274) vehicles. However, only forty-eight (48) logbooks were provided for audit resulting to a difference of two hundred and twenty-six (226) that were not in the custody of the Ministry.

Submission by the Accounting Officer

The 226 logbooks indicated are available and in safe custody. Copies of the same have since been availed for audit review.

Committee Observations and Findings

The Committee noted the submission was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

384.4 Undisclosed Land and Buildings

Annex 4 to the financial statements for the year ended 30 June, 2021 reflects land and building balance of Kshs. 516,616,299. The Ministry has various parcels of land across the country including land on the ongoing construction of Cancer Centres in Mombasa, Nakuru and Garissa. However, a list of these parcels of land, buildings and ownership documents have not been provided. Further excluded from this balance is land and buildings along Cathedral Road where the Ministry of Health Headquarters is located. In the circumstances, the existence of an effective mechanism to safeguard the assets could not be established.

Submission by the Accounting Officer

The Mombasa, Nakuru and Garissa Cancer Centres are constructed in the respective counties; hence the Ministry does not own land where the centres are.

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 a complete assets' register.

Committee Recommendation

The Accounting Officer should ensure that a complete fixed asset register is maintained pursuant to Regulation 143(1) of the PFM (National Government) Regulations 2015.

385. Mathari National Teaching and Referral Hospital (MNTRH)

385.1 Motor Vehicle Records

A review of motor vehicle records held by the Ministry of Health (MOH) and the Mathari National Teaching and Referral Hospital revealed that there were some discrepancies regarding the description of the motor vehicles as is stated below; -

Item Records	MOH Records	MNTRH
GK B 704U	Toyota Double Cab	Van
GK A 233U	Nissan Navara	Van
Tractor	GK A795U	GK A 785U

In the circumstances, the ownership of two (2) vans at MNTRH could not be confirmed.

Submission by the Accounting Officer

The hospital was allocated two local running vehicles from the Ministry and proper allocation letters given. All other motor vehicles have proper documentation. A request has also been done to the Ministry of public works for the valuations of these vehicles and tractors to be included in the MNTRH Fixed Asset Register.

Committee Observations and Findings

The Committee noted that the motor vehicles are in the possession of the Mathari National Teaching and Referral Hospital.

Committee Recommendation

The Accounting Officer should ensure that a complete fixed asset register is maintained pursuant to Regulation 143(1) of the PFM (National Government) Regulations 2015.

385.2 Transition of the Hospital to a State Corporation

Legal Notice 165 of 21 August, 2020 established Mathari National and Teaching Referral Hospital (MNTRH) as a state corporation classifying it as a Level 6 hospital. The notice is yet to be fully operationalized since there is no substantive Chief Executive Officer; staffs at the hospital are from the Ministry, payroll and other operations like budget approval are still being controlled by the Ministry.

Submission by the Accounting Officer

The process of transition to a state corporation began with the appointment of the Board; and development of Human Resource instruments. The following instruments have since been developed, adopted by the hospital Board and submitted to the Public Service Commission for approval.

I. Organizational structure and staff establishment
II. Salary structure
III. Career guidelines
IV. Human Resource and Procedures Manual

Upon approval of the instruments, the Ministry will be able to transfer the existing staff to the approved establishment.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to transition of the Hospital to a state corporation was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

385.3 Forensic Department

The hospital's largest population is from Forensic Department/Maximum Security Unit (MSU) which accounts for 30% and deals with in-patient that are law offenders hospitalised for an average of two (2) years. However, for the last seven (7) years the hospital has not received an amount of Kshs. 868,501,000 from the Prisons Department to cater for these patients. There is no signed memorandum of understanding between the Prisons Department and the hospital on the financing arrangements. To this extent, the hospital is being stretched financially and may not offer the services as envisioned.

Submission by the Accounting Officer

The hospital runs the forensic unit which offer services for persons deprived of liberty. However, the State Department of correction services has never remitted funds to defray expenses incurred by prisoners for treatment and maintenance of the facility since inception 42 years ago. Section 15 of the Persons Deprived of Liberty Act provide for the Right to health care for a person detained, held in custody or in prisoned, the responsibility of health care of such a person is therefore within the State Department of correctional services. As such, talks are ongoing between the two Ministries of Health and Interior and Coordination of National Government to see how best to care of MSU patient can be improved and have the state department for correctional services fund the facility.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Forensic department was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

386. Governance Structure

The Note 6 to the financial statements reflects basic salaries permanent employees of Kshs.1,433,608,063 out of which Kshs. 39,683,292 relates to payment of salaries to four (4) key management personnel under job group ‘U’. The positions of these officers are between the office of the Director General and the Principal Secretary but their reporting channels have not been included in the organizational structure neither have their designations disclosed in the financial statements under fiduciary management.

In addition, the key entity information and Management section to the financial statements indicates seven (7) directorates while the organizational structure indicates six (6) resulting to a variance of one (1). Also, there are four (4) acting officers at senior Management level for more than six (6) months. This contravenes Public Service Human Resources guidelines. Furthermore, effective decision making may be hampered due to not holding positions in substantive manner.

Submission by the Accounting Officer

The Organizational Structure and Staff Establishment of 2016 had gaps that could not address the current functionality of the Ministry of Health. Consequently, there were officers acting on positions which were not in the approved staff Establishment of 2016 and therefore could not be confirmed in appointment. The review of the organization structure was delayed by challenges posed by COVID-19. However, a new structure which has been approved by the Public Service Commission is present. The Ministry is in the process of implementing the new structure which will help to competitively fill the senior positions substantively.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Governance Structure was satisfactory.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

DONOR FUNDED PROJECTS

EAST AFRICA PUBLIC HEALTH LABORATORY NETWORKING PROJECT (EAPHLN) - CREDIT NO.5616-KE

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

387. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for conclision

388. Project Closure

The review of the financial agreement indicated that the project was expected to come to an end on 30 September 2020. However, the project account had not been closed at the time of audit without any explanation. Failure to close the project contravenes section 74(6) (c) of the Public Finance Management (National Government) Regulations: 2015, which states that an accounting officer of a national government entity shall ensure that whenever projects are completed, the project assets including buildings, plants, vehicles, furniture, fittings and equipment are properly recorded and handed over to the accounting officer in accordance with the financial agreement. Consequently, the project is in breach of law.

Submission by the Accounting Officer

The East Africa Public Health Laboratory Networking Project was closed on 30 September 2020. However, the project account had not been closed at the time of the audit review as formal project closure report from the World Bank had not been received. Assets were taken over by the respective county governments where the assets were located on closure of project and the cash balance transferred to donor. The Ministry initiated the process of closing the bank account and the National Treasury has instructed the Central bank to close the project account.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Project Closure was satisfactory.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

389. Preparation and Presentation of CR No. 4732 (KEMSA) and CR No. 5616 (MOH) Financial Statements.

The financial agreement of the East Africa Public Health Laboratory Networking (EAPHLN) Project Credit No .4732 KE between The Republic of Kenya and International Development Association was signed on 05 July, 2010. In 2015 an additional Subsidiary Financing Agreement for the East Africa Public Health Laboratory Networking Project Credit No. 5616-KE was signed on 10th November 2015. The management prepared two (2) sets of financial statements under these financing agreements. However, the financial agreement signed 10th November, 2015 stated under appendix Section 1 paragraph 21 on definitions that, "original financing agreement for the East Africa Public Health Laboratory Networking Project between the recipient and the association, (Credit No. 4732 KE)" and also under Section 5.01 of Credit No. 4732- that states the additional condition of effectiveness consists of the Subsidiary Agreement. Consequently, the management has not provided explanations for preparing the two separate sets of financial statements for the same project contrary to the position of the agreements.

Submission by the Accounting Officer

The Accounting Officer admitted that two sets of financial statements were prepared for the two credits. The East Africa Public Health Laboratory Networking (EAPHLN) project prepared and presented financial statements of CR No. 5616 (MOH). KEMSA being a Semi-Autonomous Government Agency (SAGA) and thus a reporting entity prepared a separate set of financial statements for CR 4732 (KEMSA) component. This allowed for fairly presentation of transactions and events of the two entities in the reporting period.

Committee Observations and Findings

The Committee noted the apparent laxity in preparation of financial statements.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office; and**

ii. **The Accounting Officer must institute internal administrative action on officers responsible within one (1) month of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

390. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

391. As required by Financing Agreement Credit No.5616-KE dated 10 November, 2015, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

KENYA HEALTH SECTOR SUPPORT (EMMS/KEMSA COMPONENT) PROJECT (IDA CREDIT NO.4771 AND CREDIT NO.50340-KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

392. Unresolved Prior Years Audit Matters - Receivables

The statement of financial assets and liabilities reflects Nil receivables balance as at 30 June 2021 (2020- Kshs. 2,380,000). However, as previously recorded the receivables balance of Kshs. 2,380,000 as at 30th June 2020 relates to a double payment that was made to a company and for which no refund has been made as at 30th June 2021. In the circumstances, the accuracy and full recoverability of Kshs. 2,380,000 and nil receivables balance as at 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

The double payment of Kshs. 2,380,000 occurred in the year 2016 during the transition of the Central Bank of Kenya payment system from G-Pay to Internet Banking. The matter on the double payment has been referred to the Attorney General's office to undertake legal proceedings against the supplier. The Accounting Officer admitted that the statement of financial assets and liabilities reflects Nil balance as at 30th June 2021. This was an error of omission which has since been corrected and is highly regretted.

Committee Observations and Findings

The Committee noted that this matter was discussed in the FY 2019/20 and a recommendation issued therein.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

393. Closure of the Project Account

The Project effectiveness date was on 30 September 2010 with expected end date of 31 December 2016 which was extended to 30 June 2018. However, the management did not avail any evidence of either a formal request to the International Development Association (IDA) for Project extension beyond 30 June 2018 or the project closure report for audit review. Consequently, any transactions from the project account contravene financing agreement section iv part B (2) on withdrawal conditions, which states that the closing date in respect of the original credit, first additional credit and second additional credit is December 31, 2016 (extended to 30 June 2018)

Submission by the Accounting Officer

The Accounting Officer admitted that the Project had an end date of 31 December 2016 with an extension of up to 30 June 2018. All transactions relating to the project were affected within the project life. No payment was made after the end date. The balance of Kshs. 117,399,654 that was held in the account was transferred to the National Treasury and the account held at Central Bank was closed.

Committee Observations and Findings
The Committee observed that the project account has since been closed.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

394. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

395. As required by Financing Agreement dated 30 September, 2010 between International Development Association and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

HEALTH SECTOR SUPPORT PROJECT-SWAP SECRETARIAT (IDA CR.NO. 4771-KE AND CR. NO. 5367-KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

396. Cash and Cash Equivalents

The statement of financial assets reflects bank balance of Kshs. 289,178,320 (2020- Kshs. 289,178,800) as disclosed under Note 9.7A to the financial statements. Review of correspondences revealed that the National Treasury requested the World Bank to cancel the undisbursed balances under the Kenya Health Sector Support Project estimated at USD 4,628,182.31 vide letter reference EA/FA 63/76/06/ E(92) of 25th June 2018. On 20th February 2019, the World Bank indicated that the final transactions were processed on 13th February 2019 and therefore Credit account IDA 5367-KE was closed. The management has not explained the source of the bank balance whether from GoK or donor funding. In addition, the utilization of the funds held in the bank could not be ascertained. Under the circumstances, the accuracy, validity and completeness of bank balance of Kshs. 289,178,320 as at 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of financial assets and liabilities reflects a bank balance of Kshs. 289,178,320 as at 30th June 2021. The funds were disbursed to KEMSA during the project life for various purposes. However, KEMSA did not utilize all the funds by the time the project was closing and had to refund the balances. The amount consisted of funds from both GOK and donor as per schedule.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Cash and Cash Equivalents was satisfactory.

Committee Recommendation

The Accounting Officer should 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 Act, 2012.

397. Variance on loan from External Development

The statement of receipts and payments reflects cumulative loan from external development partners to date of Kshs. 6,586,234,016 while the project information overall performance under 1.7 funding summary reflects amounts received to date of Kshs. 5,722,527,962 resulting to unreconciled variance of Kshs. 863,706,054. Consequently, the accuracy and completeness of the above balances included in the financial statements for the year ended 30th June 2021 as prepared and presented could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that there was an unreconciled difference of Kshs. 863,706,054 in the statement of receipts and payments. This was an error that arose when the Financial Statements were being prepared using changed templates from another project component which needed adjustment to the balances. The error is regretted and corrected.

Committee Observations and Findings

The Committee noted laxity by the state department to do reconciliations on time.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.

398. Failure of Project to Utilize Full Funding

The Project had an approved budget of Kshs. 6,167,872,262 as funding from co-financiers. The funding summary reflects amounts received of Kshs. 5,722,527,962 resulting to undrawn balance of Kshs. 445,344,300 as at 30th June 2021. Consequently, there's no explanation as to why the project was not able to utilize these funds to achieve the planned objectives for the year ended 30th June 2021.

Submission by the Accounting Officer

The Accounting Officer admitted that there was an undrawn balance of Kshs. 445,344,300. This amount was cancelled through the National Treasury as it could not be spent within the remaining period. As stated in the National Treasury letter ref EA/FA-63//76/06/'E'(92) dated 25th June 2018, cancellation was due to: delay of putting in place a funds flow mechanism for the devolved system; protracted doctors and nurses strike and the prolonged electioneering process that hampered governance structures across the counties.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Failure of Project to Utilize Full Funding was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

399. Closure of the Project

The project effectiveness date was on 30th September 2010 with expected end date of 31 December 2016 which was extended to 30th June 2018. The project held a bank balance of Kshs. 289,178,320 as at 30th June 2021 and incurred expenditure of Kshs. 170,560 in the year under review. However, the management did not provide any evidence of formal request to the International Development Association (IDA) for project extension beyond 30th June 2018. Consequently, any transactions from the project account contravene financing agreement section iv part B (2) on withdrawal conditions, withdrawal period which states that the closing date in respect of the original credit, first additional credit and the second additional credit is December 31, 2016 (extended to 30th June 2018).

Submission by the Accounting Officer

The Accounting Officer admitted that an expenditure of Kshs. 170,560 was incurred during the year contrary to the financing agreement. The amount of Kshs. 170.080 was a long outstanding imprest by one staff member who was away. The officer later surrendered the imprest hence the entry in the books as expenditure. The other Kshs. 480 is bank charges which could not be avoided.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Closure of the Project was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

400. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

401. As required by Financing Agreements dated 10 February, 2012 and 21 January, 2014, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit, further adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

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

Unmodified Opinion

402. There were no material issues noted during the audit of the financial statements of the Project.

Other matter

403. Unutilized Balance

The project information and overall performance under funding summary at Note 1.7 to financial statements reflects donor commitment of KES. 3,674,000,000 and amount received to date (30 June 2021) of KES. 1,355,657,845 resulting to a difference of KES. 2,318,342,155. Meaning the project has attained 37% performance level with project end date indicated as 31st December, 2022. However, the Management has not provided evidence of project extension and amounts of KES. 2,318,342,155 due from the donor may not be received.

Submission by the Accounting Officer

The Ministry will review the project implementation status as at 30th June 2022 to ascertain if there is need to seek extension in line with donor requirements. Meanwhile, the project had attained 37% performance level as at 30th June 2021. This was due to delay in project commencement. The project activities have since progressed with the amount received as at 31st March 2022 being Kshs. 1,750,009,145 (or 47.6%). It is expected that the receipts will be at least 80 % by 30th June 2022 and that all donor commitments will have been received within the project's life.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unutilized Balance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

404. Budgetary Control and performance

The statement of comparative budget and actual amounts reflects final budget of KES. 960,000,000 and variance (under expenditure) of KES. 336,755,885 (or 36%). This underutilization is an indication of failure to implement the planned programmes for the project, thus negatively impacting planned project objectives and service delivery.

Submission by the Accounting Officer

The Accounting Officer admitted that there was under expenditure of KES. 336,755,885 (or 36%) for the year ended 30th June 2021. This was caused by delay in project commencement and the COVID-19 containment measures which limited the project activities thus slowing absorption of funds. The project has instituted mitigating measures including NEMA approval for a 24-hour construction schedule and also aligned it's work plan to fast track its activities and absorption.

Committee Observations and Findings
The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

405. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

406. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

407. As required by Financing Agreement dated 17 December, 2014 between African Development Fund and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

GLOBAL FUND TUBERCULOSIS GRANT PROGRAMME (GRANT NO.KEN-T-TNT-854 AND KEN-T-TNT-1548)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

408. There were no material issues noted during the audit of the financial statements of the Project.

GLOBAL FUND TUBERCULOSIS GRANT PROGRAMME (GRANT NO. KEN-T-TNT 854 AND KEN-T-TNT-1548)

Other matter

409. Budget Control and Performance

The statement of comparative budget and actual amounts for the year ended 30th June 2021 reflects final receipts budget of Kshs.587,000,000 and actual expenditure of Kshs.446,779,164 resulting to underutilization variance of Kshs.140,220,836 (or 24%). Failure to achieve the set targets may negatively impact on the objective of accelerating reduction of tuberculosis, leprosy and lung disease burden through provision of people-centered, universal accessible and affordable quality services in Kenya.

Submission by the Accounting Officer

The project actual expenditure for the year under review is Kshs.446,779,164 resulting to underutilization figure of Kshs.140,220,836 (or 24%) as reported. COVID-19 pandemic impacted negatively on the activities, the project experienced interruptions on the implementation of programmatic interventions that required in person interaction such as capacity building of county health care workers, provision of technical supervision visits to the counties, development and revision of policies and guidelines. Despite the aforesaid challenges, the Ministry ensured provision of adequate Anti-Tuberculosis medications and diagnostic services in all the public health facilities for free to all the diagnosed TB patients in Kenya. Kshs. 140,220,836 not utilized in the financial under review was carried forward to the subsequent financial year.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to the Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

410. Long Outstanding Imprests

The statement of financial assets reflects accounts receivable-imprest and advances balance of Kshs. 3,238,374 (2020 – Kshs. 3,164,169) as disclosed under Note 8 to the financial statements. As previously reported, the total imprest and advances of Kshs.3,238,374 some dating back to 2012/2013 financial year were overdue as at 30 June, 2021. This is contrary to Section 93(5) of the Public Finance Management 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, Section 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. Consequently, it has not been possible to ascertain the recoverability of the imprest and advances balance of Kshs. 3,238,374 as at 30 June, 2021 and the Management is therefore in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of financial assets reflects accounts receivable-imprest and advances balance of Kshs.3,238,374. This amount includes unspent advances to the now defunct provincial directorate of public health amounting to Kshs. 744,774. The ministry is in the process of closing the Kenya Expanded Project Initiative (KEPI) bank accounts that were under the management of the now defunct provincial directorate of public health and transferring the funds to respective accounts including Kshs. 744,774 belonging to National Tuberculosis, Leprosy and lung disease program hence settling oustanding advances. The remaining balance of Kshs. 2,493,600 less over recovery of Kshs. 26,800 is imprest in respect of officers who are no longer in service. The Ministry has engaged the office of the Attorney General for advice and tracing the persons concerned with a view of recovering the defaulted amount in full.

The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings

The matter was resolved by the Committee in its previous report.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

411. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

412. As required by Grant Agreements No. KEN-T-TNT-854 dated 1 October, 2015, and KEN-T-TNT-1548 dated 15 December, 2017, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further,adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

GLOBAL FUND MALARIA CONTROL PROGRAMME GRANT/CREDIT NO. KEN-M-TNT-1546 AND ROUND 10 KEN-011-G13-M

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

413. There were no material issues noted during the audit of the financial statements of the Project.

GLOBAL MALARIA CONTROL PROGRAMME GRANT (GRANT NO. KEN-M-TNT-1546 AND ROUND 10 KEN-011-G13-3)

414. Unsupported Basic Wages of Temporary Employees

The statement of receipts and payment reflects compensation of employees of Kshs. 18,709,029 (2020 – Kshs. 17,655,038) as disclosed under Note 11.4 to the financial statements. Included in the amount is Kshs. 14,169,476 on basic wages of temporary employees. However, the employment contracts of the employees expired in 2016 and have not been renewed. This is contrary to employment Act 2007 section 9(2) which states that an employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee. To this extent, the project management is in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that included in the expenditure for compensation of employees is Kshs. 14,169,476 on basic wages of temporary employees. The Ministry renewed employees contract annually as required by the law and the project regulations. In the year under review the contract documents were inadvertently not provided for audit review, have since been provided for audit review.

Committee Observations and Findings

The Committee noted laxity of the state department to avail supportive documentation on time.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

415. Irregular Domestic Travel Expenditure

The statement of receipts and expenditure reflects purchase of goods and services balance of Kshs. 1,553,227,257 (2020 – Kshs. 373,861,508). Included in this figure is Kshs. 832,625,631 in respect to domestic travel and subsistence. However, the management did not use imprest system but claims were made contrary to section 91(2) of the public finance management act, national government regulations, 2015. In addition, management did not provide donor correspondences indicating their preference to use this method. To this extent, the Project management is in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that the program does not use imprest system but instead uses claim system and makes payment by Mobile money. This was occasioned by challenges in management of imprests by the projects leading to poor accountability of funds. The Ministry raised the concern with the National Treasury vide letter Ref: MOH/1b/15/1/13/Vol.11/17 dated 19th July 2017. Prior to this, the Global fund vide letter Ref: HIA-II/JO/MPESA payment platform/20.06.12 dated 20th June, 2017 had given a no-objection to the implementation of the use of M-PESA payment platform. The National Treasury gave Authority for use of M-PESA system to effect payments vide letter Ref No. MOH/1B/15/1/13 VOL.AG.3/140 Vol.5/(3) dated 8th September, 2017. The National Global Fund Coordinator had recommended the implementation of mobile money payment platform to reduce the risk of using the cash-based imprest system for the activities funded by the grants.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Irregular Domestic Travel Expenditure was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

416. Incomplete Fixed Assets Register

Analysis of the fixed asset register revealed that the Project acquired assets three (3) motor vehicles, two (2) UPS servers, twenty (20) UPS power backup, a microwave, a laser printer, fifty-five (55) laptop bags, sixty-five (65) laptops, power adaptors, five (5) desktop computers, two (2) drawer fire proof safe and a bulk filling storage cabinet. However, details of dates of acquisition, unique identification numbers, and purchase prices of the assets were not indicated in the asset register. Further, annexure on summary of fixed assets was not included in the financial statement as required by the 2020-2021 Public Sector Accounting Standards (PSASB) reporting template. Consequently, the internal control expected from a well-maintained fixed assets register was missing and therefore the existence and ownership of fixed assets could not be confirmed as at 30 June 2021.

Submission by the Accounting Officer
The Accounting Officer admitted that at the time of audit, the asset register had not been updated. The asset register has since been updated.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Incomplete Fixed Assets Register was satisfactory.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

417. As required by Financing Agreement dated 15 December 2017, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KENYA HEALTH SECTOR SUPPORT PROJECT-HEALTH SECTOR SERVICES FUND (GRANT NO. 4771-KE AND TF-16027)

418. Unsupported Bank Balances and transfers to counties
The statement of financial assets and liabilities reflects restated opening balance of Kshs. 1,247,228 instead of Kshs. 657,122,495 reflected in the audited financial statements for the year ended 30th June 2020. However, as had been reported in the previous year and as disclosed in the footnote of the statement of financial assets and liabilities for the year ended 30th June 2021, the amount totaling Kshs. 657,875,226 was transferred and utilized by the counties. The management did not provide evidence such as expenditure returns to support the project transfer of Kshs. 657,875,226 to the counties in the financial year 2013/14. Also, the corresponding funds acknowledgment receipts were not provided for audit review. Consequently, the propriety, accuracy and validity of Kshs. 657,875,226 transfers to the counties and bank balance of Kshs. 1,247,228 as at 30th June 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that the management did not provide evidence such as expenditure returns to support the transfer and utilization of Kshs. 657,875,226 to counties. Further, the corresponding funds acknowledgement receipts by the counties were not availed for audit review. The Ministry is following up with the counties and has dispatched a team of officers to obtain the acknowledgement letters and expenditure returns to support the expenditure. The documents will be provided to the Office of the Auditor General for review.

Committee Observations and Findings
The Committee observed that the Accounting Officer failed to provide evidence for the transfers to counties and the bank balances to the Auditor as prescribed under Section 62 of the Public Audit Act, 2015.

Committee Recommendation

i. **The Committee reprimands the Accounting Officer for failing to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.**
ii. **The Accounting Officer should within one (1) month of adoption of this report, prepare and submit to the Auditor General supported account bank balances and respective schedules for audit verification; and**

419. Closure of the Project Account

The Project commenced on 30 September, 2010 and ended on 30 June, 2018. However, the Project account had not been closed as at 30 June, 2021. Consequently, any transactions from the Project account contravene Section IV (B2) of schedule 2 to the Financing Agreement which states that the closing date in respect of the original credit, first additional credit, the second additional credit and extension of closing date to 30 June, 2018. However, to date the project account has not been closed and no explanation has been provided for failing to close the project account as per the financing agreements.

Submission by the Accounting Officer

The Accounting Officer admitted that the Project was to close on 30th June 2018 but to date the project account has not closed. This is due to an outstanding audit issue on the Kshs. 657,875,266 which was disbursed to the counties in 2013/14 Financial year. Currently, the Ministry is working on providing documentary evidence confirming the receipt of the funds by the counties and the expenditure returns in support of the expenditure as indicated in the audit report. The Project will be closed upon collection of the information from the Counties and clearance by the Auditor.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

Committee Recommendations;

i. **The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.**
ii. **The Committee recommends that the Accounting Officer provide the Committee a report on the finalization of this matter within three (3) months after adoption of this report; and**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

420. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

421. As required by Financing Agreement dated 21 January, 2014 between International Development Association and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

SUPPORT OF THE HEALTH FINANCING STRATEGY - OUTPUT BASED APPROACH (OBA) PROGRAMME (CREDIT NO. 201065853)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

422. There were no material issues noted during the audit of the financial statements of the Project.

423. Undrawn Balances

The programme information and overall performance reflects undrawn balance of EURO 4,392,740 equivalent to Kshs. 457,530,933 under the funding summary on page 5. Also, the statement of financial assets and liabilities reflect cash and cash equivalent balance of Kshs. 479,228 which is likely to be refunded to the donor since the programme end date was 30 October, 2017. There is no evidence that the management have sought for approval for the extension of the programme upon expiry. In the circumstances, the programme may not have realized its set goals and objectives.

Submission by the Accounting Officer

The Accounting Officer admitted that there are undrawn balances as indicted above. The management had written to the donor to re-programme for the undrawn balances where a no objection was issued to utilize the funds with similar activities with the same core objective of the initial programme. The balances in the cash and cash equivalent were refunded back to the donor as the project has now ended it operations.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Undrawn Balances was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

424. Closure of the Programme Account

The Programme commenced on 07 October 2011 and was to end on 30 October 2017. However, the Programme account has not been closed to date without any explanations. Consequently, any transactions from the Programme account contravene Article 2 of the Financing Agreement section 2.2 which states that KfW (German Development Bank) shall have the right to refuse to make disbursements after December 2015.

Submission by the Accounting Officer

The Accounting Officer admitted that the project was to close in October 2017. The Donor however requested for a final Audit to be carried out by external independent auditors which is yet to be done. The Ministry will initiate closure of the Programme bank account as soon as the audit is completed. The Ministry in collaboration with KFW is in the process of procuring the independent auditor.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Closure of the Programme Account.

Committee Recommendation

The Accounting Officer should report to the Committee within three (3) months after adoption of this report, the status in the closure of this project as well as furnish the Committee a copy of the audit report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

425. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

426. As required by Financing Agreement dated 07 October, 2011, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

SUPPORT OF THE HEALTH CARE FINANCING STRATEGY –REPRODUCTIVE HEALTH - OUTPUT BASED APPROACH PROJECT (CREDIT BMZ NO. KENYA 201065853)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

427. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON THE FINANCIAL STATEMENTS

Basis for conclusion

428. Irregular Legal Fee Expenditure

The statement of receipts and payments reflects purchase of goods and services balance of Kshs. 703,993 (2020- Kshs. 287,032) as disclosed at note 6 to the financial statements. Included under the expenditure is special material and services of Kshs.667,484 explained to be legal expenses. However, the procurement documents to engage the law firm including the contract, advertisements shortlisting, minutes, evaluation report and prequalification list were not provided for audit verification. This is contrary Section 44(2) of the Public Procurement and Asset Disposal Act, 2015 which requires accounting officer (d) to ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act and (g) to ensure the procurement and asset disposal process of the public entity shall comply with this Act. To this extent, the project is in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that included under the purchase of goods and services is special material and services of Kshs. 667,484 described as legal expenses. As the Voucher Management Agency (VMA), PwC contracted Voucher Service Providers (VSPs), the health facilities providing the Safe Motherhood and Family planning services to the Voucher Clients. The VSPs would then raise a claim to the VMA for reimbursement as per the contract. However, the VMA was only obligated to reimburse claims that were contractually eligible, some claims or part of the claims submitted for reimbursement would be rejected as ineligible. The rejection prompted some of the affected VSPs to sue PwC. The Legal representative under review is a prequalified legal service provider of PwC representing the firm in all legal matters including the OBA one. The law firm was therefore not procured for this specific matter or project.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Irregular Legal Fee Expenditure was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

429. Closure of Programme Account

The project commenced in November 2005 and ended in January 2017. However, as of 30 June 2021 the project account had not been closed and no extension has been granted. Therefore, the expenditure from the project account is continuously being incurred without approval from the donor. This is contrary to Article 2 of the Financing Agreement section 2.2 which states that KfW shall have the right to refuse to make disbursements after December 2015.To this extent, the Project is in breach of the law.

Submission by the Accounting Officer

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 email communication between KFW and PwC was presented. The programme account will be closed as soon as the court cases are concluded.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Closure of the Programme Account was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

430. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

431. As required by Financing Agreement dated 07 October, 2011, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

TRANSFORMING HEALTH SYSTEMS FOR UNIVERSAL CARE (THS-UC) PROJECT GRANT IDA CREDIT NO.5836-KE, TFOA2561, TFOA2792 AND CR. P152394

REPORT ON THE FINANCIAL STATEMENTS

432. Variance of Donor Receipts

The special account statement reflects total amount withdrawn from Central Bank of Kenya project bank account of Kshs. 4,317,236,086(equivalent to USD 39,749,221) while the actual total amount reflected in the Project statement of receipts and payments as receipts controlled by the entity, payments by third parties and direct payments for the year under review is Kshs. 4,648,461,098 resulting to an unexplained overstatement of donor receipts of Kshs. 331,225,012. In the circumstances, the accuracy and completeness of the donor receipts amount of Kshs. 4,648,461,098 could not be confirmed for the year ended 30th June 2021.

Submission by the Accounting Officer

The Accounting Officer admitted that during the year ended 30th June 2021 the total amount of donor receipts is reflected as Kshs. 4,648,461,098 in the statement of receipts and payments while the special account statement reflects total amount withdrawn from Central Bank of Kenya project bank account of Kshs. 4,317,236,086. The difference between the amounts reflected in the statement of receipts and payments and that in the special account statement of Kshs. 331,225 021 is payments made directly by the World Bank to suppliers for supply of family planning commodities. The Special account statement only shows the movement of actual cash to the project account while the statements of receipts and payments includes direct payments.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Variance of Donor Receipts was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

433. Budget Control and Performance

The statement of comparative budget and actual amounts reflects final budget of Kshs.5,327,429,185 and actual expenditure on comparable basis of Kshs.4,997,431,168 resulting to utilization variance of Kshs.329,998,017 (or 6%). Also, the receipts under performance of Kshs.678,968,088 (or 13%) is an indication of possible weakness in meeting donor conditions and enforcement of controls. Under the circumstances, the primary objective of improving utilization and quality of primary health care services with a focus on reproductive, maternal, newborn, child and adolescent health (RMNCAH) services may not be realized in light of the budget underperformance.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of comparative budget and actual amounts reflects final budget of Kshs. 5,327,429,185 and actual expenditure on comparable basis of Kshs. 4,997,431,168 resulting utilisation variances of Kshs. 329,998,017. The utilisation variance comprised amounts not disbursed to Nairobi Metropolitan Services (NMS) and Isiolo County. NMS had not opened a Special Purpose Account where the money was to be channelled; and the 1st Tranche to Isiolo county was not disbursed as the County had not met the minimum eligibility conditions for disbursement of funds as per the financing agreement which requires that the health budget for the County should not be less than their previous financial year's. It is also true that there were receipts under performance of Kshs. 678,968,088 during the year under review. This is due to restriction of movement and gathering after outbreak of COVID-19, the funds received in the prior year had not been fully utilized as many activities were not undertaken as planned. All the activities planned for 2019/20 were reprogrammed and undertaken in the year 2020/21 together with some planned for 2020/21.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for conclusion

434. Specialized Materials and Services – Transfers to KEMSA

The statement of receipts and payments reflects purchase of goods and services of Kshs. 567,417,122 (2020 – Kshs. 715,840,584) as disclosed under note 10.5 to the financial statements. Included under the expenditure is Kshs. 283,539,315 on specialized materials and services out of which Kshs. 275,875,084.26 were transferred to Kenya Medical Supplies Authority. The following unreasonable matters were noted.

434.1. Emergency Procurement of Ventilators and Masks

Included in the unpaid bills of Kshs. 190,793,450 was Kshs. 59,000,000 for COVID-19 ventilators and masks that were procured using retrospective direct procurement but there was no evidence of contract negotiation and award after the delivery of the COVID-19 ventilators and masks. Therefore, the supplier may have been single sourced contrary to Section 69(2) Public Procurement and Assets Disposal Act 2015. In addition, physical verification on 24 September, 2021 revealed that out of the twenty (20) ventilators, thirteen (13) of them valued at Kshs. 33,800,000 were still at the KEMSA warehouses seventeen (17) months after emergency procurement to mitigate the effects of COVID-19. Management has not explained failure to distribute these ventilators. In view of the undistributed, essential and high demand ventilators value for money was not realized and the Project was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that KEMSA used Retrospective Direct Procurement Method. This is pursuant to Section 69(2) of the PPADA 2015; provides that no procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on

procurements in response to an urgent need. Pursuant to PPADA, "urgent need" means the need for goods, works or services in circumstance where there is an imminent or actual threat to public health, welfare, safety or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable".
Due to the emergency situation caused by the pandemic and urgent need for the items in order to adequately respond to the pandemic in addition, due to high demand of ventilators, they were not readily available in the market and this necessitated the use of direct method of procurement. The 20 ventilators were delivered to KEMSA warehouse in July 2020. During the same period, EACC launched investigations in KEMSA which resulted in halting of the procurement payment and distribution process of all COVID-19 related procurements. This led to the delay in conclusion of the negotiation process. The procurement process has been concluded in the current FY 2021/22**.**

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Closure of the Project was satisfactory.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

434.2 Cost variance in purchase price of masks
Included in transfers to KEMSA is Kshs.16,420,000 for four (4) suppliers of masks. The audit noted that specifications for the masks were the same but one (1) supplied at unit price of Kshs.250 while three (3) at unit price of Kshs.700 representing 64.3% difference. All the supplies were inspected to meet set specifications and accepted on 16 April, 2020. In addition, there was no evidence of carrying out market survey; this is contrary to the Public Procurement and Asset Disposal Regulations, 2020 Section 33(3) which states that the role of the procurement function shall be to carry out market surveys to inform the placing of orders or adjudication by the relevant awarding authority. To this extent, the price of masks from the three (3) suppliers may have been exaggerated and management was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer admitted that various items were procured from various suppliers who had quoted different prices. The difference in price occurred due to suppliers who already had in stock items that had been procured before the pandemic therefore quoting a lower price for the same item than suppliers importing the items at the time of the pandemic where prices had escalated due to high demand and scarcity in the world market.

Committee Observations and Findings
The Committee observed that there was a lack of prudence in the purchase of the masks.

Committee Recommendation
The Committee admonishes the Accounting Officer for imprudent use of public resources.

435. Family Planning Commodities
The statement of receipts and payments reflects at Note 11.6 to the financial statements transfers to other government entities of Kshs.3,939,588,116. The amount represents transfers to counties. Audit verification in sampled counties revealed that funds were utilized to purchase family planning commodities including Depot Medroxyprogesterone Acetate Inj-150mg, Implant (2-ROD), intra-uterine contraceptive device (IUCD) Copper T among others. Some of these

commodities were distributed to private facilities and were not inscribed "GOK and NOT FOR SALE", making difficult to monitor. The financing agreement dated 4th July, 2016 provides implementing agencies to be Ministry of Health (MOH), the county governments, the country's Civil Registration Services (CRS) and Kenya Medical Training College (KMTC) and not private facilities. Under the circumstances implementation through private facilities is in breach of provisions of financing agreement.

Submission by the Accounting Officer

The Accounting Officer admitted that during the year ending June 2021, Kshs. 3,939,588,116 was transferred to other government entities and in this case to counties. However, Kajiado and Narok counties used the funds to procure family planning commodities some of which were distributed to private facilities. It is the government's policy to avail family planning commodities to all, both in private and public health facilities at no cost. The commodities are supposed to be inscribed "GOK and NOT FOR SALE" to ensure that the commodities are not sold to clients in any of the facilities. The Ministry is following up with the two counties to provide explanations as to why the commodities were not inscribed "GOK and NOT FOR SALE" as required to ensure they are not sold.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Family Planning Commodities was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

436. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

437. As required by Financing Agreement dated 4 July, 2016, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

GLOBAL FUND HIV AND AIDS PROGRAM PROJECT GRANT NO KEN-H-TNT-1547

REPORT ON FINANCIAL STATEMENTS

Basis for conclusion

438. Bank balance

The statement of financial assets reflects bank balance of Kshs. 439,828,460 (2020 – Kshs. 420,811,123) as disclosed under Note 5A to the financial statements. Included in the bank reconciliation statements are payments in bank statements not yet recorded in cash book of Kshs.

617,800. However, the payments were made without preparing vouchers which contravenes section 99(3) of the Public Finance Management (National Government) Regulations, 2015 which states that every entry in the accounts shall be supported by a voucher or other approved document gazetted by the Cabinet Secretary containing the full details, clear narrations and particulars of the item or items to which it relates. Under the circumstances, the accuracy and completeness of bank balance of Kshs.439,828,460 as at 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

The bank reconciliation reflects an amount of 617,800 being payments in the bank statement not yet recorded in the cash book comprising the following:

- KES 5,300 was erroneously paid to NHIF by the bank and a follow up email in 2019 was not effected by the bank. Another follow up was made via a letter to the bank to recover the amount; and
- KES 612,500 - A letter was written to the Bank to provide details of the two payment transactions relating to KES 612,500 (KES 250,500 and KES 362,000). Based on the bank information, MOH has written a letter requiring the officers who authorized the transaction to shed light on the circumstances under which these payments were done.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to present accurate bank balances.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

439. Unsupported Cash and Cash Equivalents

The statement of financial assets reflects bank balance of Kshs.485,257,615 (2020 – Kshs.421,185,310) as disclosed under Note 5A and 5B to the financial statements. There prior balance is made up of bank balance of Kshs.420,811,123 and cash balance (Mpesa balance of Kshs.374,187). As previously reported the reconciliation statement supporting the bank balance indicated payments in bank statement not in the cashbook totaling Kshs.619,500 and payments in cash book not in bank statement of Kshs.2,206,420 and whose clearance status had not been disclosed at the time of conclusion of the audit in October, 2020. In addition, the Mpesa balance of Kshs. 374,187 includes an opening balance of Kshs. 15,000,000 whose supporting documents by way of Mpesa confirmation certificate were not availed for audit review. Consequently, the accuracy and completeness of the cash and cash equivalent balance of Kshs. 421,185,310 reflected in the statement of financial assets as at 30 June, 2020 could not be confirmed.

Submission by the Accounting Officer

The state department notes the audit observations and respond as follows:

- **Payments in bank statement not in cash book – KES 617,800**

  The reconciliation statement supporting the bank balance indicated payments in bank statement not in cash book totaling KES 617,800 and not KES 619,500. This amount includes KES 5,300 paid to NHIF erroneously by the bank, and KES 612,500 relating to two transactions which the Ministry is still investigating.

- **Payments in cash book not in Bank statement – KES 2,206,420**

At the commencement of the NFM 2(new grant) a separate bank account was opened under the same platform as that of NFM 1 (Old grant) with balances in the account. The process of payments totaling Kshs. 2,206,420 inadvertently got mixed up to the extent that it was paid from NFM 1 instead of NFM2. The bank balance for NFM1 was restored vide payment voucher number 0074 and bank clearance dated 28th October 2020.

- **MPESA balance – KES 15,000,000**

Supporting documents have been provided for audit review which include MPESA certificate of balance and corresponding Mpesa statement.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to present accurate bank balances.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

440. Budgetary Control and Performance

440.1 Project Performance

The project information and overall performance under funding summary Note 1.7 reflects donor commitment of Kshs.2,606,284,072 and cumulative amount to date (30 June 2021) of Kshs.2,256,454,835 resulting to undrawn balance of Kshs.349,829,237. In addition to this undrawn balance, the Project reported cash and cash equivalent of Kshs.485,257,615 bringing the total unutilized funds to Kshs.835,086,852 which are likely to be refunded to the donor as the project end date was 30 June 2021. This is contrary to Section 10.3 (3) of the Global Fund Grant Regulations (2014) which requires that 'within seven months of such expiry or early termination, return to the Global Fund any Grant Funds that have not been expended by the Grantee. Under the circumstances, planned project activities may not have been achieved and the objectives of the Project to reduce new infections by 75% and to reduce AIDS related mortality by 25% by the year 2021 may not be realized.

Submission by the Accounting Officer

The Accounting Officer admitted that the project reported undrawn balance and cash and cash equivalents of Kshs.349,829,237 and Kshs.485,257,615 respectively all totaling Kshs. 835,086,852 for the financial year ending 30 June, 2021. The donor gave a 6-months extension up to 31st December 2021 to pay all pending bills as at June 30, 2021. Part of the cash and cash equivalents totaling Kshs. 63,268,759 was used to clear pending bills while the balance of Kshs. 421,988,856 was carried over to New Funding Model 3 (NFM 3). Project implementation was severely disrupted by the COVID-19 pandemic lockdowns and restrictions that caused cancellation and postponement of many activities. Meetings were being held through virtual engagements. After all the bills were settled and reconciliation done with the National Treasury the project achieved an overall absorption rate of 85% for the cumulative grant period.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Project Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

441. Variation in Donor Commitments

The project information and overall performance section reflects donor commitment of Kshs.2,606,284,072 (USD.25,303,729). However, budget analysis for the implementation period of forty-two (42) months from 1 January 2018 to 30 June 2021 revealed an allocation of Kshs.2,662,994,445 (USD.25,854,315) resulting to under disclosure variance of Kshs.56,710,373 (USD.550, 586) which has not been explained or reconciled. The variance of Kshs. 56,710,373 may affect the implementation of Project's objective of reducing new infections by 75% and to reduce AIDS related mortality by 25% by the year 2021.

Submission by the Accounting Officer

The Accounting Officer admitted that there was a variance of KES 56,710,373 for the overall period of the grant. This difference represents interest earned during the grant period. The Global Fund guidelines for grant budgeting dated December, 2019 on page 43 disallowed recognition of interest income as grant income. The regulation also forbids use of interest income without prior written approval from Global Fund. The interest income did not form part the budget and should not be included in budget analysis for the period under review. The amount did not therefore affect the implementation of the project objective as these funds were outside the approved budget.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Variation in Donor Commitments was satisfactory.

Committee Observations and Findings
The Committee recommends that the matter is resolved.

442. Irregular value added tax payments.

The statement of receipts and payments reflects purchase of goods and services of Kshs.283,322,452 (2020 - Kshs.438,097,261) as disclosed under Note 4 to the financial statements. As previously reported, the balance of Kshs.438,097,261 includes Kshs.38,208,319 for printing, advertising and information supplies and services out of which Kshs.4,577,869 was value added tax (VAT) paid to suppliers. This is contrary to the Global Fund Guidelines section 3.5(1) which categorizes use of grant funds to pay for VAT as non-allowable expense. To this extent, the Project Management was in breach of the Grant regulations.

Submission by the Accounting Officer

The Accounting Officer admitted that the balance of Kshs.438,097,261 includes Kshs.38,208,319 for printing, advertising and information supplies and services. However, the amount of Kshs. 4,577,869 was not invoiced as value added tax (VAT) by the suppliers. The Operations Manual for Global Fund Grants in Kenya guides that all goods purchased by Global Fund are free from taxes and duties hence that non-inclusion on the invoices. This was interpreted to mean that all goods and services are invoiced at net the price which is the case with these specific payments.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Irregular Value Added Tax Payments was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

443. Unaccounted for Imprest

The statement of financial assets reflects accounts receivables of Kshs. 330,000 (2020 - Kshs.1,312,660) as disclosed under Note 6 to the financial statements. However, the amount has been long outstanding and overdue since financial year 2019/2020. This is contrary to Section 93(5) of the Public Finance Management Act (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the same within seven (7) working days after returning to the duty station. Further, Section 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. Consequently, the Project management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of financial assets reflects accounts receivables of Kshs.330,000 which has been long outstanding and overdue since financial year 2019/2020. This amount relates to part of imprest taken by an officer who was robbed in the cause of duty as the officer was traversing in Marsabit County. The matter was referred to the Director of Criminal Investigations for investigation and currently the case is in court. The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2019/20 and recommendations not implemented.

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.

444. Non-compliance to procurement procedures

The statement of receipts and payments reflects purchase of goods and services of Kshs.283,322,452 (2020 - Kshs.438,097,261) as disclosed under Note 4 to the financial statements. Included in the amount is Kshs.20,411,659 expenditure on hospitality supplies and services whose analysis of payment vouchers revealed services of Kshs.249,199 from three (3) suppliers evaluated on the basis of only two (2) quotations for each. This is contrary to section 106 (2)(d) of Public Procurement and Asset Disposal Act 2015 which states that at least three persons shall submit their quotations prior to evaluation.

Submission by the Accounting Officer

The Accounting Officer admitted that payment vouchers totaling Kshs.249,199 from three (3) suppliers evaluated on the basis of two (2) quotations for each were included in the statement of receipts and payments under purchase of goods and services of Kshs.283,322,452. In the period under review the country was experiencing the effects of the covid-19 pandemic rendering to closure of many eligible hotels following MOH guidelines and compliance to Covid-19 restrictions. Under the unique circumstances only two quotations were received and evaluated.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Non-compliance to procurement procedures was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

445. Fixed assets

Audit of the fixed assets including review of the fixed asset register revealed the following unreasonable matters;

446. Unutilized Assets

The fixed asset register includes eight hundred and seventy-five (875) different categories of medical equipment out of which four (4) chemistry analysers, four (4) haematology analysers and five (5) immunoassay analysers that are spread across different health facilities in the country. However, asset verification exercise done in the month of October 2021 revealed that these assets have not been put into use. Under the circumstances, proper need assessment may not have been performed and the public is continuously being denied essential services associated with their usage

Submission by the Accounting Officer

The grant is a medium-term plan for a period of 3 years. A needs assessment is a pre-condition for the grant approval and subsequent procurement processes for any assets procured under the grant. Specifically for fixed assets, a needs assessment precedes the approval of the procurement/work plan by the Global Fund. These assets were delivered and handed over to the county governments who have taken ownership of the same. Two hundred and eight (208) Laboratory equipment consisting of Chemistry Analyzers fully automatic (70), Hematology Analyzer (70) and Immunoassay Analyzer (68) were procured by Global Fund through KRCS. Only four (4) chemistry analyzers, four (4) hematology analyzers and one (1) immunoassay analyzer that are spread across different health facilities in the country that are not in use. The Ministry of Health has officially communicated to the specific Counties about the same to ensure the assets are in full use.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unutilized Assets was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

447. Stolen Assets

Included in the asset register are six (6) motorcycles and one (1) laptop which were indicated in the asset register and asset verification report to have been stolen. There was no evidence that the management had replaced them. This contravenes section 6.4 (2) of the Global Fund Grant Regulations (2014) which requires all lost, stolen or damaged assets be replaced with similar assets of the same quantity and quality at the entity's expense. To this extent, the Project Management was in breach of the Grant regulations.

Submission by the Accounting Officer

The program undertook an asset verification exercise earlier in the year which revealed six motorcycles and one laptop reported as stolen. These assets were procured using grant funds and handed over to the counties formally as devolved units. The stolen assets had not been replaced by the time of audit. The program has written to the counties requesting for a replacement of the stolen assets.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Stolen Assets.

Committee Recommendation

The committee recommends that the Accounting Officer ensures recovery of the assets from theose responsible and prosecution, within three (3) months of adoption of this report.

448. Purchase of good and services

The statement of receipts and payments reflects purchase of goods and services of Kshs.283,322,452 (2020 - Kshs.438,097,261) as disclosed under Note 4 to the financial statements. The purchase of goods and services includes Kshs.48,143,723 on printing, advertising and information supplies out of which Kshs.17,801,455 was payment to a company that was issued with five (5) local purchase orders (LPO) on 10 March 2020 although the deliveries were made after the validity period of 90 days. Under the circumstances, controls on enforcement of contract deliveries was weak.

Submission by the Accounting Officer

The contract was signed on March 10, 2022; just days before Covid-19 was declared a pandemic and travel restrictions and lockdowns were instituted by the government. This resulted in a delay in delivery of goods beyond the contract period for some suppliers due to disruptions in logistics and supply chain that ensued. There was restricted access to the offices too, which were opened partially after June 2020. Full deliveries were made for the same.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Purchase of Goods and Services was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

449. Asset register

Examination of the fixed asset register revealed twenty (20) vehicles, forty-three (43) motor cycles, ninety-eight (98) laptop computers, two hundred and fifty (250) desktop computers, eight hundred and seventy-five (875) different categories of medical equipment, twelve (12) different categories of electrons, various furniture items and various applications systems. These assets have not been disclosed in the annual report and financial statements under annexes (summary of fixed assets). The register did not include details on purchase prices and the dates of purchase. Physical verification in October 2021 revealed assets were not tagged and motor vehicles not branded making it difficult to differentiate assets financed by global fund. To this extent, controls over maintenance of asset register are weak.

Submission by the Accounting Officer

At the time of audit, the asset register had not been updated; some assets had not been tagged or branded. These had not been disclosed in the annual report and financial statements. The asset register has since been updated with details of purchase prices and dates of purchase. The Ministry has since started tagging of all assets and will disclose the fixed assets in subsequent financial reports.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Asset Register.

Committee Recommendation

Within three (3) months of the adoption of this report, the Accounting Officer ensures the presence of a complete asset register for verification pursuant to the provisions of Section 68(2)(n) of the Public Finance Management Act, 2012.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

450. As required by Grant Agreement No. KEN-H-TNT GA 1547 dated 01 January, 2018, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

UNITED NATIONS POPULATION FUND (UNFPA) 9TH COUNTRY PROGRAMME FOR KENYA

451. Unsupported Printing and Stationery

The statement of receipts and payments reflects purchase of goods and services at Kshs. 13,537,890 (2020-Kshs. 3,588,140) as disclosed under note 10.5 to the financial statements. Included in the balance is Kshs. 10,434,500 in respect to printing and stationery explained to be to be printing of COVID -19 job aids, RH policy, Care guidelines for HCW and RMNH screening forms. However, a list of supporting documents for distribution of these items to counties indicating the name of the counties, officers involved, work tickets for the vehicles used, signed issue (S11) and (S13) vouchers were not provided for audit. Consequently, the propriety, accuracy and completeness of printing and stationery balance of Kshs. 10,434,500 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the purchase of goods and services expenditure included Kshs. 10,434,500 in respect to printing and stationery for printing of COVID -19 job aids, RH policy, Care guidelines for HCW and RMNH screening forms. A schedule detailing the officers involved, name of the counties, distribution dates, copies of work tickets, copies of signed issue(S11) and (S13) vouchers have now been availed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Printing and Stationery was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

452. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

453. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

454. As required by Financing Agreement dated 03 June, 2020, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

COVID-19 EMERGENCY RESPONSE PROJECT GRANT/CREDIT NO.6598-KE

REPORT ON FINANCIAL STATEMENTS

Basis for qualified opinion

455. Inaccuracies in Financial Statements

The financial statement for the year ended 30 June, 2021 submitted for audit contained the following presentation and disclosure errors:

455.1 The statement of cash flow did not include the receipts from operating activities hence it was not prepared as per the financial template provided by public sector accounting standards board.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of cash flow did not include receipts from operating activities. During the financial year under review, the project did not receive any receipt from the donor. The project utilized cash brought forward from the financial year 2019/2020 to fund its operations.

455.2 The statement of cash flow reflects nil balance for change in imprest and advances. However, the statement of financial assets shows change in imprest and advances of Kshs. 4,584,175;

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of cash flow reflects nil balance for change in imprest and advances. The amount of Kshs. 4,584,175 relates to outstanding imprest from the financial year 2019/2020 which has since been cleared. In the financial year 2020/2021 outstanding imprest was nil.

455.3 The statement of comparative budget and actual amounts reflects budget utilization difference under total payments of Kshs.2, 910,972,564 while casting revealed Kshs.2, 906,388,389 resulting to unexplained nor reconciled variance of Kshs. 4,584,175.

Submission by the Accounting Officer

No casting error noted from the Financial Statements

455.4 The statement of cash flows reflects cash and cash equivalents at end of the year of Kshs.714, 744,494 while casting revealed Kshs. 710,160,318 resulting to unexplained nor reconciled variance of Kshs. 4,584,175.

Submission by the Accounting Officer

No casting error noted from the Financial Statements.

Committee Observations and Findings

The Committee noted the laxity of the state department to keep accurate financial statements.

Committee Recommendation

- **i. The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office; and**
- **ii. The Accounting Officer institutes internal administrative action on the concerned officers within one (1) month of adoption of this report.**

456. Salary Payments

As disclosed in Note 11.2 to the financial statements, the statement of receipts and payments reflects compensation of employees of Kshs.94,892,917 and nil expenditure for financial year ended 30 June, 2020. Included in the amount is salary payments of Kshs. 59,174,166 whose verification revealed that some staff were paid gross monthly allowance of Kshs.75,000 and others paid Kshs. 100,000. However, the basis of arriving at these rates was not provided or supported by Salaries and Remuneration Commission guidelines. Under the circumstances, the accuracy, completeness and validity of salary payments of Kshs. 59,174,166 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that some employees were paid gross monthly allowance of KES 75,000 while others received kes 100,000. This is because the project contracts consultants on short term basis based on need, available budget and agreed upon rates with the World Bank. The staff paid Kshs. 100,000 were the initial consultants contracted to manage the 24-hour call centre set up at National level to address questions from the public on COVID-19 in April 2020 soon after COVID-19 cases were reported in the country. The other staff were contracted later to support the COVID-19 response in various aspects in the counties. The Salaries and Remuneration Commission guidelines did not apply since the project was not hiring staff, rather it was engaging short term consultants.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Salary Payments was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

457. Cash and Cash Equivalents

As disclosed in Note 11.7 to the financial statements the statement of financial assets reflects bank balance of Kshs.714,744,943 (2020 - Kshs.1,322,627,947). Included in the bank balance are unpresented cheques of Kshs. 361,679,019 out of which Kshs. 1,253,687 were stale cheques that had not been reversed in the cashbook while the receipts in the cashbook not recorded in bank statements totaled Kshs. 3,247,042 out of which an amount of Kshs. 945,000 described as an overcast of closing balances was not explained nor supported. Under the circumstances, the accuracy and completeness of bank balance of Kshs. 714,744,943 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that included in the bank balance are unpresented cheques of Kshs. 361,679,019 out of which Kshs. 1,253,687 were stale cheques that had not been reversed in the cash book. The error was in the bank reconciliation which has since been revised to reflect the correct position of the cash book. The revised bank reconciliation has been availed.

It’s also true that the receipts in the cashbook not recorded in bank statement totaled KES 3,247,042 out of which an amount of Kshs. 945,000 described as an overcast of closing balances was not explained nor supported. This was an arithmetic error which has since been adjusted.

Committee Observations and Findings

The Committee noted the laxity of the state department in keeping accurate financial records.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

Other matter

458. Unutilized Balance

I draw attention to paragraph 1.7 of the project information and overall performance under funding summary in the financial statements which reflects total commitment of Kshs. 5,662,652,356 and total receipts of Kshs. 2,518,534,796 resulting to undrawn balance of Kshs. 3,144,117,560. Failure to utilize the funds could affect prevention, detection, and response to the threat posed by COVID-19 and public health preparedness with focus now shifting to vaccination.

Submission by the Accounting Officer

The Accounting Officer admitted that there was slow absorption of funds at the early stages of project implementation. The bulk of the project funds are used for procurement of equipment and renovation of health facilities. The following reasons contributed to slow absorption of funds:

i. Global supply chain challenges of COVID-19 related equipment. Globally, the supply chain of COVID-19 supplies was affected s due to high demand and shipment challenges thus increasing the lead times. This resulted in slow procurement processes, which meant the project could not spend money since the required goods had not been delivered.

ii. The challenges that the Kenya Medical Supplies Authority (KEMSA) was experiencing at the time also resulted in delays in procurement. The project procures medical supplies through KEMSA and delays in completion of procurement processes at KEMSA contributed to low absorption of funds.

iii. The project was renovating COVID-19 isolation centres in the counties. Construction work is a lengthy process from tender to construction. Payment is only done after completion of the construction and issuance of completion certificate. Most of the facilities are now complete and payment processing is ongoing.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unutilized Balances was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

459. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflect a final budget of Kshs. 4,310,268,200 and actual expenditure on comparable basis of Kshs. 1,403,879,811 resulting into underutilization of Kshs. 2,906,388,389. The receipts realized under performance of Kshs. 429,110,409 (or 35%) which could be indicative of possible weakness in meeting donor conditions and enforcement of controls. In addition, the approved budget was not provided as authority to undertake activities for year under review. This is contrary to financing agreement Part B 2(a) which states that the recipient shall no later than thirty (30) days after the effective date, prepare and furnish to the Association a proposed work plan and budget for project implementation. Under the circumstances, the project may not meet the key objective which is to prevent, detect, and respond to the threat posed by COVID-19 and strengthen national systems for public health preparedness.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of comparative budget and actual amounts reflected a final budget of Kshs.4,310,268,200 and actual expenditure on comparable basis of Kshs.1,403,879,811 resulting into underutilization of Kshs.2,906,388,389. The receipts also realized under performance of Kshs.429,110,409 (or 35%). As mentioned previously global supply chain challenges of COVID-19 related commodities and challenges at KEMSA contributed to slow absorption of funds. A work plan and budget was discussed and agreed upon with the World Bank for procurement of all goods. The approved Work plan and budget for the period has been availed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer within regards to Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS IN USE OF PUBLIC RESOURCES

Basis for conclusion

460. Procurement of Printing Supplies and Services

As disclosed in Note 11.3 to financial statements the statement of receipts and payments reflects purchase of goods and services of Kshs.350,380,640 (2020 - Kshs.42,625,987). Included in the expenditure is printing, advertising and information supplies & services expenditure of Kshs.11,708,990. However, these items were not included in the annual procurement plan and there was no evidence of competitive procurement processes. This contravenes section 71(1) of the Public Procurement and Asset Disposal Regulations, 2020 which states that pursuant to section 73 of the Act, the head of the user department shall initiate the procurement process through a requisition as per the approved procurement plan. In the circumstances, Management is in breach of the law

Submission by the Accounting Officer

The Accounting Officer admitted that included in the expenditure of purchase of goods and services of Kshs. 350,380,64 under note 10.3 to financial statements is printing, advertising and information supplies & services expenditure of Kshs. 11,708,990.

The project during implementation used the COVID-19 Health Response Project (C-HERP) procurement plan as discussed with the World Bank which is reviewed, updated and approved by World Bank regularly as and when the need arises. These services were uploaded in the World Bank's procurement platform, reviewed and cleared by World Bank by issuing a no-objection.

There was competitive bidding whereby five (5No.) bidders were invited. The procurement of these services was uploaded, reviewed and cleared by the World Bank, through issuing a No-Objection. Request for Quotations was cleared as the procurement method to be used. The clearance by the Bank is now availed. The requisitioning memo from the user department drawn from the approved procurement plan which was used in initiating the procurement process has now been availed.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Procurement of Printing Supplies and Services was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

461. Procurement of Other Machinery & Equipment

As disclosed in Note 11.4 to the financial statements the statement of receipts and payments reflects acquisition of non-financial assets of Kshs.158,264,472. The expenditure includes Kshs.148,444,200 on purchase of other machinery & equipment out of which assets worth Kshs.57,941,000 were not included in the annual procurement plan, delivered after the purchase order expiry date and received without evidence of inspection and acceptance. Also, the assets were not taken on charge in store ledger or entered in the fixed asset register. In the circumstances, Management is in breach of the law.

Submission by the Accounting Officer
The project during implementation used the COVID-19 Health Response Project (C-HERP) procurement plan as discussed with the World Bank which is reviewed, updated and approved by World Bank regularly as and when need arises. These services were uploaded in the World Bank's procurement platform, reviewed and cleared by World Bank by issuing a No-Objection.

The items were delivered after the purchase order expiry date because there was shortage of supplies in the markets both locally and internationally due to the imposed lock-downs and the challenges experienced in the global supply chain occasioned by the COVID-19 pandemic. Given the situation, the World Bank was consulted on this matter and they agreed that delivery takes place since the items were urgently required amid the logistical and global supply chain challenges. All machinery and equipment received during this period were received and inspected by the Inspection and Acceptance Committee appointed by the Accounting officer vide reference memo MOH/PROC/GEN.MF/ADSCMS/VOL1dated 11th March 2021 for inspection of goods, services and works for the Financial year 2020-2021.

The asset register has since been updated and the items taken on charge in their respective store ledger cards and entered into the fixed asset register.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Procurement of Other Machinery & Equipment was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

462. Procurement of Hospitality Supplies and Services

As disclosed in note 11.3 to financial statements the statement of receipts and payments reflects purchase of goods and services of Kshs. 350,380,640. The amount includes Kshs. 17,268,580 paid on hospitality supplies and services. Review of payment vouchers and supporting documentation revealed local purchase orders with a value of Kshs. 12,560,580 for provision of conference facilities were issued after the delivery of the services. In the circumstances, Management is in breach of the law.

Submission by the Accounting Officer

During this period, there was emergency procurement of training facilities to capacity build health workers on the COVID-19 outbreak. The IFMIS system experienced down times and this made it difficult to process system generated purchase orders in time, prior to the training. The Project Management Team used manual purchase orders and thereafter generated IFMIS/system generated purchase orders in order to facilitate payments

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Procurement of Hospitality Supplies and Services was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

463. Procurement of Abbot Real Time SARS COVS Testing Kits

As disclosed in Note 11.6 to the financial statements the statement of receipts and payments reflects other grants and transfers and payments of Kshs.719,412,182. The amounts include Kshs. 384,226,829 for supply and delivery of Abbot Real Time SARS COVS Testing Kits that were procured from the manufacturer. It was observed that notification for award and letter of acceptance were both dated 17 June, 2020. However, the Local Purchase Order had earlier been issued on 13 May, 2020 while the contract was signed on 23 June, 2020 while the goods were received on 17 June, 2020. In the circumstances, the Management did not adhere to the procurement process.

Submission by the Accounting Officer

The manufacturer provided a cost proposal on 13th May 2020. They indicated on page 2 of their cost proposal that "they will provide delivery schedule once a purchase order has been received". This necessitated the processing of the purchase order on 13th May 2020 to secure the order as the procurement process progressed.

The Purchase order was raised before notification for award and acceptance of offer by the supplier because the procurement was done retrospectively as provided for under Section 69 (2) of the Public Procurement and Asset Disposal Act, 2015 which states "No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on procurements in response to an urgent need". Effectively, based on the provisions of the above section, the Ministry adhered to the procurement process.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Procurement of Abbot Real Time SARS COVS Testing Kits was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for conclusion

464. Purchase of ICT Material

As disclosed in note 11.4 to the financial statements the statement of receipts and payments reflects acquisition of non-financial assets of Kshs.158,264,472 (2020 – Kshs.109,190,111). The expenditure includes purchase of ICT material of Kshs.6,469,272. However, these items were not included in the assets register and ICT assets worth Kshs.5,171,900 purchased in financial year 2019-2020 were omitted from the summary of fixed assets in 2019/2020 as well as opening balance in the 2020-2021. In the circumstances, the controls over custody and safeguarding of ICT assets are weak.

Submission by the Accounting Officer

The Accounting Officer admitted that at the time of audit, the items were omitted from the summary of fixed assets in 2019/20. The items in question have since been included in the asset register. The asset register is subject to continuous update. The assets register containing all ICT equipment procured under the Kenya COVID-19 Health Emergency Project (C-HERP) has now been availed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Purchase of ICT Material was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

465. As required by Financing Agreement dated 03 April, 2020, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

Unmodified Opinion

466. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

467. Budgetary Control and Performance

The Kenya Health Sector Programme Support III under County Government of Kisii received exchequer totalling Kshs.104,559,200 during the year under review against an approved budget of Kshs.196,122,958, resulting in a shortfall of Kshs.91,563,757or 47%. Further, the Programme had an approved expenditure budget of Kshs.196,122,958 for 2020/2021 financial year but the actual expenditure amounted to Kshs.71,115,562 and thus resulting in an under-expenditure of Kshs.124,978,614 or 64%. The shortfall in revenue by Kshs.91,563,757 or 47% and the under-expenditure of Kshs.124,978,614 or 64% of the budgeted amount implies that the overall goals and objectives of the Programme were not achieved as intended and planned during the year under review.

Submission by the Accounting Officer

The Accounting Officer submitted that the under-absorption was a result of late exchequer issues.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits status report of current attainment of programme objectives, within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

468. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

469. There were no material issues relating to effectiveness of internal controls, risk management and governance.

HEALTH SECTOR SUPPORT PROJECT (CREDIT NO.4771-KE) KENYA MEDICAL SUPPLIES AUTHORITY (KEMSA)

REPORT ON FINANCIAL STATEMENTS

Basis for qualified opinion

470. Interest Payable to DANIDA

The statement of financial performance reflects trade and other payables from exchange transactions of Kshs. 38,224,311 (2020-Kshs. 38,009,352) as disclosed under note 6 to the financial statements. Management attributes this to be 9% share of interest earned from financial year 2012/13 to 2020/21 payable to DANIDA. However, the sharing of the 9% interest with DANIDA is not supported by the financing agreement or any approved document. Consequently, the accuracy and validity of the trade and other payables of Kshs. 38,224,311 as at 30 June 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that note 6 of the financial statements disclosed payables from exchange transactions of Kshs. 38,224,311 attributable to the share of 9% interest payable to DANIDA.

DANIDA invited Key KEMSA management staff to a meeting where they indicated that in line with their financial regulations, no money from the Royal Danish Government should be put in an interest earning account. This development affected the funds at the Ministry of Health and also the deposits in the two KEMSA KHSSP project accounts.

DANIDA's Auditor Deloitte and Touché audited the project and came up with the composition of the funds both at the Ministry and the portion disbursed to KEMSA. The audit established that DANIDA's portion of interest earned was 9%. KEMSA through a letter dated 25th August 2017, requested DANIDA to give an account where the interest earned would be channeled after confirmation by their contracted auditors. KEMSA accrued the interest payable in the financial statements then and has been accruing annually an amount equivalent to 9% of the interest earned from the project's funds.

KEMSA is in the process of concluding the matter with DANIDA auditors in the financial year 2021-22.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Interest Payable to DANIDA was satisfactory.

Committee Recommendations;
The Committee recommends that the matter is resolved.

471. Purchase of Asset, Equipment and Consumables
The statement of financial performance reflects nil balance on purchase of assets, equipment and consumables against a comparative balance of Kshs. 25,046,348. However, as previously reported the supporting schedule for this expenditure reflected Kshs. 641,309,540 resulting to a variance of Kshs. 616,263,192 which was offset against deferred income without justification.

ln the circumstances, the accuracy and validity of nil balance on purchase of assets, equipment and consumables for the year ended 30 June 2021 and comparative balance of Kshs. 25,046,348 could not be confirmed.

Submission by the Accounting Officer
The KEMSA Capitalization project under the Kenya Health Support Project (KHSSP) was carried out jointly by the World Bank, DANIDA and the Government of Kenya (GOK). The World Bank made payments to Suppliers of commodities supplied to Public Health Facilities through KEMSA, While DANIDA and GOK established a fund from which payments to KEMSA were to be done. Expenditure for the year for Purchase of Asset, Equipment & Consumables was Kshs. 641,309,540.17 against the deferred income of Kshs. 616,263,192.00 which was the balance of contribution by GOK and DANIDA for KEMSA capitalization. As per IPSAS 23, the grant is recognized as income over the period necessary to match them with the related costs, for which they are intended to compensate, on a systematic basis. The income recognized was to the extent of the balance of deferred income and was netted off in the accounts hence creating an additional expenditure of Kshs. 25,046,348.17.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for conclusion

472. Unresolved Prior year matters

472.1 Non-compliance with Public procurement and Asset Disposal Act, 2015
As previously reported, the Kenya Medical Supplies Authority (KEMSA) procured dispensing plastics resealable envelops at a cost of Kshs.28,665,000 through tender No. KEMSA/DP03/2019-2021 and pharmaceutical items amounting to Kshs.94,962,092 through tender No. KEMSA/DP15/2018-2020 using direct procurement method. According to the Management, the use of the direct procurement method was aimed at mitigating against stock outs of critical items needed by the Counties and that the identified supplier was a not-for-profit Faith-Based Organization. However, the reason for use of the direct procurement method in this case do not satisfy the conditions for use of the method as provided in section 103(1)(2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstance, the Management was in breach of the law

Submission by the Accounting Officer
The justification to use Direct Method of procurement for above mentioned tender was provided for in the approved MEMO. Further, KEMSA had contracted MEDS who are not for profit, faith-based institution to provide EMMS to fill the gaps to mitigate against stock outs of critical selected commodities during the rollout of UHC. The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings
The Committee observed that the issues were discussed during the examination of the Ministry's account for financial year 2019/20.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

472.2 Delay in Delivery of Goods
As previously reported, a review of procurement contracts entered into between the Authority and suppliers revealed instances of delay in delivery of goods for periods of 2-6 months by six suppliers with total orders of Kshs.19,718,531. The delay in delivery of goods if not addressed could adversely affect timely realization of the project objectives.

Submission by the Accounting Officer

Suppliers are expected to make deliveries within the agreed timelines. However, due to reasons such as logistics challenges on the suppliers' end and availability of adequate stocks in KEMSA warehouse hence deferring the deliveries to a later date. Authority to extend several contracts was sought and approved to facilitate delivery and payment of commodities. KEMSA procurement contract team follows up and expedites deliveries from suppliers.

A tool has been developed to facilitate supplier performance measurement, which will enhance timely deliveries of medical commodities. The Authority has continued to engage the suppliers by organizing for pre-bid conferences where issues affecting supplier timely delivery (among other concerns) are addressed. The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings

The Committee observed that the issues were discussed during the examination of the Ministry's account for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

472.3 Variation of Contract Price

As previously reported, the contract for supply of chlorhexidine gluconate solution 5% was awarded to a supplier as per framework contract dated 18 October, 2018.

The initial quantity was 16,573 units at Kshs. 684.50 per unit translating to Kshs. 11,344,218.50. Purchase order No. 819731 and 819732 were issued for supply of 7,500 units and 9,073 units respectively. The supplier delivered only 7,500 units but in the subsequent call down the supplier agree to supply additional quantities of 11,070 units at the price of Kshs. 684.50. the Authority revised unit price from Kshs. 685.50 to 787.17based on the 12th November 2019 supplier request for 15% price variation citing increase in global price of raw materials and fluctuation of foreign exchange rates. Subsequently, the Authority cancelled purchase order No. 819732 for the 9,073 units and issued purchase order No. 824031 for 11,070 units at Kshs. 787.17. This resulted to additional cost of Kshs. 931,524 for the 9,073 units that had been supplied at Kshs. 684.50 each.

In view of the above, the public may not have realized value for money in respect of the varied contract that resulted in additional cost of Kshs. 931,524.

Submission by the Accounting Officer

Call offs are informed by the stock handling policy of maintaining 9 months of stock quantity which include pipeline and warehouse stock levels. Therefore, to avoid stock outs, call offs can be made when other deliveries are in pipeline. This assists the suppliers in preparing to avail the commodities in appropriate time.

The price variation was approved by the Accounting Officer following the request from the supplier vide a letter citing increase cost of raw materials and foreign exchange fluctuations. Following, the COVID-19 global pandemic, cost of raw materials increased especially in China where majority of materials are sourced from.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Variation of Contract price was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

472.4 – Letter from Njimia Kenya Ltd. requesting for review of award unit price

Pursuant to section 139(4) of the PPADA 2015, For the purpose of this section, any variation of contract shall only be considered after twelve months from the date of signing the contract and shall only be considered if the following are satisfied-

a) The price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of statistics or the monthly inflation rate issued by the central Bank of Kenya; The exchange rate during tender opening of 28th June 2018 was USD 1 = Kshs. 101.15 while in March when the variation was effected, it was USD 1= Kshs. 104.792.

Submission by the Accounting Officer

The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the Ministry's account for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

472.4 Delay in Distribution of Equipment

As previously reported, the statement of comprehensive income for the year ended 30 June, 2019 reflected purchase of assets, equipment and consumables amounting to Kshs. 400,099,529 out of which equipment valued at Kshs. 3,051,499 was still at KEMSA warehouses and had not been distributed for installation and commissioning despite the suppliers having been fully paid. A review of the matter in financial year 2020/2021 indicated that equipment valued at Kshs.515, 102 had still not been distributed for installation and commissioning. Consequently, the public may not have realized value for money in respect of the undistributed equipment valued at Kshs. 515,102

Submission by the Accounting Officer

The Ministry issued instructions on distribution for the remaining stocks to KEMSA and all the stocks were distributed. The matter was discussed by the Public Accounts Committee (PAC) in its sitting held on 25th November 2021. The Ministry awaits the recommendations.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the Ministry's account for financial year 2019/20.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matters as required by Section 68 (2) (l) of the PFM Act, 2012.

473. Project Closure and Un-utilized Funds

The statement of financial position reflects cash and cash equivalent of Kshs. 40,655,003 (2020 - Kshs.38,275,254). The project commenced in January 21 2014 and ended on December 31 2016 but extended to 30 June 2018. However, no further extension was granted and therefore, expenditures from the project are continuously being incurred without approval from the donor.

Submission by the Accounting Officer

The project ended on 30 June 2018 and the Project Fund balance was transferred back to the project account. The remaining amount in the bank account relates to DANIDA, one of the Project partners who on inception of the Project, had indicated that no money from the Royal Danish Government should be put in an interest earning account. This development affected the funds at the Ministry of Health and also the deposits in the two KEMSA KHSSP project accounts.

DANIDA's Auditor Deloitte and Touché audited the project and came up with the composition of the funds both at the Ministry and the portion disbursed to KEMSA. The audit established that DANIDA's portion of interest earned was 9% of the total interest earned by KEMSA. KEMSA has been accruing for this interest since. The money will be transferred to DANIDA after conclusion of the ongoing audit to establish amount refundable.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Project Closure and Un-utilized Funds was satisfactory.

Committee Recommendations;

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

474. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

475. As required by Financing Agreement dated 21 January, 2014 International Development Association and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

GLOBAL FUND HIV/AIDS PROJECT GRANT NUMBER KEN-H-TNT1547– NATIONAL AIDS CONTROL COUNCIL

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

476. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

477. Budgetary Control and Performance

The statement of comparative budget and actual budget amounts reflect final expenditure Budget amount of Kshs. 466,631,023 and actual budget on comparable basis of Kshs. 307,576,174 resulting to underutilization of Kshs. 159,054,849(or 34%). Failure to achieve these targets may negatively impact on the strategic goals of reducing HIV infection by 75%, reduction of AIDS related deaths by 25%, reduction in stigma and discrimination by 50% and increase in domestic financing for HIV response to 50% may not be realized.

Submission by the Accounting Officer

The under absorption was occasioned by the Funds Flow challenges with the GF resources being received towards the end of the financial year. The Kshs. 200M was received 7months after the year began on 30/1/2021. Further, restrictions on movements in the FY 2020/2021 due to the COVID-19 pandemic caused a slowdown in implementation of the project.The unutilized funds were rolled over in the next Financial Year, and were effectively utilized to realize the NACC's mandate.

The Challenges occasioning delays have since been addressed with a more efficient funds flow in the subsequent Grants as evidenced by 91% absorption for the Grant.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Budgetary Performance and Control was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT OF LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for conclusion

478. Irregular tax on Global funds

The statement of receipts and payments reflects purchase of goods and services for Kshs. 307,576,174 as disclosed in note 11.4 to the financial statements. The amount includes bank charges for Kshs. 1,823,510 out of which Kshs. 229,033 is Excise duty.

However, charging 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 Global Fund for purposes for implementing respective activities, and the Grant agreement or purchase of or import/export of goods and services with the Grant funds shall be exempt to from relevant Taxation in the host country including but not limited to (a) Custom duties, import duties, taxes or fiscal charges with equal effect levied or otherwise imposed on health products imported into the country under the Grant agreement or any related sub recipient or supplier contracted, (b) Value Added Tax levied or otherwise imposed on the purchase of goods and services using Grant funds.

To this extent the management was in breach of Global Fund Regulations, 2014.

Submission by the Accounting Officer
The Accounting Officer admitted that Kshs. 229,033 being Excise duty was part of the bank charges included in the statement of receipts and payments under purchase of goods and services of Kshs. 307,576,174. The Excise duty was charged by the Bank on interest earned on Global Funds due to changes introduced by the Finance Act where interest earned attracts Excise duty. The NACC management has since written to NBCA bank, the Bankers for Global Fund resources, communicating the requirement that transactions involving funds from Global Fund be exempted from excise tax which the bank has acknowledged and implemented. Going forward Global Fund transactions shall not be subjected to excise tax.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Irregular tax on Global Funds was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

479. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

480. As required by Financing Agreement dated 15 December, 2017, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA PUBLIC HEALTH LABORATORY NETWORKING (EAPHLN) PROJECT CREDIT NO.4732-KE-KENYA MEDICAL SUPPLIES AUTHORITY

REPORT ON FINANCIAL STATEMENTS

Basis for qualified opinion

481. Interest Expense

The statement of financial performance reflects interest expense of Kshs. 11,343,918 as disclosed under note 4 to the financial statements. The management attributes the interest expense of Kshs.11,343,918 to interest income earned on the bank balances for the period 2012 to 2019 which was being refunded to the National Treasury. However, the computation and the treatment of the interest income over the project period could not be established. The recognition therefore contravenes IPSAS 9(33) which states revenue arising from the use of others by the entity assets yielding interest, royalties and dividends should be recognized when (a) it is probable that the economic benefits or service potential associated with the transaction will flow to the entity and (b) the amount of the revenue should be measured reliably; and IPSAS 9(34) (a) which states that the interest should be recognized on a time proportion basis that that takes into account the effective yield of the asset.

Under the circumstances the propriety, accuracy and completeness of interest expense of Kshs. 11,343,918 for the year ended 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of financial performance reflects interest expense of Kshs. 11,343,918 as disclosed under note 4 to the financial statements attributed to the interest income earned on the bank balances for the period 2012 to 2019.

The amount had been reported to the World Bank through the quarterly Interim Financial Reports (IFR) over the years. Since the Project Agreement Document (PAD) did not exclusively stipulate that fund should not be deposited in an interest earning account, it was assumed that the interest earned belonged to the Project and KEMSA would get instructions on how the funds would be utilized. However, since this was not captured in the work plans, it was not recognized until the end of the project.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Interest Expense was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

482. Project Closure

A review of the financing agreement indicates that the project was expected to come to an end on 30th September 2020. However, the project account has not been closed to date without explanations. Failure to close the project contravenes Regulation 74 (6) (c) of the Public Finance Management (National Government) Regulations, 2015 which states that an accounting officer of a national government entity shall ensure that whenever projects are completed, the project assets including buildings, plant, vehicles furniture, fittings and equipment are properly recorded and handed over to the accounting officer in accordance with the financing agreement.

Submission by the Accounting Officer

The Accounting Officer admitted that the East Africa Public Health Laboratory Networking Project was closed on 30 September 2020. However, the project account had not been closed at the time of the audit review as formal project closure report from the World Bank had not been received. Assets were taken over by the respective county governments where the assets were located on closure of project. The Authority has initiated the process of closing the bank account.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Project Closure was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

483. Preparation and Presentation of CR No. 4732 (KEMSA) and CR No. 5616 (MOH) Financial Statements

The financial agreement of the East Africa Public Health Laboratory Networking (EAPHLN) Project Credit No .4732 KE between The Republic of Kenya and International Development Association was signed on 05 July, 2010. In 2015 an additional Subsidiary Financing Agreement for the East Africa Public Health Laboratory Networking Project Credit No. 5616-KE was signed on 10th November, 2015. The management prepared two (2) sets of financial statements under these financing agreements. However, the financial agreement signed 10th November, 2015 stated under appendix Section 1 paragraph 21 on definitions that, "original financing agreement for the East Africa Public Health Laboratory Networking Project between the recipient and the association, (Credit No. 4732 KE)" and also under Section 5.01 of Credit No. 4732- that states the additional condition of effectiveness consists of the Subsidiary Agreement.

Consequently, the management has not provided explanations for preparing the two separate sets of financial statements for the same project contrary to the position of the agreements.

Submission by the Accounting Officer

The Accounting Officer admitted that two sets of financial statements were prepared for the two credits. The East Africa Public Health Laboratory Networking (EAPHLN) project prepared and presented financial statements of CR No. 5616 (MOH). KEMSA being a Semi-Autonomous Government Agency (SAGA) and thus a reporting entity prepared a separate set of financial statements for CR 4732 (KEMSA) component. This allowed for fairly presentation of transactions and events of the two entities.

Committee Observations and Findings

i. **The Committee noted incapacity of officers in the finance department; and**
ii. **The Committee further noted that the Accounting Officer failed to keep complete and reconciled financial and accounting records that comply with provisions of Section 68(2) of the PFM Act 2012 Committee Recommendation**

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform duties bestowed upon the office.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

484. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

485. As required by Financing Agreement Credit No.4732 - KE dated 05 July, 2010, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements are in agreement with the accounting records and returns.

A CASE STUDY ON INTEGRATED DELIVERY OF SELECTED NON-COMMUNICABLE DISEASES IN KENYA (PHGF GRANT NO. TFOA5636) - MOI TEACHING AND REFERRAL HOSPITAL

REPORT ON FINANCIAL STATEMENTS

Basis for qualified opinion

486. Unsupported Amendments to the Revised Financial Statements

The financial statements submitted for audit on 27 September 2021 reflect total receipts and total payments of Kshs.58,579,636 and Kshs.112,537,682 while the revised financial statements submitted on 19 November 2021 reflect total receipts and total payments of Kshs.58,586,926 and Kshs.56,962,659 respectively. However, the amendments have not been supported by approved journal vouchers.

Further, the statement of receipts and payments, the statement of financial assets and the statement of cash flows for the year ended 30 June 2021 reflect a column headed 2020-2021 restated which is not provided for under paragraph 47 of the International Public Sector Accounting Standards No.3 – Accounting Policies, changes in accounting estimates and errors. Consequently, the validity, accuracy and completeness of the amendments of the financial statements for the financial year 2020/2021 submitted for audit could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the financial statements reflected total receipts and total payments of Kshs.58,579,636 and Kshs.112,537,682 while the revised financial statements reflect total receipts and total payments of Kshs.58,586,926 and Kshs.56,962,659 respectively. This is because the financial statements had been prepared on accrual instead of cash basis as required. The journal entries have been provided for audit review.

Further, the revised financial statements reflect a column headed 2020-2021 restated which is not provided for under paragraph 47 of the International Public Sector Accounting Standards No.3. This was an error which is regretted and will be corrected in the subsequent financial statements.

Committee Observations and Findings

The Committee noted the laxity of the state department to keep accurate financial records.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office.

487. Cash and Cash Equivalents

The statement of financial assets as at 30 June 2021 reflects a cash and cash equivalents balance totaling Kshs.76,856,172 and as disclosed in Note 12.1 to the financial statements. However, no distinct cash book was maintained for the Project's bank account in the year under review. The operations were instead accounted for in the cashbook for a project named Academic Model Providing Access to Healthcare (AMPATH) and which served several other projects implemented by the Hospital. Analysis of the Project's receipts and expenditures for the year under review reflected in the AMPATH cash book did not tally with the cash and bank balance totaling Kshs.76,856,172 reported in the Project's statement of financial position as at 30 June, 2021.

In addition, note 12.1 supporting cash and bank balance include a balance of US $ 500,000 held in Special Deposits Account no. 1000354518 held at Central Bank of Kenya which had not been released to the project account and was disclosed under Special Deposits Accounts Movement Schedule. The special account support documents have not been provided for audit verification.
In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.76,856,172.00 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that no distinct cash book was maintained for the Project's bank account in the year under review. The implementing health institution with regard to this project is Moi Teaching and Referral Hospita (MTRH) while Research Sponsored Projects Office (RSPO) is the implementing unit in Academic Model providing Access to Healthcare (AMPATH) program created pursuant to Section 1.02 of the Subsidiary grant agreement, where funded project activities are carried out

The utilization of funds was in the AMPATH cashbook which is maintained in an Enterprise Resource Planning (ERP) System with multi-project reporting. The entity maintained separate records for each project which enabled preparation of the financial statements.
The special account support documents were provided including the Subsidiary grant agreement.

The bank balance of Kshs. 76,856,172.0 as at 30th June 2021 is supported by certificate of Bank Balance now availed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Cash and Cash Equivalents was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

488. Budget Control and Performance

The statement of comparison of budget and actual amounts reflects approved budgeted receipts funded by proceeds from domestic and foreign grants and budgeted expenditure totaling Kshs.105, 300,013, respectively for the year under review. Records examined indicated that the Project Management incurred expenditure totaling Kshs.56, 962,659 or 54% of the budget, resulting in an under-expenditure of Kshs.48, 337,353 or 46% of the budget. As a result, some of the Project's activities/programmes planned for the year were not implemented.

Submission by the Accounting Officer

The Project's planned activities were substantially implemented. However, as at the end of the financial year, not all payments had been executed due to delay in disbursement of funds and therefore reported as part of pending bills as disclosed in the financial statements.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

489. Audit Fees
Annex 3(A) to the financial statements discloses pending bills of Kshs.93,030,320 which excludes external audit fees provided for under both the financing agreement as stipulated at article III at 3.01 and 3.02. Although management has explained that the item should not be budgeted for since the service would be provided by the Office of the Auditor General, the validity and legality of this argument could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that external audit fees were not included in the pending bills list. The World Bank advised that the Audit fee of $16,248.83 be re-budgeted and utilized for other project costs as per the evaluation report.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Audit Fees was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

490. Compensation of employees
The statement of receipts and payments for the year ended 30 June 2021 reflects compensation of employees' figure of Kshs. 34,293,071 which includes Kshs. 2,339,679 paid as leave allowances to contracted staff in the month of January 2021. However, the contract documents do not include leave allowances as part of packages to the Project staffs. In addition, section 5.1.3 of the AMPATH Human Resources Policies and Procedures Manual states that annual salary increments will be done as per contract. Further, salaries paid to the same staff were reviewed upwards for six months from beginning of November to July, contrary to the contract terms which didn't provide for salary reviews for the contract period. Consequently, the Project Management is in breach of the law.

Submission by the Accounting Officer
The project's employment practices are governed by AMPATH - RSPO Human Resource Policies and Procedures Manual approved in 2017 implemented by the Research and Sponsored Projects office which is the grants management unit for MTRH. Where terms and conditions is not included in the contract letters, the provisions of the AMPATH - RSPO Human Resource Policies and Procedures Manual are used. In the AMPATH - RSPO HR Policies and Procedures Manual, annual increment and leave allowance is provided for in page 29 and 37 respectively. The salary increments were effected so as to harmonize the salaries for all project staff.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer was satisfactory.
Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

491. There were no material issues relating to effectiveness of internal controls, risk management and governance.

15. STATE DEPARTMENT FOR INFRASTRUCTURE- VOTE 1091

REPORT ON THE FINANCIAL STATEMENTS

Prof. Paul Mwangi Maringa, the Principal Secretary and Accounting Officer for the State Department for Infrastructure (Vote 1091) appeared before the Committee on 5th May, 2022 to adduce evidence on the Audited Financial Statements for the State Department for Infrastructure (Vote 1091) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Ms. Sophie Mwangechi	–	Head of Accounting unit
2.	Mr. Philip Wachira	–	Head of Finance
3.	Eng. Morris S. Nabende	–	Director KIHBT
4.	Eng. Silas Kinoti	–	Director General- KURA
5.	Eng. G. W. Chiaji	–	Deputy Director KERRA
6.	Eng. Kubai Kimani	–	Deputy Director (Roads) KERRA
7.	Mr. Eric Maina	–	Accountant
8.	Mr. Haron Koros	–	Accountant

And submitted as follows:

REPORTS ON THE FINANCIAL STATEMENT
Unmodified Opinion

492. There were no material issues noted during the audit of the financial statements of the State Department.

Other Matter
493. Budgetary Control and Performance
During the year under review, actual receipts for the State Department amounted to Kshs.187,394,597,013 against an approved receipts budget amount of Kshs.200,530,786,903 resulting to a shortfall in receipts of Kshs.13,136,189,889.

In addition, overall the State Department under-spent its budget amount by Kshs**.**13,228,100,925. The under expenditure mainly occurred under the components related to use of goods and services at Kshs.822,414,945, social security benefits at Kshs.520,529 and acquisition of assets at Kshs.8,141,846,118.

The State Department goals and objectives may not have been achieved as some planned programs were not undertaken which impacted negatively on service delivery to the citizens.

Submission by the Accounting Officer
The Accounting Officer submitted that the State Department had a budget of Kshs.200,530,786,903 against which it received financing of Kshs.187,394,597,013 signifying an expenditure level of 93%. The funding level equated into the actual expenditure. The 93% expenditure level is considered optimal. The 7% under-expenditure was on the Development

Partner Component whose utilization was slowed by the Covid-19 pandemic. The minimal under expenditure did not adversely affect the earmarked programs.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

494. Loss of Asset

As previously reported, the summary of fixed assets register at Annex 1 reflects other machinery and equipment balance of Kshs.175,384,079 as at 30 June, 2021. Included in the balance is an amount of Kshs.6,538,892 being the value of motor vehicle GKB 211J belonging to the Kenya Institute of Highways and Building Technology (KIHBT) that was reported stolen on 3 July, 2020. Although the case was reported at Makadara Directorate of Criminal Investigations Office and the matter is said to be under investigation, the vehicle had not been recovered as at the time of audit.

In the circumstances, the accuracy of the balance of Kshs.175,384,079 reflected under other machinery and equipment could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that as previously discussed during our appearance before the Public Accounts Committee (PAC) on the 2019/2020 Financial Year, the loss of motor vehicle Toyota Hiace GKB 211J belonging to KIHBT was reported stolen to the Police under OB no. 15/07/07/2020 on 3rd July 2020 at Makandara Police Station as per letter ref DCI/C/CRI/1/VOL IX 27 dated 10th November 2020 from DCI Makadara**.** The vehicle was stolen from KIHBT grounds after office hours. As at the time of the theft, the premises were under the Contracted guard firm, Gyto Security.

The following suspects were charged and arraigned in court

i. Denis Kiprotich Mutios – Gyto Security
ii. Kelvin Kimatu Mwema – Gyto Security
iii. Peter Muchiri Mwangi - KIHBT Driver
iv. David Mwangi Gichimu – Accomplices
v. Washington Mutinda Mutuku - Accomplices

All the above were charged in court as per the Director of Criminal Investigations letter Ref: DCI/C/CRI/1/1/VOL.IX/27 dated 10th November, 2020 and letter Ref. DCI/C/CRI/1/1/VOL.IX/37 dated 27th November, 2020**.** The vehicle has however not been recovered.

Committee Observations and Findings
The Committee observed that this matter was discussed in the FY 2019/20 and was currently before courts.

Committee Recommendations

The Committee recommends that the matter awaits the outcome of the court process.

495. Lack of Fixed Asset Register

Annex 1 on summary of Fixed Assets Register reflects total assets valued at Kshs.24,091,984,653 as at 30th June, 2021. Management did not however, provide a fixed asset register as at 30th June, 2021. In the circumstances, the accuracy of the balance of Kshs.12,615,314,038 reflected for fixed assets could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that fixed Asset Register was not availed to the Auditor at the time of the initial audit. The State Department maintains an Inventory Register for furniture and equipment at its stores section of the Procurement Division. A copy of the Inventory certified Register has since been availed to the Auditor.

The register for motor vehicles of the State Department of Infrastructure is kept at the Mechanical and Transport Division of the State Department. A copy of the register has also been availed to the Auditor.

Committee Observations and Findings

(i) The Committee observed that the asset register was not availed at the time of the audit contrary to section 62 of the Public Audit Act, 2015;

(ii) The register was availed by the Accounting Officer to the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to avail documents for audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

496. Human Resource Management-Lack of Annual Recruitment Plan and Over Establishment in Some Cadres

During the year under review, the State Department recruited twenty-nine (29) new staff. However, no annual recruitment plan to justify the need for recruitment. In addition, the newly recruited staff had not been included in the Integrated Payroll and Personnel Database (IPPD) system by the time of the audit in November, 2021. Further, the State Department exceeded the approved staff establishment in various cadres by 129 staff. No justifiable explanation was provided for this anomaly.

Submission by the Accounting Officer

The Accounting Officer admitted that the State Department, recruited 29 additional staff in the Financial Year 2020/2021. The said staff comprised,

1.	Inspector Roads	4
2.	Assistant Eng. Materials	15
3.	Human Resource/Assistant	4
4.	Economists	4
5.	ICT officers	2

Total	**29**

The above listed were in the State Department request for recruitment to the Public Service Commission for Financial Year 2019/2020. This request for recruitment was not however honored within the said Financial Year.

Consequently, the request remained outstanding and could not be re-submitted in the subsequent financial year 2020/2021.

Arising from the foregoing, the State Department did not prepare another annual recruitment plan since the earlier on submitted plan was rolled over. It was therefore true that there was no Annual Recruitment Plan for the particular year as at the time of the audit. The recruitment was done by the Public Service Commission of Kenya (PSCK). PSC used the prior year recruitment plan, which had sent to them by the State Department. By the time the recruitment was done in Financial Year 2020/2021. There are no excess staff under the cadre recruited by the PSC (K). The Recruitment plan submitted to the Public Service Commission of Kenya has been availed to the Auditor**.**

As regards to uploading of credentials of the newly recruited staff into the Integrated Payroll and Personnel Database (IPPD), the uploading is a process that involves the State Department for Public Service and it is therefore entirely under the State Department. There were delays occasioned by the foregoing and capacity challenges of uploading credentials by the newly recruited staff. However, this process of integration has been completed and all have been captured in the IPPD system.

It was also true that there was non-compliance with the approved staff establishment. The most current Staff Establishment which was done in May, 2021 has not been approved and released by the Public Service Commission of Kenya, PSC (K). There were mass promotions purposed to address the issue of the succession management across the entire Civil Service regardless of the approved establishment. This resulted to having disparities in Ministries/Departments having more establishments in some cadres.

It was on this basis that the State Department ended up having more than the approved establishment. The scheme administrators are in the process of doing the balancing of the excesses and shortfalls of staff in various cadres. It is expected that the foregoing will be normalized with time.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to keep an annual recruitment plan contrary to section 68 (2) of the PFM Act, 2012; and

(ii) The Committee notes that Accounting Officer exceeded the approved staff establishment which is an unlawful use of public funds, despite the explanation given;

Committee Recommendations

(i) The Committee reprimands the Accounting Officer for failure to perform duties bestowed upon the office in failing to keep an annual recruitment plan; and

(ii) The Accounting Officer should ensure that the Annual Recruitment plan is prepared for each financial year.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS

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

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

497. Cash and Cash Equivalents

Review of the cash and cash equivalents balance as at 30 June 2021 revealed the following anomalies:

498.1 Variance between Financial Statement and Cashbook

Statement of financial assets and note 4 to the Financial Statements reflects bank balance of Kshs.50,065,126 which differs with the cashbook balance of Kshs.48,081,317 as at 30th June, 2021 resulting to unexplained variance of Kshs.1,983,809. Further, bank reconciliation statement for June 2021 reflected a bank balance of Kshs.50,065,123 which differed with Kshs.51,522,285 shown in the certificate of bank balance leading to an unexplained variance of Kshs.1,457,158.

Submission by the Accounting Officer

The Accounting Officer admitted that the amount shown in the Statement reflects the closing bank balance as at 30th June, 2021 of Kshs.51,522,284.55, which was unreconciled. The difference of Kshs.3,440,967 comprise of Kshs.1,457,158.45 being payments made after 30th June, 2021, and Kshs.915,205.70 being balance brought forward from previous years which were not adjusted in the cashbook and have now been adjusted. The amount of Kshs.1,439,059.35 which include Kshs.800,000 being surrender of unspent imprest by an Officer, Eng. Gilbert Arasa which has already been captured in the cash book and Kshs.620,400 in respect of a project employee, Judith Kerich was returned due to invalid bank account. The bank reconciliation statement has since been availed to the Auditor. An amount of Kshs.18,659 was a refund of an unspent imprest.

Committee Observations and Findings

> **(i) 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; and**

The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

498.2 Payment in Cashbook and not in Bank Statement

Bank reconciliation statement as at 30th June, 2021 reflects a figure of Kshs.674,023 in respect of payments which are in cashbook but not in bank statement which includes two payments made to KRA totaling Kshs.302,785 dating back to the year 2017 and another payment to an officer of the project of Kshs.241,183 paid in 2019. These payments were all-stale as at 30 June 2021 and should have been written back into the cashbook. In addition, the bank reconciliation statements includes entries totaling to Kshs.130,055 described as cashbook overcasts which should have been adjusted in the cashbook instead of being captured as reconciling items.

Submission by the Accounting Officer

The Accounting Officer admitted that there is a total Kshs.674,023 of payment reflected in the cash book and not reflected in the bank statement. This was as result of errors in the cashbook, which has since been corrected and availed to the auditor. The total amount of Kshs.130,055 which was indicated as an overcast in the bank reconciliation statements has already been amended and reversed to indicate true position of the cash book.

Committee Observations and Findings

(i) 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; and

(ii) The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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;

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

498.3 Receipts that are in Bank Statement not Recorded in Cashbook

The bank reconciliation statement as at 30 June 2021 shows receipts which are in the bank statement but are not in the cashbook of Kshs.1,439,059. Included in the amount is an entry of Kshs.620,400 dating back to 2017 which was not explained or reconciled. Included in the balance, are two amounts described as local cash deposit bulk of Kshs.18,659 and Kshs.800,000 dated 25 November, 2018 and 24 January, 2020 respectively. The nature of these receipts and reasons for their posting in the cashbook was not provided.

Submission by the Accounting Officer

As highlighted in our response on the variance between Financial statement and Cashbook, the total amount of Kshs.1,439,059.35 includes an amount of Kshs.800,000 being surrender of unspent imprest by an Officer, Eng. Arasa. The said amount has since been captured in the cash book while an amount of Kshs.620,400 in respect of a project employee, Judith Kerich was returned due to invalid bank account. A bank reconciliation statement has since been availed to the Auditor. An amount of Kshs.18,659 was a refund of unspent imprest.

Committee Observations and Findings

(i) 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; and

(ii) The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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;

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

498.4 Payments in Bank Statements not recorded in Cashbook

The bank reconciliation statement as at 30th June, 2021 reflects payments of Kshs.129,273 which are in bank statement but not recorded in the cashbook and which comprise of two items dating back to 2019. No supporting documents or explanations were provided for these long outstanding payments.

In the circumstances, it was not possible to confirm that cash and cash equivalents balance of Kshs.50,065,126 as at 30 June, 2021 was fairly stated.

Submission by the Accounting Officer

Payments in Bank statement not recorded in cashbook of Kshs.129,273 were made up of Kshs.38,782 for pay as you earn (PAYE) and Kshs.90,491 being net payment to a project employee, Samson Nthuku being total salary to the officer. The analysis for the Kshs.129,273 is as analysed below:

Date	Details	Reference	Amount
24 June, 2019	TFRS Payments	FT19175V6	38,782.00
25 June, 2019	Samson Nthuku	FT19176H5	90,491.00
			129,273.00

The said payments have since been recorded in the Cash Book accordingly.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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

(iii) In addition, the Committee also observed that the Accounting Officer failed to provide supporting documents in breach of Section 62 of the Public Audit Act, 2015

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

499. Special Account Reconciliation

The Statement of receipts and payments reflects Kshs.211,861,456 in respect of total receipts for the year which includes Kshs.77,128,596 (USD.704,984) as loan from development partners (controlled by the entity) representing amounts drawn from the special account maintained at the Central Bank of Kenya. However, review of the special account statements and the accompanying reconciliation revealed that a total of Kshs.77,207,250 (USD.919,638.13) was drawn to fund project activities during the year leading to an unreconciled variance of Kshs.78,654 (USD.214,654).

Consequently, it has not been possible to confirm the fair statement of Kshs.77,128,596 reported as loan receipts from development partners (controlled by the entity) during the year ended 30 June, 2021.

Submission by the Accounting Officer

The amount advanced by IDA, the development partner, is US$.3,043,276.06 which includes US$.704,985. The amount documented to date is USD.2,543,276.06. The difference of US$.500,000 remain unutilized which forms part of our bank balance. A copy of the bank reconciliation has since been availed to the auditor.

Committee Observations and Findings

(i) 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; and

(ii) The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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 Act 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

Other Matter

500. Budgetary control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.693,352,000 and Kshs.211,861,456 respectively, resulting in under-funding of Kshs.481,490,544 equivalent to 70% of the approved budget. Similarly, the project expended Kshs198,911,274 against an actual receipt of Kshs.211,861,456 resulting to under-expenditure of Kshs.12,950,182 or 6% of the approved budget.

Failure to receive the budgeted funding and the resultant under-expenditure implies that some of the planned project activities were not implemented thereby denying effective services to the citizens.

Submission by the Accounting Officer

The Project had an approved budget of Kshs.693,352,000 made up of a revenue component of Kshs.493,352,000 and an AIA component of Kshs.200,000,000. The total expenditure as highlighted by the auditor amounted to Kshs.197,454,116 or 22% utilization. Owing to the Covid-19 pandemic, most of the planned activities were delayed. However, the same planned programmes though delayed will be implemented using funding from the same project in the future.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

501. Long Outstanding Inter-Project Borrowings

Notes 5 and 6 to the Financial Statements reflects amounts of Kshs.1,336,355 and Kshs.4,167,891 in respect of advances and accounts payable for Kenya Transport Sector Support Program (KTSSP) and National Urban Transport Improvement Project (NUTRIP) respectively which remained unchanged from the previous financial year. Management has explained that the amounts relate to inter-project borrowings and that the two projects have since been closed. However, no efforts have been demonstrated towards clearing of the balances arising from inter-project borrowings.

Submission by the Accounting Officer

The Accounting Officer submitted that the Kshs.1,336,335 was advanced to KTSSP. Kshs.4,167,891 was advanced from NUTRIP to EARTTDFP. Both KTSSP & NUTRIP have since closed and the matter rested. The Accounting officer further submitted that the borrowing from one project account to another were made to finance payment of salaries to contracted Project staff on the same projects. World Bank finances all the three projects.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not submit evidence of the approval for inter- project borrowing.

Committee Recommendation

The Accounting Officer should submit the approval for inter- project borrowing to the Committee within three (3) months after adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

502. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

503. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

504. As required by International Development Association and the Financing Agreement No. 5638-KE dated 20 July, 2015, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA SKILLS FOR TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (CREDIT NO. 6334-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

505. There were no material issues noted during the audit of the financial statements of the Project.
Other Matter

506. Unsupported Budget Amounts

The statement of comparative budget and actual amounts reflects a final budget of Kshs.196, 822,567 against actual total expenditure of Kshs.55, 851,455. However, the Project management did not provide the approved detailed budget for the Project.

It was therefore not clear how the budget figures in the statement of comparative budget and actual amounts for the Project were arrived at.

Submission by the Accounting Officer

The consolidated budget amounts are implemented as approved by Parliament and captured in the Printed Estimates. The said approved budget is later on disaggregated into sub items. The Accounting Officer admitted that a detailed budget was not provided to the auditors as at the time of the initial audit. However, that same was later on availed to the auditors in response to the draft audit report. A copy of the detailed budget was availed for perusal by the Committee.

Committee Observations and Findings

(i) **The Committee observed that during the audit, the Accounting Officer failed to provide detailed budget in breach of Section 62 of the Public Audit Act, 2015; and**

(ii) **The Accounting Officer subsequently availed the detailed budget to the Committee.**

Committee Recommendation

The Committee reprimands the Accounting Office for failing to provide detailed budget during audit in breach of Section 62 of the Public Audit Act, 2015.

507. Project Implementation-Low Absorption Rate

Section 1.8 of the annual report and financial statements on funding summary shows that the Project duration is 5 years or 60 months from 2018 to 2024, with an approved budget of EUR 9,280,000 equivalent to Kshs.1,086,168,320. As at 30 June, 2021, 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 30 months equivalent to 50% of the total Project duration. Further, out of the total amount received as at 30 June, 2021, only Kshs.48,830,761 had been spent on project activities representing a 25% absorption rate.

In view of the above, the Project is clearly behind schedule and it is unlikely that the set timelines will be achieved.

Submission by the Accounting Officer

As correctly observed, EASTRIP had received a total amount of KSH196,822,567 which is 18% of the total funding by 30th June 2021.

First of all, it's worth noting that the financing agreement was signed on 18th December 2018, which is the time the project became effective, meaning that during the first two project years 2018-2019 and 2019-2020 the institute actually did not have funds with which to conduct project activities. It should also be noted that the funds were deposited into the project's commercial bank account in May 2020, just a month before the end of the 2019-2020 financial year.

Further, please note that activities commenced in the year 2020-2021, which was actually the third project year, and this explains the apparent delay in the implementation. During this year, the budget amount of KSH400,000,000 was not only meant to take care of the 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 has finally obtained the waiver in no. 3 above and already procured some of the equipment in this financial year (2021/2022) hence spending a total of Kshs. 126,000,000.00 with a further amount of Kshs. 28,000,000,00 to be spent on the procurement of a simulator which is already at an advanced procurement stage.

An additional Kshs. 4,000,000 has 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 observed that the explanation provided by the Accounting Officer with regards to the low absorption rate was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

508. Lack of a Fixed Assets Register

Annex 2 – Summary of Fixed Assets Register, reflects a balance of Kshs.5,589,325 as the closing cost of the Project's fixed assets as at 30 June, 2021. However, contrary to Section 143(1) of the Public Finance Management Regulations, 2015, the Project Management did not avail a register of assets for audit purposes. In the circumstances, Management was in breach of the law and the accuracy and existence of the total fixed assets balance of Kshs.5,589,325 could not be confirmed.

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

Submission by the Accounting Officer

The Accounting Officer admitted that the fixed asset register was not availed when documents for initial audit were submitted. However, at the time of the draft audit, the fixed asset register as at 30th June 2021 has been availed to the Auditor.

Committee Observations and Findings

(i) **The Committee observed that the asset register had not been availed at the time of the audit contrary to section 62 of the Public Audit Act, 2015; and**

(ii) **The register was subsequently availed by the Accounting Officer to the Committee.**

Committee Recommendation

The Committee reprimands the Accounting Office for failure to avail the asset register contrary to section 62 of Public Audit Act, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

509. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

510. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KENYA TRANSPORT SECTOR SUPPORT PROJECT (IDA CREDIT NO. 4926-KE AND NO. 5410-KE)

Basis for Qualified Opinion

511. Accuracy of Financial Statements

The statement of receipts and payments for the year ended 30th June, 2021 reflects Nil transactions for receipts and payments in the year. However, and even though the Management confirmed that the project came to an end in 2019, available information indicates that an amount of Kshs.8,001,161 was paid to a local company on 21st October, 2020 in respect of an outstanding bill after closure of the project and was settled through GoK Development budget.

In the circumstances, the accuracy of the Nil figure reported in the statement of receipts and payments for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The amount of Kshs.8,001,161.40 was in respect to a contract for Teknohub Limited which was left outstanding after the project was closed. The payment has already been settled through GoK Development Budget in line with the Project Agreement Conditions.

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 for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

Other Matter

512. Project Closure Report

The project information and overall performance for the year ended 30 June 2021 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 review two years after the closure period of the project.

Submission by the Accounting Officer

The closure report for Kenya Transport Sector Support Project had not been cleared by the development partner (World Bank) for circulation until 25th January, 2021 as per the evidence of the letter distributing the borrower's Implementation Completion and Results Report (ICR). The same report have been presented to the Auditor and other stakeholders.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

513. Late Submission of Financial Statements

Kenya Transport Sector Support Program's Management submitted financial statement to the Auditor General for audit on 16th November, 2021 contrary to the provisions of the Public Audit Act, 2015 Section 47(1) which states that 'the financial statements required under the constitution, the Public Finance Management Act, 2012 (No. 18 of 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.'

Submission by the Accounting Officer

The Accounting Officer admitted that the Financial Statement was submitted to the Auditor-General on 16 November 2021. This is because the project ended in the year 2019 and it was assumed the last financial statement was for the year 2019/2020.

Despite the foregoing, the financial Statements were prepared and submitted to the auditor after in-depth consultation between the auditor and the management. The management however regrets this eventuality and has taken proper measures to prevent such an occurrence in future.

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.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
514. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

515. As required by International Development Association, except for the matters under Emphasis of matter, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
516. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
517. Budget and Budgetary Performance
The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.80,000,000 and Kshs.19,678,155 respectively resulting to an under-funding of Kshs.60,321,845 or 75% of the budget. In addition, out of the Kshs.19,678,155 received, only Kshs.4,090,058 was utilized leaving the balance of Kshs.15,588,097 unspent.

The underfunding and failure to utilize the realized funds implies that the planned project's activities for the year were not fully implemented.

Submission by the Accounting Officer
There was general budget underutilization amounting to Kshs.15,588,097 due to the effect of the Covid-19 pandemic. Some services that were to be offered under the unutilized funds in the Project Bank Account were delayed because of the Covid-19 pandemic. However, the same services such as training, though delayed, will be offered and will be charged to the same funds that are secure in the Project Bank Account.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regards to the Budgetary Control and Performance was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

518. Lack of Approved Annual Work Plan/Budget

Section 1 (E) of the financing agreement requires the implementing entity to prepare and furnish the International Development Association (IDA) with a consolidated work plan and budget not later than 31 March of each fiscal year beginning in the year 2021. Further, the consolidated work plan/budget should contain all activities proposed to be implemented under the project and the related financing. However, the project management did not present for audit the consolidated work plan/budget approved for implementation by the Association.

In the circumstances, it has not been possible to ascertain if the expenditure incurred under the project was in accordance with financing agreement.

Submission by the Accounting Officer

A consolidated work plan had been prepared and was used for the activities planned for the year. The expenditure against the project was done in line with the Project Appraisal Document. A copy of the consolidated Work Plan was availed to the Auditor.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide annual work plan for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide annual work plan during audit contrary to section 62 of the Public Audit Act, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

519. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

520. As required by International Development Association and financing agreement for Credit No. 6768-KE I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE STATE DEPARTMENT FOR INFRASTRUCTURE

SUPPORT TO ROAD 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

Unmodified Opinion

521. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

522. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects an approved receipts budget of Kshs.404,900,000 against actual amount of Kshs.147,809,147 resulting in a shortfall in receipts of Kshs.257,090,853. Similarly, overall, the Project under-spent its budget amount by Kshs.185,351,341. The under expenditure mainly occurred under the components related to consultancy at Kshs.104,836,892 and road works at Kshs.80,422,071 and operating costs at Kshs.92,379.

In view of the above under expenditure, the Project's targets and objectives for the year under review may not have been achieved.

Submission by the Accounting Officer

The Accounting Officer concurred that the projects targets were not achieved in the period. The shortfall on roadworks was attributed to lack of output for Lot 1 & Lot 2 contracts which were later terminated in the 4th and 3rd quarter of FY 2020/21 respectively. There was likelihood the contractor would resume site operations following concerted efforts to amicably settle the disputes. The Consultancy expenditure was under-spent following the delay by the consultant Nicholas O'Dwyer, to present their final invoice which was eventually submitted in October 2021.

Committee Observations and Findings

The Committee observed that under expenditure was occasioned by delays by both the contractor as well as the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer should take greater diligence, care and focus in the implementation of the budget as guided by regulation 43 of the PFM National Government Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

523. Abandoned Works

523.1 Lot 1: Kyeni – Kathanjure - Karurumo Road Works

The contract for construction of Lot 1 in respect of Kyeni-Kathanjure-Karurumo Road was awarded to a Contractor on 5 October, 2015. The contract sum was Kshs.231,570,571 covering 10.2 km. The project completion date was revised to19 December, 2017 (An additional 216 days), leading to delayed project implementation. However, the project was abandoned and subsequently terminated on 8 June, 2021. As at the time of termination, the Contractor had been paid accumulated payments amounting to Kshs.172,117,546 being 74% of the contract price. Records provided in respect of the Project indicate that a no objection letter was done to EU, to allow a negotiated procedure to procure new contractors for the works following the early termination of the contractor. There was no evidence whether a new contractor had been procured as at the time of the audit.

Submission by the Accounting Officer

The Accounting Officer concurred that the contractor has abandoned site since March 2019. Subsequently, the Contractor's employment was terminated with effect from 8th June 2021.
The EU gave a no-objection to procure a new contractor through negotiated procedure on 3rd October 2021. The re-tendering works was carried out in accordance with Article 64 of General Conditions.

Approval of the tender document and shortlist of bidders was given on 13th June 2022. Bids were opened on 28th July 2022. The Negotiation Committee's recommendation was approved by the Contracting Authority and a No Objection from the EU was granted on 17th October, 2022. The notification of the Award is currently underway.

Committee Observation and Finding

(i) The Committee observed that the project was yet to commence 8 years after the initial award;

(ii) There was need to recover liquidated damages from the previous contractor for delayed performance; and

(iii)The Committee observed that the project has been retendered and was still in progress.

Committee Recommendation

(i) The Committed recommends that the Accounting Officer recovers liquidated damages from the previous contractor for delayed performance within three (3) months of adoption of this report;

(ii) Further, the Committee pends comprehensive recommendation on the matter to its subsequent financial year report, as the matter is recurring.

523.2 Lot 2: Chuka- Kaanwa -Kareni Road

Kaanwa-Kareni Road Project was awarded to a contractor on 5 October, 2015. The contract sum was Kshs.537,264,086 covering 28 km. Records provided for audit indicate that the contractor has been paid accumulated payments amounting to Kshs.231,022,802 being 42% of the contract price as at 30 June, 2021. The project initial completion period was two (2) years but a revised completion date of 10 June, 2019 was agreed upon. However, the project was abandoned and subsequently terminated with effect from 8 June, 2021. Information provided indicate that a no objection was done to Financier to allow use of negotiated procedure to procure new contractors for the works following the early termination of the contract. There was no evidence as to whether a new contractor had been procured as at the time of the audit.

Submission by the Accounting Officer

The Accounting Officer agreed that the contractor had abandoned site since March 2019 and the contract was subsequently terminated with effect from 19th January, 2021. The Contracting Authority received a No-Objection to procure new contractors using negotiated procedure on 13th July 2021. An approval was granted for the tender documents and shortlisted bidders on 20th December 2021. The outstanding works were split into three sections to allow speedy construction within the remaining period of execution under the Financing Agreement.

The Negotiation Team's recommendation was approved by the EU on 2nd May 2022. The Notification of Award for the three (3) new lots were communicated on 9th May, 2022. The awards were to M/s Assets Construction Ltd (Lot 1), Elikar Enterprises Ltd (Lot2) and Nariana Enterprises Ltd (Lot 3) The commencement orders were issued on 18th August 2022. The contractors are currently mobilising and works are expected to be completed in 12months time.

Committee Observation and Finding

(i) The Committee observed that the project had delayed for almost 8 years after the initial award;

(ii) The Committee observed that the project had been retendered with an expected completion term of August 2023.

Committee Recommendation

(i) The Accounting officer should submit a status report to the National Assembly within three (3) months after this report is adopted;

(ii) Further, the Committee pends comprehensive recommendation on the matter to its subsequent financial year report, as the matter is recurring.

523.3 Lot 5: Katuaa-Kee-Nunguni Road (20.5 km)-Makueni County

The Authority awarded tender to a local contractor for construction of 20.5 Km Katuaa-Kee-Nunguni Road in Makueni County at a contract sum of Kshs.362,001,255. Physical verification on the road works conducted in October, 2021 indicated that the contractor had completed 9.7 Km of 20.5 Km road to asphalt concrete which is 47% of the contract having been paid a total of Kshs.255,314,503 equivalent to 70% of the contract sum. The project is therefore behind schedule and the funds are almost exhausted as the revised contract period had elapsed.

In addition, physical verification of the road indicated that there are cracks on some sections of the road, approximately 1 Km which could be attributed to poor workmanship or failed asphalt concrete mix. It was also noted that trial section of about 200M failed near Kee Market and the section had not been done by the time of verification. The asphalt concrete surfacing was not continuous as there were gaps in some sections of the road and the contractor was not on site and no work was going on.

In review of foregoing, value for money on these roads have not been achieved.

Submission by the Accounting Officer
The Accounting Officer submitted that the Lot 5 works are behind schedule. However, overall progress as at 30th June 2021 was at 75%. The contract had completed 9.7 km of cold asphalt surfacing as observed and an additional 0.7Km of roller compacted concrete surface. The contractor had also completed 12.2 km of base, 19.5 km of subbase and 20.8 km (100%) of improved subgrade works.

The contractor shall be sanctioned for delayed implementation of tasks as per the contact terms. On site observations issues, our response is as follows;

i) Areas that have shown early signs of failure including the trial section will be made good prior to taking-over of the works,
ii) The contractor was not on site after his labour declined to work until their wages were paid. This being a labour intensive contract all works were grounded once industrial action was initiated. The contractor resumed operations on 8th November, 2021,
iii) The asphalt concrete gaps occur due to traffic management as only half carriageway is surfaced at a time. The asphalt concrete gaps are usually given first priority in subsequent operations.

Committee Observation and Finding

(i) The Committee observed that the Accounting Officer indicated that the contractor was at fault and shall be sanctioned appropriately;
(ii) The Committee also observed that there was evidence of substandard work in the project as confirmed by the Accounting Officer; and
(iii) The Accounting officer did not give an indication on when the project will be completed.

Committee Recommendation

(i) The Accounting officer should provide evidence of sanctions taken against the contractor within three (3) months after this report is adopted by the House for review and reporting in the subsequent audit;
(ii) The Accounting officer should provide evidence of rectification of the substandard work within three (3) months after this report is adopted by the House for review and reporting in the subsequent audit; and
(iii) Further, the Committee pends comprehensive recommendation on the matter to its subsequent financial year report, as the matter is recurring.

524. **Vacation of Site by the Consultant**

Review of Project's documents indicated that consultancy and supervisory services provider vacated the site as per letter Ref No: KeRRA/03/5/VOL.1/ (2497). The letter emphasized that this was due to exhaustion of funds despite the fact that the works had not been concluded as some were still outstanding. This situation could adversely impact on the quality of work done by the contractors.

Submission by the Accounting Officer

The Accounting Officer concurred that the consultancy services for Nicholas O'Dwyer & Company Ltd ended in September 2020 after exhaustion of the consultancy services funds. However, the Contracting Authority approved the Implementing Agency (Kenya Rural Roads Authority) to take-over supervision activities from the outgoing consultant. The new supervision teams were already in place and have been involved in supervision works in Lot 3, 4 & 5 since August 2020. Control of road works is being effectively controlled and supervised.

Committee Observation and Finding

The Accounting officer did not give an indication on when the project will be completed.

Committee Recommendation

The Accounting officer should submit a status report to the National Assembly within three (3) months after this report is adopted.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

525. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

526. As required by the European Commission, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NUNO-MODOGASHE ROAD PROJECT – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

527. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

528. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final revenue budget and actual on comparable basis of Kshs.100,000,000 and Kshs.1,492,600 respectively resulting to under-funding of Kshs.98,507,400 or 99% of the budget. Further as disclosed in the project information under Note 1.7 on funding summary, the donors committed an amount of Kshs.6,773,847,400 for utilization under the project but as at the close of the project only Kshs.4,207,863,488 was utilized resulting to an undrawn amount of Kshs.2,565,983,912. Similarly, the Project expended Kshs.1,492,600 against an approved budget of Kshs.100,000,000 resulting to under-expenditure of Kshs.98,507,400 or 99% of the budget. Failure to fund the activities of the Project may lead to Project objectives not being met.

Submission by the Accounting Officer

The Accounting Officer agreed with this audit observation. The Authority had anticipated receipt of contractor's final payment certificate in FY 2020/21 thus the budgeted amount of Kshs.100,000,00. The certificate was however not finalized within the FY 2020/21 hence the Authority was only able to realize Kshs.1,492,600 as correctly observed by the Auditor. The contractor submitted the final payment certificate in FY 2021/22 and the Authority has settled this certificate.

The full amount from proceeds of the loans were not expended in full because the project did not experience cost overruns and hence savings were realized. The Authority therefore initiated the cancellation of the undisbursed amounts of the loan by the National Treasury through the Parent Ministry.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

529. Pending Bills

According to Note 11.6 to the financial statements, the Project had pending accounts payable of Kshs.575,470,814 (2020: Kshs.575,470,814) as at 30 June, 2021. Although Management had explained that the bills were awaiting submission of payment certificates from the contractor, the bills had not been settled at the close of the year under review.

Submission by the Accounting Officer

The Accounting Officer clarified that the project did not have pending bills as at the end of FY 2020/21 as clearly disclosed in other Important Disclosures – 1. Pending Accounts Payable and Annex 3A of the financial statements. The payable amount of Kshs.575,470,813 however represent withheld retention money from the contractor's certificates which was to be released upon submission of a retention release certificate by the contractor. The contractor submitted the certificate in FY 2021/22 and the Authority has since settled this amount.

Committee Observation and Finding;
The Committee observed that the explanation given by the Accounting Officer with regard to retention money was satisfactory.

Committee Recommendation
The matter is therefore marked as resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
530. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
531. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENOL-SAGANA-MARUA HIGHWAY IMPROVEMENT PROJECT (P-KE-DBO-037) CREDIT Nos.5050200000901 AND 20020004504 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
532. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
533. Pending Bills
Note 12.1 to the financial statements reflects pending bills amounting to Kshs.42,161,578 as at 30 June, 2021. Although the Management has committed to liaise with the line 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 significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer
The Accounting Officer agreed with the observation, that the project had an accumulated pending bill amounting to Kshs.42,161,578. These bills have however been settled in full in the Financial year 2021/2022.

Committee Observation and Finding;
The Committee observed that the the bills had since been settled in the subsequent financial year, however, the pending bills had not been settled by the end of the FY 2020/21 contrary

to regulation 43 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

534. Lack of Project Budget

During the year under review, the Project had an approved budget of Kshs.3,654,552,708. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended. Consequently, it was not possible to conduct budget performance analysis on budgeted and actual amounts.

Submission by the Accounting Officer

The Accounting Officer submitted that the overall project had a total budget of Kshs.7,470,000,000. However, 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. As correctly noted in your observation, this 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 indicated in the Statement of comparative budget versus actual, the expenses for the project did not exceed the amounts appropriated hence full compliance with provisions of the PFM Act 2012 and its attendant regulations.

Committee Observations and Findings

(i) The Committee observed that during the audit, the Accounting Officer failed to provide detailed budget in breach of Section 62 of the Public Audit Act, 2015; and

(ii) However, the Committee observed that the Accounting Officer had eventually availed the detailed budget.

Committee Recommendation

The Committee admonishes the Accounting Officer for failing to provide detailed budget in breach of Section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

535. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

536. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

537. As required by African Development Fund (ADF), except for the effects of the matter described under Other Matter section of my report, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NAIROBI OUTER RING ROAD IMPROVEMENT PROJECT NO. P-KEDB0-020 – KENYA URBAN ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

538. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

539. Interest on Late Payments

Review of interim payment certificate (IPC) No.48 approved in December, 2020 revealed that an amount of Kshs.34,715,982 had been charged by the contractor as interest on delayed payments. This charge arose due failure by the Authority to settle contractor's dues within the timelines stipulated in the contract agreement and has no commensurate benefit to the citizens.

Interest on delayed payments is a nugatory cost which is avoidable and is not a proper charge to public resources.

Submission by the Accounting Officer

The Accounting Officer submitted that the delay in payment to the contractor was caused by inadequate budgetary allocations and slow disbursement of exchequer funds consequently delaying settlement.

Our request for additional funding was not granted due to lack of additional resources.

The interest charged is contractual in line with the relevant conditions of contract.

Committee Observations and Findings

The Committee observed that interest on late payments amount to wasteful expenditure.

Committee Recommendation

The Accounting Officer for National Treasury should ensure early disburments of exchequer funds in order to avoid such wasteful expenditure. Failure to do so amounts to an offence under section 197 (1) (i) of the PFM Act, 2012.

540. Pending Bills

Note 6 to the financial statements reflects pending bills totalling Kshs.418,926,708 and as analyzed under Annex 3. Although this was a decrease from an amount of Kshs.710,123,917 reported in the previous year, the Project is at risk of incurring additional costs in form of interest and penalties for failure to settle project related costs as and when they fall due.

Submission by the Accounting Officer

The Accounting Officer agreed with this observation. The State Department is in communication with the National Treasury for provision of adequate funding to clear the outstanding bills. The bills will be settled as soon as exchequer funding is received.

Committee Observation and Finding;

The Committee observed that the pending bills had not been settled by the end of the FY 2020/21 contrary to regulation 43 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

541. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

542. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

543. As required by Financing Agreement Loan No. 2100150030144 and Grant No. 2100155026117, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

UPGRADING OF KIBWEZI-MUTOMO-KITUI ROAD PROJECT - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

544. Unsupported Expenditure

The statement of receipts and payments and Note 12.2 to the financial statements reflects an expenditure of Kshs.1,501,838,874 incurred in acquisition of non-financial assets paid by third parties during the year. However, no supporting documents were provided for audit to confirm the disbursements as required by Article 5(clause 5.3) of the buyer credit loan agreement.
In the absence of adequate relevant supporting documents, the accuracy, completeness and regularity of the expenditure of Kshs.1,501,838,874 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;
The payments amounting to Kshs.1,501,838,874 is made up of two payments;

1. IPC 7 USD 15,968,729.10 (Kshs.1,282,820,705.41 Equivalent.
2. IPC 08 USD 2,726,368.38, Kshs.219,018,168.98 equivalent

The above payments are duly supported by all the relevant payment documents which were also availed to the audit team during the audit exercise. Copies of payment vouchers, Interim payment Certificates (IPCs) and remittance advices from the development partner confirming the disbursements were availed and perused by the Committee.

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 for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

545. Interest on Delayed Payments

Review of interim payment certificate No.5b of 2 February, 2021 revealed that that the company that had been awarded the contract charged the employer interest on delayed payments amounting to 215,284,609 during the year and which should have been avoided since the Project had enough funding at the time. The interest payments were therefore, an irregular charge to public funds.

Submission by the Accounting Officer

The Accounting Officer submitted that it was 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 the GoK portion of the IPcs.

In order to ensure that the pending bills are settled, the Authority is liaising with the Parent Ministry and the National Treasury in an effort to secure adequate budgetary provisions to settle the Pending Bills. This is evidenced by the settlement of an amount of Kshs.796,772,220 to the contractors/consultants and PAPs in the year under review and a further Kshs.90,582,730 in FY 2021/22. The Authority has also secured a GoK budgetary allocation amounting to Kshs.125,000,000 in FY 2022/23 which will be utilized towards reduction of the pending bills.

Committee Observations and Findings
The Committee observed that interest on late payments amounts to wasteful expenditure.

Committee Recommendation
The Accounting Officer for National Treasury should ensure early disbursements of exchequer funds in order to avoid such wasteful expenditure. Failure to do so amounts to an offence under section 197 (1) (i) of the PFM Act, 2012.

546. Pending Bills
Annex 3 to the financial statements reflects a pending bills balance of Kshs.1,920,289,734 as at 30 June, 2021. However, review of pending bills analysis revealed the following anomalies;

i. An amount of Kshs.38,650,265 which was payable during the year from counterpart funds to Sinohydro Corporation Ltd under interim payment Certificate Number 8 was not paid.
ii. Payment of Kshs.219,018,169 was made by the Lender during the year for which no supporting documents were provided for audit review.
iii. An amount of Kshs.5,765,256 relating to lease of 11.74 acres of land to KeNHA by Kenya Forest Services in respect of wayleave for construction and maintenance of Kibwezi Road interchange was not disclosed in the financial statements.

In the circumstances, the completeness, accuracy and validity of the pending bills of Kshs.1,920,289,734 could not be confirmed.
Submission by the Accounting Officer
The Accounting Officer submitted that it was true that the amount of Kshs.1,920,289,734 GoK portions of the project were outstanding as at 30 June 2021 after the project was completed and opened for public use in June 2021. The outstanding amounts however arose from insufficient exchequer budgetary allocation in the current as well as prior financial years. The Authority, in liaison with the parent ministry is working closely in order to ensure the outstanding certificates are settled through sufficient budgetary allocation.

The payment of Kshs.219,018,169 is duly supported by a payment voucher, payment certificate (IPC) and a remittance advice from the development partner which were availed to the audit team during audit. A copy was availed and perused by the Committee.

It is true that an amount of Kshs.5,765,256 is due to KFS in respect of wayleave for the project. As at close of FY 2020/21 however, the payment requests/invoices from KFS were still under review by management hence were not included in the FY's financial statements. The invoices were subsequently approved for payment and will be accounted for in the financial statements for FY 2021/22.

The audit team was availed with a schedule of the pending bills amounting to Kshs.1,920,289,734 together with copies of the certificates/invoices hence the entire amount of pending bill is duly supported

Committee Observations and Findings

(i) The Committee observed that the pending bills had not been settled by the end of the FY 2020/21 contrary to regulation 43 of the Public Finance Management (National Government) Regulations, 2015.

(ii) The Accounting Officer for failed to provide the supporting documents to the pending bills.

Committee Recommendation

(i) The Committee admonishes the Accounting Officer for failing to keep and provide supporting documents to the pending bills.

(ii) The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015. Failure to comply to this, the accounting officer should be sanctioned with disciplinary action as per the provisions of section 74 (4)(d) of the Public Finance Management Act, 2015.

Other Matter

547. Delayed Payments to Persons Affected by the Project

Annex 3 to the financial statements reflects a pending bills balance of Kshs,1,920,289,734 as at 30, June 2021. The balance includes an amount of Kshs.1,643,235,886 for acquisition of land from persons who were affected by the implementation of the project which had not been paid.

In the circumstances, the project risk losing funds through award of damages and interest in legal disputes with the affected persons.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that the Authority owed an amount of Kshs.1,643,235,886 to persons who were affected by the project. The delay in settlement of the amounts is a result of inadequate GoK budgetary allocation. The Authority is however committed to settlement of the pending bills as evidenced by settlement of an amount of Kshs.200,000,000 to Project Affected Persons in the financial year under review.

Early Entry was approved by NLC and the PAPs agreed that their land could be taken for purposes of road construction, especially on sections where there were no developments evidenced by sample copies vailed to the Committee for perusal. This was agreed by the PAPs considering that the benefits of a tarmacked road will by far benefit them.

The Authority, in liaison with the parent ministry will endeavor to ensure that the balance of the bills as well as subsequent invoices and bills raised by the contractor as well as acquisition of rights of way are promptly settled through sufficient budgetary allocation

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012.

(ii) The Committee notes that the State Department compulsorily acquired land without an adequate budget thereby occasioning delayed settlement.

Committee Recommendation

(i) The Committee reprimands the Accounting officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should prioritize and complete compensation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

548. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

549. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DUALLING OF MAGONGO ROAD PHASE 2 PROJECT – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

550. Unsupported Receipts from Government Entities

Note 1 to the financial statements reflects Kshs.1,152,106,668 in respect to transfers from other Government entities. However, the supporting documents provided was in form of exchequer

requisitions made during the year which amounted to Kshs.1,679,382,094 resulting into an unexplained difference of Kshs.527,275,426.
In the circumstances, the accuracy, completeness and validity of receipts from other Government units could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that during the Financial Year 2020/21, the Authority made exchequer requests amounting to Kshs.1,679,382,094 as rightfully observed. However, the Authority received Kshs.1,152,106,668 as correctly indicated in Note 1 to the financial statements. A copy of exchequer receipt confirmation has now been availed.

Committee Observations and Findings
The Committee observed that there was an error in the preparation of the financial statements since what should have been attached were supporting documents for receipts of the Kshs. 1,152,106,668. However, what was attached was receipts of requisitions.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

551. Unreconciled Retentions Balance

The payables-deposits and retentions and as disclosed under Note 6 to the financial statements reflect a balance of Kshs.64,308,620 as at 30 June, 2021. However, review of the last contractor's interim payment certificate, No. 5 revealed that retentions totaling Kshs.72,999,481 had been deducted from contractor's payments leading to an unexplained variance of Kshs.8,690,861.

Consequently, it was not possible to confirm if payables- deposits and retentions balance of Kshs.64,308,602 as at 30 June, 2021 was fairly stated.

Submission by the Accounting Officer

The Accounting Officer noted the audit observation. However, he clarified that an amount of Kshs.8,690,861 had not been transferred to retention account due to inadequate budgetary allocation, hence form part of the outstanding balance on IPC 4 & 5 as indicated in copies of the financial statements (analysis of pending bills) which were availed for perusal by the Committee.

Committee Observation and Finding;

- **(i) The Committee observed that although the retention monies had been deducted from the payments to the contractors, it was not transferred to the retention account contrary to the established procedure;**
- **(ii) Payment is made per certificate hence inadequate budgetary allocation cannot be a reason for failure to provide for retention money. The Accounting Officer willfully failed to remit the retention money and possibly diverted the funds.**

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for failing to transfer retention money to the retention account; and**

(ii) **The Accounting Officer should ensure that retention monies are promptly paid to the retention accounts after deduction from the payments to contractors.**

552. Unexplained Variance in Surplus for the Year

The statement of receipts and payments reflects surplus for the year of Kshs.31,261,628, whereas the statement of financial assets shows a surplus of Kshs.8,690,882 resulting into an unexplained variance of Kshs.22,570,746. In the circumstances, the fair statement of surplus for the year could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer disagreed with this observation. Kshs.22,570,746 represent retention amounts withheld for the project during the FY 2020/21. In the statement of financial assets and liabilities this amount is accounted as part of the Payables – Deposits and retentions of Kshs.64,308,623 derived by adding prior year retention amount of Kshs.41,737,874 with the current year's retention amount of Kshs.22,570,746. This treatment of the retention money is in line with the projects reporting template issued by the National Treasury.

Committee Observation and Finding

The Committee noted that the variance between the statement of financial assets and the statement of receipts and payments was not satisfactorily explained by the Accounting Officer. The cited surplus was probably the retention money in the preceding audit query.

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012;**

(ii) **The Accounting Officer to reconcile the variance between the statement of financial assets and the statement of receipts and payments within three (3) months after adoption of the report.**

553. Misstated Fund Balance Brought Forward

The statement of financial assets reflects nil balance in respect to fund balance brought forward from the previous year. However, audited financial statements for 2020 financial year indicated that the Project reported a surplus of Kshs.41,737,874 which should have been disclosed as fund balance brought forward.

Consequently, the fund balance is not fairly stated in the financial statements.

Submission by the Accounting Officer

The Accounting Officer disagreed with this observation. Kshs.41,737,874 represent prior year closing retention amount which was reclassified from the Fund balance b/f to financial liabilities – Payables (retention) in the financial statements as required by the PSASB revised reporting template for FY 2020/21.

Committee Observation and Finding

The Committee notes that the balance brought forward was misstated and the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

Other Matter

554. Delay in Completion of the Project

The Project commenced on 1 May, 2018 with the expected completion date of 1 May, 2020 as the contract period was 24 months. The contractor was later granted 476 days extension of time which revised the expected completion date to 20 August, 2021.

However, physical verification of the Project which was cconducted in 21 October, 2021 revealed that works were still ongoing with an overall progress approximated at 83%. In addition, it was noted that the Project supervision contract had been extended twice due to delay in completion, occasioning an increase in the awarded contract price from Kshs.97,236,900 to Kshs.126,312,917 representing an increase of Kshs.28,986,017 or about 30% of the original cost.

In view of the foregoing, delayed completion of the project has occasioned extra costs since it is not clear when the project will be completed.

Submission by the Accounting Officer

The Accounting Officer agreed with the observations in relation to delay in completion of the project. This has been due to challenges in appropriating sufficient budgetary allocations for the project. Further, besides facing insufficient budgetary allocations towards acquisition of land for construction right of way, funds remitted to NLC would take long to be availed to the project affected persons, thereby disrupting the contractor's sequence of works.

Committee Observation and Finding

The Committee observed that the Accounting Officer reviewed the contract price of the project by more that 25% which was contrary to the provisions of section 139 of the Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation

The committee reprimands the Accounting Officer for breach of the provisions of section 139 of the Public Procurement and Asset Disposal Act, 2015 by reviewing the contract price by more than 25%.

555. Pending Bills

Note 12.1 under Other Important Disclosures reflects pending bills totaling Kshs.1,496,072,975 analyzed in Annex 3A. The Management explained that it was liaising with the line Ministry and The National Treasury to obtain adequate budgetary allocation to secure exchequer releases for prompt payments of the pending bills in the subsequent financial year. However, the Project is at risk of incurring extra costs in interest and penalties due to continued delay in settling the outstanding bills.

Submission by the Accounting Officer

The Accounting Officer agreed with this observation. This is due to inadequate budgetary provisions and delays in Exchequer releases to facilitate prompt contractual payments. In FY 2021/22 the project had a budget of Kshs.150 million which has been utilized towards reducing these bills. The project has further obtained a budgetary allocation of Kshs.130,000,000 in FY 2022/23 which will be utilized in defraying the pending bills.

Committee Observations and Findings

The committee observed the Accounting Officer did not settle pending bills as a first charge as per the provisions of regulation 43 of the PFM Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

556. Notice of Suspension of Works Due to Delayed Demolitions of Structures

On 21 October, 2021, the contractor issued a notice of suspension of works to their employees for a period of between three (3) and Six (6) months with effect from 23 November, 2021 due to delay in demolition of structures encroaching on the Project site which inhibited the continuation of work. Management did not explain efforts put in place to secure demolition of the structures to forestall suspension of work. Suspension of works will lead to further delay in completion of the project and may also attract extra charges from the contractors.

Submission by the Accounting Officer

The Accounting Officer submitted that this has been due to slow compensation of project affected persons (PAPs) as a result of inadequate budgetary provisions and delays in exchequer releases to facilitate prompt compensation to PAPs.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided for under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012; and

(ii) The Committee notes that the State Department compulsorily acquired land without an adequate budget thereby occasioning delayed settlement;

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should prioritize and complete compensation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

557. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

558. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KAPCHORWA-SUAM-KITALE AND ELDORET BYPASS ROADS (KENYA) PROJECT ID NO. P-Z1-DB0-183 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

559. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

560. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.999,981,672 as at 30 June, 2021. Although the Management has committed to liaise with the line 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 significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer agreed with the observation on pending bills and wish to note that this is as a result of inadequate budgetary allocation and insufficient funds. However, the authority secured a budgetary allocation of Kshs.200 Million for financial year 2021/22 which were utilized towards reduction of pending bills. A further Kshs.200 million has been secured in FY 2022/23 which will also reduce the amount of pending bills.

In order to secure adequate budgetary allocation, the Authority will continue to closely liaise with the parent Ministry & National Treasury.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as a first charge as per the provisions of regulation 43 of the PFM Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

561. Lack of Project Detailed Budget

During the year under review, the Project had an approved budget of Kshs.1,825,212,548. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended. Consequently, it was not possible to conduct budget performance analysis on budgeted and actual amounts.

Submission by the Accounting Officer

The Accounting Officer clarified that 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. As correctly noted in your observation, this 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 indicated in the Statement of comparative budget versus actual, the expenses for the project did not exceed the amounts appropriated hence full compliance with provisions of the PFM Act 2012 and its attendant regulations

Committee Observations and Findings

(i) The Committee observed that during the audit, the Accounting Officer failed to provide detailed budget in breach of Section 9 (1) (e) of the Public Audit Act, 2015; and

(ii) However, the Committee observed that the Accounting Officer eventually availed the detailed budget to the Committee.

Committee Recommendation

(i) The Committee admonishes the Accounting Officer for failing to provide detailed budget in breach of Section 62 of the Public Audit Act, 2015.

(ii) The Accounting Officer should always comply with the provisions of section 68 of the Public Finance Management Act, 2012 and section 9 (1) (e) of the Public Audit Act, 2015 on keeping and providing accurate accounting records.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

562. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

563. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

564. As required by African Development Fund (ADF) and African Development Bank (AfDB), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

MOMBASA PORT AREA ROAD DEVELOPMENT PROJECT – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

565. Unsupported Expenditure

Note 4 to the financial statements reflects acquisition of non-financial assets expenditure of Kshs.686,105,936 relating to construction of roads. The expenditure was however, not supported with entries in the ledger, payment vouchers and interim payment certificates. Consequently, the accuracy, completeness and propriety of the expenditure of Kshs.686,105,936 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer noted that the payment vouchers and the supporting documents relating to payments amounting to Kshs.686,105,936 were availed to the audit team during the audit exercise. Copies of payment documents of the said payments amounting to Kshs.686,105,936 were availed and perused by the Committee.

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 for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

566. Nugatory Expenditure

Included in the pending bills balance of Kshs.4,789,660,357 as recorded under Annex 3A is Kshs.19,959,349 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 avoidable.

Submission by the Accounting Officer

The Accounting Officer submitted that the delay in payments resulted from inadequate budgetary provisions and delays in Exchequer releases to facilitate prompt contractual payments.

Committee Observation

The committee notes that the interest charged on delayed payments amounts to wasteful expenditure.

Committee Recommendation

The Accounting Officer should ensure that the provisions of Regulation 43 of the Public Finance Management (National Government) Regulation, 2015 are complied with so as to avoid wasteful expenditure.

567. Unsupported Bank Balance

Note 5A to the financial statements reflects cash and cash equivalents balance of Kshs.82,691,214 as at 30 June, 2021. However, bank certificate provided for audit included other Projects' balances totalling to Kshs.214,265,448 as at 30 June, 2021 and which made it difficult to isolate the correct balance for the Project.

In the circumstances, it was not possible to confirm that cash and cash equivalents balance of Kshs.82,691,214 as 30 June, 2021 was fairly stated.

Submission by the Accounting Officer

The Accounting Officer noted 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.

Documents were further attached showing the payment vouchers that support the retention funds retained for this project.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the bank balance for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

Other Matter

568. Delays in Land Compensation

Review of progress reports for the contract's packages 2 and 3 revealed delays in land compensation as a major cause of delay in project implementation with Kshs.3,673,011,232 out of the Kshs.5,708,116,715 as captured at Annex 3A on pending bills still outstanding. Delayed project implementation may lead to additional cost due to inflation and resultant interest payable to beneficiaries.

Submission by the Accounting Officer

The Accounting Officer submitted that the delays in compensation to project affected persons is due to inadequate budgetary provisions coupled with delayed Exchequer releases. The Authority has however sought early entry to allow the Contractor to proceed with works as payment for PAPs are being finalized. This allows the contractor access to the right of way hence minimizing delays in project implementation.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012; and

(ii) The Committee notes that the State Department compulsorily acquired land without an adequate budget thereby occasioning delayed settlement.

Committee Recommendation

(i) The Committee reprimands that the Accounting officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land; and

(ii) The Accounting Officer should prioritize and complete compensation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

569. Foreigners Engaged in the Project without Work Permits

The review of expatriate staffs' records revealed that they did not have valid work permits as required by Section 40 of the Kenya Citizenship and Immigration Act, 2011 on employment of foreigners. This is likely to pose security risk since the workers were not vetted as required and hence violation of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the expired work permits were renewed. All expatriates have valid work permits while all the Contractor's Expatriate Engineers have Temporary EBK Licenses. A detailed schedule of status of work permits and copies of work permits are availed.

Committee Observation

The Committee observed that there was inordinate delay in renewing the work permits.

Committee Recommendation

The Accounting officer should henceforth ensure the process of renewals start in earnest and are done before expiry of existing permits.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
570. There were no material issues relating to effectiveness of internal controls, risk management and governance.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR PROJECT PHASE II (MARSABIT-TURBI ROAD) ID NO. P-Z1-DBO-027 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion
571. Cash and Cash Equivalents
The statement of financial assets and liabilities reflects a bank balance of Kshs.3,090,827 as at 30 June, 2021. As disclosed at Note 10.9A to the financial statements, the balance was held at NIC Bank Account No.1000015004. However, Management did not provide bank reconciliation statement and the cash book to support the balance.

In the circumstances, it was not possible to confirm that cash and cash equivalents balance of Kshs.3,090,827 as at 30 June, 2021 was fairly stated.

Submission by the Accounting Officer
The Accounting Officer noted that the bank reconciliation statement, cash book, bank statement and statement of bank balance confirmation letter were all availed to the auditors during the audit. Copies of the documents availed for further reference by the Committee.

Committee Observations
The Committee observed that the Accounting Officer failed to provide documents required under section 62 of the Public Audit Act, 2015.

Committee Recommendation
The Committee admonishes the Accounting Officer for failing to provide documents under section 62 of the Public Audit Act, 2015.

Other Matter

572. Pending Bills
As disclosed under Note 11 and Annex 3A, the financial statements disclose pending bills balances of Kshs.62,165,683 against a bank balance of Kshs.3,090,827 as at 30 June, 2021. Management has not explained how these bills will be cleared since the Project has closed and may not attract further funding from the Development partner or the Kenya Government.

Submission by the Accounting Officer

The Accounting Officer agreed with this observation; however, it is critical to note that it is the Authority that contracts service providers to the project and therefore bound by the provisions of the contract. 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. Pending bills are as a result of inadequate or reductions in budgetary allocations and or exchequer receipts to the Authority

Committee Observations

The Committee observed that the Accounting Officer did not settle pending bills as a first charge as required under regulation 42 of the PFM National Government Regulations 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

573. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

574. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

575. As required by African Development Fund (ADF), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR PROJECT PHASE III (TURBI - MOYALE) NO. P-ZI-DB0-095 LOAN NO. 2100150025546 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

576. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

577. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.17,533,871 as at 30 June, 2021 , the bills had not been paid at the end of the financial year and the project management has not liaised with the line 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 additional significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer noted that the Authority is closely liaising with the line Ministry and National Treasury for adequate budgetary allocation and timely exchequer release to ensure that the bills are settled on time. The correspondence to the line Ministry are letters ref. KeNHA/SD/FIN/0.7/Vol.2/36 dated 17th June, 2020 on Submission of the Authority's cash flow projections for Development Projects for the period June, 2020 to December, 2020 – Kshs.70.0 Billion and Ref. KeNHA/Budget/Fin/0.7/Vol.4/21-22 (02) dated 3rd November, 2021 on Request for Additional Development Budget of Kshs.80.1 Billion for FY2021/2022 to Settle Pending bills.

Committee Observations

The Committee observed that the Accounting Officer did not settle pending bills as a first charge as required under regulation 42 of the PFM National Government Regulations 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

578. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

579. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

580. As required by ADB, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

MOMBASA–MARIAKANI HIGHWAY PROJECT LOT 1 (MOMBASA-KWA JOMVU) LOAN NO. 2100150032743 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

581. Unsupported Transfers from Government Entities

Note 1 to the financial statements reflects Kshs.248,755,305 in respect to transfers from other Government entities. However, the supporting documents provided by way of exchequer requisitions and bank statements revealed that an amount of Kshs.302,681,906 was requested for the Project during the year under review but which could not be linked to actual receipts resulting to an unexplained variance of Kshs.53,926,601. It was therefore, not clear how the Management of the implementing Authority determined the receipts attributable to the Project.

In the circumstances, it has not been possible to confirm the completeness, accuracy and validity of Kshs.248,755,305 in respect to receipts from other Government entities.

Submission by the Accounting Officer

The Accounting Officer submitted that all exchequer funds received are all 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. The exchequer receipt confirmations were availed for perusal by the Committee.

Committee Observations

The Committee noted that the Accounting Officer did not keep proper records as required under section 68 of the PFM Act, 2012.

Committee Recommendation

The Committee admonishes the Accounting Officer for failing to keep proper records as required under section 68 of the PFM Act, 2012.

582. Unreconciled Retention Funds

The statement of financial assets and liabilities and Note 6 to the financial statements reflects a balance of Kshs.15,033,144 in respect to retention funds controlled by the entity which, when added to the Kshs.418,033,205 reflected as retentions controlled by third parties under other important disclosures at Note 12.2, gives a combined figure of Kshs.433,066,349. However, examination of the last interim payment certificate No.29 of 28 May, 2021 revealed that, a total of Kshs.427,436,817 had been retained from the contractor's payments implying that there is an overstatement of the retentions balance by Kshs.5,629,532.

Consequently, the financial statements do not reflect the correct position on retentions as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the project's retention amounts is made up of retention relating to the main road works contract and the contract for relocation of oil and gas pipelines from the road corridor. The retention amounts withheld and transferred to retention fund for the main works contractor and the contractor relocating oil and gas pipelines as at 30th June 2021 is Kshs.6,818,554 and Kshs.8,414,590 respectively thus Kshs.15,033,144 as reflected in the financial statements.

Copies of retention schedule for the project was availed for Committee perusal.

Committee Observations

(i) The committee observed that the Accounting Officer failed to reconcile the retention accounts contrary to section 68 of the PFM Act, 2012 which requires the Accounting Officer to keep proper accounting records; and

(ii) The Committee notes that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendations;

(i) The committee reprimands the Accounting Officer for failing to provide information as required under section 62 of the Public Audit Act, 2015;

(ii) The Accounting officer should submit a detail explanation of the overstatement of retentions balance by Kshs. 5,629,532 to the Committee within three (3) months of adoption of this report.

583. Undisclosed Surpluses

The statement of financial assets and liabilities reflects nil amounts under both fund balance brought forward and surplus for the year. However, the statement of receipts and payments reflects Kshs.434,525 and Kshs.15,033,144 as surplus for the year and cumulative surpluses respectively which should have also been included in the statement of financial assets and liabilities.

In the circumstances, it was not possible to ascertain the fair statement of the financial position of the Project as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer clarify that the surplus of Kshs.434,525 and Kshs.15,033,144 in the current and prior financial year represent retention funds that are held in the retention bank account. The revised Projects reporting template issued in July 2021 required that the retention amounts be reflected as Payables – Deposits and retentions in the Statement of Financial Assets (and not Fund Balance or Surplus).

Committee Observation and Finding

The Committee notes that the variance between the statement of financial assets and the statement of receipts and payments was not explained by the Accounting Officer.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012;

(ii) The Accounting Officer to reconcile the variance between the statement of financial assets and the statement of receipts and payments within three (3) months after adoption of the report.

Other Matter

584. 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, 2021. However, physical verification of the project site, which was carried out in October, 2021 after the lapse of revised completion date, revealed that works were still ongoing with overall progress approximated at 95%.

In the circumstances, implementation of the Project was behind schedule which may lead to costs escalation and delayed realization of expected benefits.

Submission by the Accounting Officer

The Accounting Officer submitted that the project as indicated was initially to be completed by July, 2020 and was later extended to September. 2021. The project however has delayed due to the delay in acquisition of Right of Way (RoW), compensation of Project Affected Persons and relocation of services. The area had major services including oil and gas pipelines and high voltage power masts and water pipes which required specialized contractors and collaboration with other government departments to relocate. The relocation works have been completed and works are ongoing in those sections. The Contractor has since submitted claim for extension up to 29th October, 2022 inclusive of 12 months Defects Notification Period.

Committee Observations

(i) The Committee noted that the project delayed beyond the expected completion date of 3rd September, 2021 even after extension of the contract;

(ii) The Committee further notes that the project was still not completed.

Committee Recommendation

The Accounting Officer to submit to the Committee the status report on the progress of the project within three (3) months after adoption of this report.

585. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.451,001,811 as at 30 June, 2021 and as analyzed in Annex 3A. The balance represented an increase from a figure of Kshs.133,575,356 reported in 2020 financial year by Kshs.317,426,455. The Management 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 in the subsequent financial year.

However, 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

The Accounting Officer submitted that this arose due to inadequate budgetary provisions and delays in exchequer releases. In FY 2021/22 the Authority managed to secure Kshs.60 million budgetary allocation for the project in an effort to further reduce the pending bills, with a further Kshs.150 million in FY 2022/23 which will be utilized in reducing the pending bill.

Committee Observations

The Accounting Officer failed to settle pending bills as a first charge as required under regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

586. Lack of Site Access Due to Legal Disputes

A physical verification of the Project carried out in 21 October, 2021 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.

In the circumstances, completion of road works in the affected sections is doubtful which not only undermines realization of benefits from the Project but could also lead to additional costs in form of claims by the contractor due to lack of access to the site.

Submission by the Accounting Officer

The Accounting Officer submitted that 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. It is expected that these cases will be concluded and works executed in this section within the contract period.

Committee Observations

The Committee noted that the project was still not completed.

Committee Recommendation

The Accounting Officer to submit to the Committee the status report on the litigation cases relating to the project within three (3) months after adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

587. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

588. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

589. As required by the African Development Fund, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EPC/TURNKEY CONSTRUCTION OF FIVE FOOTBRIDGES AND T-MALL FLYOVER IN MOMBASA AND LANGATA ROADS PROJECT LOAN CREDIT NO.KEN-01001-19 AND NO.KEN-02001-19 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

590. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

591. Change in Project's Initial Scope due to Conflict in Design and Overlap with Another Project

The initial scope of the project as per the commercial contract signed on 12 March, 2018 was for construction of five foot-bridges three of which were to be along Mombasa road and the remainder in Langata road. The footbridges which were to be constructed along Mombasa road were Mlolongo foot bridge-Mombasa road, Syokimau Estate Foot BridgeMombasa road and Syokimau Railway station foot Bridge-Mombasa road. However, construction of the three (3) footbridges along Mombasa road was later deemed untenable due to what was said to be design conflicts with another project on the same road for construction of Nairobi Expressway which came up in 2020. It was later agreed that the construction of the three footbridges be shifted from Mombasa road to Lang'ata road. According to a letter Ref: MOTIHUD&PW/A35.34 Vol. 1 from the Principal Secretary of the line Ministry to the Solicitor General dated 9 April, 2021, the relocation of the footbridges did not have any effect on the project contract sum as the reduced dimensions of the footbridges would compensate the contractors for the costs already incurred on the same.

However, management did not provide detailed costings to support this conclusion. In addition, it was not clear why the two projects implemented by the same Authority ended up having overlapping/conflicting scope and why this was not foreseen. The foregoing is indicative of weaknesses in project planning and implementation on the part of implementing Authority which could lead to delayed implementation and occasion wastage of public resources.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commercial Contract for the construction of the five footbridges was signed in March 2018. However, when the government decided to implement the dual carriageway Nairobi Expressway in 2020, the road geometry and cross-section parameters 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 was not anticipated when the commercial contract was signed.

Following consultations, it was determined that the affected structures should be relocated to other deserving locations based on the feasibility studies conducted during the project's planning phase. The change was approved by the Attorney General, the National Treasury, and the Lenders. Consequently, Contract Addendum No.2 was executed on October 21, 2021. Due caution has been exercised to ensure that the project is successfully implemented to improve road user safety while also providing value for money to the public.

Committee Observation

The Committee observed that the Accounting Officer did not provide the information on the project costs for the new sites along Langata road vis a vis the cost at the initial sites along Mombasa road.

Committee Recommendation

The Accounting Officer should submit a report to the National Assembly on the project cost for the new sites vis a vis the costs at the initial sites within three (3) months after adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

592. There were no material issues relating to effectiveness of internal controls, risk management and governance.

IMPROVEMENT OF RURAL ROADS AND MARKET INFRASTRUCTURE IN WESTERN KENYA PROJECT CREDIT NO. BMZ 2007-65 123 (KFW) –KENYARURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

593. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

594. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects actual receipts of Kshs.25,584,782 against the budget amount of Kshs.300,000,000 resulting to a shortfall in receipts of Kshs.274,415,218 or 91% of the approved budget. Further, actual expenditure for the year amounted to Kshs.13,262,130 against the final expenditure budget of Kshs.300,000,000 resulting to an under expenditure of Kshs.286,737,870 or 96% of the approved budget. The under expenditure of Kshs.286,737,870 is an indication that some planned programs were not undertaken during the year which could impact negatively on the attainment of the overall Project's goals and objectives.

Submission by the Accounting Officer

The Accounting Officer the technical works for the KFW project had been fully completed hence the Authority did not receive the entire budgeted amount. The bulk of the unreceived funds comprised loan amounts from the Development Partner (KfW) for Phase II of the project for which roadworks have not yet begun.

Since the KfW project is technically complete, only a few of the planned program components remained outstanding during the financial year, hence the variance between budget and expenditure. The variance for consultancy services was brought about by the consultants' non-compliance with the National Treasury guidelines on payment of withholding income tax.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer with regards to the Budgetary Control and Performance was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

595. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

596. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

597. As required by the Kreditanstalt Fur Wiederaufbau (KFW), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been and the Project's financial statements are in agreement with the accounting records and returns.

KENYA - SOUTH SUDAN LINK ROAD PROJECT (REF. NO.202062065 AND BMZ NO.202083939) – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

598. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

599. Slow Uptake of Loan Disbursements

Note 1.7 on the funding summary indicates that of the total funding requirement of Kshs.12,607,122,471 for the Project, Kshs.12,604,345,250 was to be received from KfW Frankfurt am Main (''KfW''). However, as at 30 June, 2021, only Kshs.25,108,356 had been drawn despite the Project having been in existence for four and half (4.5) years. It was further noted that the implementing agency (Kenya National Highways Authority) entered into a sixty-six (66) months' consultancy contact with a consultant vide contract reference No. KeNHA/RD/Dev/2826/2019, dated 15 October, 2019 for design, finalization of safe guard documents, procurement support, construction supervision and contract administration. However, as at 30 June, 2021, the Project was at the road design phase and only 10% of the design phase had been executed.

In the circumstances, the Project is at risk of not being implemented due to continued delay on the draw down and in view of Section 3.2 of the Loan Agreement which gives right to the financier to decline disbursements after 31 December, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the undrawn balance has been occasioned by the fact that the civil works (which were to be preceded with the re-design of Kamatira hills section) have not been procured yet.

The Consultancy Services commenced on January 20, 2020, and after submission of the inception report (10%) the assignment was disrupted by the CoVID-19 leading to a delay of the design phase by 12 months. In effect, the duration of the design phase was extended from 18 months to 30 months through Addendum No. 1. which was availed to the Committee for perusal.

While taking cognizance of the impending expiry of the loan period, the management (through the National Treasury) requested for the extension of the loan period by 72 months up to 31st December 2027 and copies of the request and acceptance letters were availed to the Committee for perusal.

Committee Observations

(i) **The Committee noted that there had been an inordinate delay in the implementation of the project with only around 25 million out of the 12.6 billion which was received from the donor;**

(ii) **The Committee also noted that the management through the National Treasury had requested for the extension of the loan period by 72 months up to 31st December 2027.**

Committee Recommendation

The Accounting Officer should provide a report to the Committee on the measures taken so as to ensure the project is completed within the requested extension period within three (3) months of adoption of the report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

600. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

601. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

602. As required by KfW Frankfurt am Main (''KfW''), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been and the Project's financial statements are in agreement with the accounting records and returns.

TIMBOROA-ELDORET ROAD REHABILITATION PROJECT NO. P-KEDB0-019 (LOAN NO. 2100150023344) – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

603. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

604. Project Closure Report

As disclosed in the project information under Note 1.7 funding summary, the donor committed an amount of Kshs.4,215,044,349 for utilization under the project but as at the close of the project only Kshs.4,206,371,760 was utilized resulting to an unutilized amount of Kshs.8,672,589. Information provided for audit review indicate that this balance increased to Kshs.17,978,273 as at 30 June, 2021. However, no explanation has been provided as to why the unutilized funds have not been surrendered to the National Treasury considering the Project ended on 16 July, 2016.

Submission by the Accounting Officer
The Accounting Officer noted that bank balance of Kshs17,978,273 is interest income received from the bank and thus forms part of authority's AIA to be budgeted and expended internally.

Committee Observations

(i) Although the Accounting Officer submitted the amount queried was AIA for KENHA, he did not avail to the Committee evidence of approved AIA in the budget of KENHA and documents to confirm the interest was disclosed as revenue by KENHA in its financial statements.

(ii) Although the Accounting Officer submitted the entire balance of Kshs. 17,978,273 was interest earned, no evidence was availed to show the balance of Kshs. 8,672,589 was not surplus of spending from the proceeds from the financier.

Committee Recommendation

(i) The Committee reprimands the Accounting officer for failure to provide evidence of their submissions contrary to section 62 of the Public Audit Act, 2015.

(ii) The Accounting Officer to submit to the Committee the evidence of approved AIA and the documents to confirm the interest disclosed, within three (3) month of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
605. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
606. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

607. As required by African Development Fund (ADF), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NAIROBI-THIKA HIGHWAY IMPROVEMENT PROJECT LOT I AND II (CREDIT NO. 2100150015544) – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

608. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

609. Pending Bills

Note 11 to the financial statements reflects pending bills amounting to Kshs.428,623,554 as at 30 June, 2021. The Management has however attributed the delay in the discharge of the bills to delays in Exchequer releases and has committed to liaise with the line Ministry and The National Treasury for timely Exchequer releases for prompt payments in the subsequent financial year. The Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer clarified that this amount relates to land compensation along the project road. These bills are as a result of inadequate budgetary allocations coupled with insufficient exchequer releases to the project.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012; and

(ii) The Committee noted that the State Department compulsorily acquired land without an adequate budget thereby occasioning delayed settlement.

Committee Recommendation

(i) The Committee reprimands that the Accounting officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land; and

(ii) The Accounting Officer should prioritize and complete compensation.

610. Project Closure Report

The Project information in the financial statements provided for audit revealed that the project was to end on the 22 July, 2015. However, the project closure report was not availed for audit review, being more than six (6) years after the expiry of the closure period.

Submission by the Accounting Officer
The Accounting Officer submitted that the project inspection and taking over certificates were availed to the audit teams during the audit period. The certificate was availed for reference by the Committee.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as project closure report are different from certificates.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails the project closure report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

611. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

612. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

613. As required by the African Development Fund (ADF), except for the matters described under Other Matter section of my report, I report based on my audit that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

ROADS 2000 PHASE TWO PROJECT (AFD CREDIT NO. CKE 101201B, CREDIT NO. CKE 104601J AND CREDIT NO. CKE 109401 M) - KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

614. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

615. Pending Bills

As previously reported, Note 12 to the financial statements reflects pending bills of Kshs.30,273,407 as at 30 June, 2021. Management has not provided explanations for non-payment of the bills. The Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills were chargeable to the GoK portion of the contracts. The bills arose due to inadequate net GoK provisions. The agency has prioritized settlement of the bills in the subsequent Financial Year 2022/2023.

Committee Observations

The Accounting Officer did not settle pending bills as a first charge as per the provisions of regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

616. Variation of Contracts

Examination of payment records and other documents relating to road projects revealed that the Kiambu Regional Office implemented works with a total contractual sum of Kshs.273,413,609. The Regional Office however made total payments of Kshs.359,509,139 for the road works resulting to a variation of Kshs.86,095,530. No evidence was availed to show that the variations were approved. Further, the Nyathuna -Rironi Road project BQ provided for stone pitching of drainage for 500 meters at a cost of Kshs.1,500,000. It was however noted that stone pitching for 5,628.90 meters was done at a cost of Kshs.16,886,700. No explanation was given for the huge variations of the cost of stone pitching.

Further, the taking over certificate for Nyathuna - Rironi road indicated that the length of the road was 4.1km while the contract agreement had a length of 5.4 km. The difference of 1.3 km had not been explained as at the time of the audit. In addition, physical verification of Kirangari – Nyathuna road conducted on 8 November, 2021 revealed that the road had started developing potholes on various sections while the project is under defect liability period. Similarly, Kanunga – Banana road had no road markings and no traffic signs were provided for in the bill of quantities.

Under the circumstances, it has not been possible to ascertain whether value for money was realized for the projects implemented during the year under review.

Submission by the Accounting Officer
The Accounting Officer submitted that these contracts had been appraised and variations issued. Copies of approved variation appraisals were availed to the Committee.

Committee Observations
The committee noted that the contract price was varied by around 31% which was contrary to section 139 (4) (d) of the Public Procurement and Asset Disposal Act.

Committee Recommendation
The committee recommends that the EACC investigates into the matter and prosecutes the then Accounting Officer or relevant officer for committing an offence under section 176 (1) (l) of the Public Procurement and Asset Disposal Act, 2015 by contravening section 139 (4) (d) of the Act.

617. Un-surrendered Retention Money for Nyeri Region
Examination of payment records and other documents revealed that retention money amounting to Kshs.17,656,316 was deducted from six (6) contractors during the financial year 2020/2021. The money was however, not deposited in the retention account number 1737850097 – 1001964972 held at NCBA Bank. Although Management have explained that the money was deposited in the operational account at Co-operative Bank, no bank statements were provided to support this.

Submission by the Accounting Officer
The Accounting Officer submitted that the above retention money was not deposited to the retention account number 1737850097 – 1001964972 held at NCBA Bank. However, the amount is held in the regional Co-operative bank account Nyeri A/C No. 01141379349200. It will be released to the contractor partly upon takeover and fully after final inspection at the end of defects liability period.

Committee Observation
The Committee observed that although the retention monies had been deducted from the payments to the contractors, it was not transferred to the retention account contrary to the established procedure.

Committee Recommendation
(i) The Committee reprimands the Accounting Officer for failing to transfer the withheld contractors' retention monies into the retention deposit bank accounts;

(ii) The Accounting officer should transfer the retention money to the appropriate retention account within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

618. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

619. As required by the Agence Francaise De Development (AFD), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

MULTINATIONAL ARUSHA-HOLILI/TAVETA-VOI ROAD CORRIDOR DEVELOPMENT PROJECT PHASE I - LOAN NO.2100150028894 –KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

620. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

621. Pending Bills

Note 12 to the financial statements reflects pending bills amounting to Kshs.25,023,499 as at 30 June, 2021. Although Management has committed to liaise with the line Ministry and The National Treasury for adequate budgetary allocation, timely Exchequer releases for prompt payments in the subsequent financial year, the Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that the Project had outstanding bills amounting to Kshs.25,023,499 as at 30 June 2021. This is a result of closure and exhaustion of Development Partner financing prior to completion of the project as well as Government of Kenya counterpart portions payable under the project which remain unpaid due to insufficient exchequer allocations in the current as well as prior financial years.

He further noted that in the event that the development partner funding is exhausted before completion of the project, it is the Government's responsibility to ensure all liabilities are settled and the project is delivered to the public.

The Authority is liaising with the parent ministry in order to ensure that the outstanding bills are settled through sufficient budgetary allocation.

Committee Observation

The Committee observed that the Accounting Officer failed to settle the pending bills as required by regulation 43 of the PFM National Government Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

622. Project Closure Report

The Project information in the financial statements provided for audit revealed that the Project was to end on the 31 December, 2019. However, the Project closure report was not availed for audit review, being more than two years after the expiry of the closure.

Submission by the Accounting Officer

The Accounting Officer submitted that the audit observation is noted. A copy of the project Performance certificate indicating that the contractor had discharged all its obligations under the contract was attached and for perusal by the Committee.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as project performance certificates were different from closure reports.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he submits the project closure report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

623. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
624. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

625. As required by financier and financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

PORT REITZ/MOI INTERNATIONAL AIRPORT ACCESS (C110) ROAD (FIDIC EPC/TURNKEY BASED) – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

626. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

627. Pending Bills on Land Compensation
Note 12 of the financial statements reflects pending bills on land compensation of Kshs.29,624,000. Documents provided for audit review revealed that the pending bill arose from unsettled land compensation of parcel bearing plot number MN/VI/3746 registered under Rainy Days Limited and Ms. Selame Transport Company Ltd. In addition, gazette notice No.1642 of 13 March, 2015 showed that 0.124 Ha of the land was to be acquired and was awarded a total of Kshs.36,636,580. (Rainy days Kshs.31,360,000 and Ms. Selame Transport Company Limited Kshs.5,276,580) who were fully compensated in the financial year 2016/2017. A corrigendum gazette notice No.774 further increased the acreage of the same land to be acquired from 0.124 Ha to 0.1287 Ha thus an additional land size of 0.0047 Ha. However, it was not clear how the additional land size was awarded Kshs.29,924,000 which is yet to be paid to the owner, Rainy days Limited. Further, claims that National Land Commission had incorrectly valued the land were not supported by any correspondences, therefore the pending bills figure is disputable.

Submission by the Accounting Officer
The Accounting Officer submitted that this pending bill remain unpaid as National Land Commission (NLC) has not provided correct valuation for the additional land acquired of 0.0047 Ha. The Authority however continues to liaise with the NLC to ensure this matter is resolved.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012.
(ii) The Committee notes the Accounting Officer did not provide evidence of the follow up with NLC to complete the valuation of the land; and
(iii) The Committee noted that delay in settlement amounts to an injustice to the people.

Committee Recommendation

(i) The Accounting Officer is reprimanded for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.
(ii) The Accounting Officer should avail evidence showing that NLC has completed compensation.

628. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final revenue budget and actual on comparable basis of Kshs.5,000,000 and Kshs.358,136 respectively resulting to under-funding of Kshs.4,641,864 or 93% of the budget. Similarly, the Project expended Kshs.358,136 against an approved budget of Kshs.5,000,000 resulting to under-expenditure of Kshs.4,641,864 or 93% of the budget. Failure to fund the activities of the Project may lead to Project's objectives not being realized.

Submission by the Accounting Officer

The Accounting Officer submitted that due to budgetary and consequently exchequer constraints the Authority was only able to realize Kshs.358,136 hence underperformance. However, this project is complete and open to public use and any budgeted amounts are targeted to pay outstanding bills.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer with regards to the Budgetary Control and Performance was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

629. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

630. There were no material issues relating to effectiveness of internal controls, risk management and governance.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT (IDA CREDIT NO. 4148-KE) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

631. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

632. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.46,964,093 as at 30 June, 2021. Although Management has committed to liaise with the line 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 additional costs by way of interest and penalties with the continued delay in making the payments.

Submission by the Accounting Officer

The Accounting Officer agreed with the observation. The EATTFP project was co-financed by GoK and the International Development Association (IDA) whose credit and financing ended on 30 September 2015 prior to completion of the project. With the exhaustion of development partner financing, it is the sole responsibility of the Government to ensure the project is completed for use by the public and to make good the liabilities arising thereof through exchequer budgetary allocations.

The Authority has settled an amount of Kshs.3,000,000 in the financial year 2021/22 and will continue to engage the parent ministry and the National Treasury in order to secure sufficient budgetary allocation to settle the balance of the outstanding bills.

Committee Observation

The committee noted that the Accounting Officer did not settle the pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

633. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

634. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

635. As required by financier and financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

SIRARI CORRIDOR ACCESSIBILITY AND ROAD SAFETY IMPROVEMENT PROJECT: ISEBANIA-KISII-AHERO – (A1-ROAD REHABILITATION) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

636. Unsupported Expenditure in Construction of Roads

Note 11.5 to the financial statements reflects an expenditure of Kshs.1,226,712,604 on construction of roads. However, schedules provided in support of the expenditure reflected an amount of Kshs.1,203,776,922, resulting to an unexplained difference of Kshs.22,935,682.
In the circumstances, the accuracy and completeness of the expenditure of Kshs.1,226,712,604 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer disagreed with this observation. He clarified that the observed variance of Kshs.22,935,682 represent withheld retention money from contractor which was released to the contractor in FY 2020/21. Schedules supporting Kshs.1,226,712,604 as shown in the financial statements were provided for further verification by the auditor general and also to the Committee for perusal.

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 for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012.

637. Land Compensation

Annex 3A on the analysis of pending bills reflects payments totalling Kshs.56,976,393 as land compensation during the year. However, the opening balances of land compensation was Kshs.488,392,959 while the closing balance as at 30 June, 2021 was recorded at Kshs.388,492,283 implying that the correct payment for the year was Kshs.99,900,676, computed from the difference between the two balances resulting to an unexplained and unreconciled difference of Kshs.42,924,283. Further, the land compensation schedules from National Land Commission were not supported with documents such as official searches and land valuation reports to indicate ownership and value for compensation. Consequently, the accuracy and completeness of expenditure on land compensation of Kshs.56,976,393 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the Authority reconciled land compensation payments and amended the outstanding land compensation bills at the end of FY 2020/21 to indicate the correct amount of Kshs.388,492,283 as indicated in the final Financial Statements' Annex 3A. The noted variance of Kshs.42,924,283 represent degazetted land parcels for which copies of gazette notices were availed for perusal by the Committee.

He further clarified that land searches and valuations are mandates of the National Land Commission (NLC) hence documents that relates to searches and valuations are in custody of NLC.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012.

(ii) The Committee notes the Accounting Officer did not provide evidence of the follow up with NLC to complete the valuation of the land; and

(iii) The Committee noted that delay in settlement amounts to an injustice to the people.

Committee Recommendation

(i) The committee reprimands the Accounting Officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should liaise with NLC to prioritize and complete compensation.

638. Omitted Deficit for the Year

The statement of receipts and payments reflects a deficit balance of Kshs.9,179,514 as at 30 June, 2021. However, the statement of financial assets shows nil balance for the surplus/(deficit) for the year.

Consequently, statement of financial assets is misstated by Kshs.9,179,514 and does not reflect a true and fair financial position.

Submission by the Accounting Officer

The Accounting Officer clarified that the deficit of Kshs.9,179,514 represents movements in retention amount in the financial year which in turn reduced the amount of Payables – Deposits and retentions in the Statement of Financial Assets (and not Fund Balance or Surplus) as required by the Projects Reporting template issued by the National Treasury.

Committee Observation and Finding

The Committee noted that deficit was omitted and the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to keep proper records contrary to section 81 (3) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

639. There were no material issues relating to lawfulness and effectiveness in use of public resource.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

640. There were no material issues relating to internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

641. As required by Africa Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR DEVELOPMENT PROJECT NO. P-ZI-DBO-018 (ISIOLO/MERILLE/MOYALE ROAD) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

642. Unsupported Cash and Cash Equivalents Balance

As reported in the previous year, the statement of financial assets and liabilities reflects Kshs.18,682,650 in respect of cash and cash equivalents held at an account with a local bank which was not supported with bank statements confirming transfer of the funds from the project bank account to the 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 Ksh.18,682,650 as at 30 June, 2021 is fairly stated.

Submission by the Accounting Officer

The Accounting Officer submitted that the bank statement confirming funds transfer from the project account to Co-operative account were availed to the audit team. The bank statement was availed for reference by the Committee.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not promptly provide documents on the bank statements for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

643. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

644. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

645. As required by ADF and the financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

NORTHERN CORRIDOR REHABILITATION PROGRAMME PHASE III -KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

646. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

647. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.4,101,454 as at 30, June, 2021. Although Management attributes the nonpayment to the consultant's failure to pay withholding taxes and provide compliance certificates, there is need to liaise with the consultant for the required information, and the line Ministry and National Treasury for adequate budgetary allocation and timely exchequer releases for prompt payments in the subsequent financial year considering that the Programme was expected to end on 13 August, 2015.

Submission by the Accounting Officer

The outstanding amounts relate to consultancy services fee notes which were not settled due to the following;

1. On 11th December 2019, the National Treasury issued a circular No. 15/2019 requiring consultants and contractors to pay Withholding taxes and provide tax compliance certificates prior to processing of payments payable by Development Partners, and to submit.
2. The supervision consultant however did not provide the documents required by the referenced circular, hence the fee notes were not processed for payment

The above payments have not been processed as a result of fault on the part of consultant, hence the fee note shall not accrue any additional costs.

Committee Observations and Findings

The Committee notes that the Accounting Officer did not settle pending bills as a first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

648. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects equal final revenue budget and actual on comparable basis of Kshs.4,303,355 respectively and expended Kshs.5,356,613 resulting to an over expenditure of Kshs.1,053,258 or 24% of the budget. Failure by Management to observe the financial discipline may lead to the Programme not achieving desired objectives**.**

Submission by the Accounting Officer

The Accounting Officer submitted that the project did not incur expenditure over and above the budget. In FY 2019/20, the project's Budget amounted to Kshs.551,604,226 against expenditure of Kshs.519,466,731 resulting in a Budget balance of Kshs.32,137,495. In FY 2020/21, the Authority received and expended an amount of Kshs.5,356,613 against FY 2019/20 Budget which was utilized towards settlement of the contractor's IPC No. 60. The financial statements for FY 2019/20 indicating the balance of Kshs.32,137,495 was provided for perusal by the Committee.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer with regards to the Budgetary Control and Performance was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

649. Programme Closure Report

As disclosed under Project information and overall performance 1.2, project information, the Project started on 26 November, 2010 and it was to close on 31 October, 2015. The Project closure report was not presented for audit review 6 (six) years after the closure period.

Submission by the Accounting Officer

The Accounting Officer confirmed that the project's completion/taking over certificate which was availed to the audit team during the audit exercise was also availed to the Committee for perusal.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as certificates were different from closure reports.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he submits the project closure report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

650. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

651. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA TRANSPORT SECTOR SUPPORT PROJECT CREDIT NO.4926-KE AND NO.5410-KE - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

652. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

653. Delays in Project Implementation

The Project lifespan was of six (6) years from 23 May, 2011 with an approved budget of Kshs.35,118,325,932 with actual amounts received of Kshs.29,495,071,705. As at 30 June, 2021 the physical progress based on outputs, outcome and impact indicated that some components were not complete and the Project completion was behind schedule. Delayed completion may lead to increased costs and the objectives of the Project may not be achieved.

Submission by the Accounting Officer

The Accounting Officer agreed with the audit observation that some components of the project were behind schedule, a situation which arose due to;

a) Exhaustion of development partner financing prior to completion of all the project components,

b) Insufficient GoK budgetary allocations in the current as well as previous financial years. This has led to cash flow challenges on the part of the contractors hence challenges in completion of the projects.

The Authority shall continue liaising with Parent ministry and the National Treasury for adequate budgetary allocation and timely release of exchequer.

Committee Observations

(i) The Committee observed that the project has been pending for 12 years since 2011;

(ii) The Committee noted that the Accounting Officer did not provide any evidence of progress of the project.

Committee Recommendation

(i) The Committee admonishes the Accounting Officer for inordinate delay of completion of the project.

(ii) The Accounting Officer should comply with the provisions of section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 which require an accounting officer

not to commence any procurement unless satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimate;
(iii) The Accounting Officer to avail a plan of action of completion of the project, within three (3) months of adoption of this report.

Other Matter
654. Pending Bills
Note 12 to the financial statements reflects pending bills amounting to Kshs.2,301,615,924 as at 30 June, 2021. Although Management has committed to liaise with the line 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 additional significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer
The Accounting Officer agreed with the observation that the project had outstanding bills amounting to Kshs.2,301,615,924 on 30 June 2021. The KTSSP project was co-financed by GoK and the International Development Association (IDA) whose credit and financing ended on 30 December 2018 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. In FY 2021/22, the Authority has earmarked funds amounting to Kshs.2,929,871,913 towards settlement of the above outstanding bills as well as bills to be generated in current Financial Year. The balance of the bills are planned for settlement in FY 2022/23 whose budgetary allocation amounts to Kshs.1,096,037,499.

Committee Observation and Finding
The Committee noted that the Accounting Officer did not settle pending bills as a first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation
The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

655. Project Closure Report
The Project information in the financial statements provided for audit revealed that the Project was to end on the 31 December, 2019 However, the Project closure report was not availed for audit review.

Submission by the Accounting Officer
The Accounting Officer submitted that the project completion/substantial certificates for the following project's components are available for review and copies were also availed to the Committee for perusal:

a) Kisumu – Kakamega Road Project
b) Webuye – Kitale Road Project

c) Construction of Three (3) Interchanges (Nyahururu Town Off, Njoro Turn Off and Mau Summit)
d) Bachuma Gate - Maji Ya Chumvi Road Project
e) Construction of Office Complex for the Road Sector Institutions
f) Access Road to EASA

Due to the exhaustion of Development Partner financing and subsequent inadequate GoK budgetary allocations however, the following project components were still ongoing;

a) Dualling of Athi River Machakos Turn-Off Road
b) Kakamega – Webuye Road Project
c) Dualling of Kisumu Boys-Mamboleo Junction
d) Construction of Ahero Interchange
e) Construction of Kericho Interchange

The above projects are planned for completion in the current and subsequent financial years after which the completion certificates will be issued.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as completion certificates are different from closure reports.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails a project closure report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

656. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

657. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

658. As required by IDA and financing agreements, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

REGIONAL ROADS COMPONENT (MERILLE-MARSABIT ROAD) (KE/001/09) PROJECT LOAN AGREEMENT NO.KE/FED/2009/021-655 -KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

659. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

660. Pending Bills

Note 11.1 to the financial statements reflects pending bills of Kshs.141,566,761 as at 30 June, 2021. Although Management has committed to liaise with the line 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 significant additional interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer agreed with the observation, that the project had an accumulated pending bill amounting to Kshs.141,566,761. This is as a result of budget constraints in the current as well as prior financial years.

The bills have however been settled in full in the financial year 2021/2022.

Committee Observations and Findings

The Committee observed that the Accounting Officer had satisfactorily addressed the matter.

Committee Recommendation

The Committee recommends that the matter is resolved.

661. Project Closure Report

The project information in the financial statements provided for audit revealed that the project was to end on the 27 May, 2017 with total commitment by Donors of Kshs.14,460,676,495 received. However, the project closure report was not availed for audit review.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as completion certificates are different from closure reports.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails a project closure report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

662. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

663. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

664. As required by the financier and financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

NAIROBI MISSING LINKS ROAD AND NON MOTORISED TRANSPORT FACILITIES (KE/001/09) EDFX - KENYA URBAN ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

665. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

666. Pending Bills

Note 12(1) under other important disclosures and Annex 3A to the financial statements reflects pending bills balance of Kshs.490,647,638 representing a reduction of Kshs.75,000,000 from the Kshs.565,647,638 reported in 2019/2020 financial year. The pending bills expose the Authority to additional costs in form of interest and penalties due to failure to settle Project's obligations as per the terms and conditions of the signed contracts. It was further noted that included in the pending bills is a claim from the contractor of Kshs.224,866,530 submitted vide interim payment certificate (IPC) No. 40 of July, 2018 against which a notice to claim interest on delayed payment of Kshs.77,933,170 was issued vide a letter from the contractor to EU-Delegation dated 14 April, 2021. This implies that the risk of claim for interest on delayed payments has already crystalized. Failure to settle project obligations as and when they fall due may lead to additional costs in form of interest and penalties which are avoidable.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills under the project were due to exhaustion of the allocated budget for the project. The pending bills are therefore being given first consideration for funding under the subsequent budget cycle as a prioritization to clear pending bills. The implementing Authority is in communication with the parent Ministry and the National Treasury for provision of adequate funding to clear the outstanding bills. The bills will be settled as soon as exchequer funding is received.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

667. Unconstructed Section of Ring Road Parklands (M15A) Road Due to Encroachment

The initial scope of the Project as per the financing agreement and the signed contract between Kenya Urban Roads Authority (KURA) and a construction company included construction of Ring Road Parklands (M15A) which connects Limuru Road and Waiyaki Way. As per the Financing Agreement, the said road was 4KM in length and was designed as a dual carriage with open drains and non-motorized facilities.

However, a physical verification of the Project carried out on 5 October, 2021 revealed that the road was inaccessible to motorist as a section of about 300m was not constructed due to encroachment by members of an informal settlement. This notwithstanding, the contractors were discharged of their duties under the contract and the project taken over by the Authority on 20 March, 2021 after the end of defects and liabilities period. It was further noted that the remaining works under the 300m section were expunged from the initial scope through an addendum to the contract.

In view of the foregoing, value for money may not have been be realized from the resources utilized in construction of the above road which was not completed and is thus inaccessible to motorists.

Submission by the Accounting Officer

The Accounting Officer submitted that the designed length of Ring Road Parklands from Limuru Road to Waiyaki Way is 3.5Kms and not 4kms. The constructed and commissioned length is 3.1kms. A section of approximately 400m was fully encroached by Deep Sea Slum thus necessitating an administrative order for review of the scope of works to omit the section (Detailed Scope of works was provided to the Committee).

The process of removing the slum dwellers posed a challenge because of the Donor conditions. The uncertainty on when the section would be accessible for construction made it impossible for the contractor to give a conclusive revision to the program of works. The omission was therefore necessary to save the government further loss of money through claims from the Contractor due to lack of provision of access to site.

The outstanding section of approximately 400m has since been constructed by the implementing Agency after removal of the encroachments. The section is now open and accessible to the road users

Committee Observations and Findings

- **(i) The Committee noted that the Accounting Officer did not provide evidence of completion of the 400m of the road.**
- **(ii) The Committee also noted that the 400m of road was constructed despite the amendment of the contract which removed the section from the project. The Accounting Officer did not explain how the road was constructed without a valid contract.**

Committee Recommendation

The Committee recommends that EACC investigates into the project.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

668. There were no material issues relating to effectiveness of internal controls, risk management and governance.

NAIROBI SOUTHERN BYPASS PROJECT LOAN NO. CHINA EXIM BANK PBC NO. (2011) 32 TOTAL NO. (183), NO. 1420303052011211528 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

669. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

670. Pending Bills

Note 12.5 to the financial statements – other important disclosures, reflects a figure of Kshs.3,672,093,817 relating to pending accounts payables as at 30 June, 2021 an increase of Kshs.756,062,674 from the Kshs.2,916,031,143 outstanding as at 30 June, 2020. Although Management has committed to liaise with the line 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 additional costs by way of interest and penalties with the continued delay in making the payments.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that the Authority did not have sufficient budget to settle the outstanding bills as at 30th June, 2021, arising from inadequate budgetary allocation

The Authority is however in close liaison with the line Ministry and National Treasury to ensure sufficient budget allocation and timely exchequer release.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

671. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

672. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

673. As required by Financier and Financing Agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KENYA 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

Unmodified Opinion

674. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

675. Pending Bills

Note 12 to the financial statements reflects pending bills balances of Kshs.116,274,109 as at 30 June, 2021. As reported in the previous year, the balances relate to disputed claims that arose six years earlier but had not been disclosed as contingent liabilities over the prior periods. Although Management has committed to liaise with the line 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 significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer

The Accounting Officer agreed with the observation that the pending bills as at 30th June 2021 amounted to Kshs.116,274,109. This bill was subsequently paid in full in FY 2021/22.

Committee Observations and Findings

The Committee observed that the Accounting Officer had satisfactorily addressed the query.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

676. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND OVERALL GOVERNANCE

Conclusion

677. There were no material issues relating to effectiveness of internal controls, risk management and governance.

NATIONAL URBAN TRANSPORT IMPROVEMENT PROJECT - IDA CREDIT NO. 5140 - KE – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

678. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

679. Pending Bills

Note 12 to the financial statements reflects pending accounts payables totaling Kshs.4,542,434,807 as at 30 June, 2021. 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 interest costs and penalties should the bills not be paid in due time.

Submission by the Accounting Officer

The Accounting Officer agreed with this observation. Pending bills arose due insufficient and delayed Exchequer releases to facilitate prompt contractual payments. In the subsequent Financial Year 2021/22, the Authority in liaison with the Parent Ministry and the National Treasury managed to secure a total budgetary allocation of Kshs.2,050,000,000 for the project which were used to reduce the pending bills as well as facilitating project completion. In FY 2022/23, the Authority has secured a budget of Kshs.212,286,599 will further reduce the outstanding amounts.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation
The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

680. Accrued Interest as a Result of Delayed Payments
The Project had in the year under review accrued a total of Kshs.171,171,003 being interest due to delayed payment to a contractor. The accrued interest was in respect of works carried out between May, 2019 and August, 2020. The accrued interest of Kshs.171,171,003 constitute a nugatory expenditure on the Project.

Submission by the Accounting Officer
The interest was occasioned by the following factors which were beyond the authority' control;
i. Inadequate budgetary allocation
ii. Delay in release of exchequer funds
iii. Cash crunch occasioned by Withdrawal of World Bank credit facility to the project.

Committee Observations and Findings
The Committee observed that interest on late payments amounts to wasteful expenditure. The Accounting Officer did not provide explanation as to why the World Bank withdrew.

Committee Recommendation
The Accounting Officer for National Treasury should ensure early disbursements of exchequer funds in order to avoid such wasteful expenditure. Failure to do so amounts to an offence under section 197 (1) (i) of the PFM Act, 2012.

681. Delay in Project Completion
The rehabilitation and capacity enhancement of James Gichuru Road Junction to Rironi Highway (A104) was initiated on 2 August, 2016 through an agreement between the Kenya National Highways Authority and a contractor for a contract sum of Kshs.16,366,586,563 inclusive of taxes and a contract period of 48 months. The contract period comprised of 36 months for completion and 12 months defects liability period. The works began on 4 August, 2017 and the original project completion date was to be on 3 August, 2020. However, the project activities were revised with new additional activities which entailed the following:

(i) Gitaru full clover interchange
(ii) Reconstruction of major bridges instead of widening.
(iii) Rironi bridge changed from 1 span to 2 spans.
(iv) Introduction of retaining walls in line with urban roads design philosophy.

Due to the above additional works, the project sum increased to Kshs.20,414,794,998 being 25% of original cost. The increased works as planned could not be executed due to delay in land acquisition and shifting of utilities. Though the land was finally acquired on 9 June, 2021, the work could not move on as expected since the financier (IDA) pulled out in 2018 leaving the project to be funded solely by Kenya Government. As a result of the withdrawal of the funding, there has been delay in payment of works done resulting to delays in completion of the Project.

Submission by the Accounting Officer

The Accounting Officer agreed with the observation and wish to note the following;

i. Increase in the project sum was mainly due to redesigning and 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.
ii. Delay in land acquisition resulting from inadequate budgetary allocation has affected the entire project and not the additional works only.
iii. The introduction of retaining walls in line with Urban Road design philosophy was meant to reduce the cost of land.

Committee Observations

(i) The Committee noted that the Accounting Officer did not provide an analysis on expected completion date and the measures being taken to achieve it;
(ii) The Committee further noted that the project was still not completed;
(iii) The Committee noted that the State Department compulsorily acquired land without an adequate budget thereby occasioning delayed settlement.

Committee Recommendation

The Accounting Officer to submit to the Committee the status report on the progress of the project within three (3) months after adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

682. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

683. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NORTHERN CORRIDOR TRANSPORT IMPROVEMENT PROJECT IDA CREDIT NO.3930-KE AND NO.4571-KE – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

684. Unsupported Receipts

The statement of receipts and payments reflects transfers from Government entities of Kshs.30,069,765 as at 30 June, 2021. The transfers were however not supported with bank statements and exchequer receipts. In the circumstances, the accuracy and completeness of the transfers of Kshs.30,069,785 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that all exchequer funds received are all channeled to a single exchequer bank account which is in line with provisions of the PFM Act of a Treasury single Account. The bank balance certificate for this account was provided for audit review and was also availed to the Committee for perusal.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide supporting documents on the bank balance for audit contrary to section 62 of the Public Audit Act, 2015. They were eventually availed to the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

685. Unsupported Refund of Retention Money

The statement of receipts and payments reflects non-financial assets expenditure of Kshs.189,393,143 being retention money refunded to a contractor during the year under review. The expenditure was however not supported with payment vouchers and bank statements.

Consequently, the accuracy and completeness of the expenditure of Kshs.189,393,143 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer disagreed with this observation. The retention listing and the documents supporting payments relating to release of retention were availed for audit review. Further, that the amount of retention released has since been revised to Kshs.159,386,378 as was disclosed under notes 11 & 12 in the financial statements.

Committee Observations and Findings

The Committee observed that the Accounting Officer eventually submitted supporting documents.

Committee Recommendation
The Committee recommends that the matter is resolved.

686. Unsupported Bank Balance
The statement of financial assets and liabilities reflects a bank balance of Kshs.69,055,856 as at 30 June, 2021. The balance was not supported with bank reconciliation statements, confirmation certificate and bank statements.
In the circumstances, the accuracy and completeness of the bank balance of Kshs.69,055,856 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the bank reconciliation statement, cash book, bank statement and statement of bank balance confirmation letter were all availed to the auditors during the audit. Copies of the documents were availed for Committee perusal.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not provide supporting documents on the bank balance for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
687. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
688. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

689. As required by International Development Association, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

Unmodified Opinion

690. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

691. Unsupported Budget Amounts

The statement of comparative budget and actual amounts reflects Kshs.10,000,000 and Kshs.206,457,727 as the budget for purchase of goods and services and acquisition of non-financial assets respectively. However, these two amounts could not be traced in the approved budget under the budget line items of purchase of goods and services and acquisition of non-financial assets.

It was therefore not clear how the budget figures in the statement of comparative budget and actual amounts for the Project were arrived at.

Submission by the Accounting Officer

The Accounting Officer submitted that the overall project had a total budget of Kshs.216,457,727. 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. This 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.

Committee Observations and Findings

(i) The Committee observed that during the audit, the Accounting Officer failed to provide detailed budget during audit in breach of Section 62 of the Public Audit Act, 2015; and

(ii) However, the Committee observed that the Accounting Officer had since availed the detailed budget.

Committee Recommendation

(i) The Committee reprimands the Accounting Office for failing to provide detailed budget during audit in breach of Section 62 of the Public Audit Act, 2015; and

(ii) The Accounting Officer should always comply with the provisions of section 68 of the Public Finance Management Act, 2012 on keeping and providing accurate accounting records.

692. Delay in Project Implementation

As previously reported, Note 1.7 to the annual report and financial statements on funding indicates 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, 2021, an amount of Kshs.464,053,893 (2.6%) had been drawn leaving a balance of Kshs.17,648,812,107 as undrawn balance.

Although Management has indicated that the procurement of the civil works contract has been done and awaiting the European Investment Bank's no objection, there is minimal progress in implementation of the Project, which increases the risk of the Project not realizing the envisaged objectives with the continued delay in implementation.

Submission by the Accounting Officer

The Accounting Officer submitted that the delay in implementation has been due to prolonged procurement process for the works contractor occasioned by numerous requirements by the financier. The Authority has however finalized the procurement process and awarded the contract in August 2022. The construction works will commence in FY 2022/2023. Further, the Project's credit agreement has been extended to December 2025.

Committee Observations and Findings

The Committee observed inordinate delay of projects within the Ministry .

Committee Recommendations;

- **(i) The Committee recommends that the Accounting Officer should conduct a review of the planning and implementation process in order to prevent project delays.**
- **(ii) The Accounting Officer should ensure payment for certified works is prioritized to avoid interest on delayed payment which can lead to project cost escalation.**

693. Pending Bills

Note 12.1 to the financial statements reflects pending accounts payable totalling Kshs.15,028,891 as at 30 June, 2021. Management has not provided reasons for non-payment of the bills even though the Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments. Failure to settle bills during the year in which they relate adversely affects the provisions for the subsequent year as they form the first charge.

Submission by the Accounting Officer

The Accounting Officer agreed with the auditors' observation. This amount represents outstanding land compensation payments as adjudged by the National Lands Commission (NLC). The amounts remain outstanding as details of the Project Affected Person (PAP) for plot no. MN/VI/169/ has not been provided by NLC.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012.

(ii) The Committee notes the Accounting Officer did not provide evidence of the follow up with NLC to complete the valuation of the land; and

(iii) The Committee noted that delay in settlement amounts to an injustice to the people.

Committee Recommendation

(i) The committee reprimands the Accounting Officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should liaise with NLC to prioritize and complete compensation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

694. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

695. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

696. As required by KfW Frankfurt am Main ("KfW"), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

UPGRADING OF "GILGIL MACHINERY" ROAD PROJECT– KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

697. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

698. Low Absorption of Project Funds

Sections 1.7 of the annual report under Project information and overall performance, indicates that the Project is to be implemented within a duration of six (6) years from 2016 to 2022, with a total expected funding of Kshs.1,500,000,000 equivalent to US$15,000,000. However, only Kshs.339,607,028 or 22.6% of the expected funding had been drawn as at 30 June, 2021, leaving a balance of Kshs.1,160,392,972 or 77.4% undrawn despite a time lapse of 83%. Clearly, the project is behind schedule and the envisaged strategic goals may not be achieved within the expected timelines.

Submission by the Accounting Officer

The Accounting Officer submitted that the delays in granting of tax exemptions delayed the commencement of the project. This has caused the project to run behind schedule. However, adequate measures have been put in place to extend the financing period and ensure that the project is fully planned for and financed within the new project timeline.

Committee Observations

(i) The Committee noted that the Accounting Officer did not provide an analysis on expected completion date and the measures being taken to achieve it.

(ii) The Committee further noted that the project was still not completed.

Committee Recommendation

The Accounting Officer to submit to the Committee the status report on the progress of the project within three (3) months after adoption of this report.

699. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects an approved receipt budget of Kshs.420,000,000 during the year against actual receipts amounting to Kshs.199,994,359 resulting to a shortfall in receipts of Kshs.220,005,641. Similarly, budgeted expenditure amounted to Kshs.420,000,000 against actual expenditure of Kshs.263,879,023 resulting in an overall under expenditure of Kshs.156,120,977, an indication that some planned activities were not undertaken during the year.

Consequently, the Project's goals and objectives during the year under review may not have been achieved.

Submission by the Accounting Officer

The Accounting Officer submitted that the shortfall in actual receipts against the budget was brought about by a shortfall in the GoK-Counterpart funding. Due to inadequate funding, the project was unable to fully absorb its planned GoK-Counterpart budget. However, works still continued leading to the accumulation of pending bills totaling Kshs.15,984,862.02.

The Covid-19 pandemic slowed down roadworks for the project. This was especially due to the travel restrictions and restrictions on gatherings imposed in the early days of the pandemic. As a result, the project budget was not fully expended.

Also, the heavy rains experienced in the region during the period greatly slowed down the progress of works.

Committee Observations and Findings
The Committee noted the explanation and documents provided by the Accounting Officer with regards to the Budgetary Control and Performance.

Committee Recommendations
The Committee recommends that the Accounting Officer should ensure adequate measures are put in place to ensure full realization of planned activities in the event of future pandemics.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

700. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
701. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DUALLING OF NAIROBI-DAGORETTI CORNER ROAD – PHASE 2 –KENYA URBAN ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion
702. Cash and Cash Equivalents
The statement of financial assets and liabilities reflects a bank balance of Kshs.33,685,562 as at 30 June, 2021. However, the balance was not supported with bank reconciliation statements, bank statements, cash books and bank confirmation certificates.

Consequently, the accuracy and completeness of the bank balance of Kshs.33,685,562 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the bank balance of Kshs.33,685,562 as at 30th June, 2021 relates to a separate contract funded by the exchequer and managed separately from the main development partner funded contract. This did not necessitate separate bank accounts as the funds are administered from the Authority's bank accounts which holds all other funds relating to exchequer funding and retention money.

The Agency maintains one bank account for management of exchequer funding and another account for management of retention funds under all the projects under its implementation. It is not possible to maintain separate bank accounts for each and every project being implemented due to the large number.

The bank statements for the related banks were availed during the audit with schedules showing the specific contracts whose funds were held in the accounts for examination and confirmation.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide supporting documents on the bank balance for audit contrary to section 62 of the Public Audit Act, 2015. The documents were subsequently availed to the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

Other Matter

703. Unsupported Pending Bills

Annex 3 to the financial statements reflects outstanding pending bills of Kshs.90,165,198 as at 30 June, 2021 which was not supported with adequate relevant documents. Consequently, the completeness and accuracy of the Kshs.90,165,198 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the project's pending bills as at 30th June, 2021 was Kshs.90,165,198. The implementing agency submitted the documents for review by the auditors during the audit and subsequently through letter in response to the auditor's management letter.

The outstanding pending bill under the project has subsequently been settled.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to provide supporting documents of the pending bills during audit review contrary to the law, leading to increase in the bills over time; and

(ii) The Committee further observed that the Accounting Officer failed to provide information during audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendations;

(i) The Committee reprimands the Accounting Officer for failing to provide information during audit contrary to section 62 of the Public Audit Act, 2015.

(ii) The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

704. There were no material issues relating to lawfulness and effectiveness in use of public resources**.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion

705. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA NAIROBI WESTERN BYPASS PROJECT CHINA EXIM BANK GCL NO. (2017) 28 TOTAL, NO. (633) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion
706. Unsupported Transfers from Government Entities
The statement of receipts and payments shows transfers from Government entities of Kshs.525,000,000 as at 30 June, 2021. The amount was however, not reflected in the cash book and the bank statements. Exchequer notifications were also not provided for audit review. In the circumstances, the transfers from Government entities of Kshs.525,000,000 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer disagreed with this observation. All exchequer funds received are all 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 were availed to the auditors during the audit exercise.

Committee Observations
The Committee noted that the Accounting Officer did not keep proper records as required under section 68 of the PFM Act, 2012.

Committee Recommendation
- **(i) The Committee admonishes the Accounting Officer for failing to keep proper records as required under section 68 of the PFM Act, 2012.**
- **(ii) The Accounting Officer should comply with the provisions of section 68 of the PFM Act, 2012 and keep proper records.**

707. Un-Supported Land Compensation
Note 11.4 to the financial statements reflects an expenditure of Kshs.520,416,300 on land compensation to Project Affected Persons (PAPs). However, the following anomalies were noted:

i. The identification of PAPs through searches at public land office and gazettement of these were not provided for audit review.
ii. Although Kshs.520,416,300 had been transferred to the National Land Commission for payment to the PAPs, the schedule of the beneficiaries was not provided for audit.
iii. Out of the total amount due to PAPs of Kshs.1,571,282,009 a balance of Kshs.1,050,865,709 was yet to be paid to the beneficiaries. There were no correspondences between the implementing Agency and National Lands Commission to indicate the progress of compensation process in order to have the Project completed on schedule.
iv. Review of Project progress report indicated that the road was later redesigned. However, a revised list of PAPs to be compensated was not provided.
v. A schedule forwarded to the Director General - Kenya National Highways Authority (KeNHA) by the Ag. Secretary/CEO of the National Land Commission contained parcels of land which did not have the names of the registered owners and for which compensation amounting to Kshs.83,357,966 was to be paid.

In the circumstances, the propriety of the expenditure of Kshs.520,416,300 on land compensation could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the Identification of PAPs to be paid compensation is the mandate of National Land Commission (NLC) and once this was done, they then forward a compensation schedule to KeNHA for processing of payment.

The searches proving ownership are therefore with NLC. Gazettement for the land acquisition were done as required in law via the following gazette notices:

a) 1259 dated 14th February, 2020
b) 5271/5272 dated 28th July, 2020
c) 10258 dated 4th December, 2020
d) 1703 dated 19th February, 2021
e) 7888 dated 30th July, 2021

The total amount due to Project Affected Persons (PAPs) has also changed from Kshs.1,873,027,171 as per the two (2No) compensation payment schedules received from National Land Commission (NLC) as follows:

a. Ksh.1,571,282,009 – forwarded via letter ref: NLC/VAL.1593/18 dated 23rd November, 2020
b. Ksh.301,745,151 – forwarded via letter ref: NLC/VAL.1593/20 dated 27th April, 2021

As at 30th June, 2021, KeNHA had transferred three payments to NLC for disbursement to the PAPs as follows:

1. Ksh.6,349,869 – NLC notified via letter ref: KeNHA/F/NLC/6/Vol.3/3329 dated 18th January, 2021

2. Ksh.350Million – NLC notified of the transfer via letter ref: KeNHA/F/NLC/6/Vol.3/333 dated 3rd March, 2021

3. Ksh.164,066,431 – NLC notified via letter ref: KeNHA/F/NLC/6/Vol.3/3338 dated 29th April, 2021.

The balance of Ksh.1,352,610,871 is yet to be availed by the National Treasury. The revisions to the list of PAPs were done (as addendum, corrigendum and deletions) as indicated in the gazette notices 5271 and 5272 dated 28th July, 2020 and 10258 dated 4th December, 2020.

This usually happens when NLC are unable, for one reason or another to get the ownership details of the affected parcels or there is nobody competent to receive the compensation. Such situations are covered under section 115 of the Land Act, (No. 6 of 2012) which provides that compensation shall be deposited in a special compensation account held by NLC

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012; and

(iii) The Committee notes that delay in settlement amounts to an injustice to the people.

Committee Recommendation

(i) The committee reprimands the Accounting Officer for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should liaise with NLC to prioritize and complete compensation.

708. Irregular Payment of Allowances

Note 11.3 to the financial statements reflects purchase of goods and services of Kshs.4,583,700 relating to domestic travel and subsistence. Review of the expenditure records on domestic travel and subsistence allowances revealed that an amount of Kshs.2,450,800 was issued to KeNHA staff on behalf of National Land Commission employees, being allowances paid during site visits to the project.

The expenditure was therefore irregularly incurred since National Land Commission employees should draw their allowances from the Commission.

Submission by the Accounting Officer

The Accounting Officer submitted that the NLC being the government body mandated to value the properties of Project Affected Persons (PAPs), do inquiries and issue notices of possession, the Authority is obligated to engage their services. The nature of the assignments necessitated issuing them with facilitation as they are required to work out of their duty stations.

In compliance to PFM Act regulation Sec 93(5), that stipulates surrender of imprest timelines, the Authority's control mechanism to address the same necessitates an officer engaged in the assignment at hand to carry the allowances for NLC officers. This aids in ensuring that only officers who've turned up are given their facilitation monies. This in turn ensures that there is value for monies advanced and adequate accountability to the said monies.

Committee Observation and Finding
The Committee notes that submission by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter
709. Pending Bills
Note 12.1 to the financial statements reflects pending accounts payable of Kshs.3,926,892,951 as at 30 June, 2021. The balance includes Kshs.2,574,282,080 being balance brought forward from the previous year, out of which Kshs.4,628,287 is interest accrued due to delayed payment. Failure to settle bills during the year in which they relate distorts the financial statements and adversely affects the allocation for the subsequent year, as they form a first charge to that year. The Project has incurred nugatory expenses due to interest on delayed payments.

Submission by the Accounting Officer
The Accounting Officer agreed with the observation, that the project had an accumulated pending bill amounting to Kshs.3,926,892,951. This is as a result of budget constraints in the current Financial year.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not settle the pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation
The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

710. Failure to Prepare Itemized Budget
The project had an overall approved budget for the year. The itemized budget was, however, not provided for audit to show the amount approved for each of the project's components.
In the absence of itemized budget, funds may not be accounted for accurately leading to Project implementation challenges.

Submission by the Accounting Officer
The Accounting Officer disagreed with this observation. The overall approved budget was availed during the audit exercise.

He also clarified that 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. As correctly noted in your observation, this 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 indicated in the Statement of comparative budget versus actual, the expenses for the project did not exceed the amounts appropriated hence full compliance with provisions of the PFM Act 2012 and its attendant regulations.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to adhere to accounting standards on itemized budget contrary to section 68 (2)(e) of the PFM Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to adhere to accounting standards on itemized budget contrary to section 68 (2)(e) of the PFM Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

711. Hindrance of Traffic Passage

During audit inspection conducted on 8 October, 2021 on the Project, it was noted that the contractor had not provided road traffic signs and lights for traffic diversion at Karura Kamurimo and the road users faced difficulties in identifying the diversion. In the circumstances, road accidents may occur and users were being inconvenienced due to lack of proper road signage.

Submission by the Accounting Officer

The Accounting Officer submitted that the Contractor will be appropriately advised to put up and institute the necessary traffic control, signage and safety measures.

Committee Observations and Findings

The Committee notes that since 2021, no measures have been put so far to address the issue thereby amounting to ineffective use of public funds.

Committee Recommendation

The Accounting Officer should submit a report to the National Assembly on the measures taken to rectify the road within three (3) months of adoption of this report.

712. Failure to Erect Publicity Signboards and Non-Adherence to Contract

Audit inspections conducted on 8 October, 2021 revealed the absence of Projects publicity signboards throughout the stretch of the road under construction, yet funds had been allocated for erecting the signboards. Failure to erect publicity signboards may lead to disputes arising from failure to identify the Project with the employer.

In addition, the interchange at KM 00 was not constructed although the Project had progressed beyond KM 12 and this component was not among the Project's components that the contractor intended to implement.

In the circumstances, the Project may not have achieved the intended objectives of decongestion and smooth flow of traffic along the constructed road in the absence of an interchange.

Submission by the Accounting Officer
The Accounting Officer submitted that the publicity signs will be erected at strategic locations along the construction corridor for effective conveyance of information.

The Gitaru Interchange will be implemented under the James Githuru Rironi Project. The savings generated by re-scoping of works will be used to ensure that the NWBP terminates at a logical point (Round-about with Northern Bypass). This was discussed in the 1st negotiation minutes

Committee Observations and Findings
(i) The Committee observed that the Accounting Officer did not provide an indication on when the rectification was to be done;
(ii) The Committee notes that the Accounting Officer did not adhere to the contract contrary to section 68 (2)(d) of the PFM Act, 2012 which mandates an Accounting Officer to ensure that all contracts entered into by the entity are lawful and complied with.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failing to adhere to the contract contrary to section 68 (2)(d) of the PFM Act, 2012;
(ii) The Accounting Officer to provide a status report to the Committee within three (3) months of adoption of this report.

713. Unlawful Employment of Foreigners in the Project
Review of records revealed that foreigners working on the Project did not have temporary work permits as required by Section 40 of the Kenya Citizenship and Immigration Act, 2011. The foreigners may not be qualified for the jobs since their particulars had not been verified by the Government of Kenya. Further, they may also pose security risk since they had not been subjected to the required clearance by the Immigration Department.

Submission by the Accounting Officer
The Accounting Officer submitted that the employer has made applications to immigration office for key Contractors staff. Copies of the correspondence to immigration were provided in support of the same.

Committee Observation and Findings
The Committee observed that the Accounting Officer belatedly applied for work permits for the foreigners.

Committee Recommendation
The Accounting officer should henceforth ensure that work permits are applied for in earnest and renewed before expiry.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

714. Failure to Hold Site Meetings

Review of project documents revealed that site meetings did not take place during the year under review despite the fact that this is a requirement during project implementation. In absence of site meetings, issues arising from the project implementation may not be addressed in time since forum for deliberations was lacking and the Project's success could face a risk in addressing important concerns.

Submission by the Accounting Officer

The Accounting Officer submitted that in line with the Covid-19 advisory by the MoH, physical site meetings were limited. However, several virtual meetings were held to review progress, respond to progress issues and approve preliminary and construction designs.

Committee Observation and Findings

The Committee noted that the Accounting Officer did not provide any evidence that there were virtual meetings held as submitted.

Committee Recommendation

The Committee reprimands the Accounting Officer.

715. Complaints by Some Plot Owners

The audit revealed the existence of a Letter dated 17 May, 2021 written by a local resident on his behalf and two other plot owners, addressed to the Director-General of Kenya National Highways Authority complaining that the design of the road along their plots in Kiambaa/Ruaka area denied them easy access to the road.

Complaints by plot owners is an indication of lack of public participation before the commencement of the Project resulting in redesign which may inconvenience some of the intended beneficiaries.

Submission by the Accounting Officer

The Accounting Officer submitted that the employers' representative replied to Mr. Peter vide letter Ref. KeNHA/05. B/EXIM/2074/ Vol.17/8277 dated 12th July, 2021 a copy of which was provided. He was informed in the letter that the old Government Road touching on the three plots to be affected will be upgraded and connected to service road no. 23 to ensure adequate connectivity of residents.

Committee Observation and Finding

The Committee observed that the explanation given by the Accounting Officer with regard to the query was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

ARUSHA-NAMANGA-ATHI RIVER ROAD DEVELOPMENT PROJECT NO. P-Z1-DB0-040 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
716. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

717. Pending Bills
Note 12.1 to the financial statements discloses pending bills balances of Kshs.155,603,353 as at 30 June, 2021. Although Management has committed to liaise with the line 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 significant interest costs and penalties with the continued delay in making payments.

Submission by the Accounting Officer
The Accounting Officer agreed with the observation that the project had pending bills amounting to Kshs.155,603,353 as at 30 June 2021 which arose due to:

a) Insufficient GoK budgetary allocations to facilitate settlement of the project's final account
b) Lack of adequate supporting documents from the contractor to facilitate settlement of part of pending bills amounting to Kshs.83,139,480. The Authority is duty bound to ensure that all claims made for payment are fully supported and meet all the necessary requirements to facilitate payments. The supporting documents were not availed by the contractor hence the claim remained outstanding as at close of the financial year.

He further informed that the unsupported bills do not attract interest on delayed payments until they are duly supported to enable settlement, hence such will not lead to any escalation of project costs. Any further delay in proper documentation of the claim will lead to a write back which will extinguish any liability thereon.

In FY 2021/22 however, the Authority settled the project's final account amounting to Kshs.72,258,398.20. The Authority, in liaison with the parent ministry will endeavor to ensure that the balance of the pending bills are settled through sufficient budgetary allocation.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not settle the pending bills as first charge as required under regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

718. There were no material issues relating to lawfulness and effectiveness in use of public resources.

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REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

719. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

720. As required by the financier and financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

EASTERN AFRICA REGIONAL TRANSPORT, TRADE AND DEVELOPMENT FACILITATION PROJECT-(IDA CR-5638) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

721. Transfers from Government Entities

The statement of receipts and payments reflects transfers from Government entities of Kshs.1,091,589,491. However, the schedules provided in support of the balance showed Exchequer issues totaling to Kshs.35,436,554,614, thereby resulting to an unexplained variance of Kshs.34,344,965,123. The Management explained that all Exchequer funds are channeled into a single Exchequer account thus occasioning the disparity.

Further, the statement of comparative budget and actual amounts reflects transfers from Government entities final budget amount for the year of Kshs.803,268,455. However, the approved supplementary budget for the 2020/2021 financial year shows an amount of Kshs.193,774,628 for the item, thus occasioning an unexplained difference of Kshs.609,493,827.

In the circumstance, the accuracy and completeness of the transfers from Government entities of Kshs.1,091,589,491 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that all exchequer funds received are all channeled to a single exchequer bank account which is in line with provisions of the PFM Act of a Treasury Single Account. However, each project maintains its own General Ledger that details payments for that project. This was availed for audit. Further total receipts from the parent ministry are equally confirmed at the end of each financial year.

He also clarified that the budgetary allocation of Kshs.803,268,455 is made up of the following approved budgets for the project:

1. GoK Exchequer supplementary budget Kshs.193,774,628
2. Savings from Operation and Administration budget Kshs.480,000,000
3. Carry over funds of Kshs.129,493,827 for which approvals were provided.

Committee Observations

The Committee noted that the Accounting Officer did not keep proper records as required under section 68 of the PFM Act, 2012.

Committee Recommendation

The Committee admonishes the Accounting Officer for failing to keep proper records as required under section 68 of the PFM Act, 2012.

722. Acquisition of Non-Financial Assets

Included in acquisition of non-financial assets balance of Kshs.7,154,243,148 as at 30 June, 2021 is Kshs.144,816,276 in respect of acquisition of land which in turn included payment of Kshs.48,693,621 which lacked identification particulars of the persons compensated and details of parcels of land acquired. The payment records indicated the payee as National Land Commission but no schedules of beneficiaries with their particulars were provided.
Consequently, the propriety of the expenditure of Kshs.48,693,621 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that National Land Commission (NLC) is the body mandated to carry out valuation and payments of Land compensation to Project Affected People (PAP's). Therefore, where compensation to PAP's was not clear to whom to be paid either due to ongoing inquiries, death, court cases etc, payments are normally effected to NLC for onwards transmission to the rightful owner of the parcel of land. However, it was worth to note that once a transfer is made to the NLC, the Authority sends a notification to the commission indicating the Plot No., Beneficiary, and the amount payable.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to liaise with NLC so as to promptly settle compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012; and

(ii) The Committee notes that the lack of settlement amounts to an injustice to the people.

Committee Recommendation

(i) The Accounting officer be reprimanded for failing to comply with the provisions of Article 40 (3) of the Constitution and section 111 of the Land Act, 2012 which requires prompt payment in full of just compensation during compulsory acquisition of land.

(ii) The Accounting Officer should liaise with NLC and prioritize and complete compensation.

723. Unreconciled Balances on Special Deposit Accounts

The special account statement shows an amount of USD 5,198,078 (equivalent Kshs 570,064,176) being withdrawal from the special account and transferred to the Project bank account. The statement of receipts and payments however, reflects an amount of Kshs.568,215,586 as transfer from external development partner to the project resulting in an unreconciled difference of Kshs.1,848,590.

In the circumstances, the difference of Kshs.1,848,590 in respect of external development partner could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer confirmed that the Authority received an amount of Kshs.568,215,586, being equivalent to USD. 5,198,077.95 as ascertained in the copies of the statement provided for perusal and not Kshs.570,064,175.91 as stated in the observation.

Committee Observations and Findings

(i) 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; and

(ii) The Committee further observed that the Accounting Officer failed to ensure that reconciliations were 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 Act 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in accordance with Section 68 (2) (b) of the PFM Act, 2012; and

Other Matter

724. Outstanding Pending Bills

Note 12.1 to the financial statements shows pending bills amount of Kshs.1,540,700,413. Although Management had committed to liaising with the line 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 significant interest costs and penalties and implementation of the Project may delay.

Submission by the Accounting Officer

The Accounting Officer agreed to the auditor's observation and wish to note that this was occasioned by budgetary reduction and delayed exchequer releases. However, it is worth to note that in the FY 2021/22 the authority through the line Ministry and National Treasury secured a budgetary allocation of Kshs.10.7Billion which was utilized in settling the pending bills and works certificates.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle the pending bills as first charge as required under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

725. Upgrading of Kainuk Bridge and Approach Roads

The Kainuk bridge was completed and handed over on 2 August, 2021 and was at defects liability period. However, the following anomalies were noted:

i. The snag list was to be done during defects liability period as per the contract agreement but no information on the progress and status on the snag list implementation was provided for audit review.
ii. The contractor was to carry out Corporate Social Responsibility (CSR) activities for the Project which had not been done despite the handover.
iii. The Project had accrued interest of Kshs.4,934,560 in delayed payments.

In the circumstances, the contractor may fail to implement all the components of the contract and the interest charged would amount to loss of public funds.

Submission by the Accounting Officer

The Accounting Officer submitted that the Snag List was substantially completed by 2nd August 2021 as per the Quarterly Report [July – September 2021]. However, minor defects on street lighting were noted during the Defects Notification Period (DNP). Consequently, the Engineer notified the Contractor accordingly and extended the DNP pursuant to Sub-Clause 11.3 [*Extension of Defects Notification Period*] of the Conditions of Contract. It should be noted that Sub-paragraph (a) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] obligates the Contractor "…*to complete any work which is outstanding on the date stated in a Taking-Over Certificate or within such satisfactory time as is instructed by the Engineer*."

He further expressed that the Contract did not provide for Corporate Social Responsibility. On the Contrary, a Provisional Sum was provided for roadside amenities which were to be done following a global social need assessment (SNA). The findings of the SNA made it not possible to implement the amenities within the confines of the Contract and hence the World Bank gave guidance that the socio-economic infrastructure be implemented through a separate Contract. The procurement plan of the activity is awaiting the Bank's No-objection.

Sub-Clause 13.5 [*Provisional Sums*] of the Conditions of Contract provides that "*Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly*." Consequently, in the absence of Engineer's Instructions, there is no mandatory requirement to expend the Provisional Sum and hence no breach of terms of the Contract.

The Accounting Officer also agreed with the observation and wish to note that the delay in payments was occasioned by;

i. Inadequate budgetary allocation
ii. Delay n disbursements of funds from the exchequer

Committee Observations and Findings
The Committee noted that the Accounting Officer did not adhere to the contract contrary to section 68 (2)(d) of the PFM Act, 2012 which mandates an Accounting Officer to ensure that all contracts entered into by the entity are lawful and complied with.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to adhere to the contract contrary to section 68 (2)(d) of the PFM Act, 2012.

726. Lot 0: Upgrading of Loichangamatak-Lodwar Road 50KMs
The Project was undertaken by China Railways No.5 Engineering Group Co. Ltd and DOHWA Engineering Co. Ltd in a Joint Venture with GIBB Africa Ltd as contractor and consultants respectively. The contract sum was Kshs.6,782,439,479 for the contractor, Kshs.421,319,530 and USD 2,968,202 for local and foreign consultants. The contract period was thirty (30) months from 10 July, 2017 to 9 January, 2020 with a defects liability period of 12 months. The progress reports revealed that as at 30 September, 2021 out of certified amount of Kshs.5,098,761,761, a figure of Kshs.4,837,009,610 had been paid leaving a pending bill of Kshs.261,761,187. The Project time had elapsed by 50 months of the revised completion time with a financial progress of 79%.

However, the following unsatisfactory anomalies were noted:

i. There was a proposal to revise the contract sum to Kshs.7,619,688,236 being an increase of Kshs.837,248,757 (12%) and the variation had not been justified with additional scope of work.
ii. Payment to 43 Project Affected Persons (PAPs) in Lodwar town had not been done and there was delay in relocation of power lines and water pipes which have slowed the progress of the Project.
iii. Field inspection conducted on 21 October, 2021 revealed that the road was uneven in most of the sections and this was evident from the bumpy motion of the vehicle casting doubt on the life span of the road.

iv. Some sections of the road with culverts where the road was raised, and had sloppy sides, were not protected with stone pitching as required by the contract and may erode faster than expected.

Consequently, value for money may not be realized from this road upgrading Project.

Submission by the Accounting Officer

The Accounting Officer submitted that the following the evaluation of the Cost Appraisal of August 2021, it has been determined that the Contract will be completed within the original Accepted Contract Amount of Ksh.6,782,439,479.76.

The Authority transmitted to NLC funds for compensation of PAPs on January 31, 2020, and NLC continues to remit the funds in accordance with the Schedule of Awards. There were 440Nos Project Affected Persons under the Contract out of which 397Nos have been compensated. The 43Nos. Project Affected Persons in Lodwar town (although within the right-of-way) are outside the construction width and therefore do not affect the Works in any way. The management continues to follow up with NLC to expedite remittance of the balance of payments within the duration of the Contract.

Section IV of the Contract stipulates the technical specifications to be adhered to in execution of the Works. On one hand, Sub-Clause 4.1 [*Contractor's General Obligations*] of the Works Contract obligates the Contractor to *"…complete the Works in accordance with the Contract and with the Engineer's instructions."* On the other hand, Sub-Clause 20.1 [*Standard of Performance*] of the Services Contract obligates the Consultant to *"…perform the Services and carry out the Services with all due diligence, efficiency, and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices."* Based on the available survey and pavement data, the surface tolerances for the road finished level [RFL] as well as the pavement materials parameters have been achieved in accordance with the technical specifications of the Contract.

The Contract did not require stone pitching as the only method of protection works throughout the entire length of the road. On the Contrary, stone pitching was provided for around the bridge abutments and box/pipe culverts wingwalls as well as on side drains in steep gradients. In high fill areas, the Contract provided for side kerbs with intermittent openings with chutes (half-round channels) to channel the surface run-off into the side drains. Therefore, the protection works have been executed in accordance with the provisions of the Contract.

Following the evaluation of the cost appraisal pursuant to Clause 13 [*Variations and Adjustments*] of the Conditions of Contract and successful request for Bank's No-Objection, the Management and the Contractor duly executed Addendum No. 2 which extended the duration of the Contract to January 31, 2022, and increased the Accepted Contract Amount by KES 2,087,406,690.50 (24.7%) comprising of:

(i) Variation of Works occasioned by further deterioration of the existing pavement, changes in hydrological conditions and confirmatory geotechnical investigations - which was executed in accordance with Clause 13 [*Variations and Adjustments*] of the Conditions of Contract. The Variation has increased the cost of Works by KES 794,311,235.50 (13% of the original Accepted Contract Amount);

(ii) Adjustments for changes in cost occasioned by escalation of applicable indices in accordance with Sub-Clause 13.8 [*Adjustments for Changes in Cost*] of the Conditions of Contract. The adjustments have resulted in additional Cost of KES 980,283,316.63;

(iii) Additional taxes amounting to KES 283,935,128.34 in accordance with Sub-Clause 14.1 [*Contract Price*] of the Conditions of Contract; and

(iv) Additional cost of KES 28,877,010.03 due to delays occasioned by delays in compensation of PAPs for section 0+000 and 2+000 pursuant to Sub-Clause 2.1 [*Right of Access to Site*] of the Conditions of Contract.

The Snag List was substantially completed by September 2021 as per the Quarterly Report [July – September 2021] and Final Inspection done for Section Km 40+000 – Km 80+000 on October 16, 2021. The Truck Parking which falls under Section Km 0+000 – Km 40+000 is expected to be completed by November 30, 2021, and Final Inspection of the section is expected in December 2021 ahead of expiry of the DNP.

Committee Observations and Findings

(i) The Committee observed that the project has delayed for almost 6 years; and

(ii) The Committee also observed that it is not clear whether the project was now complete.

Committee Recommendation

The Accounting Officer should provide to the Committee a status report on the project within three (3) months of adoption of the report. The Committee will then make substantive recommendations in its next report as the matter was recurring.

727. Lot 1: Upgrading of Lodwar-Lokitaung Junction Road (80Km)

The Project was undertaken by China Engineering Bureau of China City Construction Group Company Limited and Egis International in association with Egis Kenya being the contractor and consultant respectively. The contract sum was Kshs.8,334,773,795 for the contractor, Kshs.568,958,975 and Euro 1,589,113 for the consultants. The contract period was for thirty-six (36) months from 15 August, 2017 to 14 August, 2020 with a defects liability period of 12 months. The revised cost was Kshs.10,393,303,476, an increase of Kshs.2,058,529,680 (25%) of the contract sum. By 16 September, 2021, out of the certified amount of Kshs.9,961,308,050, a sum of Kshs.9,478,269,755 had been paid and hence a pending bill of Kshs.483,038,295 with time escalation of 41.5 months and physical progress at 99.81%.

There were however several unsatisfactory issues noted as listed below;

i. There was a contract variation amount of Kshs.2,058,529,680 (24.7% of the contract sum) which had not been explained through additional scope of work.

ii. There was delay in compensation of 7 Project Affected Persons (PAP) and land acquisition.

iii. Vandalism and destruction of road signage and survey beacons had occurred.

iv. The truck parking at KM 0+220 in Lodwar town was yet to be completed.

v. The status and progress of implementation of the snag list was not provided for audit review and hence it is not clear what was to be implemented.

vi. Vegetation had encroached on the road in some sections implying road maintenance was lacking.

In the circumstances, value for money may not be realized from the expenditure on road upgrading.

Submission by the Accounting Officer

The Accounting Officer submitted that following the evaluation of the cost appraisal pursuant to Clause 13 [Variations and Adjustments] of the Conditions of Contract and successful request for Bank's No-Objection, the Management and the Contractor duly executed Addendum No. 2 which extended the duration of the Contract to January 31, 2022, and increased the Accepted Contract Amount by KES 2,087,406,690.50 (24.7%) comprising of:

Variation of Works occasioned by further deterioration of the existing pavement, changes in hydrological conditions and confirmatory geotechnical investigations - which was executed in accordance with Clause 13 [Variations and Adjustments] of the Conditions of Contract. The Variation has increased the cost of Works by KES 794,311,235.50 (13% of the original Accepted Contract Amount); Adjustments for changes in cost occasioned by escalation of applicable indices in accordance with Sub-Clause 13.8 [Adjustments for Changes in Cost] of the Conditions of Contract. The adjustments have resulted in additional Cost of KES 980,283,316.63; Additional taxes amounting to KES 283,935,128.34 in accordance with Sub-Clause 14.1 [Contract Price] of the Conditions of Contract.

Additional cost of KES 28,877,010.03 due to delays occasioned by delays in compensation of PAPs for section 0+000 and 2+000 pursuant to Sub-Clause 2.1 [Right of Access to Site] of the Conditions of Contract. The contractor has been instructed to restore the vandalized road signage being the contractor is still under DNP.

The Truck Parking which falls under Section Km 0+000 – Km 40+000 is expected to be completed by November 30, 2021, and Final Inspection of the section is expected in December 2021 ahead of expiry of the DNP.

The Snag List was substantially completed by September 2021 as per the Quarterly Report [July – September 2021] and Final Inspection done for Section Km 40+000 – Km 80+000 on October 16, 2021.

PBC contractor has been procured under Fuel levy for the next three years**.**

Committee Observations and Findings

- **(i) The Committee observed that the project had delayed for almost 6 years; and**
- **(ii) The Committee observed that it is not clear whether the project was now complete.**

Committee Recommendation

The Accounting Officer should provide to the Committee a status of the project within three (3) months of adoption of the report. The Committee will then make substantive recommendations in its next report as the matter was recurring.

728. Lot 2: Upgrading of Lokitaung Junction-Kalobeiyei River Road Project 80KMs
The Project was undertaken by Chongqing International Construction Corporation with a contract sum of Kshs 8,454,759,874 for the contractor, USD 2,204,145 and Kshs 629,802,599 for the consultants. The project duration was for thirty-six months period starting from 1 August, 2017 to 31 July, 2020 with twelve (12) months defects liability period. The completion date was extended to 30 October, 2021 with estimated cost of Kshs.9,799,110,192.

At the time of audit in October, 2021, out of the certified amount of Kshs.8,196,243,591, a sum of Kshs.6,918,287,349 had been paid leaving a pending bill of Kshs.1,277,956,242
with time escalation of 100% and physical progress at 89%. Physical verification of the Project conducted on 22 October, 2021 revealed the following unsatisfactory issues:

i. The work carried out had been assessed to be substandard and the contractor was instructed to repeat sections of the road which already had defects. The contractor was on site and redoing the sections affected.
ii. The road works were found to be behind schedule since only 89% was complete while full contract period had elapsed.
iii. The contract sum was revised from Kshs.8,454,759,874 to Kshs.9,799,110,192 representing an increase of Kshs.1,344,350,318 (13.7%?) with no explanation of extra scope of work.

Therefore, the intended benefits to the community may not have been achieved from the Project.

Submission by the Accounting Officer
The Accounting Officer submitted that Section IV of the Contract stipulates the technical specifications to be adhered to in execution of the Works. On one hand, Sub-Clause 4.1 [*Contractor's General Obligations*] of the Works Contract obligates the Contractor to *"…complete the Works in accordance with the Contract and with the Engineer's instructions."* On the other hand, Sub-Clause 20.1 [*Standard of Performance*] of the Services Contract obligates the Consultant to *"…perform the Services and carry out the Services with all due diligence, efficiency, and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices."*

In sections that have exhibited defects, the Engineer notified and instructed the Contractor in accordance with Sub-Clause 7.5 [*Rejection*] and Sub-Clause 7.6 [*Remedial Works*] respectively. Currently, the Contractor is undertaking the remedial Works and based on the available survey and pavement data, the surface tolerances for the road finished level [RFL] as well as the pavement materials parameters on the remedial works are being achieved in accordance with the technical specifications of the Contract.

The slow rate of progress has been occasioned by the lack of access to site in Kakuma due to delayed remittance of compensation funds to PAPs by NLC. The Contractor is yet to gain full possession of site and is currently working on half of the construction width to expedite the rate of progress. As a result, the management is awaiting Bank's No-objection to Addendum No. 3 which extends the duration of the Contract to May 19, 2023 (inclusive of DNP).

Following the evaluation of the cost appraisal pursuant to Clause 13 [*Variations and Adjustments*] of the Conditions of Contract and successful request for Bank's No-Objection, the Management is processing Addendum No. 2 which increased the Accepted Contract Amount by KES 1,344,350,317.97 (16%) comprising of:

(i) Variation of Works occasioned by further deterioration of the existing pavement, changes in hydrological conditions and confirmatory geotechnical investigations - which was executed in accordance with Clause 13 [*Variations and Adjustments*] of the Conditions of Contract. The Variation has increased the cost of Works by KES 447,126,476.78.

(ii) Adjustments for changes in cost occasioned by escalation of applicable indices in accordance with Sub-Clause 13.8 [*Adjustments for Changes in Cost*] of the Conditions of Contract. The adjustments have resulted in additional Cost of KES 711,796,211.13; and

Additional taxes amounting to KES 185,427,630.07 in accordance with Sub-Clause 14.1 [*Contract Price*] of the Conditions of Contract.

Committee Observations and Findings

(i) The Committee observed that the project has delayed for almost 6 years; and

(ii) The Committee observed that it is not clear whether the project was now complete.

Committee Recommendation

The Accounting Officer should provide to the National Assmebly a status report on the project within three (3) months of adoption of the report. The Committee will then make substantive recommendations in its next report as the matter was recurring.

729. Lot 3: Upgrading of Kalobeiyei River-Nadapal/Nakodok Road Project 77.20KMs

The Project was undertaken by China Railways No.5 Engineering Group Co. Ltd. with a contract sum of Kshs.7,865,031,057 for the contractor, Kshs.423,582,250 and USD3,054,613 for the consultants. The contract period was thirty-six (36) months from 11 July, 2017 to 10 July, 2020 with a defects liability period of 12 months, but the completion date was later revised to 30 September, 2021.

Due to non-availability of land for road construction arising from security inaccessibility Nadapal to Nakodok, the contract sum was revised to Kshs.7,803,895,829 representing a reduction by Kshs.61,135,228 for the unavailable land for 10.8 kilometers.

The project milestones as at 22 October, 2021 were as follows;

Items	
Amount Certified	Kshs.4,903,907,998
Amount paid	Kshs.4,594,850,936
Pending bills	Kshs,309,057,063
Time elapsed	51.32 months - 94.91% of revised completion date of 30 September 2021

Physical Progress	84.75%
Overdue Payments	Kshs.229,749,945

The following anomalies were however noted during the audit exercise;

i. There was 10.8KM inaccessible from Nadapal to Nakadok which was not permitted by border guards of The Republic of South Sudan hence delaying implementation of the project.

ii. There was a delay in payment of (PAPs) and relocation of infrastructure, water and electricity at Lokichoggio town, which also affect project implementation.

iii. The work carried out had been assessed to be substandard and the contractor was instructed to repeat sections of the road which already had defects. The contractor was concurrently redoing the sections affected with the uncompleted work.

In the circumstances, value for money may not have been realized by the community on the expenditure incurred on the Project.

Submission by the Accounting Officer

The Accounting Officer submitted that further to directives of the National Treasury to truncate the road by 11km, the Client instructed the Engineer to determine the value of Works for the Nadapal – Nakodok Section [Km 237 – Km 248] and undertake a full appraisal of the Works pursuant to Clause 13 [*Variations and Adjustments*] of the Conditions of Contract. Subsequently, the Engineer has submitted the cost appraisal and below is a summary of the findings:

Cost

a. *Estimated value of Works for the 11-km Nadapal – Nakodok Section [Km 237 – Km 248].*

Using the estimated quantities of the related work items and the prevailing rates under the Contract, the Engineer has determined the value of the Works in the above section as KES 938,905,080.13.

b. *The appraisal of the Works for the 77-km Kalobeiyei River – Nadapal Section [Km 160+000 – Km 237+200].*

In view of the value of work done to date and estimation of the value of the outstanding works, the Engineer has determined the cost of the above section as KES 3,832,195,019.44 (*VAT and WHT exclusive*). In addition, the Engineer proceeded to appraise the following indirect costs to the Works in the above section as follows.

(i) *Provisional Sums:* The respective amounts have been adjusted to reflect the requirements at the current stage of the Works save for the amount earmarked for roadside amenities. In general, the total amount has reduced from KES 866,500,000 to KES 816,500,000.

(ii) *Physical Contingencies:* The amount has been adjusted to reflect amounts that have been expended to date. As a result, the amount has reduced from KES 432,327,251.19 to KES 150,000,000 to cater for any uncertain event during the remainder of the Contract.

(iii) *Financial Contingencies [Price Adjustment]:* In view of the price adjustment computation to date, the price adjustment (including balance works based on current indices) is estimated to increase from the initial KES 432,327,251.19 to KES 1,645,998,972.77.

The net effect of the adjustments in sub-paragraphs (a) – (c) above is a reduction in the Accepted Contract Amount from KES 7,865,031,057.15 to KES 7,803,895,829.44 translating to a saving of KES 61,135,227.71.

In view of the above, whereas the road has been truncated by 11km, the potential savings (cost of constructing the 11km - KES 938,905,080.13) that would have been realised have been consumed by the adjustments under the Contract. It is therefore inaccurate to assume that the cost of constructing the 11km is KES 61,135,228.00. The issue is currently being taken up by the Ministry of Foreign Affairs, its engaging the South Sudan government with a view of resolving the issue. The issue of relocation and compensation of PAP's is now complete. All the pending compensation claims were forwarded to NLC for processing. The contractor was instructed to correct the defects. This has since been corrected.

Committee Observations and Findings

(i) The Committee observed that the project had delayed for almost 6 years;

(ii) The Committee also observed that it is not clear whether the project was now complete;

(iii) The Committee further observed that the Accounting Officer has not settled compensation as provided under Article 40 (3) of the Constitution and section 111 of the Land Act, 2012.

Committee Recommendation

The Accounting Officer should provide to the National Assembly a status report on the project within three (3) months of adoption of the report. The Committee will then make substantive recommendations in its next report as the matter was recurring.

730. Lot 4: Upgrading of Lokichar-Loichangamatak Road 40KMs

The Project was being undertaken by China State Engineering Corporation Limited and Intercontinental Consultants & Technocrats Pvt Limited being the contractor and consultants respectively. The contract sum was Kshs.5,800,819,125 for the contractor, USD 3,650,253 and Kshs.162,128,560 for the consultants.

The contract period is thirty (30) months from 2 June, 2020 to 2 December, 2022 with a defects liability period of 12 months. Relocation of (PAPs) and water and electricity infrastructure had been delayed thus affecting project implementation. The progress reports revealed the following project milestones as at 31 August, 2021;

Items	
Amount Certified	Kshs.1,793, 232,907
Amount Paid	Kshs.1,411,926,834
Pending Bills	Kshs.381,306,074
Time Elapsed	50%

Physical Progress	31%
Overdue Payments	Kshs.55,734,840

The following unsatisfactory issues were noted the time of audit:

i. The project was behind schedule since time lapsed was 50% and work completion was only at 31%. The project may not be completed on time for the beneficiaries to enjoy the services.

ii. The diversions for the road were not well maintained by levelling, watering dusty areas and having road signs thus denying road users convenient use of the road, yet the amount allocated for maintenance of diversions had not been utilized.

iii. The employer may incur additional cost due to delay in relocation of PAPs, electricity and water infrastructure along the road corridor.

Consequently, the intended benefits to the community may not be achieved by the Project.

Submission by the Accounting Officer

The Accounting Officer submitted that the Management transmitted to NLC funds for compensation of PAPs on August 31, 2020, and NLC continues to remit the funds in accordance with the Schedule of Awards. The Project Affected Persons in Lokichar town (although within the right-of-way) are outside the construction width and therefore do not affect the Works in any way. The management continues to follow up with NLC to expedite remittance of the balance of payments within the duration of the Contract.

Regarding the rate of progress, the Management in liaison with the Engineer have put in place requisite mitigation measures against the prevailing risks under the Contract as well as formulated Key Performance Indicators which are currently being monitored on a regular basis to avert any further delays. As of October 31, 2021, the achieved progress stood at 42% against 47% planned progress. Given that the Contractor is achieving a monthly average progress of 5%, he is expected to catch up in his schedule in another 4 months and the Works are expected to be completed within the Time for Completion if he continues at the same rate of progress.

Notwithstanding the challenges of scarcity of water and rampant vandalism of temporary road signs in the project area, the Engineer continues to monitor the interventions put in place to ensure safe passage of traffic throughout the site and issue requisite instructions to the Contractor in cases where non-compliance is observed on the diversions

The delay in relocation of PAPs were as a result of inadequate exchequer to finance the counterpart component of the project. In FY 2022/23, the Authority has secured a budgetary allocation of Kshs.100,000,000 which will be utilized to settle the outstanding PAPs.

Committee Observations and Findings

The Committee observed that it is not clear whether the project was now complete;

Committee Recommendation

The Accounting Officer should provide to the National Assembly a status report on the project has since been completed within three (3) months of adoption of the report. The

Committee will then make substantive recommendations in its next report as the matter was recurring.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENTAND GOVERNANCE

Conclusion

731. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

732. As required by IDA, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

MOMBASA GATE BRIDGE CONSTRUCTION PROJECT LOAN AGREEMENT NO.KE-P34 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

733. Unsupported Transfer from Government Entities

The statement of receipts and payments reflects transfers from Government entities amount of Kshs.4,422,361 as disclosed in Note 1 to the financial statements. However, this amount was not supported by way of Exchequer requisitions, Exchequer notifications and bank statements.
In the circumstances, it has not been possible to ascertain the authenticity, completeness and accuracy of receipts from other Government entities of Kshs.4,422,361.

Submission by the Accounting Officer

The Accounting Officer submitted that all exchequer funds were received in bulk and channeled to a single exchequer bank account which is in line with provision of section 28 (2) of the PFM act 2012 of a treasury single account. In FY 2020/21 the project received Kshs.4,422,36. Copies of Bank reconciliation statements for the co-operative bank account accompanied by the cash books and bank statements for each month for the period 1st July 2020 to 30th June 2021 were also availed during the audit. Further, a certificate of bank balance for the period ending 30th June 2021 was availed during the audit. Total receipts from the parent ministry are equally confirmed at the end of each financial year as per the exchequer confirmation

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide supporting documents for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

Other Matter

734. Delay in Commencement of the Project

The financing agreement for construction of Mombasa Gate Bridge Project was signed on 5 December, 2019. However, by the time of audit in October, 2021, which was almost two years after signing of the financing agreement, the Project was yet to commence. It was also noted that the contract for provision of consultancy services for tender assistance and construction assistance was signed on 31 August, 2021 but there was no evidence to show that the consultancy services had commenced. Further, management did not present for audit, implementation timelines showing schedule of activities such as procurement of contractors and commencement works.

In view of the foregoing, commencement of the Project has been delayed which casts doubt on the ability of the Authority to implement the same within the timelines stipulated in the financing agreement.

Submission by the Accounting Officer

The Accounting Officer disagreed with the Observation. In spite of the adverse effects of COVID-19, the Authority managed to award the contract on 7th July 2021, and contract agreement signed on 31st August 2021. The award letters and signed contracts which were shared with the audit team during the audit exercise for review. The project has therefore started with the project designs by the consultant ongoing.

Committee Observations

The Committee noted that it was not clear whether the project was now complete.

Committee Recommendation

The Accounting Officer should provide to the National Assembly a status report on the project within three (3) months of adoption of this report by the House. The Committee will then make substantive recommendations in its next report as the matter was recurring.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

735. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

736. There were no material issues relating to effectiveness of internal controls, risk management and governance.

BAGAMOYO-HOROHORO-LUNGA LUNGA-MALINDI ROAD PROJECT (PHASE I) ID NO: P-ZI-DBO-129 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

737. Purchase of Goods and Services

Note 11.3 to the financial statements reflects expenditure of Kshs.19,749,555 incurred under training. The payments were made to various institutions for bursaries to students. Management did not however, provide supporting documents such as application forms and committee minutes to show how the beneficiaries of the bursaries were identified. In the circumstances, the propriety of Kshs.19,749,555 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer disagreed with the observation. The Development Partner issued their no-objection before advertisement for call of application for the various courses offered. The courses were subsequently advertised and applications made through the respective assistant county commissioners' offices within the project area.

He noted that all the above payments were paid directly by the Development Partner to the respective institutions offering the training. A copy of the Development Partner's no-objection and a copy of the advertisement for call of applications were availed for perusal by the Committee.

Committee Observations and Findings

The Committee noted that although the Accounting Officer submitted that the Development Partner made payments directly to the respective institutions, he did not provide evidence of the same.

Committee Recommendations

The Committee recommends that the evidence of payments be availed to the Committee within three (3) months of adoption of this report.

Other Matter

738. Lack of Project Detailed Budget

During the year under review, the Project had an approved budget of Kshs.100,000,000. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended. Consequently, it was not possible to conduct budget performance analysis on budgeted and actual amounts.

Submission by the Accounting Officer

The Accounting Officer clarified that the project had a budgetary allocation of Kshs.100,000,000. As provided by the budget guidelines, appropriation by The National Assembly to the project is on a specific line individual project. This is the form in which the project budgets are uploaded into IFMIS and availed for expenditure. This was availed during the audit for review.

He further availed a copy of the Budget for reference by the Committee. Further, as indicated in the statement of comparative budget versus actual, the expenses for the project did not exceed the amounts appropriated hence full compliance with provisions of the PFM Act 2012 and its attendants' regulations

Committee Observations and Findings

(i) The Committee observed that during the audit, the Accounting Officer failed to provide detailed budget in breach of Section 9 (1) (e) of the Public Audit Act, 2015; and

(ii) However, the Committee observed that the Accounting Officer had now availed the detailed budget.

Committee Recommendation

The Committee admonishes the Accounting Officer for failing to provide detailed budget in breach of Section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

739. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

740. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

741. As required by the African Development Bank and African Development Fund, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

16. STATE DEPARTMENT FOR TRANSPORT- VOTE 1092

REPORT ON THE FINANCIAL STATEMENTS

Eng. Joseph Njoroge, the Principal Secretary and Accounting Officer for State Department for Transport (Vote 1092) appeared before the Committee 6th June, 2022 to adduce evidence on the audited financial statement for the State Department of Transport (Vote 1092) for the Financial Year 2020/2021. He was accompanied by the following officers:

1. Ms. Priscila Karanja – Head of accounting unit.
2. Ms. Esther Gachange – Principal economist.
3. Mr. Nahum Nyawara – Principal finance officer.

And submitted as follows

Qualified opinion

742. Acquisition of Assets
The statement of receipts and payments reflects acquisition of assets expenditure of Kshs.35,635,975,932 which includes a payment of Kshs.11,027,888 for refurbishments works carried out on Public Works Building and Kshs.4,800,000 for roof maintenance works carried out on Transcom House. However, tender documents and bill of quantities for the two works were not provided for audit review. Further, Inspection and Acceptance Committee minutes were also not provided. In the circumstances, it was not possible to confirm the competitiveness and fairness in the award of the contract as well as the value for money on the expenditure of Kshs.15,827,888 incurred on the two projects. Further, the validity of expenditure of Kshs.15,827,888 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that the statement of receipts and payments reflects acquisition of assets expenditure of Kshs.35,635,975,932 which includes a payment of Kshs.11,027,888 for refurbishments works carried out on Public Works Building and Kshs.4,800,000 for roof maintenance works carried out on Transcom House and that at the time of the audit, the tender document, and the bill of quantities Inspection and Acceptance Committee minutes were not availed for audit review. The documents are available for audit review. Auditors Comments. The issue has been resolved. Audit team reviewed the bid documents

Committee Observations and Findings
The Committee observed that the Accounting Officer failed to provide documents required for audit in contravention of Section 62 of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting officer for failing to provide documents required for audit in contravention of Section 62 of the Public Audit Act, 2015;

Other Matter

743. Budgetary Control and Performance

During the year under review, actual receipts for the State Department amounted to Kshs.63,585,779,287 against a budgeted amount of Kshs.74,241,046,749 resulting to a shortfall in receipts of Kshs.10,655,267,462. In addition, the State Department underspent its overall budget amount by Kshs.10,655,543,139. The under expenditure mainly occurred under the components related to use of goods and services at Kshs.43,997,722, and acquisition of assets at Kshs.9,687,018,222. Failure to fully absorb the budget may affect some planned programs which affects service delivery to the citizens.

Submission by the Accounting Officer

The Accounting Officer admitted that during the year under review, actual receipts for the State Department amounted to Kshs.63,585,779,287 against a budgeted amount of Kshs.74,241,046,749 resulting to a shortfall in receipts of Kshs.10,655,267,462 and that the State Department underspent its overall budget amount by Kshs.10,655,543,139. The under expenditure mainly occurred under the components related to use of goods and services at Kshs.43,997,722 and acquisition of assets at Kshs.9,687,018,222. The under expenditure related to the use of goods and services was occasioned majorly by the GOK directives on Covid 19 protocols which inhibited absorption and collection under Kenya Civil Aviation Authority and Kenya Ferry Services. The under expenditure on acquisition of assets was occasioned by non-acquisition of the SGR Intergrated security system due to delay in the approval of the project by the National Treasury.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer were satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

744. Pending Bills

Note 15.1 to the financial statements reflects pending bills balance of Kshs.55,873,513. Management has not explained why the bills were not settled during the year they occurred. The Department is at risk of incurring significant interest costs and penalties due to continued delay in payment. Further, review of documents in support of the pending bills revealed that the balance included an amount of Kshs.36,000,000 and Kshs.5,597,500 payable to a contractor and a consultant in respect of construction of 3 Transport Data Centre whose contract sum was Kshs.130,739,261. However, to date the contractor has been paid Kshs.120,252,245 leaving an outstanding bill of Kshs.10,487,016 and not Kshs.36,000,000 indicated in the list, hence casting doubt on the validity of the disclosed balances. Failure to settle bills in the year to which they relate adversely affect the implementation of the subsequent year's budgeted programs as the pending bills form a first charge.

Submission by the Accounting Officer

The Accounting Officer admitted that Note 15.1 to the financial statements reflects pending bills balance of Kshs.55,873,513 out of which the pending bills of kshs 14,276,013 have subsequently been paid in the financial year 2021/2022. Appendix I The Kshs.36 million relates to the establishment of the Data Centre and supervision of the consultancy services certified works as shown below in accordance with the forwarding letters Ref. No. UNES/HQ/4/1/Q/39 of September 24, 2015 and Certificate of Payment of 29th September 2015 from University of Nairobi enterprises and Services Ltd and Memo Ref. No. MOT/C/ADM/90VOL.l(57) and MOT/C/ ADM/90VOL.1(58) of 29th September, 2015 by the Project Manager: Appendix II (i) Invoice No. PCIN43830: Kshs. 4,478,000 being 20% of the lumpsum upon operationalisation of the data center and on-site facilities; (ii)Invoice No. PCIN43866: Kshs. 2,239,000 being 10% of the lump-sum paid proportionate during the management period by UNES; (iii) No. PCIN43867: Ksh. 3,358,500 being 15% of lump sum upon submission of the final report for the whole project; (iv)Ksh 16,600,482.00 being 12% of the total project value as variation on items inadvertently and are highly required for successful implementation of the transport data centre as recommended by UNES. The four items total Kshs 26.675 million for the certified work while the balance is work not yet certified but is part of the contract sums. Auditors Comments. The issue has not been resolved Contract seems to have been varied but no addendum to variation was availed for audit review.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that pending bill of Ksh. 36 million was wrongly classified;

(ii) The Committee further observed that the Accounting Officer submitted misleading information on pending bills contrary to section 62 (1)(d) of the Public Audit Act, 2015;

(iii) The Committee noted that the Accounting Officer did not settled pending bills as a first charge as per the provisions of regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendations

The Committee reprimands the Accounting Officer for submitting misleading information on pending bills contrary to section 62 (1)(d) of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

745. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

746. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECTS

NATIONAL URBAN TRANSPORT IMPROVEMENT PROJECT CREDIT NO.5140 KE (MOT COMPONENT)

Basis for Qualified Opinion

747. Unutilized Donor Grant

As disclosed in the Project information under Note 1.7 of the funding summary, IDA had committed an amount of Kshs.1,152,400,000 for utilization under the Project but as at the close of the Project only Kshs.935,649,481 was utilized resulting to an undrawn amount of Kshs.216,750,519. Information provided for audit review reflects USD.207,468,633 as amount cancelled as of 21 December, 2018 due to poor performance of the Project. However, no reconciliation between the amount cancelled and undrawn amounts reflected in the financial statements was provided for audit review. In the circumstances, the accuracy and validity of the donor grant received of Kshs.935,649,481 disbursed as at 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The National Urban Transport Improvement Project (NUTRIP) was approved by the World Bank Board on 2nd August 2012 and became effective on 24th December 2012. The credit amount was SDR 193.5million (US$300 million equivalent). As at 21st December 2018, the undisbursed balance of IDA Credit was SDR 149.5 million (US$207.5 million equivalent) which was with respect to the entire Credit No. 5140-KE. The MOT component of the cancelled credit was US$360,382.30 as provided. Appendix III- Cr. No. 5140-KE: Refund of Designated Account Balance.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unutilized Donor Grant was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

748. Unreconciled Donor Amount

The project information and overall performance under Note 1.7 funding summary, reflects amount received to-date of US Dollars.9,263,856 while the special account report of National Urban Transport Improvement Project (SDT) IDA Loan No. Credit No.5140- KE DA-C for the year ended 30 June, 2021 reflects amount advanced by IDA to the project amounting to USD.2,240,354 as at 30 June, 2021. Although USD.9,263,856 reflected as donor commitment in the financial statement was explained as cumulative disbursements to the various authorities under the State Departments (Kenya Civil 5 Aviation, Kenya Railway Corporation and Kenya Airports Authority) the reason for capturing grants relating to other entities was not provided and the variance of USD.7,023,502 was similarly not reconciled or supported. In addition, the financial statements did not include the Project's special accounts reconciliation statements as per the financial reporting template prescribed by the Public Sector Accounting Standards Board (PSASB). In the circumstances, the actual grant advanced has been misstated.

Submission by the Accounting Officer

The project information and overall performance under Note 1.7 funding summary reflected amount received to date of US Dollars.9, 263,856 while the special account report of National Urban Transport Improvement Project (MOT) IDA Credit No.5140-KE DA-C for the year ended 30 June, 2021 reflected amount advanced by IDA to the project amounting to USD.2, 240,354 as at 30 June, 2021 occasioning a difference of USD 7,023,502 which was as a result of a transposition error in the cumulative receipts in the financial statements .The error will be addressed in the ongoing revision of financial statements.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that he failed to reconcile the donor account;

(ii) The Committee noted the Accounting Officer failed to submit reconciliation statements as per the financial reporting template prescribed by Public Sector Accounting Standards Board contrary to section 68 of the PFM Act, 2012

Committee Recommendation

The Committee reprimands the Accounting officer for failing to to submit reconciliation statements as per the financial reporting template prescribed by Public Sector Accounting Standards Board contrary to section 68 of the PFM Act, 2012.

749. Lack of Updated Fixed Assets Register

Annex 2 to the financial statements contains a summary of fixed asset register for the project with a balance of Kshs.406,811,939. Included in this balance is office equipment, furniture and fittings and vehicles and other transport equipment worth Kshs.70,207,070 and Kshs.145,276,985 respectively. However, the assets register provided for audit review reflected assets totaling Kshs.23,608,500 resulting to a balance of Kshs.383,203,439 unaccounted assets. In the circumstances, acquisition of non-financial assets cumulative balance Kshs.406,811,939 reflected in the statement of receipts and payments could not be confirmed.

Submission by the Accounting Officer

The fixed asset register shall be updated with the revision of the financial statement.

Committee Observations and Findings

The Committee observed that the asset register provided by the Accounting Officer for audit was incomplete contrary to section 72 (1) of the Public Finance Management Act 2012 and Regulation 143 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to maintain a fixed assets register contrary to section 72 (1) of the Public Finance Management Act 2012 and Regulation 143 of the Public Finance Management (National Government) Regulations, 2015.

Other Matter

750. Project Closure Report

The Project information and funding summary reflected at Note 1.2 and Note 1.7 respectively indicates that the Project's duration was six years from 3 August, 2012 to 31 December, 2018. However, Management did not provide completion certificates, handover minutes and the project completion report for audit review. In the absence of these reports and minutes, it is not possible to ascertain whether the project activities came to a close and the existence and ownership of the assets acquired under the project.

Submission by the Accounting Officer

The Accounting Officer admitted that the Project information and funding summary reflected at Note 1.2 and Note 1.7 respectively indicates that the Project's duration was six years from 3 August, 2012 to 31 December, 2018. The project entailed Procurement of Goods/Services and capacity building. The project was not involved with construction works and subsequently a supervision consultant, thus the completion certificates; hand-over minutes were not issued. However, upon the completion of the project, the Financier and the Borrower jointly prepared the Borrowers Implementation, Completion and Results Report which is available for audit review.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as the documents he alluded to were not project closure reports and could not replace it.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails a project closure report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

751. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

752. There were no material issues relating to effectiveness of internal controls, risk management and governance.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT IDA CREDIT NO. 4148-KE AND CREDIT NO. 4977-KE (MOT COMPONENT)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

753. There were no material issues noted during the audit of the financial statements of the Project.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT IDA CREDIT NO. 4148-KE AND CREDIT NO. 4977-KE (MOT COMPONENT)

Other Matter

754. Unresolved Prior Year Matter - Construction of Transport Data Centre

As reported previously, the State Department for Transport entered into an agreement with a local firm on 30 September, 2014 for supply, installation, testing and commissioning of a Transport Data Centre, networking, software and hardware at a cost of Kshs.130,739,261. The State Department for Transport further entered into another agreement with a local University firm for consultancy services for the establishment of the Transport Data Repository Centre Resolution at a contract sum of Kshs.22,390,000. The consultancy services included designing of the Transport Data Repository Centre System; preparation of bid documents for supply and installation; supervision and capacity building of staff to man the data centre. The consultancy agreement dated 4 July, 2012 was to run for a period of sixty-four (64) weeks with ending date of 25 September, 2013.

Review of the Project revealed that the contract agreement had expired, and the contractor and the consultant had been paid Kshs.120,252,245 and Kshs.16,792,500 representing 92% and 75% of the contract sums respectively. Further, Note 12.1 to the financial statements reflects a contingent liability of Kshs.36 Million relating to the establishment of the Data Centre and supervision of the consultancy services. However, adequate supporting documents for the liability and approval for the variation of the contracts as required under Section 139 of the Public Procurement and Asset Disposal Act, 2015 were not provided for audit.

Under the circumstances, it was not possible to ascertain the fairness of the contingent liability and whether the State Department obtained value for the total amount of Kshs.137,044,745 paid to the contractor and the consultant.

Submission by the Accounting Officer

The Auditor that the contractor and the consultant had been paid Kshs.120,252,245 and Kshs.16,792,500 representing 92% and 75% of the contract sums respectively. Therefore, total outstanding payments as per the two contracts is Kshs 16,084,516 (i.e Kshs 153,129,261-Kshs.137,044,745) in addition to the outstanding payment for variation on items. The contingent liability of Kshs.36 million relates to the establishment of the Data Centre and supervision of the consultancy services certified works as shown below in accordance with the forwarding letters Ref. No. UNES/HQ/4/1/Q/39 of September 24, 2015 and Certificate of Payment of 29th September 2015 from University of Nairobi enterprises and Services Ltd and Memo Ref. No. MOT/C/ADM/90VOL.l(57) and MOT/C/ ADM/90VOL.1(58) of 29th September, 2015 by the Project Manager: Appendix II (i) Invoice No. PCIN43830: Kshs. 4,478,000 being 20% of the lumpsum upon operationalisation of the data center and on-site facilities; (ii)Invoice No.

PCIN43866: Kshs. 2,239,000 being 10% of the lump-sum paid proportionate during the management period by UNES; 8 (iii) No. PCIN43867: Ksh. 3,358,500 being 15% of lump sum upon submission of the final report for the whole project; (iv)Ksh 16,600,482.00 being 12% of the total project value as variation on items inadvertently and are highly required for successful implementation of the transport data centre as recommended by UNES. The four items total Kshs 26.675 million for the certified work while the balance is work not yet certified but is part of the contract sums. Auditors Comments. The issue has not been resolved.

Committee Observations and Findings

(i) The Committee observed that the matter was discussed in the 2018/2019 Financial Year Report;

(ii) The Committed noted that the Accounting Officer failed to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012.

755. Project Closure Report

Review of the project information and funding summary reflected at section 1.2 and 1.7 of project information and overall performance indicate that the project duration was for 9 years from 5 April, 2006 to 30 September, 2015. However, Management did not provide completion certificates, handover minutes and project completion reports for audit review. In the absence of these reports, it was not possible to ascertain whether the project was closed and the status of the assets acquired under the project.

Submission by the Accounting Officer

The Accounting Officer admitted that the Project information and funding summary reflected at Note 1.2 and Note 1.7 respectively indicates that the Project's duration was six years from 3 August, 2012 to 31 December, 2018.

The project completion certificates, handover minutes and the project completion report were not availed for the audit review since there are outstanding project issues with the construction of the Transport Data Centre which hinder issuance of final Certificates.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as he did not avail evidence on what the 'project issues' were.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails a project closure report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

756. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

757. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

758. As required by International Development Association (IDA), I report based on my audit, that, I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT (MOT/KRC COMPONENT) CREDIT NO.4148-KE AND CREDIT NO. 4977-KE

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

759. There were no material issues noted during the audit of the financial statements of the Project.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT (MOT/KRC COMPONENT) CREDIT NO.4148-KE AND CREDIT NO. 4977-KE

Other Matter

760. Pending Bills

Note 12.1 to the financial statements reflects pending accounts payable balance of Kshs.1,517,967,848 as at 30 June, 2021 which relates to Value Added Tax (VAT) refunds on the project whose refund is contingent on verification and certification by the Kenya Revenue Authority and the Kenya Railways Corporation. As previously reported, Management has not provided reasons for the delay in undertaking the verification and certification of the refunds even though the Project is at risk of incurring significant interest costs and penalties with the continued delay in payment.

Submission by the Accounting Officer

The National Treasury vide letter Ref. No. DV /ES 1092/18/01/ (36) of 18th October 2018 had advised State Department for Transport that the Department in consultation with relevant Department of National Treasury should review and KRA should reconcile the outstanding VAT to ascertain what qualifies for refund. The Accounting Officer admitted that there has been a delay in undertaking the verification and certification of the VAT refunds amounting to Kshs.1,517,967,848 as at 30 June, 2021. The major reason for the delay is that although The National Treasury advised State Department of Transport vide letter Ref. No. DFN 415/232/011 dated 13th March 2020 to clear the VAT refund to M/s Parbat Siyani and other cases relating to the three contractors namely, M/s Vee Vee Enterprises, M/s H. Young Ltd and M/s EPCO Builders Ltd and the Edon Consultant be treated in the same way, the State Department for Transport vide letter Ref. No. MOT &I/C/RAIL/7 /2 VOL XVII (52) of 7th May 2020 informed Kenya Railways Corporation (KRC) to advise the contractors and the Consultant to liaise with KRA to certify that payment of the VAT in respect of all the invoices for certified works have been made prior to forwarding the claims to KRC/Ministry for processing. This was the same procedure that applied to M/s Parbat Siyani Construction Ltd in that the contractor had declared VAT amounting to Kshs 275,801,880.99 in respect of the twenty-nine (29) invoices and was confirmed by KRA vide letter Ref. No. P051139140V dated 16th July 2019 prior to forwarding to the National Treasury for funding. None of the three contractors and Consultant has either sought clearance by KRA or forwarded any supporting document to the warrant finalization of the refund.

Committee Observations and Findings

The Committee noted that it was taking inordinately long for the contractors to provide the cited confirmations from KRA.

Committee Recommendation

The Accounting Officer should avail a status report within three (3) months of adoption of this report.

761. Project Closure Report

Review of the project information and funding summary reflected at Note 1.2 and Note 1.6 indicates that the project duration was for 9 years from 5 April, 2006 to 30 September, 2015. However, Management did not provide completion certificates, handover minutes and project completion report for audit review. In the absence of these reports, it was not possible to ascertain whether the project was closed or the status of the assets acquired under the project.

Submission by the Accounting Officer

The Accounting Officer admitted that the project completion certificates, handover minutes and the project completion report were not availed for the audit review since there are outstanding project issues including the VAT refund which hinder issuance of final Certificate.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015, as the alluded to ‘project issues’ were not evidenced.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails a project closure report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

762. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

763. There were no material issues relating effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

764. As required by International Development Association (IDA), I report based on my audit, that, I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NORTHERN CORRIDOR TRANSPORT IMPROVEMENT PROJECT CREDIT NO. 4571-KE AND 3930-KE (MOT COMPONENT)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

765. There were no material issues noted during the audit of the financial of the Project.

NORTHERN CORRIDOR TRANSPORT IMPROVEMENT PROJECT CREDIT NO. 4571-KE AND 3930-KE (MOT COMPONENT)

766. Project Closure Report

The Project funding summary reflected at Note 1.5 and the Project extension indicates that the Project was to end on 31 December, 2015. Although the bank balance of Kshs.18,311,165 was transferred to The National Treasury Exchequer Account on 12 August, 2021 and the management has provided the donor's implementation completion and results report dated 29th June, 2016, the completion certificates, handover minutes and the current project completion report have not been provided for audit review. In the absence of these reports and minutes, it is not possible to ascertain whether the Project was closed and the status of the assets totaling Kshs.61,753,308 acquired under the Project.

Submission by the Accounting Officer

The Accounting Officer admitted that the Project funding summary reflected at Note 1.5 and the Project extension indicates that the Project was to end on 31 December, 2015. The project entailed Procurement of Goods/Services and capacity building. The project was not involved with construction works and subsequently a supervision consultant, thus the completion certificates; hand-over minutes were not issued. However, upon the completion of the project, the Financier and the Borrower jointly prepared the Borrowers Implementation, Completion and Results Report which is available for audit review.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

767. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

768. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

769. As required by World Bank and the Financing Agreement Credit No. 3930-KE/4571- KE dated 8 May, 2009 I report based on my audit, that, I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT-IDA CREDIT NO.6768KE REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

770. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

771. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

772. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

773. As required by International Development Association (IDA), I report based on my audit, that, I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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 THE FINANCIAL STATEMENTS

Unmodified Opinion

774. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

775. Pending Bills

Annex 3 to the financial statements reflects pending bills amounting to Kshs.3,900,000 as at 30 June, 2021. Although this is a commendable improvement from the 2019/2020 balance of Kshs.40,804,058, the Project is at risk of incurring additional interest costs and penalties with the continued delay in settling payments.

Submission by the Accounting Officer

The pending bills resulted from costs incurred on consultancy services on the NUTRIP team leader. The amount of Ksh 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. The project is not incurring additional interest costs or penalties due to delays in the payment.

Committee Observations and Findings

The Committee noted that the Accounting Officer did not settle pending bills as a first charge as per the provisions of regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

776. Low Absorption of Project Funds

As previously reported, sections 1.2 and 1.7 of the annual report under Project information and overall performance, indicates that the Project was to be implemented within a duration of six (6) years from 2012 to 2018, with a total expected Donor's credit of Kshs.1,071,552,600 equivalent to US$11,930,000. However, only Kshs.117,813,333 or 11% of the expected credit had been received from the Donor as at 30 June, 2021, leaving a balance of Kshs.953,739,267 or 89% undrawn. Similarly, out of the expected receipts of Kshs.332,324,000 from the Government of Kenya, only a sum of Kshs.109,337,077 has been received leaving a balance of Kshs.222,996,923 or 67% undrawn by 31 December, 2019 when the Project formally closed.

Under the circumstances, the Project's strategic goals may not be achieved within the expected timelines.

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 – Ksh 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 till 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.KR will seek GoK counterpart funding to ensure implementation of the same.

Committee Observations and Findings

(i) The Committee observed that World Bank funding was halted on 27/12/2018; and
(ii) The Committee further observed that Kenya Railways Cooperation would seek GOK Counter funding to complete the project.

Committee Recommendation

The Accounting Officer should submit the status report on efforts to revive and complete the project to the National Assembly within three (3) months of adoption of the report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

777. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

778. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

779. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KENYA AVIATION MODERNIZATION PROJECT (PREPARATION ADVANCE NO. V0440) - KENYA AIRPORTS AUTHORITY REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

780. There were no material issues noted during the audit of the financial statements of the Project.

KENYA AVIATION MODERNIZATION PROJECT (PREPARATION ADVANCE NO. V0440) - KENYA AIRPORTS AUTHORITY

Other Matter

781. Pending Bills

As disclosed under Note 11.9 to the financial statements, the Project had pending payables balance of Kshs.15,244,000 as at 30 June, 2021. Although Management has indicated that the outstanding claim was due to late submission of invoice by the Consultant, the Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments. 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.

Submission by the Accounting Officer

It is true as disclosed under Note 11.9 to the financial statements; the Project had pending payables balance of Kshs.15, 244,000 as at 30 June, 2021.This outstanding claim was due to late submission of the invoice by the consultant. The Authority allowed for these amounts in the supplementary budget for 2021/2022 FY towards settlement of the claim, which will be settled by 30th June 2022.

Committee Observations and Findings

The Committee noted that the Accounting Officer did not settle pending bills as a first charge as per the provisions of regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

782. Consultancy Services for Rehabilitation of Jomo Kenyatta International Airport (JKIA) Terminal 1B, C and D Building

Consultancy services for rehabilitation of JKIA Terminal 1B, C and D Building commenced on 10 April, 2017 with expected end date of 30 November, 2020 and an approved budget of Kshs.517,000,000. The consultancy service was completed, and the designs handed over to the Authority on 21 June, 2019. However, as at the time of audit in October, 2021, the Authority had not provided evidence showing measures taken to have the designs implemented.

Consequently, value for money may not have been achieved in view of delay in implementation of the designs.

Submission by the Accounting Officer

The financial and economic analysis that informed the Consultancy Services for Rehabilitation of JKIA Terminal 1B, C and D Building was undertaken in 2006. Thereafter, owing to changing aviation dynamics and further discussions with World Bank during the mission held in December 2017, it was agreed that it would be necessary to undertake a new feasibility study to confirm the viability of the project as designed by ADPI/APEC prior to implementation. This is given that the projected capacity injection of 5.3 million passengers resulting from the proposed project will have been capped at completion by 2023 – 2024 at which time the projected traffic throughput will be 10.8 million per year.

The Management therefore resolved that a further feasibility study be undertaken to inform both nominal re-modeling and construction of a new terminal building side by side. The study will be undertaken as part of the Master Plan study for JKIA.

In the meantime, the Government has engaged a consultant to undertake development of an aviation policy for Kenya and review of the proposed medium term investment requirements for enhancing passenger terminal at Jomo Kenyatta International Airport. The component involving medium term investment requirements will inform the nature of development that is needed to bridge the capacity deficit as development of a high-capacity terminal building is awaited.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer did not prove the value for money of the Kshs. 517,000,000/= budgeted as consultancy services; and

(ii) The Committee further noted that the Accounting Officer shall incur additional expenditure on consultation which could amount to wasteful expenditure.

Committee Recommendations

The Accounting Officer should submit a justification and status report of the rehabilitation of the terminals to the Auditor General for audit of the subsequent financial year.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

783. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

784. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

DONOR FUNDED PROJECTS

785. The Committee observes that despite request for responses for queries cited under donor (Nos. 789-808) projects vide letter Ref. NA/DAASC/PAC/2023/225 dated 1st November 2023, the Accounting Officer had not responded by the deadline given, and as at the time of adoption of this report.

786. The Committee reprimands the Accounting Officer and will make substantive recommendations for the cited queries in its report for the FY 2021/22.

17. STATE DEPARTMENT FOR SHIPPING AND MARITIME – VOTE 1093

REPORT ON THE FINANCIAL STATEMENTS

Mr. Shadrack Mwadime, the Principal Secretary and Accounting Officer for the State Department of Shipping and Maritime Affairs appeared before the Committee on 16th February 2023 accompanied by the following officers:

1.	Mr. Daniel Mwaura	–	Director, Planning
2.	Mr. Henry N. Mobegi	–	Deputy Accountant General
3.	Mr. Ferdinand G. Wandere	–	Director, Procurement
4.	Ms. Catherine Muiru	–	Assistant Director, Supply Chain Management
5.	Mr. Simon Mungai	–	Principal Economist
6.	Mr. Maina Chira	–	Senior Chief Finance Officer
7.	Dr. Mabinda Benson	–	Senior Assistant Internal Auditor General
8.	Mr. Abraham Wachira	–	Senior Principal Finance Officer
9.	Ms. Angeline Kwera	–	Finance Officer

and submitted as follows;

Unmodified Opinion

811. There were no material issues noted during the audit of the financial statements of the State Department.

Other Matter

812. Pending Bills

Annex 1 to the financial statements reflects pending bills of Kshs.8,666,783 as at 30 June, 2021. Management did not provide reasons for non-payment of the bills which exposes the State Department to the risk of incurring significant interest costs and penalties due to the continued delay in making payments. 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 settled as a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that during the financial year that ended on 30th June 2021, there were pending bills amounting to Kshs.8,666,783 that were carried forward to the Financial year 2021/2022. The bills were not paid in the year under review (2020/2021) due to lack of sufficient exchequer receipts at the end of the financial year. Further, some bills were not paid due to lack of adequate supporting documents such as LPOs for air tickets purchased without first raising the LPOs.

An internal auditor was appointed to undertake the pending bills verification exercise on 3rd September 2021 to verify and issue recommendations regarding the pending bills relating to the financial year 2021/2022. Kshs.7,499,413 of the pending bills have so far been verified by the internal auditor and settled. The balance of Kshs.1,216,870 have not been settled due to lack of sufficient supporting documents.

The Accounting Officer further informed the Committee that Kshs.6,147,492 (inclusive of the earlier outstanding balance of Kshs.1,216,870) was the outstanding pending bills as at 30th June 2022. However, the internal auditor has verified all the pending bills for payment as genuine and the bills would be settled once the requisite funds are received.

Committee Observations and Findings

(i) The Committee observed that failure to maintain supporting documents for the pending bills and poor record keeping indicates that the State Department was disorganized and there was lack of responsibility in the Accounting Officer; and

(ii) The Committee observed that the Accounting Officer failed to pay pending bills as first charge contrary to regulation 42 of the PFM (National Government) Regulations, 2015.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failing to ensure proper records were maintained resulting to unsupported pending bills contrary to section 197 (1)(l) of the PFM Act, 2012.

(ii) The Committee recommends that the Accounting Officer should ensure that pending bills are settled as a first charge pursuant to the regulation 42 of the PFM (National Government) Regulations, 2015.

813. Budgetary Control and Performance

The summary statement of appropriation - recurrent and development combined reflects final receipts budget and actual on comparable basis of Kshs.2,496,757,055 and Kshs.2,165,628,636 respectively, resulting to an under-funding of Kshs.331,128,419 or 13% of the budget. Similarly, the State Department spent a total of Kshs.2,162,639,709 against an approved budget of Kshs.2,496,757,055 resulting to an under-expenditure of Kshs.334,117,346 or 13% 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

The Accounting Officer submitted that the appropriated budget for the Financial Year 2020/2021 was Kshs.2,517,615,000.00. However, there was a budget cut during supplementary process in both the recurrent and development vote of Kshs.20,848,001.00 and Kshs.285,000,000.00 respectively. The State Department budget was thus reduced to Kshs.2, 211,757,000.00.

The Accounting Officer also submitted that the underutilization was occasioned by Non-Receipt Donor funds and exchequer for GoK Counterpart funds for the Multinational Lake Victoria Maritime Communication & Transport Project during the Covid-19 restrictions period.

The Accounting Officer further informed the Committee as follows;

i. The project was conceptualised in 2014 but commenced in 2018 and that the Kenya Maritime Authority was the implementing agency;
ii. The project had technical and funding challenges from conception;
iii. After consideration of the challenges faced, The Government of Kenya requested for a midterm review of the project in 2018 but no progress was made at the time. However, there was tripartite engagement in 2021 where the request for review was granted;

iv. The project is now reformulated in April 2022 and it will now be a national stand-alone project and funded from Appropriations in Aid (A-in-A);
v. The main component of the project is a search and rescue centre in the five riparian counties around Lake Victoria;
vi. The total cost of the project is Kshs.1.2 billion as per the revised concept paper; and
vii. The project will start in the 2023/24 financial year as it wasn't appropriated for in the current financial year and construction will begin by December 2023.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer with regard to budgetary control and performance were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

814. Non-Compliance with the National Cohesion and Integration Act, 2008

During the year under review, the State Department had sixty-seven (67) employees out of whom twenty-four (24) or 36 % of the total number were members of the same community. This is contrary to Section 7(1) and (2) of the National Cohesion and Integration Act, 2008 which states that, "all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its staff establishment from the same ethnic community".

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

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department staff are in office either through appointments by the Public Service Commission for Technical staff or through transfers by respective scheme holders or through the central posting. The responsibility of transferring public officers' in support departments rests with the holder of the scheme of service.

The State Department submits quarterly returns to Public Service Commission on matters of ethnicity, which serves as a guide on how the officers are distributed in terms of ethnicity, however the situation has been noted and the matter has since been rectified. The Accounting Officer also indicated that transfers were done within the Public Service and the State Department is now compliant with Section 7(1) and (2) of the National Cohesion and Integration Act, 2008.

Committee observations and Findings

The Committee observed that there was a need to follow up the matter with the Public Service Commission in order to address the issue wholistically and ensure there is diversity of the people of Kenya in employment of staff across the Public Service, in line with the National Cohesion and Integration Act.

Committee Recommendations

The Committee recommends that the Public Service Commission should adhere to the National Cohesion and Integration Act in recruitment of public officers.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

815. Audit Committee

During the year under review, the State Department nominated five (5) members to the Audit Committee. However, available information indicates that the Committee met only once contrary to Regulation 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.

In the circumstances, the effectiveness of the Audit Committee for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department has no audit committee of its own but it is part of the Ministerial audit committee. During the period under review, the State Department nominated five (5) members to the Audit Committee.

The calendar schedule of meetings was guided by availability of funds to facilitate the independent members of the committee, but were hampered by lack of funds. However, the five State Departments in the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works had resolved to pool funds together to facilitate the meetings on quarterly basis.

The Accounting Officer also submitted that the Audit Committee held its inaugural meeting on 22nd December, 2020 at the Public Works Building 9th Floor Board room. The Audit Committee held subsequent meetings between 21st and 31st August, 2022 to consider the achievements of the internal audit unit and address some of the challenges faced.

The Accounting Officer undertook to make the Audit Committee more effective and ensure it holds at least four (4) meetings as required by law and address audit queries comprehensively.

Committee observations and Findings

(i) The Committee observed that the submission by the Accounting Officer is unsatisfactory since there is no relation between availability of funds and the meeting of the Audit Committee. The audit committee could have met virtually;

(ii) The Committee further observed that the Audit Committee did not meet at all in 2021; and

(iii) The Committee noted that failure to hold audit meetings compromises the internal audit function.

Committee Recommendations

The Committee reprimands the Accounting Officer for failing to comply with the provisions of regulation 179 of the PFM (National Government) Regulations, 2015.

18. STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT – VOTE 1094

REPORT ON THE FINANCIAL STATEMENTS

Mr. Charles Hinga, the Principal Secretary and Accounting Officer for the State Department of Housing and Urban Development appeared before the Committee on 20th February 2023 and 5th May 2023 accompanied by the following officers:

1.	Eng. B. K. Njenga	–	Secretary, Urban and Metropolitan Development
2.	Mr. Cassius M. Kusienya	–	Deputy Director of Estates
3.	Mr. Cornelius Kimuyu	–	Deputy Director, Estate Management
4.	Mr. Duncan Imbamba	–	Deputy Director, Housing
5.	Ms. Evelyn O. Nyakwara	-	Senior Chief Finance Officer - Housing

Unmodified Opinion

816. There were no material issues noted during the audit of the financial statements of the State Department.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

817. Interest on Delayed Settlement of Award

During the year under review, the State Department made payments totalling to Kshs.136,953,343 to the Office of the Attorney General for on-ward transfer to a claimant in respect of an award for principal and accrued interest computed on an amount of Kshs.100,000,000 arising from case No. HC ELC NO.476 of 2012. The payment was effected in two tranches of Kshs.103,907,285 and Kshs.33,046,058 on 10 July, 2019 and 21 April, 2020 respectively. The payment was final and catered for the principal and the interest accrued from 13 March, 2015 to 31 December, 2019. However, review of documents indicated that the claimant issued an additional demand note of Kshs.24,212,628 to the State Department as additional interest accrued for six (6) months due to failure by the Attorney General to transmit the awarded amount in time.

Consequently, the State Department is likely to incur additional expenditure of Kshs.24,212,628 that could have been avoided and hence lack of value for money on the additional expenditure.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department for Housing and Urban Development made a payment of interest amounting to Kshs. 24,212,628 to Khimji Seyani and Karsan KhimjI Seyani in a Nairobi case HC ELC NO.476 of 2012. This was informed by the advice from Solicitor General to settle the interest although the interest accrued after the State department had transferred the funds to the Attorney General's Office of Kshs 103,907,285 and Kshs 33,046,057.70 on 10th July 2019 and 21st April 2020.

The interest of Ksh 24,212,628 accrued from the period between 30 January, 2018 to January 2020 when the principal amount of the liability had not been paid. This accrued interest had not earlier been re-computed and considered for payment.

The Accounting Officer also submitted that the law stipulates that once the principal amount has been paid, interest stops accruing. However, the interest still accrued over the two years, that is, from January 2018 to January 2020 when the plaintiff received the first payment. The plaintiffs had not been paid the two years interest of Ksh 24,212,628.90, which they were entitled to.

The Accounting Officer further submitted that the Solicitor General responded and advised that the State Department was responsible for the liability and should settle the amounts. The State Department went ahead and remitted the outstanding liability to Attorney General's office. The Accounting Officer agreed that the penalties had accrued but argued that court judgments can become complicated.

Committee Observations and Findings
The Committee noted that the process had taken inordinately long.

Committee Recommendation
The Accounting Officer to avail a status report to the Committee within three (3) motnhs of adoption of this report.

818. Contingent Liabilities
Note 16.2 to the financial statements reflects a contingent liability of Kshs.402,494,393 relating to a contractor. The liability arose from an arbitral award to the contractor on the matter of arbitration between the contractor and the then Ministry of Local Government. The arbitral award was for two (2) contracts under the Nakuru Town Roads Project contract no. PKA/16A of Kshs.100,726,453 and PKG/16A of Kshs.301,767,941 outstanding since 31 October, 2017 and 3 June, 2018 respectively. Although the State Department had paid Kshs.305,999,999 as at 30 June, 2021, the two (2) arbitral awards had accumulated additional compound interest of Kshs.283,504,982 and additional cost of Kshs.5,390,215 both totalling to Kshs.288,895,197. The additional amount of Kshs.288,895,197 represents an avoidable expenditure for which no value for money was obtained.

Submission from the Accounting Officer
The Accounting Officer submitted 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 was an arbitral award to the contractor which was not paid due to insufficient budget.

The Accounting Officer also submitted that there have been major budget cuts in the two years since then, thus hampering the remittance and committed to ensure that the pending bills are cleared once the National Treasury avails the requisite budget.

The Accounting Officer further submitted that the bulk of the amount accrued when the principal amount had not been paid and it was by the then Ministry of Local government that ended in 2013. The then Transitional Authority made a broad agreement with stakeholders not to pass over liabilities to counties and the same gazetted. In this case, the liability stayed with the National government.

Committee Observations and Findings

The Committee noted that Accounting Officer delayed to pay the arbitral award which lead to accumulation of interest thereby amounting to wasteful expenditure.

Committee Recommendation

The Committee recommends that the Accounting Officer pursues negotiation to waive the accrued interest and prioritizes settlement.

819. 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 amounted to Kshs.873,395,571 leading to an under performance of Kshs.651,198,429 of the full potential. Further, for the Government houses occupied by the County Governments' staff, deductions made through the respective payrolls were not remitted in full to the State Department.

Consequently, rent income due to 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 AppropriationsIn-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

The Accounting Officer submitted that the Department recorded a shortfall of Kshs.651,198,429 against the expected total of Kshs.1, 524,585,000 in rent from 56,892 houses during the year under review. The shortfall arose from the following: -

(i) A total of Kshs. 42,714,265 was deducted from tenants by various MDAs but was not remitted to the State Department despite addressing demand letters to the particular MDAs;

(ii) A total of Kshs. 251,084,922 was owed by County Governments. A letter was addressed to Council of Governors to that effect;

(iii) A total of Kshs.72,331,200 was not collected from 2,502 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; and

(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.

The Accounting Officer also submitted that in order to scale up rent collection efficiency, the State Department instituted several measures which have resulted in a steady increase in overall annual collection over the last four (4) years as depicted in Table below: -

SUMMARY OF RENT COLLECTION EFFICIENCY	
FINANCIAL YEAR	RENT RECEIPTS
2016/2017	83,596,990.00
2017/2018	299,084,080.00
2018/2019	230,192,826.00
2019/2020	665,117,909.00
2020/2021	873,258,124.00
2021/2022	1,053,809,702.00

The Accounting Officer further submitted that it was comfortable with the check off system of collecting rental income as it was cumbersome to chase tenants around for rent. Some MDAs run the amounts on their payroll and do not remit.

Committee Observations and Findings

(i) The Committee noted that the Accounting officer admitted that there was uncollection of revenue from the houses; and

(ii) The Committee also noted with concern that some houses were irregularly alienated while some were in dilapidated conditions thereby amounting to failure to perform duty bestowed upon the office by the Accounting officer.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to comply with regulation 43 of the PFM 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.

(ii) The Committee recommends that the Accounting Officer avails a total inventory of government houses including houses that have been alienated, within three months of adoption of this report.

820. Boarded Houses

Examination of records on boarded houses countrywide revealed that several houses were either encroached, condemned or demolished, transferred to other entities, or converted to office for commercial use. The State Department does not have an updated inventory of all houses countrywide which could be used to approximate the rent receivable from Government houses. In the absence of updated records, the extent of unrealized revenue from such boarded houses could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted 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 2,502 houses were identified and removed from the register.

Committee Observations and Findings

(i) The Committee observed that the asset register still had some boarded houses; and

(ii) The Committed also noted failure to perform duty bestowed upon the office by the Accounting Officer in management of the houses.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to manage assests as required under section 72 of the PFM Act; and

(ii) The Committee recommends that the Accounting Officer avails a total inventory of government houses including houses that have been encroached, within three months of adoption of this report.

821. 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 had been abandoned at 85% completion stage. Management has not provided any evidence of efforts towards resumption of the works.

Under 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

The Accounting Officer submitted that the above project comprises the construction of 100 units at Emali AP camp. The above project was awarded to M/S Buildmart Solutions Ltd under Phase 1A of Police Housing Projects. The Contractor requested for a 4th extension of the contract period of 135 weeks up to 31st December, 2020. The request was declined by the State Department given that the Contractor had performed poorly on the other extensions granted. The contractor abandoned the site without giving notice to the Project Manager.

The Accounting Officer also submitted that the project performed poorly as a result of intermittent exchequer provisions as well as the poor performance by the contractor. In that regard, it was agreed that a mutual termination be undertaken. The State Department for Public Works have completed the re-measurements, which advised on the dues to the Contractor to ensure the Mutual Termination process is completed. The Accounting Officer reiterated that the State Department will embark on the procurement of a new contractor to ensure the project is completed.

The Accounting Officer confirmed that the mutual termination had been done and was just waiting for the exchequer release to discharge the contractor.

Committee Observations and Findings

The Committee observed that the there is need to recover liquidated damages from the contractor for delayed performance.

Committee Recommendation.

The Accounting Officer should recover liquidated damages from the contractor for delayed performance pursuant to section 140 of the Public Procrement and Asset Disposal Act, 2015, within three (3) motnhs of adoption of this report.

822. 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 Accounting Officer submitted that residential houses register has since been updated and is available in soft copy since it is a very bulky document and could not be made available in hard copy.

The Accounting Officer also submitted that the Human Resources Manual and Policies for Public Service (Section D) mandates the State Department to develop guidelines for housing allocation. Towards this end, the Department has developed a tenancy rules and regulations governing occupation of Government Houses, and House allocation guidelines showing processes and procedures followed in the allocation process.

Committee Observations and Findings

The Committee noted that the Accounting officer failed to keep an updated asset register pursuant to regulation 139 (1) of the PFM National Government Regulations 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to keep an updated asset register pursuant to regulation 139 (1) of the PFM National Government Regulations 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

823. Digitization of Estate Management
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.

Submissions by the Accounting Officer
The Accounting Officer submitted that the department runs largely on a manual system. The Department advertised for ERP system but did not get a responsive bidder after evaluation hence re-advertised.

Tender evaluation was done and a contract awarded. An aggrieved bidder challenged the award in court and the matter is still pending in court.

Committee Observations and Findings
The Committee noted that the State Department may have mismanaged the process leading to unnecessary litigation.

Committee Recommendation
The State Department avails a status report to the Committee within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA INFORMAL SETTLEMENT IMPROVEMENT PROJECT NO. P113542

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
824. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter
825. Special Account Reconciliation
The statement of receipts and payments reflects nil proceeds from domestic and foreign grants as disclosed under Note 2 to the financial statements. However, and as previously reported, this excludes amounts withdrawn but yet claimed of USD12,609,173 equivalent to Kshs.1,295,554,554 as at 30 June, 2021 reflected in the Projects special account statement. The amount represents cumulative funds transfers to the Project bank account, but whose expenditure returns had not been submitted to The National Treasury by the close of the financial year.
My opinion is however not modified on the effects of the above matter.

Submission by the Accounting Officer
The Accounting Officer submitted that during the year under review, a total of USD 12,998,243.20 was documented through 6 withdrawal applications as shown below.

S/NO	Documented Amount (USD)	Date received by NT

WA10	1,014,840.25	04/09/2020
WA10A	3,551,284.20	29/01/2021
WA11	1,580,680.28	29/01/2021
WA12	1,999,444.25	08/03/2021
WA13	4,724,678.50	19/04/2021
WA14	127,315.72	19/04/2021
Total Amount	**12,998,243.20**	

The special account reconciliation has since been revised to indicate all amount has been documented.

Committee Observations and Findings
The Committee observed that the Accounting Officer did not provide expenditure returns of the project account to the National Treasury.

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to comply with basic accounting procedures.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
826. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
827. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

828. As required by the International Development Association (IDA), except for the matter under emphasis of matter, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, 258 were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NAIROBI METROPOLITAN SERVICES IMPROVEMENT PROJECT (IDA CREDIT NO.5102-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

829. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

830. Pending Bills

Note 12 .1 to the financial statements on pending accounts payable reflects pending bills balance of Kshs.20,300,335 as at 30 June, 2021. The balance comprises of Kshs.769,723 under construction of civil works and Kshs.19,530,612 under supply services which remained unpaid as at 30 June, 2021. Failure to settle bills during the year in which they relate adversely affects the provisions of the subsequent year to which they form the first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statements on pending accounts payable reflected pending bills of Kshs. 20,300,335 as at 30 June, 2021. The balance comprises of Ksh.769,723 under construction of the civil works and Kshs. 19,530,612 under supply of services, which remained unpaid as at 30th June, 2021.

The Accounting Officer also submitted that the pending bills arose from an insufficient budget provision in F/Y 2020/21. However, in the FY 2021/22, the State Department received a budget provision of Kshs.100 million and cleared the pending bill amounting to Kshs.20,300,334.55.

The Accounting Officer reiterated that all its pending bills have now been cleared.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as first charge as required under regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendation

(i) **The Committee admonishes the Accounting Officer for failing to settle pending bills as first charge as required under regulation 42 of the PFM National Government Regulations, 2015.**

(ii) **The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

831. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

832. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

833. As required by International Development Agency (IDA) and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of 259 the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KENYA URBAN SUPPORT PROGRAM (IDA CREDIT NO.6134 KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

834. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

835. Pending Bills

Note 12.1 to the financial statements reflects pending accounts payables of Kshs.2,567,156 as at 30 June, 2021. Management did not give reasons for non-payment of the bills, which exposes the Project to the risk of incurring significant interest costs and penalties due to the continued delay in making payments. Further, failure to settle bills during the year to 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

The Accounting Officer submitted that the financial statements reflect pending accounts payable of Ksh. 2,567,156 as at 30 June, 2021. However, the pending payments of Ksh.1,227,756 formed the first charge in 2021/2022 Budget and the pending bills under the program have since been paid.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not settle pending bills as first charge as required under regulation 42 of the PFM National Government Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure outstanding pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

836. Delayed Counterpart Funding

The statement of receipts and payments reflects a grant of Kshs.358,811,292 received from International Development Association and Kshs.102,998,907 counterpart funding from the Government of Kenya. The total cumulative counterpart funding from the Government of Kenya as at 30 June, 2021 stood at Kshs.182,873,288 representing 9% of the total counterpart financing projection. With the expected closing date of the project set at 31 July, 2023, it is doubtful that the counterpart financing balance of Kshs.1,885,126,712 or 91% will be disbursed to the project activities before 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

The Accounting Officer submitted that the Project has cumulatively received Ksh.182,873,288. However, the nature of KUSP Financing, as per the Financing Agreement and Project Appraisal Document, is for the Development Partner to first disburse the funds for the Setup of the Participating Counties activities followed by GOK disbursements in the subsequent years for monitoring and evaluation.

The Accounting Officer also submitted that the budget for the year 2021/2022 has been increased to Kshs.200 Million and the budget for the year 2022/2023 will be significantly increased. GOK financing is also expected in the outer years for the Project implementation.

The Accounting Officer further submitted that there will not be a project extension and that the project will absorb all the funds by the close of the financial year 2022/2023.

In addition, the Accounting Officer submitted that the program has made significant positive impact to many urban areas particularly where there has been frequent flooding, the project has saved lives.

Committee Observations and Findings

(i) The Committee observed that the delay in counterpart funding was occasioned by the National Treasury; and

(ii) The delay in counterpart funding could result in wasteful expenditure in the form of interest for delayed payment to contractors.

Committee Recommendations;

The Accounting Officer for the National Treasury should comply with regulation 72 (6) of the Public Finance Management (National Government) Regulations, 2015 which requires the National Government to appropriate counterpart funds appropriately.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

837. Projects Implementation Status

837.1. Proposed Construction of Parking Lots and Installation of Solar Powered Street Lights (Turkana County)

The County Government of Turkana entered into a contract agreement vide contract No.TCG/LEH&UM/120/2019-2020 with a local contractor on 26 January, 2021 for the construction of parking lots and installation of solar powered street lights at a contract sum of Kshs.94,428,477 for a one-year duration. According to a progress report prepared in October, 2021, 46% of works was complete with a cumulative expenditure of Kshs.41,639,876 equivalent to 44% of the contract sum, with only two months remaining to the end of the contract. Review of the performance bond revealed that the contractor provided one for Kshs.1,888,570 which was valid from 10 October, 2020 up to and including 28 April, 2021 instead of the required Kshs.9,025,000 an indication that the performance bond provided was less by Kshs.7,136,430. As at the time of the audit in November, 2021, the performance bond had not been renewed.

In view of the foregoing, the delayed implementation of the project works is likely to affect service delivery to the residents of Turkana County. Further, there could be loss of public funds should the contractor fail to complete the project as expected, in view of the expired performance bond.

Submission by the Accounting Officer
The Accounting Officer submitted that the delay in commencement of works was occasioned by lack of environmental impact assessment report which was not in place. The site visit was optional because at that time person to person contact was restricted due to threats of outbreak of Covid-19. The Accounting Officer also submitted that the Management has written to the contractor Ms. Ewoi Building Contractors for a new performance bond worth Ksh. 9,025,000 covering lifespan of the project. The contractor has provided a performance bond of Ksh. 6,609,993 that expires on May 2024.

The Accounting Officer reiterated that the project has since been completed but the official handing over has not been done.

The Agency complained of being taken to task on projects that are being handled by counties including budgets, an issue the Agency said was also discussed by the previous PAC.

Committee Observations and Findings
The Committee observed that Accounting Officer had not renewed the performance bond for about 6 months thereby failing to discharge his fiduciary duty.

Committee Recommendations'
The Committee admonishes the Accounting Officer for failing in his fiduciary duty by failing to renewed the performance bond for about 6 months

837.2. Construction of Kaloleni Community Centre (Kisumu County)
The County Government of Kisumu entered into a contract agreement vide contract No.CGK/COK/KUSP/W/2019-2020/03-3, with a local contractor on 7 August, 2020. The works were for the construction of Kaloleni Community Centre for a period of one year at a contract sum of Kshs.151,468,960. During the year under review, the contractor was paid Kshs.28,853,508 on 23 September, 2020 as payment for interim certificate No. 1. However, a physical verification of the project in October 2021, revealed that the works were behind schedule at estimated completion of 37% while the contract period had exceeded the completion date of 6 August, 2021 by about 2 months.
In view of the foregoing, the delayed implementation of the project works are likely to adversely affect service delivery to the residents of Kisumu County.
Submission by the Accounting Officer

The Accounting Officer submitted that the City of Kisumu entered into a contract for agreement vide contract No.CGK/COK/KUSP/W/2019-2020/03-3, with Polish Contractors Company Limited on 7 August 2020 for the construction of Kaloleni Community Centre for a period of one year and at a contract sum of Ksh.151,468,960. During the year ended 30 June, 2021, the contractor had been paid Ksh.28,853,508 on 23rd September, 2020 as payment for interim certificate number one. Further, site audit verification of the project carried out by the auditor in the month of October 2021, identified that the works at the site were behind schedule and estimated at a status of 37% completion.

The Accounting Officer also submitted that the delay in the implementation of the project was occasioned by prolonged stakeholder consultations during the design review process, time taken for relocation of services and unavailability of materials, all accounting to 30 weeks lost time. The contractor requested for an extension of the contract due to the challenges outlined in the same request and this was deliberated on and approved via minutes dated 2nd August, 2021. The actual commencement date for the project was adjusted from 21st August, 2020 to 22nd March, 2021.

The works at the site has progressed well as per the revised works programme and is estimated to be at 37%.

Committee Observations and Findings

(i) The Committee found the explanation given by the Accounting Officer regarding the cause of the delay to be unsatisfactory;

(ii) The Committee also observed that Kaloleni Community Centre was at 68% completion;

(iii) The Committee observed that the Kisumu County Government made payments based on measured certificates, which accounted for 19% of the contract amount;

(iv) The Committee also noted that project was not within the contract period as it was suspended due to constraints in financial disbursement.

Committee Recommendation

The Accounting Officer should collaborate with the Kisumu County Government to ensure timely completion of the project and realization of value for money.

837.3. Supply, Delivery, Installation, Commissioning and Testing of an Incinerator at TB Manyatta-Wajir Town. (Wajir Municipality)

The County Government of Wajir entered into an agreement with a local contractor vide contract No.WCG/OT/MUNI/05/2019-2020, for the supply, delivery, installation, commissioning and testing of an incinerator at TB Manyatta-Wajir Town at a contract sum of Kshs.14,234,910 for a duration of three (3) months starting 30 November, 2019. As at the time of the audit verification exercise in November, 2021, total payment of Kshs.13,089,939 or about 92% of the contract sum had been paid to the contractor. According to the project status report dated 19 June, 2021, significant work on the ground had been completed. However, the incinerator had not been tested since the required three-phase power line had not been installed. Further, a resident of the County moved to the High Court at Garissa and filed petition No. 4 challenging the project's implementation on grounds that it was harmful to the residents surrounding the proposed site of the incinerator. The matter was heard and the Court found that the setting up of the incinerator possesses potential harm to the residents.

In the circumstances, the residents of Wajir County may not get value for funds already invested on the Project.

Submission by the accounting officer

While the project was nearing completion stage, having done the construction of the building and equipment supplied in full, the contractor demanded the second phase payment so as to enable him facilitate the completion of the project. As soon as the project was done only awaiting commissioning, two individuals took the matter to court which led to the disruption of the process. The county management responded to the litigation by making submissions to the court after a suit was filed on 26th June 2020 at Garissa High court by petitioners appropriately through a law firm. On 30th September 2021 the court following determinations arising from the parties submissions made a seven points declarations.

The county has since appealed the court declarations/ruling.

Committee Observations and Findings

(i) The Committee noted that the impact assessment was not conducted before commencement of the project; and

(ii) The Committed also noted that the matter is still active in court since there is an appeal.

Committee Recommendation

(i) The Committee admonishes the Accounting Officer for failure to conduct an impact assessment before commencement of the project; and

(ii) The Accounting Officer should report on the status of the appeal to the Committee with three (3) motnhs of adoption of this report.

837.4. Construction of Central Fire Station and Fire Management System (Kisumu Municipality)

The County Government of Kisumu entered into a contract agreement vide contract CGK/COK/KUSP/W/2018-2019/01 with a local contractor on 3 April, 2019 at a contract sum of Kshs.255,022,996. The works were for the construction of a Central Fire Station and a Fire Management System for a period of one year. During the year under review, the contractor was paid Kshs.66,593,454. However, a site audit verification carried out in the month of November 2021, indicated that the works had stalled at 76% completion and the contractor was not on site. This is despite the expected completion date of 3 April, 2020 having been surpassed by more than one year.

No reason was provided for failure to complete the Central Fire Station and Fire Management System according to schedule.

Submission by the Accounting Officer

The Accounting Officer submitted that the County Government of Kisumu entered into a contract agreement vide contract CGK/COK/KUSP/W/2018-2019/01 with Damtech Enterprises Limited on 3 April 2019 and that works were for the construction of a Central Fire Station and a Fire Management System for a period of one year and at a contract sum of Ksh.255,022,996. It is also true that during the year ended 30 June, 2021, the contractor was paid Ksh.18,126,644 on 10 December, 2020 as payment for interim certificate No. 2, Kshs.24,233,405 on 04 February, 2021 as payment for interim certificate no 3 and Kshs.24,233,405 on 19 February, 2021 as payment for interim certificate no 4. However, during the audit period, a site audit verification of the project carried out in the month of November 2021, identified that the works at the site had stalled at 76% completion and the contractor was not on site.

Committee Observations and Findings

(i) The Committee observed that Kisumu County Government over budgeted for the project;

(ii) The Committee also observed that there is need to recover liquidated damages from contractor for the delayed project.

Committee Recommendation

(i) The Accounting Officer should recover liquidated damages from the contractor for the delayed project;

(ii) The Accounting Officer should collaborate with the County Government to ensure timely completion of the project and realization of value for money; and

(iii)The Committee strongly urges the County Government of Kisumu to carry out projects within their allocated budget.

837.5. Construction of a Fire Station and Structural Improvement to Uhuru Garden (Kericho Municipality)

The County Government of Kericho entered into a contract agreement vide contract No.CGK/KUSP/LHPP/003/2018/19 with a local contractor on 23 May, 2019 at a contract sum of Kshs.46,942,144. The works were for the construction of a fire station and improvement and beautification of Uhuru Gardens within Kericho town for a period of one year. During the year under review, the contractor had been paid Kshs.7,743,570. According to the contract, the procured works which included the supply of a firefighting truck at a cost of Kshs.14,000,000 were to be completed by 29 August, 2020. However, a project site visit in the month of November, 2021 established that the project works had stalled and the contractor had abandoned the site. However, completion of an Art and Performance Center at Uhuru Gardens, completion of toilet block at Uhuru Gardens, painting of fire station with three coats of bituminous paint and procurement of the fire-fighting truck works were still outstanding.

Although the contract period was subsequently extended to 31 December, 2021 vide a letter dated 10 July, 2021, it remains doubtful whether the outstanding works will be completed within the revised timeline therefore casting doubt whether value for money on this project will be achieved.

Submission by the Accounting Officer

The Accounting Officer submitted that the works at Uhuru Gardens and Fire Station Construction site has had a slight Delay. The Project was affected by Covid-19 Pandemic, and additional works that were considered very necessary. The original Bills of Quantities had omitted Landscaping works and there was also a modification of the art theatres structural design (Additional of a canopy). However, the issues have been addressed and the contractor is now on site. The project is set to be completed on or before 3rd May 2022.

Secondly, the Fire station Project stands at 98% complete safe for Painting and Minor correctional works. The contractor was requested by management to leave the painting works until all other ongoing works around the Fire station are completed. The ongoing works include the laying down of the Cabro Pavement among other intensive activities that had potential of affecting the final

Painting works of the Fire station. All the works at the Fire station including the necessary paint works shall be completed by 31st January 2022.

Finally, the Contractor encountered the challenge in delivering the Fire Fighting Truck whose provision was priced at Ksh 14 Million. This was occasioned by the Changes in Pricing of the equipment due to the impact of the Covid-19 pandemic. Management has since secured Additional Funds to have the equipment Delivered and this is expected to happen on or before 3rd May 2022.

The Accounting Officer regretted the failure to provide valid performance bond for Contract No-CGK/LHPP/KUSP/003/2018/2019.

Committee Observations and Findings

(i) The Committee acknowledged the completion of the fire station and the launch of Uhuru Gardens by the Governor on 14th February 2022. It was further observed that the fire truck has been delivered and is currently being utilized; and

(ii) The Committee recommends that the matter is resolved.

837.6. Construction of Qorahey Market in the Township Sub County (Garissa Municipality)

The County Government of Garissa awarded a contract for the Construction of Qorahey Market in the Township Sub-County to a local contractor at a contract sum of Kshs.83,959,580. The works commenced on 23 September, 2019 (as per the work program) and the completion date was indicated as 15 June, 2021 which was later revised to 15 September, 2021. As at the time of the audit in November, 2021, a total of Kshs.74,841,042 out of Kshs.83,959,580 representing 89% of the contract sum had been paid to the contractor.

Further, a site visit to the project on 29 October, 2021 revealed that the works had stalled with parapet walling and plaster to the main market hall, installation of doors, floor screed in open market hall, electrical and major mechanical installation works including supply of water and paint works and eaves filling with masonry works, storm water drainange, control and dustbin cubicles works outstanding. It was also noted that the performance bond for the contract had expired and it had not been renewed as required of the Contractor.

Failure to deliver the project as expected may have an impact on service delivery to the residents of Garissa County. Further, the expired performance bond exposes the Project to possibility of loss should the contractor fail to deliver the project as per the contract terms.

Submission by the Accounting Officer

Audit finding that the contractor was paid 89 percent of the project is not true. The contractor was paid an amount equivalent to Kshs 69,152,549 representing 82 percent of the contract sum.

The contractor renewed the performance bond as required.

All the unfinished work as at the time of the audit on 29th October, 2021 has been fully completed. A copy of the project engineers report has been provided.

Project completion status stands at 95 percent. Contractor is currently not on site and has defaulted on the contractor citing non-payment of IPC No. 6which is exclusively for the variation of works above the capped 5 percent variation as per the POM-VOL-I for the Kenya Urban Support Program.

So far the Interim Payment Certificate No. 6 has been raised and forwarded to the county treasury for payment.

All the works have been done and completed except;

i) Burglar proofing of individuals stalls
ii) KPLC connection with 3-phase power
iii) Individual metering of the stalls /shops
iv) Water connection

Committee Observations and Findings

(i) The Committee observed that Accounting Officer/ County Government had not ensured renewal of the performance bond for about 6 months thereby failing to discharge his fiduciary duty; and

(ii) The Accounting Officer should collaborate with the Garissa County Government to ensure timely completion of the project and realization of value for money.

Committee Recommendations'

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.7. Delay in Operationalization of Homabay Municipal Market (Homabay Municipality)

The County Government of Homabay entered into two contract agreements, vide contract No.HBC/HBM/KUSP/001/2018-2019 on 27 May, 2019 for the construction of Homabay Municipal Market at a contact sum of Kshs.117,983,729 and contract No.HBC/HBMB/KUSP/TOO1/2020-2021 on 14 October, 2020 for proposed civil, electrical and mechanical works at a contract sum of Kshs.49,875,800, both totalling to Kshs.167,859,529.

A site verification carried out in the month of November, 2021, revealed that, although the market works had been completed, the contractor had not handed over the project to the County Government, seven months after the last payment. As a result, the market had not been operationalized, thus delaying service delivery to the residents of Homabay County.

Submission by the Accounting Officer

The Accounting Officer submitted the following:

(i) Practical Completion

The County Government of Homa Bay through the Chief Officer Roads, Transport & Public Works and the project manager (Homa Bay Municipal Manager) issued practical completion certificate for construction of Homabay Municipal market at a contract sum of Ksh 117,983,729 (Contract No. HBC/HBM/KUSP/001/2018-2019) and proposed civil, electrical and mechanical works at a contract sum of Ksh 49,875,800 (contract No. HBC/HBMB/KUSP/T001/2020-2021) on 23rd September, 2021.

(ii) Handing over of the Project

The contractor through his letter ref:D/HMBAY/NO.1 and dated 16th November 2021 handed over the projects contract No. HBC/HBM/KUSP/001/2018-2019 construction of Homabay Municipal market and contract No. HBC/HBMB/KUSP/T001/2020-2021 – proposed civil, electrical and mechanical works to the County Government of Homa Bay through the Chairman, Homa Bay Municipal Board.

(iii) Operationalisation of the Homa Bay Municipal Market

The County Government of Homa Bay through the office of the Homa Bay Munipal Manager and the market zoning committee has embarked on the zoning of the market open stalls/spaces and tagging/labelling of the stalls to inform the allocation of stalls to the traders. The committee has come up with the proposed zoning advisory plan for the market.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer failed to provide a satisfactory explanation for the delayed handover of Homabay Municipal Market, despite the completion of the market works;

(ii) The Committee noted that the Accounting Officer attributed the delay in the handover to the Covid-19 pandemic, which raised concerns about how the pandemic could affect the handover of a market that had already been completed;

(iii)The Committee observed a contradiction between the handover dates and the dates when the market became operational, particularly in relation to the formation of the zoning committee, which occurred prior to the handover.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.8. Upgrading to Bitumen Standards of B3 Chebirir - Bomet University Road - (Bomet Municipality)

The construction works for the Chebirir - Bomet University Road were awarded to a local contractor at a contract sum of Kshs.67,163,280. As at the time of the audit verification exercise, a total of Kshs.64,240,612 had been paid to the contractor. However, physical inspection undertaken in October 2021 revealed that the road works had not been done to completion as was expected. However, the drainage works was not duly completed and loose soil along the edges of the road/on walkways had not been compacted. Further, culverts on access points along the road had not been duly fixed as per the Bills of Quantities.

This cast doubt on whether there was value for money on this Project.

Submission by the Accounting Officer

The Accounting Officer submitted the following:

(i) Drainage works not duly completed;

Sections of drainage lines found loose were those vandalized by new residents who bought plots immediately the road improvement works began in June 2020 who, by their own, created accesses where there were no provisions in the plan. Damages on some sections of the drainage line were reported on October after the lapse of the defect's liability period. However, the road has entered its routine maintenance, as of Friday 5th May 2023, 8 weeks after the lapse of the defect's liability period.

(ii) Walk-ways not compacted

Field density tests were done by the States department of material testing on 16th November 2020 for the base course which included the shoulders; these tests were done to establish the levels of compaction on the layers of the road. The quality certificate from the state department was shared with the resident engineer and the inspection committee for purposes of quality control. From the quality control certificates, field density tests for the Right-Hand Side (RHS) showed compaction averaging at 82% MDD and Left-Hand Side averaging at 83% MDD. The field density test result qualified the compaction levels for the sub-base and base for the whole road cross-section.

(iii) Culverts on access points not duly fixed

Sections of drainage lines found loose were those vandalized by new residents who bought plots immediately the road improvement works began in June 2020 creating accesses where there were no provisions in the plan; access culverts provided in the bills of quantities were 84 Linear meters even though the contractor was instructed to install a total of 140 meters of the access culverts. 140 meters of the culverts were not sufficient yet for all residents including the new residents who were pulled by the new road development.

The construction of Chebirir Bomet university road to bitumen standards made many people purchase land for development or speculative purposes. The land parcels along the new road began to be subdivided. The new prospective developers demand more culverts and access than had been factored in in the designs and BQs. Some had made the culverts for access to their parcels of land on their own, this affected the drainage in some sections. The contractor has since been recalled and has made the necessary corrections on the affected spots.

In the future, more provisions will be provided in the design and BQ to take care of unexpected increases in the demand for access culverts.

Committee Observations and Findings

(i) The Committee deemed the answer provided by the Accounting officer to be unsatisfactory as it did not answer the audit query;

(ii) The Committee observed that the road design was not user friendly and was not projected for future use;

(iii) The Committee noted that the project was completed and the contractor was issued with completion certificate;

(iv) The Committee also observed that the Bomet County Government did not engage in public participation during the road design phase;

(v) The Committee raised concerns about the allocation of Ksh. 67,163,280 for the construction of a one (1) km road, considering the road constructed was a low volume road;

(vi) The Committee noted that there were close to thirty-five (35) access culverts across the road; and

(vii) The Committee concluded that it was necessary to visit Bomet University Road in order to assess the value for money.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.9. Upgrading to Bitumen Standards of Galbet Township Access Road (Garissa Municipality)

The County Government of Garissa entered into a contract No.CGG/KUSP/T/006/2019- 2020 with a local contractor on 29 July, 2020 for the upgrading to bitumen standards of Galbet Township access road, at a contract price of Kshs.81,825,853. The contract was to be completed in six (6) months starting 1 October, 2020.
The following unsatisfactory observations were noted during the audit verification exercise carried out in October 2021: -

837.9.1. Undelivered Motor Vehicle
Physical verification exercise carried out on 29 October, 2021 established that a motor vehicle, 4-wheel drive fully loaded double cabin pick-up of diesel engine capacity 2800 cc, used during the implementation of the project had not been delivered to the Municipality as at the time of audit yet it had been factored in the project.

837.9.2. Project Status and Quality of Work
The monthly progress report for August, 2021 revealed that the progress of permanent works stood at 98%. The report also showed that as at August, 2021 payments totalling Kshs.56,586,346, or 61% of the contract sum, had been certified and paid. During the audit verification exercise, it was noted that the drainage works on the road had not been done to the standard requirements and was filled with silt, which may result to flooding of the carriage way during the rainy season.
In addition, the contractor was required to provide a bank performance bond of 10% of the contract sum within seven (7) days. However, the performance bond provided was valid from October, 2020 to January, 2021 (only 3 months) while the contract period was for six (6) months. Management have not explained why the performance bond was not renewed to reflect the full term of the contract and hence likelihood of risk exposure should the contractor fail to complete the project.

Submission by the Accounting Officer

i)**Undelivered motor vehicle**

The contractor failed to deliver the motor vehicle as required by the contract after the completion of the project. The contractor had not been paid for the motor vehicle since he failed to deliver the vehicle as stipulated in the project bill of quantities and hence there was no loss of money in the process. Bank statements which shows the difference between the contract price vis a viz the actual amount paid have now been provided.

ii)Project status & quality of work

Performance bond- Contractor provided the performance bond for the said period remaining (3 months) which have been now availed.

Drainage work- The access culverts and the cross culverts were installed subject to the standards required as stipulated in the projects bill of quantities and project design. The culverts and the drainage system were filled with all forms of disposable wastes by the communities around the road who are using the drainage system as dumping site. Municipality officials undertake clean-up of the drainage before and after the rains.

Committee Observations
(i) The Committee observed that motor vehicle is still in the possession of the contractor; and
(ii) The Committee observed that Accounting Officer had not renewed the performance bond for about 3 months thereby failing to discharge his fiduciary duty; and

(iii) The Accounting Officer should collaborate with the County Government to ensure timely completion of the project and realization of value for money.

Committee Recommendations

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.10. Proposed Construction of Multi Storey Business Complex (Kitale Municipality)

837.10.1. Delay in Commencement of Works and Advance Payment to Contractor

The County Government of Trans Nzoia entered into a contract agreement vide contract CGTN-CP/T012/2017-2018 with a local contractor for the construction of a multi storey business complex on 25 June, 2018 at a contract sum of Kshs.874,280,383.

However, the following anomalies were noted regarding the project:

i. Review of project documents revealed that there was delay in commencement of works given that it was awarded to the contractor on 7 June, 2018 but later commenced on 10 June, 2019 which is about 12 months later.

ii. Review of project payment details revealed that the contractor was paid an advance payment lumpsum amount of Kshs.174,856,076 or 20% of the contract sum on 26 June, 2019. This was contrary to the contract terms which stated that one half of the advance requested should be certified by the engineer following presentation by the contractor of an invoice for the same as well as presentation of an irrevocable and unconditional performance guarantee. Further, the second half of the advance was to be payable after commencement date after it had been certified by the engineer, following the presentation by the contractor of an invoice for the same, and when the engineerwas able to certify that the contractor had mobilized sufficient personnel and equipment to commence works according to the programme. Further, advance payment was agreed at 20% of contract sum with 10% of advance payment to be paid prior to commencement of works but to be certified by an Engineer and the other 10% of advance payment to be paid after commencement of works, and certified by an Engineer. However, Management paid the full 20% of the advance payment prior to the commencement of works and did not follow the provisions of the contract terms.

iii. The tender documents provided for audit review stated that the minimum amount of interim payment certificate was 5% of the accepted contract amount, this being Kshs.43,714,019. Review of the project interim payment certificates revealed that interim payment certificate No.03 amounted to Kshs.21,171,163 and interim payment certificate No.04 amounted to Kshs.37,588,622 which is less than the minimum amount required by Kshs.22,542,856 and Kshs.6,125,397 respectively.

Delayed implementation in project works is likely to affect service delivery to the residents of Trans Nzoia County.

Submission by the Accounting Officer

The contract was signed in anticipation of receiving funds under KUSP. There was delay in the release of funds being received towards the end of December 2018 which was largely earmarked to fund the project. The advance payment was made pursuant to the provisions of Section 146 and 147 (i) the Public Procurement and Asset Disposal Act 2015 together with attendant regulations. Guided by the same Act, and on the production of the necessary security and on recommendation from the Project Coordinator, Quantity Surveyor and the Consultant the payments were made constituting 20 percent of the contract price. However, the recommendations made while implementing future projects to ensure alignment of our contract documents to the applicable law have been noted.

Current Status

The construction of the business complex is currently at 91 percent physical progress and the amounts retained to date is Ksh. 43,901,028

Committee Observations and Findings

(i) The Committee observed that there is need for greater diligence, care and focus on duties in the implementation of this project; and

(ii) The Committee also observed that the Accounting Officer did not comply with the provisions of the contract in the advance payment.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office in failing to adhere to the provisions of the contract contrary to section 68 (2) (d) which mandates an Accounting Office to ensure contracts entered into are complied with.;

(ii) The Accounting Officer should collaborate with the County Government to ensure timely completion of the project and realization of value for money.

837.10.2. Payment of Retention Money Before Completion of the Project - (Kitale Municipality)

During the audit it was noted that the contractor was paid an amount of Kshs.87,453,123 being the net of interim payment certificate No. 2 valued at Kshs.102,553,197 on 20 April, 2020. It was further noted that Kshs.10,255,320 was deducted from the above payment being 10% retention fee. However, this retention fee was paid to the contractor on 24 July, 2020 after 3 months. It was not clear why the contractor was paid the retention fee before full completion of the project. This is contrary to Section 151(2)(h) of the Public Procurement and Asset Disposal Act, 2015 which states that for the purpose of managing complex and specialized procurement contracts, the contract implementation team shall be responsible for ensuring that the contract is complete, prior to closing the contract file including all handover procedures, transfers of title if need be and that the final retention payment has been made.

Submission by the Accounting Officer

The amount in question (Ksh. 10,255,319.70) was erroneously deducted which had amounted to double retention after going through the interim payment certificates and the Quantity Surveyor's valuation. The anomaly was realized after the Contractor raised the complaint.

The amount in question (Ksh. 10,255,319.70) in regard to the second Interim Certificate was erroneously deducted. The gross certified valuation amounted to Ksh. 276,435,031.00. The Consultant had considered deductions of previous payments and period retention which left a payable amount of Ksh. 102,553,196.90. The same was subjected to 10 percent retention. The Interim Certificate was paid in two parts of Kshs 87,453,123 and Kshs 10,255,319.70 to correct the over-retention.

Committee Observations and Findings

The Committee observed that there was negligence by officers of the county government in the erroneous double deduction of rentention money.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.11. Upgrading of Iftin-Waberi Access Road (Garissa Municipality)

Garissa Municipality entered into a contract agreement with a local construction company on 29 July, 2020 under contract No.CGG/KUSP/T/005/2019-2020 for the upgrading to bitumen standard of Waberi Iftin Access Road at a contract sum of Kshs.82,424,588 which was to be completed in six (6) months starting 1 October, 2020. The project was certified complete on 1 March, 2021. However, an audit verification of the project carried out in November, 2021, established that total payments amounted to Kshs.83,008,777 resulting in an unexplained over-payment of Kshs.584,189.

No explanation, by way of an approved variation of the contract was provided for the overpayment, this is an indication that value for money on this project may not have been attained and the Management had not recovered the over-payment from the contractor.

Submission by the Accounting Officer

The actual amount paid to the contractor as per the UDG bank statement is Kshs 82,836,756. This resulted to an overpayment of Kshs 412,168. The contractor was notified of the overpayment error and immediately credited an amount of Kshs 343,887 in the UDG account.

The Accounting Officer availed;

i) Bank statements showing actual amount paid to Ms Warsan construction and the amount paid to Ms Warsan Construction and the amount of 2 percent withholding tax and the 3 percent withholding income tax to identify the amount of overpayment
ii) Amount credited by Warsan Construction in the UDG as shown in the bank statements. Refer to the transaction date 24-08-2022.

Committee Observation and Finding

The Committee observed that there was negligence in the over payment made to the contractor.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

837.12. Motor Vehicle in the Name of Contractor

The Project's vehicle, a pick-up registration No. KDA 494Z, four-wheel drive fully loaded double cabin of diesel engine, capacity 2800 cc and whose value in the bills of quantities was Kshs.3,150,000, was still registered under the contractors' name instead of being under the ownership of the County Government of Garissa, seven months (7) after the project was certified complete.

Submission by the Accounting Officer

Contractor delivered the pick up registration No. KDA494Z to the municipality upon completion of the contract. The vehicle is duly registered in the name of the county and is now an official county government property. The Vehicle logbook has now been availed.

Committee Observation and Findings

The Committee noted that there was inordinate delay in transfer of ownership.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

838. Delay in Disbursement of Project Funds from County Revenue Fund (CRF) Account to Projects' Special Purpose Account

838.1. Kericho Municipality

During the year under review, Kericho County Government received an amount of Kshs.66,394,492 being an Exchequer issue for the Kenya Urban Support Program. The amount was disbursed for the implementation of planned projects for the financial year 2020/2021 and was deposited in the County Revenue Fund account on 6 July, 2021. However, by the time of audit in November, 2021, about 4 months after the date of receipt, the amount was still being held in the County Revenue Fund account and had not been transferred to the Project's special purpose account, an indication that the planned objectives from this project may not have been realized.

Submission by the Accounting Officer

The Accounting Officer submitted that the mentioned funds have been transferred to the UDG Special Purpose Accounts of the respective municipalities and the funds are being put to use to realise the planned objectives of the project.

Committee Observations and Findings

The Committee noted that the counties were not promptly transferring funds to the Special Fund Account upon receiving them. Instead, they were retaining the funds for up to four months and using them to cover other expenses.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

838.2. Lodwar Municipality

During the year under review, Kshs.52,439,839 was disbursed to Turkana County under the Urban Development Grant (UDG) and was received in the County Revenue Fund Account. However, examination of the bank statements and the cash book for Lodwar Municipality indicated that Kshs.27,058,921 had been transferred from the CRF account and was received in the Urban Development Grants (UDG) Special Purpose Account leaving a balance of Kshs.25,380,918. This amount had not been transferred to the UDG account as at the time of audit in November, 2021.

Submission by the Accounting Officer

The balance of Kshs. 25,380,918 was transferred to the UDG Special Purpose Account on 30th January 2022 as per the availed bank statement.

Committee Observations and Findings

The Committee noted that the counties were not promptly transferring funds to the Special Fund Account upon receiving them. Instead, they were retaining the funds for up to four months and using them to cover other expenses. and

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

838.3. Wajir Municipality

During the year under review, UDG disbursements to Wajir Municipality amounted to Kshs.51,866,063 which was received in the County Revenue Fund (CRF) account for Wajir County at the Central Bank of Kenya. Out of this amount, Kshs.24,462,565 had not yet been transferred to the UDG special purpose account as at the time of audit in November, 2021.

Submission by the Accounting Officer

The above mentioned funds have been transferred to the UDG Special Purpose Accounts of the municipality and the funds are being put to use to realise the planned objectives of the project.

Committee Observations and Findings

The Committee noted that the counties were not promptly transferring funds to the Special Fund Account upon receiving them. Instead, they were retaining the funds for up to four months and using them to cover other expenses.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

838.4. Garissa Municipality

Included in Annex 4 to the financial statements - Municipalities UDG receipts and expenditure reports, is an amount of Kshs.112,625,979 being disbursements to Garissa County for UDG funding. As at the time of the audit verification exercise in November, 2021, the funds had not been transferred to UDG Special Purpose Account. No reason was provided by the project management for the failure to transfer the funds to the project account.

Submission by the Accounting Officer

The above mentioned funds have been transferred to the UDG Special Purpose Accounts of the municipality and the funds are being put to use to realise the planned objectives of the project.

Committee Observations and Findings

The Committee noted that the counties were not promptly transferring funds to the Special Fund Account upon receiving them. Instead, they were retaining the funds for up to four months and using them to cover other expenses.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

839. Over Expenditure/ Budget Over run-Construction of Roads in Industrial Area Site and Service Kabati (Naivasha Municipality)

The approved budget for the proposed construction of roads in industrial area Site and Service Kabati project within Naivasha Municipality was Kshs.188,075,500. However, the total contract sum paid by the Municipality was Kshs.199,413,566 resulting in an unauthorized and unexplained over-expenditure of Kshs.11,338,066.

Submission by the Accounting Officer

The Accounting Officer submitted that the observation of the audit that at the time of the award of tender, the budget was 188,075,500 to be funded by a Conditional grant from the Kenya Urban Support Program (KUSP). The deficit to cover the extra costs of the project was to be covered by through the County resources (transfers from treasury). So far, the project has been fully implemented and it in use by the public. During the project implementation, an item on purchase of a project vehicle which could have cost Kshs 5,000,000 was forfeited. As such, the standing deficit to the project is 6,388,066.

The outstanding balance will be budgeted for payment in the Financial Year 2023/2024.

Committee Observations and Findings

(i) The Committee acknowledged that there was unauthorized and unexplained over expenditure amounting to Kshs.11,338,066.

(ii) The Committee noted that there was no approval sought from the County Assembly.

Committee Recommendation

(i) The Committee reprimands the county government for unauthorized and unexplained over expenditure of Kshs. 11,338,006; and

(ii) The Committee recommends that the amount of Kshs. 11,338,006 be surcharged against the responsible officer who made the unauthorized expenditure, within one (1) year of adoption of this report.

840. Unapproved Inter-Account Borrowing by Counties and Municipalities

840.1. Garissa County

As previously reported, the Project's management borrowed Kshs.205,234,132 from the Kenya Urban Support Program (KUSP) account to the recurrent and development accounts for Garissa County, both held at the Central Bank of Kenya. Although the inter-account borrowings was later refunded to the KUSP account by the County, there was no authorization for the inter-account transfers between the Project account and the County Governments operations accounts.

Although the matter has been presented at the Senate, a determination is yet to be made. Further, Urban Institutional Grants (UIG) disbursement in the 2018/2019 financial year for Garissa County was Kshs.41,200,000 which was received in the UIG Special Purpose Account (SPA). It was noted that on 3 July, 2019 an amount of Kshs.41,000,000 was transferred from this account to the Urban Development Grant SPA (inter-account borrowing). Further, on 19 June, 2020, an amount of Kshs.41,200,000 was transferred from the UDG account to the UIG the account as a refund of the funds earlier credited. However, the extra funds of Kshs.200,000 transferred from to the UIG account had not been refunded by November, 2021. It was also noted that the closing bank balance

for UIG account as at 30 June, 2021 was Kshs.1,561, an indication that the extra funds had already been spent.
No authority was provided for the inter-account borrowing. Further, no reason has been provided for the unauthorized spending of UDG Kshs.200,000 in UIG account.

Submission by the Accounting Officer
No approved inter-account borrowing but any future inter-account borrowing will be approved appropriately by the CECM Finance and the Board of Garissa Municipality. County treasury took up the matter regarding unremitted Kshs 200,000 from the SPA account to the municipality UIG account. CECM Finance promised to remit the money before 10th March 2022.

Current status

The funds, Kshs 200,000 were remitted to the UIG account on 6th April 2023.

Committee Observation and Findings;

(i) The Committee noted that the Accounting Officer admitted that there was no approved inter- account borrowing; and
(ii) The relevant officers from the county did not avail themselves to the Committee to answer the audit query.

Committee Recommendation

The Committee recommends that the county government avails approval for inter-account borrowing to the Accounting Officer within three (3) months of adoption of this report.

840.2. Trans Nzoia County
Review of the bank statements for UIG funds disbursed to Trans Nzoia County revealed that a total amount of Kshs.58,129,859 had been spent as at May, 2020. This amount was above the Kshs.50,000,000 budgeted for Urban Institutional Grant activities. This is an indication that there was an unapproved over-expenditure on the UIG funds of Kshs.8,129,859 for the County. The over expenditure of Kshs.8,129,859 from UIG account affects funds that could have been utilized for other planned projects under UDG.

It was also noted that over the four years the programme has been in existence, a total of Kshs.37,915,400 had been borrowed from the Urban Development Grant (UDG) Account to fund UIG activities without approval. Out of this amount, only Kshs.29,434,840 has been refunded to the UDG account leaving a balance of Kshs.8,480,560 pending. It was noted that the UIG account balance as at 30 June, 2021 was Kshs.459,060 and therefore the possibility of making the refund of Kshs.8,480,560 was doubtful.

The above unauthorized borrowings are contrary to Regulation 53(1) of the Public Finance Management (County Governments) Regulations, 2015 which states that except as provided for in the Act and these Regulations, an Accounting Officer of an entity may not authorize payment to be made out of funds earmarked for specific activities for purposes other than those activities. Further, sub-section 2 provides that a public officer who makes a payment contrary to paragraph (1) commits an offence under the Act.

Submission by the Accounting Officer
As per the UIG bank statement referred to; the transactions were as follows;

Receipts on 8 May 2020	Kshs 41,200,000.00
Receipts on 31 August 2020	Kshs 8,800,000.00
Totals	Kshs 50,000,000.00
Expenditure	Kshs 49,540,940.50
Balance	kshs459,059.50

Arising from above there was no over expenditure on UIG A/C. The excess referred to of Kshs 8,129,859 is the County Government contribution towards UIG activities hence no over expenditure from the UIG.

Non refund of Kshs 8,480,560

It is true the County Government has not refunded directly the said amount to the UDG account as expected. However, the County Government paid the Kshs 8,480,560 to the contractor doing the UDG project directly instead of refunding to the UDG bank account this amount is included in the Interim Certificate no. 6

Committee Observations and Findings

(i) The Committee noted that there was unauthorised borrowing without approval and Kshs. 8,480,560 had not been refunded; and
(ii) The relevant officers from the county did not avail themselves to the Committee to answer the audit query.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

841. Unsupported RTGS Payment (Lodwar Municipality)
Urban Development Grant (UDG) funds amounting to Kshs.95,023,200 were disbursed to Urban Institutional Grant (UIG) account for Lodwar Municipality on 22 January, 2019. However, there was a payment of Kshs.1,994,000 to a local contractor from this account on 19 June, 2019 before the balance of Kshs.93,029,200 was refunded to the UDG account on 11 June, 2020. The payment in question was however, not supported with requisite documentation and it was not possible to confirm under which item it was classified since it was neither posted in the UDG or the UIG account cash book, and only appeared in the UIG account bank statement as an RTGS payment.

Although Management have explained that the payment was in respect of imprest drawn in favor of an officer, no supporting evidence were provided to support the expenditure.

Submission by the Accounting Officer
The amount of Ksh.1,944,000.00 was paid to facilitate adhoc committee on conferment of Kakuma kalobeyei to municipality status. Payment vouchers supporting the expenditure have now been provided.

Committee Observation and Finding;

(i) The Committee noted that the Accounting Officer did not provide documents at the time of audit contrary to the provisons of section 62 of the Public Audit Act, 2015;
(ii) The relevant officers from the municipality did not avail themselves to the Committee to answer the audit query.

Committee Recommendation

The Committee recommends that such projects should be structured to ensure that accountability of funds rests with the implementing agency.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

842. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

843. As required by International Development Agency (IDA) and the Financing agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

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

Basis for Qualified Opinion

844. Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs.296,972,400 as at 30 June, 2021. However, during the year under review, management recorded expenditure of Kshs.531,951,971 out of the opening cash balance of Kshs.822,287,913 which should have left a balance of Kshs.290,335,942. This therefore results to a variance of Kshs.6,636,458, which has not been explained or reconciled.

Further, the cash and cash equivalents balance of Kshs.296,972,400 as at 30 June, 2021 is at variance with the calculated balance of Kshs.296,882,076 resulting to a variance of Kshs.90,324 which was not explained or reconciled. In addition, the statement of cash flows reflects a balance of cash and cash equivalents at the end of the year of Kshs.351,234,781 while the statement of financial position reflects a balance of Kshs.296,972,400 resulting to a variance of Kshs.54,262,381 which was not been explained or reconciled.

In the circumstances, the accuracy and validity of the cash and cash equivalents balance of Kshs.296,972,400 as at 30 June, 2021 cannot be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statements had a difference of Kshs.6,636,458 in cash and cash equivalents balance. However, the management has traced the difference in the statement of cash flow and will reconcile it in the next year's report.

The cash and cash equivalents balance of Kshs.296,972,400 as at 30 June, 2021 is at variance with the calculated balance of Kshs.296,882,076 resulting to a variance of Kshs.90,324 which was not explained or reconciled. The management has traced the omission and had adjusted the difference of Kshs.90,324 amended in the subsequent financial year.

There was a variance of Kshs.54,262,381 that arose from 2018-2019 overstatement in the cash and cash equivalents. However, the management has reconciled the figure as stated below;

CASH AND CASH EQUIVALENTS RECONCILIATION STATEMENT

FY2018/2019	**KShs**
Reported Cash and Cash equivalents at the end of FY 2018/2019	669,639,304
Overstatement in the cash and cash equivalents	54,262,381
Adjusted Cash and cash equivalents at end of the year	**723,901,685**
FY 2019/2020	
Cash and cash equivalents at the beginning of the year	723,901,685
Net increase in cash and cash equivalents	174,223,945
Understatement in the cash and cash equivalents	-31,183,542
Cash and cash equivalents at end of the year	**866,942,088**
FY 2020/2021	
Net increase in cash and cash equivalents	**-531,951,971**
Cash and cash equivalents at the beginning of the year	866,942,088
Less overstatement in the cash and cash equivalents	16,244,664
Cash and cash equivalents at end of the year	**351,234,781**

Committee Observations and Findings

The Committee acknowledged that the Kisumu County Government should have done reconciliations in time for audit.

Committee Recommendation
The Committee recommends that the matter is resolved.

845. Unsupported Prior Year Adjustment

The statement of financial assets and Note 7 to the financial statements reflects prior year adjustment balance of Kshs.16,244,664 as at 30 June, 2021 indicated to be an adjustment of the misstatement in the financial statements for 2019/2020. However, the details of the misstatement and the supporting documentation in respect of the adjustment were not provided for audit review. Further, the statement of cashflows also reflects prior year adjustment of Kshs.16,244,664 which has neither been explained or supported.

Consequently, the accuracy of the financial statements as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of financial assets reflected prior year adjustment balance of Kshs.16,244,664 as at 30 June, 2021. The balance of Kshs.16,244,664 has since been reconciled.

Committee Observations and Findings
The Committee acknowledged that the Kisumu County Government should have done reconciliations in time for audit.

Committee Recommendation
The Committee recommends that the matter is resolved.

846. Amounts Withdrawn and Not Claimed

According to The National Treasury's special accounts, the amounts withdrawn but not claimed in respect to the Project amounted to EUR19,822,470.32 as at 30 June, 2021 which is indicated as amounts transferred to the local project bank account but whose expenditure returns had not been submitted to The National Treasury as at 30 June, 2021. However, the financial statements together with the records maintained by the Project management does not indicate the amounts withdrawn and not claimed.

Consequently, the accuracy of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that according to the National Treasury's special accounts, the amounts withdrawn but not claimed in respect to the project amounted to EUR19,822,470.32 as at 30 June, 2021 which is indicated as amounts transferred to the local project bank account but whose expenditure returns had not been submitted to the National Treasury as at 30 June, 2021.

However, the management was pursuing the balance of EUR19,822,470.32 from treasury which did not materialize. Being that the project commitment period was ending 31st January 2022 and fund utilization period by 30th June 2022 there was no time for utilization of the unclaimed amount.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer was unable to provide an explanation for the whereabouts of EUR 19,822,470.32;

(ii) The Committee noted that the project had been closed and observed that there was no specific account at the National Treasury where the money had been retained.

Committee Recommendation

(i) The EACC should commence investigation of this matter and the whereabouts of EUR 19,822,470.32.

Other Matter

847. Budget Performance and Lack of Approved Budget

The statement of receipts and payments reflects total payments amount of Kshs.531,951,971. However, according to the statement of comparative 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	241,359,653	241,359,653
Acquisition of non-financial assets	0	290,592,318	290,592,318
Total	**0**	**531,951,971**	**531,951,971**

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.822,287,913. The expenditure for the year amounting to Kshs.531,951,971 was therefore unauthorized.

Submission by the Accounting Officer

The Accounting Officer submitted that 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.822,287,913 thus unauthorised expenditure of Kshs.531,951,971.

However, the management has since availed the approved Budget and budget performance to support the expenditure of Kshs.531,951,971.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that there was unauthorized expenditure of Kshs. 531,951,971;

(ii) **The Committee also observed that there was no approval sought from the County Assembly; and**

(iii) **The Committee also noted that the Accounting Officer failed to keep accurate records and other supportive documents in breach of Section 197 of the PFM Act, 2012.**

Committee Recommendation

The Committee recommends that the EACC investigates the cited expenditure.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

848. Non- Registration of Heavy-Duty Refuse Compactor

The purchase of goods and services amount of Kshs.241,359,653 includes supplies amount of Kshs.57,392,964, which in turn includes Kshs.48,990,000 paid in respect of purchase of heavy duty refuse compactor equipment in July, 2020. However, ownership documents in respect of the machine were not provided for audit verification. In addition, the equipment does not have a registration number and is not recorded in the assets register.

In the circumstances, the ownership and tracking of the equipment be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the purchase of goods and services figure of Kshs.241,359,653 includes supplies amount of Kshs.57,392,964, which in turn includes Kshs.48,990,000 paid in respect of purchase of heavy duty refuse compactor equipment in July, 2020. However, ownership documents in respect of the machine were not provided for audit verification. In addition, the equipment does not have a registration number and is not recorded in the assets register.

However, the management is still pursuing the logbook and registration number for the heavy duty refuse Compactor.

Committee Observations and Findings

(i) **The Committee noted that the Kisumu County Government made a payment to the vehicle supplier without obtaining ownership documents, which posed a risk as the supplier could potentially withhold the ownership documents or even use the vehicle as collateral for a loan;**

(ii) **The Committee noted that the County Government cited the incomplete tax exemption process by the Kenya Revenue Authority as the reason for not registering the vehicle; and**

(iii) **The Committee noted a lack of sufficient follow-up by the County Government with the Kenya Revenue Authority to obtain tax exemption**

Committee Recommendation

The Kisumu County Government should take necessary steps to register the Heavy-Duty Refuse Contractor and provide a status report to the Committee within three (3) months of

adoption of this Report.

849. Upgrade of Otonglo Market

The acquisition of non-financial assets amount of Kshs.290,592,318 includes two payments totalling Kshs.29,151,034.75 made to a contractor for the upgrade of Otonglo market in respect of contract agreement number CCK/KUP/W/4/2018/037 dated 30 December, 2020 for a contract sum of Ksh.79,468,296. According to the contract, the works were expected to be completed by 30 October 2021. However, at the time of audit in October, 2021, the project was at a completion level of 75% as per the progress report. Further, the performance Security provided by the contractor from Sidian Bank had expired on 13 July, 2021 and there was no evidence that the same had been extended.

Physical verification of the project in October, 2021 revealed that although the contractor was still on site, the works were far from completion. The contractor attributed the delay to the Kenya Railways Corporation demolition Company's construction site and extreme weather conditions. However, there was no evidence that the contractor had requested for extension of the completion date.

Under the circumstances, there is likelihood of project delivery delays which may impact on project costs.

Submission by the Accounting Officer

The Accounting Officer submitted that during the physical verification the contractor was on site and the works were not yet completed.

The project is now complete and ready for occupation. The relocation process is on-going spear headed by the relocation committee of the market.

Committee Observations and Findings

The Committee noted that there was a period during which the County Government operated without a security bond.

Committee Recommendations;

The county government should ensure proper maintenance of the security bond to guarantee safety during their operations.

850. Proposed Completion of Low Volume Access Roads- (Kemri-OtongloTiengere-Rota Road)

The acquisition of non-financial assets amount of Kshs.290,592,318 includes two payments totalling Kshs.18,257,954.17 paid to a contractor in respect of completion of 5.5 kilometres of low volume access roads (Kemri-Otonglo-Tiengere-Rota road) at a contract sum of Ksh.63,687,970. The contract duration was eight (8) months with effect from 7 December, 2018 to 7 August, 2019. As at the time of audit in October 2021, the project was indicated to be at 60% completion based on the status report project of July, 2021.

Physical verification of the project in October, 2021 revealed that the contractor was not on site and the project was still incomplete due to what was said to be failure of the concrete beams to meet the tests carried out. The Management did not provide explanation on the action being taken to have the project completed. The contractor requested for extension of the contract period to 31 December, 2019 through letter reference number KUP/LOWVOLUME140819(1) dated 10 August, 2019. However, there was no evidence that the request was accepted. Further, the performance security bond that the contractor provided from M/s Rafiki Microfinance Bank was valid up to 28 July, 2019 and there was no evidence provided to show that the contractor renewed the bond. In addition, the mandatory of the risk insurance expired on 27 January, 2020 and there was no evidence of renewal.

In the circumstances, value for money in respect of Kshs.18,257,954 paid towards the project was not achieved.

Submission by the Accounting Officer

The Accounting Officer submitted that:

(i) At the time of the audit the drainage along the road had been silted and a section of the road cut off by storm water due to the choked drains, the road being a murrum road and it was on a long rainy season. The contractor was instructed to routinely open up the drains, lay the final base layer along the road to ensure free flow of water along the drains and remedy any related defects. This was done via site meeting minutes dated 24th October, 2019.

(ii) The Works on construction of the bridge/box culvert at Tiengre were suspended by the contractor before completion. The Contractor halted works due to a long-standing dispute between the Contractor and the Client. The dispute was caused by the fact that the Contractor casted Precast Beams for the Bridge, but on receiving materials test results from the Regional Materials Testing office in Kisumu, the Client confirmed that the Beams failed the tests, hence rejected the beams. The Contractor however disputed the results and insisted on installing the rejected precast beams. This disagreement between the two parties resulted into the long-standing dispute. However, in the Management Meeting held on 9th June 2021, the dispute was finally resolved amicably by the two parties. The Client committed to pay the Contractor his long-standing payment request, while the Contractor committed to resume works once the payment is done. It was also resolved that the Materials Testing Headquarters will be engaged to undertake a Non-Destructive Test on the failed beams, and that if this test confirms their failure, then the Contractor would cast new beams. The Contractor has so far been paid, and is currently mobilizing to resume works. In a further consultative meeting by the Client, it was resolved that if the Contractor fails to meet the set timelines, then the Client would reassign the pending works to another competent Contractor.

(iii) The contractor was not on site and the site office had closed been as at the time of audit. This was because of the long-standing dispute that led to suspension of works (which has since been resolved) as explained in (ii) above.

(iv) The access culverts along the road were not backfilled. This is because as at the time of audit, the culverts were still undergoing the curing process. All the constructed culverts were later backfilled after the curing process.

(v) Gravel on some sections of the road was swept off by flood waters due to poor drainage. This occurred because of the long rains that brought a lot of storm water with a lot of silt from the upstream. This silted part of the road ditches leading to storm water passing through the road surface. The Contractor was instructed to desilt the road drainage system. This was done and all the defects remedied.

(vi) A section measuring 0.005 Kilometers from Tiengre was not graded and graveled, and that no drainage works were done at the said section. This section had a boundary dispute. The dispute was later resolved and the works on the said section undertaken to completion.

(vii) The Monthly progress of work reports indicated that challenges facing the Project included inadequate materials, equipment and labor mobilization, slow execution of work. The Contractor was later given a warning letter on slow pace of works.

(viii) In August, 2019, the contractor requested for an extension of the contract period from 30 September, 2019 to 31 December, 2019, which approved by the Tender Evaluation Committee as regulations require by the time of audit. The delay in the approval by the Evaluation Committee was awaiting the no objection approval by the donor, as this is a donor conditionality requirement. However, the Committee finally approved the contractors request for extension of the contract.

Committee Observations and Findings

(i) The Committee noted that the contract was terminated due to a disagreement between the technical team and the contractors, and as a result, the remaining work will be carried out by the County Government; and

(ii) The Committee also observed that the answer provided was not satisfactory as it was overtaken by events and the current status was not availed despite request from the Committee;

Committee Recommendation

The Committee recommends that the county government provide a status report of the project to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

851. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

852. As required by Financing Agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

KISUMU URBAN PROJECT (CASH EXPENDITURE FUND)-CKE 1035.01.G - COUNTY GOVERNMENT OF KISUMU

REPORT ON THE FINANCIAL STATEMENTS

Basis for Adverse Opinion

853. Statement of Financial Assets

The statement of financial assets reflects total financial assets balance of Kshs.196,589 as at 30 June, 2021 while the funding section casts to an amount of Kshs.8,129 though reported as Kshs.196,589, resulting in a variance of Kshs.188,460 which has not been reconciled or explained. Further, the statement of receipts and payments reflects a cumulative deficit balance of Kshs.7,604,142 while the reported cash balance for statement of financial assets is Kshs.8,089 resulting to an unexplained variance of Kshs.7,612,231.

Consequently, the accuracy and validity of the prior year adjustment balance of Kshs.188,460 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of financial assets reflects total financial assets balance of Kshs.196,589 while the funding section casts to an amount of Kshs.8,129 resulting in a variance of Kshs.188,460. The management has since reconciled the two records and the outstanding imprests have been surrendered and accounted for.

Committee Observations and Findings

The Committee noted that the Kisumu County Government reconcile the accounts.

Committee Recommendation

The Committee recommends that the county government balances the accounts and provides a status report to the Auditor General within three (3) months of adoption of this report.

854. Trial Balance

The financial statements as at 30 June, 2021 were not supported by a trial balance. There was also no ledger to support the basis of preparation of the financial statements. In addition, the opening balances reflect a net finance position that does not agree with the audited financial statements. Consequently, the accuracy of the financial statements for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statements as at 30 June, 2021 were not supported by a trial balance and the ledger to support the basis of preparation of the financial statements. However, the financial statements have been revised and ledgers prepared to incorporate the trial balance.

Committee Observations and Findings

The Committee observed laxity and negligence in the County Government finance department as they could not prepare accurate and complete financial statements such as trial balance.

Committee Recommendation

The Committee recommends that the county government prepares complete and accurate financial statements and provides a status report to the Auditor General within three (3) months of adoption of this report.

855. Statement of Cash Flows

The statement of cashflows reflects cash and cash equivalents at the end of the year balance of Kshs.923,118 while the statement of assets reflects cash and cash equivalent balance of Kshs.8,089 as at 30 June, 2021 resulting in a variance of Kshs.915,029 which has not been explained or reconciled.

Consequently, the accuracy of the statement of cashflow for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of cash flows for the year ended 30 June, 2021 reflects cash and cash equivalents at the end of the year balance of Kshs.923,118 while the statement of assets reflects cash and cash equivalent balance of Kshs.8,089 as at 30 June, 2021 resulting in a variance of Kshs.915,029. The variance arose from prior Cash and cash equivalent at beginning of the year of kshs 733,175. This error was addressed and adjusted in the 2021-2022 Financial Year.

Committee Observations and Findings

The Committee observed laxity and negligence in the County Government finance department as they could not prepare accurate and complete financial statements such as statement of cash flows.

Committee Recommendation

The Committee recommends that the county government prepares complete and accurate financial statements and provides a status report to the Auditor General within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

856. Lack of Approved Budget and Workplan

During the year under review, the Project recorded expenditure of Kshs.6,265,106 on purchase of goods and services. However, the management did not avail an approved budget and workplan for 2020/2021 as required by law and financing agreement.

Submission by the Accounting Officer

The Accounting Officer submitted the expenditure of Kshs.6,265,106 on purchase of goods and services which was a mis posting though the expenditure relates to un surrendered imprests from prior years which were surrendered in the financial year 2020-2021 and the approved budget and work plan for 2020/2021.

Committee Observations and Findings

The Committee observed that the County Government failed to provide the work plan to the Office of the Auditor General contrary to Section 62 of the Public Audit Act, 2015, which mandates the Accounting Officer to ensure that all required documents are made available for verification during the audit process.

Committee Recommendation

The County Government should comply with section 62 of the Public Audit Act, 2015, which mandates the Accounting Officer to ensure that all required documents are made available for verification during the audit process.

857. Unauthorised Payments

During the year under review, the project recorded payments amounting to Kshs.6,265,106 on purchase of goods and services against nil budget giving rise to unauthorised expenditure of Kshs.6,265,106. No reason was however provided for operating without an approved budget. In the circumstances, the expenditure of Kshs.6,265,106 is unauthorised. Although the Management has explained that the expenditure of Kshs.6,265,106 on purchase of goods and services related to surrender of imprests relating to prior years, no further justification has been provided.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the project recorded payments amounting to Kshs.6,265,106 on purchase of goods and services against nil budget giving rise to unauthorised expenditure of Kshs.6,265,106.

The expenditure of Kshs.6,265,106 on purchase of goods and services which related to unsurrendered imprests from prior years which was under suspense. The imprest surrendered increased the expenditure in the financial year 2020-2021 by moving the amount from suspense.

Committee Observations and Findings

The Committee deemed the answer provided by the County Government unsatisfactory as it did not answer the audit query.

Committee Recommendation

The Office of the Auditor General should conduct a forensic audit in this matter pursuant to the provisions of section 37 of the Public Audit Act, 2015, and report in the next audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

858. Because of the significance of the matters discussed in the Basis for Adverse Opinion section of my report, based on the audit procedures performed, I confirm that internal controls, risk management and governance were not effective.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

859. As required by Financing Agreement, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have not been kept and the Project's financial statements are not in agreement with the accounting records and returns.

KENYA URBAN SUPPORT PROGRAM - KISII MUNICIPALITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

860. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

861. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects final receipts budget and actual on comparable basis of Kshs.172,853,800 and Kshs.126,137,642 respectively, resulting in an underfunding of Kshs.46,716,158 or 27% of the budget. Similarly, the Program spent Kshs.81,189,176 out of the approved expenditure budget of Kshs.197,397,118, resulting in under expenditure of Kshs.116,207,942 or 59% of the budget. The budget under-funding and underexpenditure may impact negatively on delivery of services to the residents of Kisii Municipality.

Submission by the Accounting Officer

The management concur with the Auditors' observation, however, the statement of comparative budget and actual amount for the year ended 30th June 2021. The municipality did a budget of Kshs 172,853,800 that comprised of Urban Development Grand (UDG) of Kshs 164,053,800 as per the World Bank agreement that they would have financed Kisii municipality annually and the Urban Institutional Grant (UIG) balance of Kshs 8,800,000. The municipality received Kshs 126,137,642 during the financial year 2020/2021 as stated in the audit report that comprised of;

i) UDG Kshs. 117,337,642

ii) UIG Kshs. 8,800,000

The funds were made for ongoing projects initiated in the previous financial year 2019/2020. The funds were spent prudently with a total expenditure of Kshs 81,189,176 resulting to 64% utilization hence the books of accounts were audited by the office of the Auditor General and the municipality received the certificate**.** There was no under expenditure of the budget as indicated in the audit findings. Hence the services have been delivered to the people of Kisii municipality at large.

Note; the Kisii municipality did not receive the budgeted allocation of Kshs 164,053,800 in the financial year 2020/2021 but the allocation was partially later disbursed in the financial year 2021/2022 of Kshs 43,263,258.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

862. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

863. There were no material issues relating to effectiveness of internal controls, risk management and governance.

19. STATE DEPARTMENT FOR PUBLIC WORKS – VOTE 1095

REPORT ON THE FINANCIAL STATEMENTS

Mr. Joel P. L. Arumonyang, the Principal Secretary and Accounting Officer for the State Department of Public Works appeared before the Committee on 21st and 23rd February 2023 accompanied by the following officers:

1.	Mr. Michael O. Ngolo	–	Deputy Head, Accounting Unit
2.	Mr. Julius M. Muriithi	–	Director, Economic Planning
3.	Mr. Calvin Shavanga	–	Senior Chief Finance Officer
4.	Mr. Benjamin Mwangi	–	Ag. Chief Engineer, Structural
5.	Mr. Kiprono Mutai	–	Civil Engineer
6.	Mr. David M. Waititu	–	Deputy Chief Architect
7.	Mr. Nicholas M. Mutua	–	Assistant Works Secretary

and submitted as follows;

Basis for Qualified Opinion

864. Pending Bills

Note 15.16.1 to the financial statements reflects pending bills totalling to Kshs.830,444,586 as at 30 June, 2021. However, the analysis reflects a balance brought forward from prior year of Kshs.693,538,593 while the audited financial statements for the year ended 30 June, 2020 had no pending bills as such the difference of Kshs.693,538,593 could not be supported. Further, additions during the year under review reflects Kshs.656,965,526 out of which Kshs.652,243,853 has been supported by the pending bills analysis schedule while Kshs.4,721,673 remained unsupported.

In addition, the pending bills balance includes an amount of Kshs.76,222,269 relating to interest and penalties on delayed payments charged by contractors and suppliers. This represents an additional charge to public funds as a result of budget constraints and failure to make payments once they fall due. Failure to settle pending bills in the year which they relate distorts the financial statements for the year and also affects the budgetary provisions for the subsequent year as they form the first charge.

In the circumstances, the authenticity of the pending bills reported balance of Kshs.830,444,586 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the balance brought forward of Kshs.693,538,593 was erroneously omitted in the Financial Statement submitted on 30th September, 2020 and the Revised Financial Statements submitted on 29th December, 2021. He took personal liability for the omissions and reiterated that the error was highly regrettable. However, the Pending Bill amount has been disclosed in the financial year 2020/2021 and 2021/2022 respectively.

The Accounting Officer also submitted that there was a variance of Kshs.4,721,673 between amount of pending bill indicated in the Financial Statement of Kshs.656,965,526 and the pending bill list availed to the auditors of Kshs.652,243,853. The pending bill list has been corrected to agree with the amount in the Financial Statement.

The Accounting Officer further submitted that that pending bill amount of Kshs.830,444,586 included in the Financial Statement for the period under review included an amount of Kshs.76,222,269 relating to interest and penalties on delayed payments charged by the contractors /suppliers as a result of delayed payment. This was occasioned by budgetary cuts during budget review by way of supplementary estimates/directives.

Lack of adequate budgetary support has led to delayed payment of certified amounts to the contractors thus additional cost to the project due to build-up of interest on delayed payments.

Committee Observations and Findings

(i) The Committee observed that the pending bills were to form the first charge of the subsequent year yet the bills were carried forward but not paid contrary to the provisions of regulation 42 of the PFM (National Government) Regulations, 2015;
(ii) The Committee further observed that the omission of Kshs. 693,538,593 in the financial statement during the year under review amounts to gross negligence contrary to section 62 (d) of the Public Audit Act, 2015 and may have led to inordinate delay of payment of the pending bills; and
(iii) The Committed noted that interest and penalties on delayed payment to contractors amounts to wasteful expenditure for the government.

Committee Recommendation

(i) The Accounting Officer should ensure pending bills are settled as first charge in the subsequent financial years as per the provisions of regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Other Matter

865. Long Outstanding Accounts Payable – Retention Money and Other Deposits

The statement of assets and liabilities as at 30 June, 2021 reflects a balance of Kshs.587,676,280 under accounts payable – deposits as disclosed in Note 15.16.3 to the financial statements. Examination of the schedule provided in support of the balance revealed that balances totalling to Kshs.380,597,279 have been held as retention/deposit for a long period some dating back to the period between 2000 and 2016. The long outstanding deposits implies that projects have not been completed which impact on service delivery to the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that retention moneys of Kshs.380,597,279 had been held in deposits/retention account for a long period dating back to 2000 and 2016.This has been occasioned by delay in completion of some projects on time due to budgetary constraints since retention monies are paid to contractors once the projects are completed and the defect period is over and project handing over certificate issued.

Committee Observations and Findings

(i) The Committed noted that there was an inordinate delay of over 20 years for the projects dating back to the year 2000;
(ii) The Committee observed that the Accounting Officer did not provide an analysis of the projects including the status of completion; and

(iii) The Committee further observed lack of policy on how to manage contractors' long outstanding retention/deposits and track it properly;

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office in failing to complete projects dating back to the year 2000;

(ii) The Accounting Officer should provide a status report to the National Assembly on the progress of the projects within three (3) months after adoption of this report.

(iii) National Treasury should formulate proper policy on how to manage contractors' long outstanding retention/deposits and track it properly within six (6) months after adoption of this report.

866. Late Exchequer Releases

The statement of receipts and payments for the year ended 30 June, 2021 reflects actual Exchequer receipts of Kshs.2,924,112,346 out of which Kshs.154,262,656 was received late in June and July, 2021 as analyzed below;

Date Received	**Amount (Kshs)**
25 June, 2021	78,696,326
2 July, 2021	12,876,330
6 July, 2021	62,690,000
Total	**154,262,656**

The late disbursement of Exchequer releases by The National Treasury could lead to accumulation of pending bills due to late payment of amounts outstanding as at the end of the financial year and also affects implementation of planned programs for the year.

Submission by the Accounting Officer

The State Department responded that Kshs.154,262,656/= was received in the last week to the closure of financial year and confirmed that exchequer issues are always released based on all transactions that have been processed and awaiting payment. Part of the exchequer received was to settle June, 2021 salaries and processed payments to various merchants that was awaiting approval of Supplementary appropriation at the National Assembly which was done at the closure of the financial year, thus the delay in exchequer issuance.

Committee Observations and Findings

The Committee observed that late exchequer releases were occasioned by the National Treasury.

Committee Recommendations

The National Treasury should ensure programmes are adequately funded and can be implemented within the stipulated time frame.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

867. Termination of Contracts and Related Costs

867.1. Rehabilitation of Mtangawanda Jetty

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 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 audit in November 2021, 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.

Consequently, 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

i. The Contractor resumed the works on 2nd January, 2022 and managed to complete the works in 21st February 2022 with a practical completion certificate issued.
ii. The defects liability period has lapsed with contractor having to address some minor defects which were noted during the final inspection after which the final account will be prepared.
iii. There is a pending payment yet to be honored.
iv. The Current progress status of the works is 100% complete.
v. The Project was funded by both the State Department for Public Works (SDoPW) and Kenya Ports Authority (KPA). The following is how the payments have been made;

Certificate No.		Amount (Kshs)		TOTAL AMOUNT
		SDoPW	**KPA**	**Kshs.**
1		3,027,545.81		
2	2A	1,972,454.19		
	2B		2,473,738.04	**4,446,192.23**
3	3		7,879,571.43	**7,879,571.43**
4	4		4,747,195.96	**4,747,195.96**
5	5		6,243,535.28	**6,243,535.28**
6	6	6,217,260.63		**6,217,260.63**
7	7A	6,790,412.00		**6,790,412.00**
	7B		2,900,164.34	
8	8		2,468,571.02	**16,965,397.98**

9	9		11,596,662.62	
10	10	8,828,649.41		**8,828,649.41**
TOTAL (Kshs.)		**26,836,322.04**	**38,309,438.69**	**65,145,760.73**

Certificate No. 2 of Kshs.4,446,192.23 was split into two as the money available at the time was only Kshs.1,972,454.19 paid as Certificate No.2A and the balance of Kshs.2,473,738.04 was paid by KPA as Certificate No.2B.

Certificate No. 7 of Kshs.9,690,576.34 was split into two as the money available at the time was only Kshs.6,790,412.00 paid as Certificate No.7A and the balance of Kshs.2,900,164.34 was paid by KPA as Certificate No.7B.

Certificates No. 8 & 9 had been forwarded to Accounts but returned due to inadequate funds in the vote. Consequently, Certificates No. 7B, 8 & 9 were combined with a cumulative total of Kshs.16,965,397.96 and paid by KPA. Certificate No. 10 of Kshs.8,828,649.41 was split into two 10A Kshs.3,972,895.00 and 10B Kshs.4,855,754.41 of which 10A has been honored while 10B is still pending.

The State Department for Public Works paid a cumulative total of Kshs.26,836,322.04, whereas Kenya Ports Authority paid Kshs.38,309,438.69. The Accounting Officer reiterated that due diligence was carried out during procurement process to identify the contractor and the delay in completion of the project was caused by exchequer delays and insecurity.

Committee Observations and Findings

(i) The Committee observed that the project was implemented by two agencies; Public Works and Kenya Ports Authority (KPA);

(ii) The Committee also observed that the Accounting Officer did not provide minutes of site meetings that led to culmination of the termination of the original contract, how it was resumed and the bill settled thereafter; and

(iii) The Committee noted that despite the contract being terminated on 1st March, 2021, the contractor resumed and completed works without a valid contract.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for execution of project despite the contract being terminated;

(ii) The Accounting Officer should claim for liquidated damages for delayed performance by contractors pursuant to section 140 of the Public Procurement and Asset Disposal Act, 2015 and report to the Committee within three (3) months of adoption of the report.

867.2. Construction of Ndau Sea Wall

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.

Under 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 will be incurred.

Submission by the Accounting Officer

The Accounting Officer responded that 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.

The Accounting Officer submitted that during the Tender Evaluation, the Contractor was found to have the requisite capacity, capability and competence to undertake the project as he had successfully completed similar projects of the same nature and magnitude (marine works) in the past.

The Accounting Officer also submitted that sections of the incomplete seawall have now collapsed and 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 Accounting Officer further submitted that the Retention money held by the Employer is Kshs.32,081,627.35, Liquidated damages Ksh.4,700,000.00 and Performance Bond of Kshs.16,149,714.15. However, the total is less than the estimated completion cost due to the collapsed sections, but this was beyond the control of the Employer as the court case took too long to be determined.

In pursuant with Clause 63.3 of the Conditions of Contract, after establishing the costs of execution of the completion works and all other expenses, the Employer will demand that the Contractor pay to the Government the difference between these costs and the amount that may have been due to him before the date of the contract termination. This will ensure that no public resources are lost as a result of the terminated Contracts.

Committee Observation and Findings

(i) The Committee observed that the delay by the contractor led to the collapse of the seawall amounting to wasteful expenditure; and
(ii) The Committee observed that the Accounting Officer did not provide a copy of the judgement and restraining order requested by the Committee.

Committee Recommendation
(i) The Committee reprimands the Accounting Officer for failing to provide documents pursuant to section 62 of the Public Audit Act, 2015;
(ii) The Accounting Officer should initiate recovery of the money from the contractor within one (1) month of adoption of this report pursuant to section 140 of the Public Procurement and Asset Disposal Act, 2015.

868. Management of Projects Implemented by the State Department

868.1. 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 later revised to 31 December, 2019. As at the time of the audit in October, 2021, an amount of Kshs.434,028,886 had been certified for payment with the project being 40% complete. The contract sum was revised to Kshs.1,202,694,850 according to the project status report of December, 2019. However, the contract variation by Kshs.455,404,151 or 60% of the contract sum is contrary to Section 139(4)(c) and (d) of the Public Procurement and Asset 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 review.

In addition, review of the Interim Payment Certificate No.17 certified for payment of Kshs.434,028,886 include additional costs incurred on the project such as, extended preliminaries cost as a result of extended completion time (from 104 weeks to 336 weeks) amounting to Kshs.13,973,077, fluctuations on builders work and materials of Kshs.25,518,108 and interest on delayed payments to certificates No. 1 to 17 of Kshs.20,536,241. The payment certificate also includes unsupported reimbursements to the contractor of Kshs.7,333,111.

As at 30 June, 2021 the works progress was at 65% with the elapsed period being 336 weeks or 323% of the initial completion period of 104 weeks. This is an indication that the project was significantly behind schedule.

Consequently, value for money paid to the contractor may not be achieved due to delays in project implementation and associated costs.

Submission by the Accounting Officer
The Accounting Officer submitted that the project status report erroneously indicated a revised contract sum of Ksh.1,202,694,850 which is a variation above the allowable limit. This amount was a proposal contained in the Financial Appraisal done as part of the project management to inform on measures to be taken on financial matters. The appraisal was not approved and thus the contract sum has remained at Ksh.747,290,699.

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 challenges of funding and as at 30th June 2021 which is 448 weeks (8½ years) after commencement, the completion level was 65%. This extended contract period has resulted in additional cost in form of extended preliminaries and fluctuations. In addition, owing to delay in honouring payments the project has incurred costs arising from interest on delayed payments in accordance with clause 23.3 of the Conditions of Contract.

The amount of Ksh.7,333,111 relates to funds incurred on project management in travel and allowances and reimbursed to the contractor in subsequent payment certificates. The supporting documents are available for review.

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 since power and water has been connected. The remaining 3 Blocks of 36, 3 Bedroomed flats are ongoing and scheduled for completion in 2023 subject to availability of funding.

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 completion of the remaining works within three (3) months of adoption of this report.

868.2. Proposed Completion of Mathare Nyayo Hospital
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 certified for payment indicates that a total 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 circumstance, 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 Accounting Officer submitted that the project has faced financing challenges due to lack of adequate budgetary allocation. This was occasioned by delay in completion leading to extension

of contract period, expenses on interest on delayed payments and price fluctuations due to prolonged period of implementation.

The project has since been completed with funding from the Nairobi Metropolitan Services (NMS) through an MOU and an addendum to the contract. The project has now been completed and was commissioned by His Excellency the President on 17th March, 2022.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer at the time did not ascertain availability of enough resources and budgetary provision to ensure the projects are completed in time in contravention of the PFM Act, 2012, which directs projects to be implemented when resources are available;

(ii) The Committee noted that there was wasteful expenditure through payments of additional costs of fluctuation in labour and interest in delayed payments; and

(iii) The Committee also noted that Accounting Officer failed to provide details of payments of the project as requested by the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documentation requested by the committee contrary to section 62 of the Public Audit Act, 2015.

868.3. Proposed Completion of Migori District Headquarters (Phase 1)

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: -

1. Review of the January, 2021 project status report provided for audit verification revealed that the project had stalled. The contractor had abandoned the site and the project management recommended for termination through mutual winding up.
2. An unreferenced letter dated 29 June, 2020 by the main contractor indicated concurrence to mutual winding up of the contract. 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 review.
3. The project incurred additional costs amounting to Kshs.69,703,571 due to various delays as evidenced by payment certificate No.40 and certified for payment by the project manager as detailed below: -

Item	Amount-Certificate No. 40 Dated 25 february 2020 (Kshs)
Contractual claims No. 4 (Admin Costs)	25,411,244
Interest on delayed payments (cert. 8-15)	8,826,194
Revision of rates	30,236,129

Claims for escalation of rates for electrical works	5,230,004
Total	**69,703,571**

4. The contractor vide an unreferenced letter dated 29 June, 2020 raised key issues relating to project management such as failure/ delay in convening monthly contract/ project management meetings as required under clause 18 of the contract which affected project monitoring leading to delays and consequently escalation of costs.

5. The project was significantly behind schedule as the percentage of completion as at June, 2021 was at 80%. The office block had outstanding works, the administration block was 35% complete and the refurbishment works had not been carried out with more than 315% of time having elapsed.

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 Accounting Officer submitted that 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 indicated that some payments were taking 5-6 months to be honoured. The contractor slowed down execution of the works and eventually the works stalled after the contractor completely stopped working.

The Accounting Officer also submitted that the delayed payment and subsequent slow progress caused delays in completion of the works leading to extension of the contract period severally. The project commenced on 31st July 2009 with the contract period of 104 weeks (2 years) and thus the original completion date of 29th July 2011. The project contract was severally extended and was handed over on 30th November 2020 after a construction period of 592 weeks (11 years, 20 weeks). This resulted to extra costs to the project in the form of interest on delayed payments, extended preliminaries and price fluctuations due to change in market prices as provided in the contract.

The final account had not been prepared as at the close of the FY on 30th June 2021 and thus was not available for audit review. The PS assured the Committee that the account is now available for review.

The Accounting Officer further submitted that the project was being supervised by a team of consultants who in turn reported to the State Department for Public Works. Regular project management meetings were held but the frequency of the meetings was affected by the low volume of work done and even stoppage as there was no need to convene when there was no progress of the works.

The following buildings were constructed and handed over: DC's residence, 3 blocks of type E flats (36 units), 1 block of type D flats (8 units) and 3 type C maisonettes. The office block was constructed up to 35% with the major outstanding works to date comprising of the roof, internal and external finishes, electrical and mechanical installations.

In addition, the Accounting Officer submitted that the project has since been recommended for mutual winding up and for handing over to the Ministry of Interior for completion upon availability of funds. Alternatively, the State Department for Public Works can be provided with Strategic Intervention funds to complete the project among other pending stalled projects.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer did not ascertain availability of enough resources and budgetary provision to ensure the projects are comleted in time in contravention of the PFM Act, 2012, which directs projects to be implemented when resources are available;

(ii) The Committee noted that there was wasteful expenditure through payments of additional costs of fluctuation in labour and interest in delayed payments; and

(iii) The Committeed also noted that Accounting Officer attached minutes that were not signed nor confirmed therefore lacking authenticity.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to providing minutes that were not signed nor confirmed therefore lacking authenticity, and directs that he avails a status report to the Committee within three (3) months of adoption of this report.

868.4. Proposed Completion of Tharaka Nithi County Headquarters

The proposed completion of Tharaka Nithi County Headquarters was awarded to a contractor at a contract sum of Kshs.458,239,186 and the initial expected completion date was 27 June, 2018. However, the contract completion date was revised to 31 December, 2020. As at the time of audit in October, 2021, works valued at Kshs.297,236,217 had been certified for payment. Review of progress report indicates that the project is significantly behind schedule as the percentage of completion as at 30 June, 2021 is 65% with more than 118% of time elapsed. Further, payment certificate No.15 amounting to Kshs.28,729,803 and certified for payment includes an expenditure of Kshs.1,800,000 and Kshs.1,033,824 reported as project managers expenses and Environmental Impact Assessment (EIA) report, respectively which were not supported with requisite documentation. In addition, the project incurred additional expenditure amounting to Kshs.28,729,803 related to extended preliminaries, fluctuations and interest on delayed payments all of which are associated with delay in project completion.

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 Accounting Officer submitted that the project has progressed very slowly owing to delayed payment to the contract as evident from various correspondences from the contractor. This necessitated extensions of the contract period from the original completion date of 27th June 2018 after a contract period of 156 weeks (3 years). The contract period which elapsed as at 30th June 2021 was 309 weeks (5 years 11 months).

The Accounting Officer also submitted that the cost of the EIA and Project Management expenses were incurred by the County through Site Instructions issued on 10th July 2015 and 21st July 2015 respectively. The payments were paid by the County prior to handing over of the project to SDPW.

The Accounting Officer further submitted that the payments for extended preliminaries and fluctuations arose from the extended contract period. The interest on delayed payments was a result of payments due to the contract which have been delayed beyond the stipulated payment period.

In addition, the Accounting Officer submitted the project is currently at 80% completion with the main structural frame including the roof complete; windows have been fixed; internal plaster in progress and external finishes ongoing.

In conclusion, the Accounting Officer submitted that the State Department cannot terminate the project because the County Government of Tharaka Nithi entered into an agreement with the contractor.

Committee Observations and Findings

(i) The Committee observed that the project was initiated by the County Government of Tharaka Nithi as conditional grant and was handed over to Public Works thereafter. The National Treasury paid 70% while the County paid 30%; and

(ii) The Committee noted that there was wasteful expenditure through payments of additional costs of fluctuation in labour and interest in delayed payments.

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.

868.5. 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 engagement 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. The following anomalies were however observed;

- There is 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.
- 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, it was inot possible to install lifts given that the project had stalled at the foundation level.
- The project is 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.

- It was also noted that there were additional charges related to the project totalling Kshs.22,187,3558 relating to 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

The Accounting Officer submitted that the contractor was issued with a warning letter dated 2nd March 2018 due to the slow progress of the works. The same was discussed during site meetings as evidenced from the site meeting minutes. 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.

The Accounting Officer also submitted that the amount of Ksh.13,078,306 certified and paid was for the lift components delivered to the site for the installation but does not include the labour. The contract amount for the lifts including installation is Ksh.25 million and thus the payment already made is about 50% of the total cost. The materials delivered are still available on site as they are government property and will be used for the installation of the lifts.

The Accounting Officer further submitted that the contractor M/s Highpoint Agencies was procured through a competitive process and passed at the evaluation stage. Failure by the company to complete the project as required may have been as a result of issues arising during the implementation of the project.

In addition, the Accounting Officer submitted that 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. Owing to the delay in execution of the works by the contractor and the period of termination and subsequent reinstatement, the completion status as at 30th June 2021 was 40%. The building is now 60% complete with the superstructure now complete and finishes have commenced.

Committee Observations and Findings

(i) The Committee observed that the project stalled because of the terminated contract;
(ii) The Committee also observed that there was need to sanction contractors for delayed construction of works and completion of projects; and
(iii)The Committee further observed that the project was captured in the previous Public Accounts Committee report and timelines were given for specific actions.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to implement prior year recommendations on the same.
(ii) The Accounting Officer should claim for liquidated damages for delayed performance by contractors pursuant to section 140 of the Public Procurement and Asset Disposal Act, 2015 and report to Committee within three (3) months of adoption of the report.

868.6. Proposed Construction of Isiolo County Headquarters

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 review. 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 Accounting Officer submitted that the recommendation and approval extension of time from 30th August 2021 to 30th August 2022 was done after 30th June 2021 and thus had not been submitted for audit review. The documents relating to the extension are now available for review;

The Accounting Officer also submitted that the amount certified for payment as interest on delayed payment is based on the certificates which were delayed beyond the period of payment provided in the contract;

The Accounting Officer further submitted that the contract has lagged behind owing to delayed payment to the contractor at some point and also failure by the contractor to execute the works diligently. The contractor has been cautioned. Currently, the superstructure is complete though the roof construction and cover is pending.

Committee Observations and Findings

The Committee noted that there was wasteful expenditure through payments of additional costs of fluctuation in labour and interest in delayed payments.

Committee Recommendation

The Committee reprimands the Accounting Officer, and directs that he avails a status report to Committee within three (3) months of adoption of the report.

869. Other Projects Behind Schedule

During the audit, the following projects were observed to have slow progress and were behind schedule as at 30 June, 2021.

No.	Project	Contract period (weeks)	Time elapsed (weeks)	%of time elapsed	% of work done
1	Ntungi Primary School Ruguzu - Kanyuru Footbridge	24	72	300	94

2	Keera - West Mugirango Footbridge	24	56	233	98
3	Nyamakoroto - Karantini (36m Span) Footbridge	24	56	233	98
4	Rikenye - Embaro Footbridge	24	56	233	98
5	Reconstruction of Mokowe Jetty and Associated Works	130	141	108	79

The State Department has however, not demonstrated action taken towards claiming for liquidated damages for the delayed performance of the five (5) projects. This is contrary to Section 140(b) of the Public Procurement and Asset Disposal Act, 2015 which states that the contractor shall be liable to liquidated damages for delayed performance.

Consequently, delay in completion of projects exposes the public to loss on value for money for the expenditure incurred on the five (5) projects.

Submission by the Accounting Officer

The Accounting Officer submitted that:

i. The Ntungi Ruguzu footbridge is now at 98% complete and the contractor has remobilized and finished on the approach ramp; pending works being final coat of paint and associated works which will be finalized in 4 Weeks' time. The contractor has submitted a revised works programme and extension of time;

ii. The footbridges in Keera-West Mugirango, Nyamakoroto-Karantini and Rikenye-Embaro were 100% complete and the contractor has finalized on all pending works;

iii. The contract sum for the reconstruction of Mokowe Jetty and Associated Works was Kshs.599,872,327.96 and the works started on 15th February, 2019. The project was co-funded by the State Department for Public Works and the Kenya Ports Authority; and

iv. The project was slowed down by a slow flow of funds and the Covid-19 pandemic.

Committee Observations and Findings

(i) The Committee observed that all projects had been completed apart from one, Mokowe Jetty and Associated Works project which was at 94 % completion; and

(ii) The Committee also observed that there was need to sanction contractors for delayed construction of works and completion of projects.

Committee Recommendation

The Committee reprimands the Accounting Officer, and directs that he avails a status report on Mokowe Jetty to Committee within three (3) months of adoption of the report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

870. Audit Committee and Internal Audit

During the year under review, the State Department nominated five members to the Audit Committee via letter ref MOT&I/P/HRM/052 VOL.1/76 dated 6 November, 2019. Available information indicate that the Committee met only once on 22 December, 2020 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.

Further, the internal audit plan for the year and the approved internal audit reports were not provided for audit review. In addition, the Internal Audit Department had only two (2) staff as at 30 June, 2021 against an establishment of twenty-seven (27) officers an indication that the Department is grossly under-staffed.

In the circumstances, the effectiveness of the Audit Committee and the Internal Audit Function could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the audit committee met only once on the 22nd December,2020 contrary to section 179(1) of the PFM regulations which provides for four (4) meetings in a year. The Committee explained that they were constrained with time since their mandate covers the entire Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development (four state departments). Other reason was due to inadequate budgetary provisions.

The Accounting Officer also submitted that the work plan for the period under review was availed to the auditors for review. However, the Internal Audit Report could not be availed because the same had not been deliberated and approved by the Audit Committee (PFM Regulation 2015).

The Accounting Officer further submitted that although the Audit Department is understaffed with only two (2) staffs as at 30th June, 2021, the establishment of Internal Audit Staff is with the National Treasury and not with the State Department.

Committee observations and Findings

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

Committee Recommendations

The Committee reprimands the Accounting Officer for failure to ensure that a functional internal audit function was in place.

871. Controls Over Motor Vehicles

Review of motor vehicles records revealed that the State Department is in possession of two (2) motor vehicles that had been grounded for a long time and which the Department had recommended for disposal. However, at the time of the audit in October, 2021 the recommendation had not been implemented and the motor vehicles continue to depreciate in value due to poor conditions of maintenance. Further, ownership of eight (8) motor vehicles could not be confirmed as their respective log books were not provided for audit review.

In the circumstances, the effectiveness of internal control over management of motor vehicles could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that two (2) motor vehicles registration numbers, GKA 155F and GKA 857S had been grounded for a long time and which the department had recommended for their disposal. However, the valuation of the said vehicles has been done by the Chief Mechanical and Transport Engineer and the disposal of the same is scheduled for the month of February, 2023.

The Accounting Officer provided information regarding the ownership of the eight (8) motor vehicles whose ownership could not be confirmed, as follows;

i. KBT 731Q (Toyota Prado) – the Vehicle was destroyed by Al-Shabaab and the then Principal Secretary killed in Lamu on June 28th, 2020.
ii. KCC 014Y (Toyota Hilux) – The vehicle was returned to the client (CID)
iii. GKA 078 Y (Nissan) – The vehicle was stolen and was yet to be recovered. The matter was reported to the DCI on 29th August, 2015 and investigations are ongoing. The concerned driver, Mr. Joseph Maina Nderu, was interdicted. The Committee directed the Accounting Officer to provide DCI investigation report
iv. GKB 488C (Mitsubishi) – The vehicle belonged to the Ministry of Lands
v. KAU 274 Z – It was a project vehicle owned by David Onyango Nyachio, a contractor and the vehicle was returned to him.
vi. GK 307 U (Landrover) - Whereabout of the vehicle is unknown and a search by NTSA is still pending. NTSA reported that the details of the vehicle don’t exist in their system.
vii. The PS further reported that the whereabout of GK 636 (Toyota Corolla), GKT 482 (Mazda) and KBB 250G (Ford) is unknown, pending search by NTSA.

Committee Observations and Findings

(i) The Committee observed there was insufficient follow up on status of motor vehicles particularly on one motor vehicle whose details were not provided; and

(ii) The Committee further observed that motor vehicle registration no KBB 250G (FORD), GKT 482 (MAZDA) and GK 307 U- LANDROVER did not exist in the NTSA systems

Committee Recommendations;

The Committee recommends that the EACC investigates into the matter.

20. MINISTRY OF ENVIRONMENT AND FORESTRY- VOTE 1108

REPORT ON THE FINANCIAL STATEMENTS

Dr. Chris Kiptoo, the Principal Secretary and Accounting Officer for State Department for Environment & Forestry (Vote 1108) appeared before the Committee 24th May, 2022 to adduce evidence on the audited financial statement for the State Department for Environment & Forestry (Vote 1108) for the Financial Year 2020/2021. He was accompanied by the following officers:

1. Mr. George Gachuru - Senior Deputy Accounts General
2. Mr. Joseph Mutuma - Senior Chief Finance Officer
3. Ms. Annie Syombua - Deputy CSC

4. Mr. Richard Yator - Deputy Director Supply Chain Management
5. Dr. David Gikungu - Director Kenya Metrological Department
6. Mr. Peter Nduma - Carda Project Kenya Forestry Service
7. Mr. Walter Nganyi - Director KMD -MTR
8. Mr. Stephen Ndolo Kingoo - Assistant Director Forest Conservation
9. Mr. John Saranga - Ag. NPC LVEMP

And submitted as follows:

Basis for Qualified Opinion

872. Inaccuracies in Transfers to Other Government Entities

As disclosed in Note 15 to the financial statements, the statement of receipts and payments reflects Kshs.11,072,441,399 as transfers to other government entities which includes other capital transfers and transfers and subsidies totaling to Kshs.1,497,951,770. However, confirmation of recurrent transfers to National Environment Management Authority (NEMA) revealed variances as shown in the table below:

Item	Financial Statements Amount (Kshs)	Amount Per Ledger (Kshs.)	Amount Confirmed by Entity (Kshs.)
Recurrent Transfer	107,999,288	171,499,288	133,000,000
Total	107,999,288	171,499,288	133,000,000

Consequently, it has not been possible to confirm the propriety of recurrent transfers to NEMA totaling to Kshs.107,999,288/=

Submission by the Accounting Officer

The Ministry during the financial year 2020/2021 transferred to National Environment Management Authority (NEMA) under Development vote Kshs.126,499,288.00 broken down as here below: -

NO	AMOUNT (KSHS)	DESCRIPTION
1.	19,500,000.00	Centre for excellence and Innovation on Environment Headquarter
2.	10,000,000.00	Establishment of National Environment Laboratory
3.	37,000,000,00	Plastic Waste Management and Pollution Control
4.	41,499,288.00	Green Growth - NEMA
	107,999,288.00	**Sub Total**
5.	18,500,000.00	Economic Stimulus Programme (National Tree planting Campaign).
	126,499,288.00	**Grand Total**

Initially Development vote allocation for the Entity (NEMA) was Kshs.133,000,000,00 which was later revised downwards to Kshs.66,500,000.00 through a supplementary budget.

The Authority's amount captured in its Ledger of Kshs.171,499,288.00 differs with the Ministry's figures of Kshs.126,499,288 by Kshs.45,000,000.00. This amount was Grant released to (NEMA) during the end of financial year 2019/2020 and the same was credited to NEMA's bank account in July 2020. The Ministry captured it as expenditure for financial year 2019/2020 whereas the Authority included it in its receipt figure for financial year 2020/2021.

Further, at the time of audit the Authority (NEMA) had confirmed Development Vote receipt of Kshs.66,500,000.00 from the Ministry. However, the Authority has further confirmed receipt of an additional Kshs.104,999,288.00 which includes the Kshs.45 million for financial year 2019/2020. NEMA's recurrent Vote allocation for financial year was Kshs.1,153,919,000. The full amount was transferred to the Authority and receipt for the same confirmed.

Committee Observations and Findings
The Committee observed that the financial statements of the Ministry and NEMA differ due to lack of harmonization between the two entities.

Committee Recommendations;
The Committee reprimands the Accounting Officer for failure to ensure reconciliations are done on time.

873. Compensation of Employees
As disclosed in Note 12 to the financial statements, the statement of receipts and payments reflects compensation of employees of Kshs.1,088,307,850 which includes an amount of Kshs.496,633,745 in respect of personal allowances paid as part of salary.

A review of the payroll and IPPD data revealed that, the Ministry paid various allowances totaling to Kshs.228,105,416 as detailed below:

Type of Allowance	Total Payments (Kshs.)
Safety Allowance	80,916,343
Shift Allowance	49,821,230
Adversity Allowance	62,774,378
Aviation Support Allowance	11,015,226
Aviation Allowance	22,964,699
Special Legal Allowance	613,548
Total	228,105,424

However, no evidence was provided to confirm that the allowances were approved by the Salaries and Remunerations Commission.

Consequently, the accuracy and validity of compensation of employees' figure of Kshs.228,105,424 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Ministry paid the above-mentioned allowances that were based on approvals given before Salaries and Remuneration Commission (SRC) came into being.
I**.** Allowances paid to KMD Staff- Safety Allowance, Shift Allowance, Adversity Allowance & Aviation Support Allowance totaling Kshs.227,491,876/=
These payments were made based on the underlisted circulars;

(i) Directorate of Personal Management Circular Ref. No DPM.2A VOL II/(84) dated 2nd November,1998 and;
(ii) Ministry of Transport and Communications letter Ref. No. MTC/S/18.20/12 dated 29th August, 1997;

II**.** Special Legal Allowance Kshs.613,548/=

These are allowances paid to the Legal Officers serving in this Ministry as per the Office of the Attorney General & Department of Justice Circular Ref. No. AG/5036/11/73 dated 24th April, 2020.
However, the Ministry has constituted a team of six (6) officers to review the allowances with a view to coming up with a report to:-

i. Recommend the appropriate allowances payable to Kenya Meteorological Department Staff as per its findings;

ii. Enable the Principal Secretary to write to Salaries and Remuneration Commission to seek for consideration and approval of the recommended allowances payable to KMD staff.

Committee Observations and Findings
The Committee observed irregularities in the allowances.

Committee Recommendation
The State Department should engage the Salaries and Remuneration Commission with view of regularizing the allowances within three (3) months of adoption of this report.

Other Matter
874. Budgetary Control and Performance
During the year under review, the Ministry had a low absorption rate of the approved budget in the following items as shown below:

Expenditure	**Approved budget (Kshs)**	**Actual Expenditure (Kshs)**	**Under Expenditure (Kshs)**
Use of Goods and Services	317,657,503	282,175,648	35,481,855

Transfer to Other Government Units	12,304,531,327	11,072,441,399	1,232,089,928
Social Security Benefits	16,400,000	12,248,752	4,151,248
Acquisition of Assets	234,473,474	129,193,931	105,279,543
Total	12,873,062,304	11,496,059,730	1,377,002,574

Consequently, due to the deficit in revenue and late exchequer releases, the Ministry did not achieve its planned objectives for the year under review.

Submission by the Accounting Officer

The ministry's actual expenditure under the above items was kshs 11,496,059,730 against a total budgetary allocation of kshs 12,873,062,304 resulting to an under expenditure of kshs 1,377,002,574.

The reasons under expenditure are;

i. Delay by Donors in releasing some development projects funds;
ii. Procurement process for some specialized KMD equipment had not been concluded / delivered by 30th June, 2021, hence payment could not be made for the same;
iii. Covid 19 pandemic/Restrictions of movements interfered with ministry's implementation of programs.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

875. Use of Outdated Equipment and Technology

Audit inspection at the Kenya Metrological Department in November, 2021 revealed that automatic rain gauge and sunshine recorder were not functional at the Dagoretti Corner Station. It was not clear how the Department captures data for the affected parameters for the station's reporting area.

Further, the audit revealed that the Department has not fully installed modern digital equipment and technology and relies on old manual systems for weather reporting. The Management should consider overhauling the existing manual technology system and replace it with digital technology so as to enhance reliability and effectiveness of the processes of monitoring, capturing and timely dissemination of weather forecasts to stakeholders.

Submission by the Accounting Officer

The automatic rain gauge and sunshine recorder at the Kenya Meteorological Department Headquarters' observatory were not functional at the time of the audit. The sunshine recorder uses special strips which were out of stock. However, the data was captured by the Automatic Weather Station (AWS) sensors co-located at the observatory. The Department also collects rainfall data through a network of 39 manned observatories, over 260 automatic weather stations (AWS) and over 600 volunteer observer stations spread across the country.

Further, the Department is implementing a programme on modernization of meteorological services to ensure that the instruments and equipment deployed are state of the art. Some digital instruments have been procured.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that the equipment was not functional; and

(ii) The Committee observed that the modernization exercise was ongoing and some of digital instruments had been procured.

Committee Recommendations

The Committee reprimands the Accounting Officer for failing to effectively mainating assets as required under section 72 of the PFM Act, 2012.

876. 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, 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 and the National Treasury Circular Ref AG.4/16/2 Vol.3 (72) dated 30 June, 2021 on revised Annual Reporting Template.

Submission by the Accounting officer

The Accounting Officer submitted that the Ministry has started updating a comprehensive fixed asset register. In order to develop a complete asset register, the following actions have been taken;

(i). Request for the procurement of a consultant to undertake the digitization, registration, valuation and tagging of moveable and immoveable assets across the Country has been made. However, the procurement of the same did not proceed due to lack of funds. Support documents were availed for perusal by the Committee.

(ii). The Ministry has taken an internal measure by requesting all HoDs to ensure that new assets are posted in the asset register on a continuous basis. A copy of the latest Asset Register was provided to the Committee.

(iii). Asset Register for assets procured during financial year 2019/2020 and prior years has been updated. A copy of the Asset and Liabilities Register was availed to the Committee for perusal.

Committee Observations and Findings

(i) The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2019/20 and recommendations not implemented;

(ii) The Committee noted that the Accounting Officer failed to resolve prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES.

Basis for Conclusion

877. Pending Bills

Note 30.1 to the financial statements reflects pending bills totaling to Kshs.754,319,373/= as at 30 June, 2021. As at the time of audit in November, 2021 only Kshs.29,365,951 or 4% of the total liability had been settled leaving Ksh.724,953,422 or 96% outstanding. This contravened the National Treasury Circular Ref: DGIPE/A/1/80 dated 16th June, 2020 which directed that pending bills should form list charge of the 2020/2021 Budget.

In addition, included in the pending bills of Kshs.754,319,383 is a claim of Kshs.624,578,650 by a firm based on a court ward. The award comprised of principal amount of ksh.379,500,000 and Kshs.245,078,750 being costs and interest at 12% from 30 October, 2015. Although the National Treasury approved part payment of Kshs.60 Million to the petitioner, there was no evidence that the parties had agreed for installment payment.

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

Submission by the Accounting Officer

The Accounting Officer admitted that Note 30.1 to the financial statements reflects pending bills totaling Kshs.754,319,373/= as at 30th June, 2021 and that at the time of audit in November, 2021 only Kshs.29,365,95/= or 4% of the total liability had been settled leaving a balance of Kshs.724,953,422 or 96% outstanding.

The Accounting Officer submitted as follows:

i. The ministry has not been able to pay all the pending bills due to inadequate budgetary allocation. Letters have been written to the National Treasury requesting for additional funding to enable the Ministry clear the outstanding pending bills.

ii. As at November 2021, the Ministry had managed to pay a small percentage of the total bills. The ministry has paid pending bills totaling kshs.97,189,229.80 being kshs.22,614,184.10 and kshs.74,575,045.70 for Development and Recurrent votes respectively during this financial year 2021/ 2022.

iii. The bulk part of the pending bills worth kshs 624,578,750 being 82.8 % of the total pending bills kshs.754,319,373.20 reported in the financial year 2020/2021 is as a result of court award.

In supplementary I, the National Treasury has approved a budget of kshs 61,579,281.50 being 60 Kshs. million to carter for part payment of the decretal amount of Bea International and Makoha Odera kshs 1,579,281.50. The funds have been transmitted to State Law Office and Department of Justice for onward transmission the claimants**.**

Committee Observations and Findings

(i) The Committee observed that the pending bills were to form the first charge of the subsequent year yet the bills were carried forward but not paid contrary to the provisions of regulation 42 of the PFM (National Government) Regulations, 2015; and

(ii) The Committee observed that the pending bills amounting to kshs.97,189,229.80 have since been settled and the balance is anticipated to be settled in the subsequent financial year.

Committee Recommendations;

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

878. Digital Weather Instruments

During the period under audit, the Ministry contracted a firm to supply, deliver, test and commission digital weather instruments which comprised of 60 digital barometers, thermometers and humidity sensors, 60 digital weather monitoring and display processing system and 3 rugged laptops all at a total cost of Kshs.47,000,000.

However, physical verification performed in the month of November, 2021 revealed that equipment`s delivered in April, 2021 were still laying in the store seven (7) months since delivery. Information available indicates that the delay is due to lack of power UPS which must be installed alongside the equipment. It was not clearly explained why the procurement omitted such an essential component for the installation. Consequently, the value for money from the payment of Kshs.47,000,000 could not be confirmed.

Submission by the Accounting Officer

The Instruments for data collection for meteorological parameters are highly specialized and expensive. Due to budgetary constraints, the Ministry at first procured the digital instruments during the financial year 2020/2021. The scope of works as outlined in the contract document did not include installations. The Installation of digital instruments and procurement of UPS's was to be done later after budget allocation in the financial year 2021/2022.

The procurement process for supply and delivery of UPS's has been concluded and installation of the digital instruments is ongoing. The installation of the digital instruments is being done by the Ministry's Engineers across the country as approved by the Accounting Officer.

Committee Observations and Findings

(i) The Committee observed that non-inclusion of essential parts in the tender documents reflected lack of essential technical knowhow on the technical capacity of the State Department; and

(ii) The Accounting Officer had been directed to complete installation of the digital instruments before the end of the financial year 2021/2022.

Committee Recommendations;

(i) The Committee reprimands the Accounting Officer for failing to procure all necessary equipment thereby occasioning ineffective use of public funds.

(ii) The Accounting Officer to submit a report to the National Assembly on the status of the installation of the digital instruments within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

879. Lack of Risk Management Policy

The Ministry had a draft Risk Management Policy which had not been approved for use contrary to the Public Finance Management (National Government) Regulations, 2015. Regulation 165(1). In absence of an approved Risk Management Policy, it is not clear how the Ministry identifies and mitigates emerging risks in its day-to-day operations.

Submission by the Accounting Officer

It is true that the Ministry has a draft Risk Management Policy which has not been approved for use contrary to the Public Finance Management (National Government) Regulations, 2015 Regulation 165(i). Further: -

- Ministry's Strategic Plan (2018-2022) has a general risk frame that envisages the various categories of risk that may arise during implementation of the plan and mitigation strategies.
- The Ministry is committed to fast track the approval of the draft risk management policy and have it circulated for use.

Committee Observation and Finding;

The Committee noted that the Accounting officer admitted to lack of a risk management policy contrary to regulation 165 of the PFM National Government Regulations 2015.

Committee Recommendation

(i) 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.

(ii) The Accounting Officer to provide a status report to the Committee within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

INTEGRATED HEALTH & 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

Unmodified Opinion

880. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

881. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

882. There were no material issues relating to effectivenss of internal controls, risk management and governance.

KENYA INSTITUTIONAL STRENGTHENING PROJECT PHASE XI (NO. UNEP/KEN/SEV/80/INS/63)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

883. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

884. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

885. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA GOLD MERCURY FREE ASGM PROJECT GRANT/PROJECT NO.GEF/UNDP/GOK-00108253

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

886. There were no material issues noted during the audit of the financial statements of the project.

Other Matter

887. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects actual receipts of Kshs.30,019,000 against budgeted receipts of Kshs.50,000,000 resulting in a short fall of Kshs.19,981,000 or 40% of the total budget. In addition, actual expenditure for the year amounted to Kshs.21,984,572 against the final budgeted expenditure of Kshs.50,000,000 resulting to under absorption of Kshs.28,015,428 for which Management attributed to delay in constituting the project management unit and delay in consultancies and recruitment of staff.

Submission by the Accounting Officer

The Accounting Officer submitted that the under absorption was occasioned by delay in constituting the project management unit, consultancies and recruitment of staff. The project management unit has since been constituted and operational.

Committee Observations and Findings

The Committee observed that the under absportion was occasioned by fault of the Accounting Officer.

Committee Recommendations

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

888. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

889. There were no material issues relating to effectiveness of internal controls, risk management and governance.

SOUND CHEMICALS MANAGEMENT MAINSTREAMING AND UPOPs REDUCTION IN KENYA PROJECT (GRANT NO. 99820)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

890. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

891. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects actual receipts of Kshs.91,213,752 against budgeted receipts of Kshs.137,000,000 resulting in a short fall of Kshs.45,786,248 or 33 % of the total budget. Further, actual expenditure for the year amounted to Kshs.91,849,502 against the final budgeted expenditure of Kshs.137,000,000 resulting to under absorption of Kshs.45,150,498 for which the management attributed to IFMIS disruptions, nonresponsive tenders and Covid-19 pandemic.

Submission by the Accounting Officer

The Accounting Officer submitted that the under absorption was as a result of non-responsive tenders, IFMIS disruptions and challenges occasioned by Covid-19 pandemic.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

892. Pending Bills

Note 12(1) and (2) to the financial statements reflects pending bills amounting to Kshs.4,161,550 for supply of goods and services and a further Kshs.631,875 for unremitted statutory deductions relating to PAYE, NHIF and NSSF as at 30 June, 2021. The project is at risk of incurring significant interest costs and penalties with the continued delay in payments.

Submission by the Accounting Officer

The Accounting Officer admitted that Note 12(1) and (2) to the financial statements reflect pending bills amounting to Kshs.4,161,550 for supply of goods and services and a further Kshs.631,875 for unremitted statutory deductions relating to PAYE, NHIF and NSSF as at 30th June 2021.

These bills resulted from delayed disbursement of funds from the donor (UNDP). During the financial year the project received Kshs.31,280,297 from the donor. Funding of Kshs. 7,933,316 that was for financial year 2020/2021 delayed and was received by the project on 16th August, 2021 of financial year 2021/2022.

All these pending bills have since been settled.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that there were pending bills; and

(ii) The Committee noted that notwithstanding the explanation given by the Accounting Officer on delayed disbursements, the unremitted statutory deductions relating to PAYE, NHIF and NSSF amount to gross negligence on the part of the Accounting Officer.

Committee Recommendations

(i) The Committee reprimands the Accounting Officer for failing to remit statutory deductions relating to PAYE, NHIF and NSSF; and

(ii) The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

893. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

894. There were no material issues relating to effectiveness of internal controls, risk management and governance.

SYSTEM FOR LAND BASED EMISSIONS AND ESTIMATION IN KENYA (SLEEK) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

895. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

896. Pending Bills

Note 12.1 to the financial statements reflect pending accounts payables totalling Kshs.1,132,994 relating to unremitted taxes, statutory deductions and gratuity. This balance has been outstanding since year 2019/2020.

Although the Management indicates that the bills will be settled during the current year, it is not clear why the bills were not settled during the year under review. The project is at risk of incurring significant interest costs and penalties with the continued delay in payment.

Submission by the Accounting Officer

The Accounting Officer admitted that the pending bills totaling to Kshs. 1,132,994 were still outstanding as at 30th June, 2021. The bills resulted from lack of release of donor funds and GoK counter parts funding then. However, the bills relating to unremitted taxes and other deductions totaling Ksh. 711, 394 have been paid in current financial year 2021/2022.

Committee Observations and Findings

The Committee observed that the pending bills were to form the first charge of the subsequent year yet the bills were carried forward but not paid contrary to the provisions of regulation 42 of the PFM (National Government) Regulations, 2015;

Committee Recommendations;

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

897. Undrawn External Assistance

Note 12.2 to the financial statements reflects undrawn external assistance of Kshs.21,699,441 with an indication that the project ended before the full amount of the grant was drawn. However, it is not clear, and the Management has not explained why they could not request for extension of the project in order to fully utilize all the projects allocated funds. Consequently, the objectives of the project may not have been realized.

Submission by the Accounting Officer

The Accounting Officer admitted that undrawn external assistance of Kshs 21,699,441 existed as at 30th June, 2021. This was brought by the fact that the project ended on 31st December, 2019 and only Kshs 37,700,559.00 had been received from the donor by then leaving an undrawn balance of Kshs 21,669,441.00.

Committee Observations and Findings

(i) The Committee observed that Accounting Officer did not explain why he did not seek an extension of the project; and

(ii) The Committee noted that it was not clear if objectives were met.

Commiteeee Recommendations

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office by failing to seek an extension of the project thereby occasioning ineffective use of public money, and directs that he avails a status report to the Committee within three (3) motnhs of adoption of this report.

898. Fixed Asset Register

The fixed assets summary was missing in the financial statements.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to include the fixed asset summary in the financial statements contrary to the provisions of section 81 of the PFM Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to include the fixed asset summary in the financial statements contrary to the provisions of section 81 of the PFM Act, 2012, and directs that he avails it to the Committee within one (1) month of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

899. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

900. There were no material issues relating to effectiveness of internal controls, risk management and governance.

LAKE VICTORIA ENVIRONMENTAL MANAGEMENT PROJECT PHASE III (LVEMP III) PROJECT PREPARATORY ADVANCE NO. V1570 – KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

901. Sustainability of Phase III of the Project

As reported in the previous year, under the statement of receipts and payments, the project received Kshs.10,000,000 (2020 - Kshs.13,000,000) being the Government of Kenya counterpart funding. The International Development Agency (IDA) vide 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-Saharan Africa. Consequently, the ability of the Project to continue to sustain its services is in doubt.

Submission by the Accounting Officer

the Accounting Officer admitted that the World Bank cancelled the LVEMP III Project Preparatory Advance (PPA) on 2nd October 2019 and to date the Project does not have donor funds. The LVEMP phase III books of Accounts will be closed after settling the pending bills which were left behind when the Project closed.

Currently, arrangements have been started for closing the LVEMP III Project preparatory Advance (PPA) account. Authority letter by the National Treasury to close the donor account is availed.
In order to continue with intervention activities in the Lake Victoria Basin after dropping of LVEMP III, two- fold approaches are being pursued as below:

1. The Ministry of Environment & Forestry prepared a concept for a successor project, namely Lake Victoria Climate Resilience and Environmental Management Project (LVCREMP). The Cabinet approved the Project on 25th February, 2021 and the approval letter was sent to the National Treasury for resource mobilization to establish the new project. Discussions on the same are ongoing. This planned Project will be a National Project and will

continue to address the myriad of challenges which LVEMP Program has been addressing. The Cabinet Memo was availed.

2. Lake Victoria Basin Commission (LVBC) has engaged The World Bank on a new Project, named Lake-wide Inclusive Sanitation (LWIS). LWIS will allow for providing a range of options across the sanitation and environmental service chain to ensure reduced pollution in the Basin. In this approach, the Ministry of water, Sanitation & Irrigation has been identified as the lead Ministry in the new program. A letter responding to the request by State Department of Water Services and Sanitation to acquire LVEMP assets for use in the new program of LWIS was availed for perusal by the Committee.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

902. Inaccuracies in the Financial Statement

The statement of receipts and payments reflects adjusted cumulative figures in respect of payments whose adjustments as detailed below have not been explained.

Item	Initial Figure (Kshs.)	Adjusted Figure (Kshs.)	Variance (Kshs.)
Compensation of Employees	24,305,314	17,890,790	6,414,524
Use of Goods and Services	58,874,964	58,712,798	162,166
Total	83,180,278	76,603,588	6,576,690

Although the Management has explained that the adjustments were due to stale cheques not paid in cashbook, no evidence has been provided in support of the adjustments. In addition, the adjusted accumulated deficit of Kshs.178,433 is not in agreement with the total financial assets balance of Kshs.278,464. The difference between the two sets of figures was not reconciled or explained.

Further, the statement of comparative budget and actual amounts for the year ended30 June, 2021 reflects an approved receipts budget of Kshs.11,500,000 comprising of original budget of Kshs.10,000,000 being transfer from government entities and budget adjustment figure of Kshs.1,500,000 indicated as miscellaneous receipts. However, the statement of receipts and payments and Note 1 to the financial statements shows that the full budgetary allocation of Kshs.11,500,000 was transfers from government entities and there were no miscellaneous receipts. Under the circumstances, the accuracy of the financial statements for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The downward adjustment of cumulative payments for Compensation of employees and purchase of goods and services figures for the years ended 30th June, 2021 was done to reflect the correct figures of these two items. Stale cheques amounting to kshs.6, 576,690/- were paid in the Cashbook but not by the bank.

These cheques had been included in the cumulative payment when actual payment had not been done. The same were re- credited back to the cashbook during the financial year 2019/2020 and a prior year adjustment made to the statement of receipts and payment and statement of cash flow then. However, cumulative payments of these two items were not adjusted downwards then. This led to over cast of the amounts which had to be adjusted downwards in the financial statements for the financial statements 2020/2021.

Reasons for adjusting the cumulative payments were explained in noted 5 and 6 of pages 19 and 20 of the projects financial statements for year ended 30th June, 2021.
The following have been availed**: -**

(i) Copies of statement of Receipts and payment and statement of Cash flow as at 30th June, 2020.
(ii) List of re-credited cheques.
(iii) Noted to the financial statements for financial year 2020/2021

- Compensation of employees
- Purchase of goods and Services
- The Kshs11,500,000/= received by the project during the financial year 2020/2021 comprised of:
- LVEMP budgetary allocation for the year amounting to kshs.10 million
- Additional funding/receipts of Kshs1,500,000/= from the Ministry's budget to enable the project fully pay the outstanding balance for the water hyacinth Machine. This was explained in note 1 receipt from Government of Kenya and as a foot note to the statement of Comparative budget and actual performance.

Committee Observations and Findings
The Committee observed that the Accounting Officer had not provided evidence of adjustments and miscellaneous receipts as at the time of audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to provide information contrary to section 62 of the Public Audit Act, 2015.

903. Pending Accounts Payables

The statement of receipts and payments and Note 8 to the financial statements reflect an amount of Kshs.8,908,000 in respect of acquisition of non-financial assets. The payment was said to be in respect of 10% final balance of hyacinth removing equipment which was purchased in 2013/2014 financial year. However, the amount was not included in the pending bills as at the beginning of the year and was not in the budget allocation for 2020/2021. Further, the equipment was said to have been received in the financial year 2013/2014 yet the inspection and acceptance committee was said to have passed the equipment in December, 2019 while the supplier invoiced for the same in January, 2021. Under the circumstances, the validity of the payment in respect of acquisition of asset amounting to Kshs.8,908,000 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the procurement process for the said equipment began in 2013/2014 financial year and the following are some of the highlights.

- The Contract was signed on 18th June 2014 for Supply, delivery and Commissioning of water hyacinth equipment;
- Payment schedule was agreed as: 10% upon Contract Signing; 80% upon shipment and the remaining 10% upon delivery and commissioning;
- Shipment to the port of Mombasa was done on 21st October 2015;
- Clearance at the Port of Mombasa was done on 8th December 2015;
- Arrival at Kisumu Port was on 12th April 2016;
- Inspection and Acceptance Committees (IACs) were convened and performed the tasks on various dates such as: the first IAC from 23rd-26th May 2016, the second IAC from 1st -2nd September 2016, the third IAC from 22nd- 23rd November 2016, the fourth IAC on 23rd June 2017, the firth IAC from 29-30th May 2019 and finally the sixth/last IAC from 16th-17th December 2019.

During all this period, several meetings were held between the various Government Departments such as the Office of the Attorney General & Department of Justice, Ministry of Foreign Affairs, The National Treasury and Kenya Maritime Authority with a view to resolving the procurement issues, noting that the first five IACs had rejected the equipment. The last IAC exercise held as from 16th - 17th December 2019 accepted the machine but further delays in accepting the equipment was as a result of negotiations on guarantee.

Upon the Supplier meeting all the Contractual obligations, the equipment was accepted by the Government of Kenya and Commissioning was done on 22nd January 2021 and transferred to Lake Basin Development Authority (LBDA). Payment was then done upon commissioning as spelt out in the Contract.

The payment was therefore validly made, since by the time of payment, the Supplier had met all the contractual obligations under the signed Contract. The delay in the payment was to ensure that the Supplier had met all the responsibilities.

It is also important to note that the 90% of the payment had already been made upon shipment of the equipment and only 10% remained. The pending bill for the payment of 10% was included in the financial statement for 2019/2020 pending bills and was reflected as Ksh.8,500,000.00/-.

At the time of payment, the amount increased to Kshs.8,908,000/- due to foreign currency exchange rate fluctuation. The payee was a foreign Company and was paid in Euros. The acceptance certificate and handing over documents for the equipment have been availed.

Committee Observations and Findings

The Committee noted the explanation of the Accounting Officer.

Committee Recommendations

The Committee recommends that the matter is resolved.

904. Pending Bills

Noted 12.1 and 12.2 at page 30 of the financial statements reflects pending accounts payables totalling Kshs.17,019,569 as at 30 June, 2021 comprising of Kshs.2,487,569 and Kshs.14,532,000 due to suppliers of goods and services and staff respectively, all relating to 2019/2020 and earlier. However, Management has not provided any reason for non-payment of the bills or explained how the same are to 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

Noted 12.1 and 12.2 at page 30 of the financial statements reflects pending accounts payable totaling Ksh17,019,569 as at 30th June, 2021 comprising of Ksh2,487,569 and Ksh14,532,000 due to suppliers of goods and services and staff respectively all relating to 2019/2020 and earlier. The bills were not paid due to inadequate Government of Kenya Counterpart funds budgetary allocation for 2020/2021 financial year and prior years.

However, in the financial year 2021/2022, The pending bills payable to Riley Falcon Security Ltd of Ksh, 571,484 has been settled fully leaving a balance of Ksh. 1,916,085 for goods and services. The Ministry has further allocated funds to the project to settle the remaining pending bills for other contracts that were delivered in the current financial year 2021/2022. Upon completing the payment of the bills, the Project Preparatory Advance will wind up since LVEMP III was cancelled by The World Bank. For the case of pending employee payables, it is noted that these were allowances and not salaries. The Ministry has requested for funds to settle this outstanding staff allowances totaling to Ksh. 14,532,000 noting that the current budget is not adequate and the Project will have closed by June 2022.

Committee Observations and Findings

The Committee observed that the pending bills were to form the first charge of the subsequent year yet the bills were carried forward but not paid contrary to the provisions of regulation 42 of the PFM (National Government) Regulations, 2015.

Committee Recommendation

The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

Other Matter

905. Budgetary Control and Performance

The statement of comparative budget and actual amounts indicates that the project had an approved budget of Kshs.11,500,000 for the year ended 30 June, 2021 and recorded expenditure of Kshs.11,825,158 resulting to over-expenditure of Kshs.325,158 approximately 3% of the approved budget. There was no evidence provided in support of approvals for excess budget utilisation and as in the previous year, the Project did not receive any donor funding after IDA pulled out.

Submission by the Accounting Officer

The Accounting Officer submitted that the allocation for the financial year 2020/2021 LVEMP had an allocation of Kshs.10,000,000. This being transfer from Government.

Committee Observations and Findings

(i) The Committee observed that the explanation given by the Accounting Officer was unsatisfactory and does not answer the audit query; and

(ii) The Committee noted that there was an unexplained over expendinture in the State department contrary to regulation 43 of the PFM National Government 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office for the over expenditure incurred by the department.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

906. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

907. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

908. As required by International Development Agency (IDA) I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements are in agreement with the accounting records and returns.

NATIONAL ACTION PLAN ON ARTISANAL SMALL – SCALE GOLD MINING NO. AFR/NAP ASGM PROJECT/C/10-2016

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

909. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

910. Unreconciled Receipts

The statement of receipts and payments and the bank statement of the Project for the year ended 30 June, 2021 reflects Kshs.4,973,610 as receipts from Donor. However, the reconciliation statement of the Projects special account No.1000395958 maintained at the Central Bank of Kenya reflects US $ 30,000 equivalent of Kshs.3,259,020 as the amount withdrawn to fund the Projects activities during the year. The resultant difference of Kshs.1,714,590 has not been explained.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true the funds received by the Project from the National Treasury/Donor amounted to Kshs.4,973,610.60 through the exchequer requisition made by the Project through the Ministry.

However, the state department has written to the National Treasury to provide a reconciliation for the Special Deposit Account since they are the ones who maintain and operate it. Copies of the correspondence with the National Treasury were provided to the Committee.

Committee Observation and Finding

The Committee noted that under regulation 74 of the PFM National Government Regulations 2015, the Accounting officer has a responsibility to cause to be kept and maintained proper books of accounts and records in respect on all projects and donations.

Committee Recommendation

The Committee recommends that the National Treasury reconciles the accounts and reports to the Committee within three (3) motnhs of adoption of this report.

Other Matter

911. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects approved final receipt budget of Kshs.5,029,369 as proceeds from domestic and foreign grants against actual receipts of Kshs.4,973,610 resulting in a short fall of Kshs.55,759 or 1%. The statement also reflects a final expenditure budget of Kshs.5,029,369 against actual expenditure of Kshs.4,378,800 resulting in under-utilization of Kshs.650,569 or 13%. The underutilization of Kshs.650,569 is an indication that the activities planned by project management for the financial year under audit were not fully undertaken.

Submission by the Accounting Officer

The under utilization of Kshs.650,569.00 was as a result of delays in submission of requisitions for supply of goods and services.

Committee Observations and Findings

The Committee noted that the under utilization was occasioned by failure of users to requisition.

Committee Recommendations

The Accounting Officer should ensure henceforth that all users requisition on time.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

912. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

913. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GREEN GROWTH AND EMPLOYMENT THEMATIC PROGRAMME (GGETP) – DANISH EMBASSY FILE NO.2015

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

914. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

915. Budgetary Control and Performance

The statement of comparative of budget and actual amounts reflects a final budget receipts of Kshs.135,000,000 as proceeds from domestic and foreign grants against actual receipts of Kshs.70,500,000 resulting in a short fall of Kshs.64,500,000 or 48%. 294 Similarly the statement reflects final expenditure budget of Kshs.135,000,000 against actual expenditure of Kshs.54,561,123 on purchase of goods and services resulting in under expenditure of Kshs.80,438,877 or 60%. The under expenditure of Kshs.80,438,877 due to late disbursement of funds affected delivery of services for the Project.

Submission by the Accounting Officer

The under expenditure of Kshs.80,438,877.00 was occasioned by late disbursement of funds by the donor.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

916. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

917. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA SPECIAL PROJECT FOR BRSM AND SAICM

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

918. There were no material issues noted in the audit of the financial statements of the Project.

Other Matter

919. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects actual receipts of Kshs.10,230,195 against budgeted receipts of Kshs.15,000,000 resulting in a short fall of Kshs.4,769,805 or 32% of the total budget. In addition, actual expenditure for the year amounted to Kshs.7,434,660 against the final budgeted expenditure of Kshs.15,000,000 resulting to under absorption of Kshs.7,565,340 for which Management attributed to late disbursement of funds and delayed procurement processes.

Submission by the Accounting Officer

The Accounting Officer submitted that the under absorption of Kshs.7,565,340 was as a result of the late disbursement of funds and delayed procurement processes.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

920. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

921. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

922. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

923. Budgetary Control and Performance

The summary statement of comparative budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs.740,000,000 and Kshs.546,023,789 respectively resulting to an under-funding of Kshs.193,976,211 or 26% of the budget. Similarly, the Fund spent Kshs.547,619,479 against an approved budget of Kshs.740,000,000 resulting to an under-expenditure of Kshs.192,380,521 or 26% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the stakeholders.

Submission by the Accounting Officer

The reason for this was procurement contracts that were initiated during the year but were not fully executed by the end of financial year hence payment had to be actualized in the year 2021/2022. The delays were as a result of lengthy procurement procedure that requires multiple review and issuance of 'no objection' by the Donor (African Development Bank) coupled by internal procurement and payment processes that normally take time. Among the key contracts that affected the performance were delivery of 26 units of single cabin vehicles by Toyota Kenya worth Kshs 95,368,000 and delivery of 15 units of Tractors with non-tipping trailers by CMC Motor Group Ltd worth Kshs 66,450,000 which were eventually paid on 17th January 2022 and 23rd September 2021 respectively. The payment advice has now been availed.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

924. Over Expenditure on Motor Vehicle Insurance

Note 5 to the financial statements reflects purchase of goods and services expenditure of Kshs.424,336,276 which includes motor vehicle insurance figure of Kshs.20,181,077 whereas the approved budget for motor vehicles insurance is Kshs.13,500,000 resulting to over expenditure of Kshs.6,681,077. This is contrary to Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015 that stipulates an Accounting Officer shall ensure that public funds entrusted to their care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the National Assembly. Although the Management indicated that Kshs.5,723,905 was payment relating to pending bills from the previous year insurance expense, the same had not been taken into consideration when preparing budget for the year under audit. Failure to budget for pending bills may adversely affect the subsequent year's budgeted programmes and lead to reallocation of funds. It could also imply that the financial statements did not reflect fairly the operations of the project for the year under audit. Further, the Management is therefore in breach of the regulations.

Submission by the Accounting Officer

The project spent Kshs 20,181,077 on vehicles insurance in two separate payments of Kshs 5,723,905 (pending debt 2019/2020) and Kshs 14,457,172 (part of 2020/2021 budget) respectively both for comprehensive cover for new project vehicles.

The pending debt of Kshs 5,723,905 from the previous financial year 2019/2020 was initially presented to Ministry of Environment & Forestry on 11th May 2019 for processing. However, the Ministry returned the voucher to KFS with an explanation that the there was no adequate budgetary provision as a result of budget cuts in revised estimates. The project therefore was obligated to process the payment in 2020/2021 financial year as a pending debt. The same was not incorporated into the budget for the 2020/2021 because by the time the payment voucher was returned, the project had already finalized and submitted the work plan and budget for 2020/2021. It is therefore our submission that the situation was beyond the project's control. Copy of the Ministry letter and Revised printed estimates 2019/2020 are availed.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted to over expenditure against the approved budget for motor vehicle insurance; and
(ii) The Committee also observed that the Accounting Officer was in breach of regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015 that stipulates an Accounting Officer shall ensure that public funds entrusted to their care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the National Assembly.

Committee Recommendation

The Committee admonishes the Accounting Officer and recommends that he formalizes the payment within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

925. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

926. As required by African Development Bank and African Development Fund, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements are in agreement with the accounting records and returns.

KENYA WATER TOWER PROJECT – KENYA FOREST SERVICE

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

927. Failure to Close Project

Kenya Water Towers Project was suspended by the donor in January, 2018 and later terminated in November, 2020. In a letter Ref. DENR/EMC/6/1 dated 18 November, 2020 addressed to various implementing Agencies of this project, the Principal Secretary in the Ministry of Environment and Forestry communicated the Programme termination to various implementing agencies citing the lapse of the contracting deadline of 24 September, 2020 as per the financing agreement Ref No.KE/FED/024-208 and European Union Ref. Ares (2020) s5824518 dated 21 October, 2020. However, as at the time of audit, official closure of the project had not been done more than three (3) years after the suspension, which is a going concern.

Submission by the Accounting Officer

Kenya WaTER Towers Project (KWTP) is a donor funded project that is guided by a contracting agreement with European Union. The project was only terminated in October 2020 after great efforts were put in to lift the suspension.

The project agreement stipulates the procedure of closure of the project. Article 15.7 of the grant contract states" The expenditure verification report shall conform to the model and shall be produced by an auditor approved or chosen by the Contracting Authority''.

This closure requires that an auditor appointed by the donor at the time of contract signing conducts an expenditure verification that will determine the allowable and non-allowable expenses. This activity is sanctioned by the donor. The auditor appointed at the contract signing stage (PWC) was dropped and another one (Beker Tilly Meralis) engaged by the donor. This was done in March 2021 and the project has no control over it. It is after the audit verification and agreement with the donor that the project will be closed. As at now, the project is still waiting for the audit findings and direction on how to treat depreciation and foreign exchange losses from the donor.

Committee Observations and Findings

The Committee noted the reasons given by the Accounting officer on the audit process in order to close the project.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that the audit process is concluded so as to close the project within three (3) months of adoption of this report by the House.

928. Unsupported Receipts

The financial statement for Kenya Water Towers Project has been prepared in accordance with the cash basis of Accounting Method under the International Public Sector Accounting Standards (IPSAS). However, the statement of receipts and payments for the year ended 30 June, 2021, indicate a receipt of Kshs.1,375,991. However, the project bank statements did not reflect the receipt of this amount. It is not clear how the project expended an amount not available. Consequently, the completeness of the statement of receipts and payments for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

Kenya WaTER Towers Project was being implemented in two of Kenya's five major water towers; the Cheregany and Mt. Elgon. The project was suspended after an incidence that happened in Cheregany in January 2018 which was purported to be related to human rights violation though it was not related to project activities. Following the suspension, all project activities were affected and KFS through the Ministry of Environment and Forestry has been engaging the Donor in an effort to lift the suspension.

As indicated above, Kenya WaTER Towers Project (KWTP) is a donor funded project that is guided by a contracting agreement with European Union. The project was only terminated in October 2020 after great efforts were put in to lift the suspension. During the suspension, the donor prohibited use of the donor funds towards the project activities.

During the year under review, the project management was required to facilitate officers to prepare reports and accompany EU delegations to the field in efforts towards lifting the suspension. Since these missions were planned with very short notices, KFS facilitated these activities from the development account without transferring funds to the project account. The project team included these transactions for transparency purposes even though they would have been left out and accounted for under the general KFS reporting. The Service takes note of this observation for future transactions related to the project.

Committee Observations and Findings

The Committee observed that the Accounting officer did not transfer funds to the project account as required under regulation 76 of the PFM National Government Regulations 2015.

Committee Recommendation

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 transfered.

929. Material Uncertainty Related to Sustainability of Services

As previously reported, the Project was suspended in January, 2018 by the Donor, European Union, citing violation of the rights of the people living in forests by Kenya Forest Service while implementing the Project in one of the Kenya Water Towers. As the Project was being implemented in Chereganyi, an incident in relation to violation of human rights of Sengwer community who inhabited the Embobut Forest and who claimed the land to be their ancestral land occurred.

Further, the United Nation Committee on the Elimination of Racial Discrimination, expressed concern about reports on evictions in Embobut Forest. The Committee called on Kenya to acknowledge the rights of the Sengwer, Endorois, Ogiek and all other indigenous peoples. In addition, continued habitation of the communities in the affected forest may adversely affect the ecosystem and projected value for money may not be realized by the earmarked communities.

As at the time of audit, the suspension had not been lifted. It was concluded that Kenya ought to carry out effective consultations between relevant parties and communities likely to be affected by the Project with a view to obtaining prior and informed consent from the indigenous communities before implementing future projects. A material uncertainty exists with regard to sustainability of services as no funding has been forthcoming and the implementation of the Project to its conclusion is doubtful. My opinion is not modified in respect of these matters.

Submission by the Accounting Officer

The communities in Embobut live adjacent to the forest and not in the forest. The adverse effects on the ecosystem cannot be attributed to the communities living in the forest as the communities moved out. KFS acknowledges the need to involve all communities in the implementation of forestry projects and programmes. It has embraced the Participatory Forest Management Framework (PFM) operationalized through the Community Forest Associations (CFA) as required by the Forest Conservation and Management Act 2016. All forests are managed in close collaboration with all stakeholders including forest adjacent communities through a participatory frame work. Through this framework KFS and Communities have been able to undertake key activities that comprised project activities. This includes tree planting in the landscape for rehabilitation and restoration of the forest ecosystem.

Following the suspension of the project, it was felt that Kenya ought to carry out effective consultations between relevant parties and communities likely to be affected by the Project with a view to obtaining prior and informed consent from the indigenous communities before implementing future projects. Component of the project facilitate this process in the formulation of project activities in Component 3 under the counties. The process involved component 2 and 4 which were under suspension to ensure that communities gave consent to the project activities.

Further, in order to address the human rights concerns, and to entrench human rights-based conservation approach, KFS in conjunction with Kenya National Commission on Human Rights (KNCHR) developed a Human Rights Based Approaches (HRBA) curriculum and training manuals to build the capacities of KFS staff and its stakeholders. A number of trainings including a Training of Trainers (TOTs) has already been conducted targeting forest officers who are in turn expected to train other members of staff on HRBA. In addition, KFS has recruited a Social Development Expert (SDE) to address issues of human rights, social safeguards, gender equity, economic empowerment of marginalized groups and other emerging cross-cutting themes in the forestry sector. KFS continues to ensure that social safeguards to alleviate any potential human rights abuses/conflicts while ensuring strict adherence during the implementation of all forest sector projects. Report on training and Letter on deployment of a Social Development Expert.

Committee Observations and Findings
The Committee observed that the project was terminated in October 2022.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter
930. Budgetary Control and Performance
The summary statement of comparative budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs.5,000,000 and Kshs.1,366,879 respectively resulting to an under-funding of Kshs.3,633,121 or 73% of the budget. Similarly, the Fund spent Kshs.1,375,991 against an approved budget of Kshs.5,000,000 resulting to an under-expenditure of Kshs.3,624,000 or 72% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the stakeholders.

Submission by the Accounting Officer
The project approved budget was intended to support the project activities geared towards lifting of the suspension by the donor. However, the project donor terminated the project during the financial year 2020-2021. This meant that only activities related to the closure of the project were undertaken.

Committee Observations and Findings
The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
931. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
932. There were no material issues relating to effectiveness of internal controls, risk management and governance.

NORTHERN KENYA CONSERVATION PROJECT CREDIT NO. CKE 1036 01 H– KENYA WILDLIFE SERVICE

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

933. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

934. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflect final receipts of Kshs.276,100,000 and Kshs.255,000,915 respectively resulting to an under-funding of Kshs.21,099,085 or 8% of the budget. Similarly, the Project expended Kshs.222,422,788 against an approved budget of Kshs.276,100,000 resulting to under-expenditure of Kshs.53,677,212 or 19% of the budget. The under-collection of receipts of Kshs.21,099,085 was contributed by an undercollection of Kshs.22,500,000 or 75% from Government counterpart funding.

It is not clear why the Management failed to follow-up on The National Treasury to release the counterpart funding as budgeted. The under expenditure is an indication of nonimplementation of planned activities, a situation which may have negatively affected citizens of Marsabit County.

Submission by the Accounting Officer

The Accounting Officer submitted that the project "Northern Kenya Conservation Project Credit No. CKE 1036 01 H belonged to Kenya Wildlife service which is under the Ministry of Tourism and Wildlife.

Committee Observation and Findings

The Committee noted that the project was under the State Department of Wildlife.

Committee Recommendation

The Accounting Officer for the State Department of Wildlife to submit a response on the query to the Auditor General within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

935. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

936. Risk Management Policy

During the year under review, the project did not have a risk management policy, therefore the Management did not perform formal risk assessments on all key financial risk areas such as revenue, expenditure and fraud. Consequently, the risk levels of the key financial areas of the project could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry's Strategic Plan 2023-2027 Chapter 6.3 has incorporated risk process and mitigating factors. It has constituted Public Finance Management standing committee to spearhead finalization of the risk register and is in the process of developing a risk management strategy and a risk register as a means of managing organizational risks.

Committee Observation and Finding;
The Committee noted that the Accounting Officer admitted to lack of a risk management policy contrary to regulation 165 of the PFM National Government Regulations 2015.

Committee Recommendation

(i) 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.

(ii) The Accounting Officer should ensure compliance with the provisions of regulation 165 of the Public Finance Management (National Government) Regulations, 2015 on developing risk management strategies.

937. Disaster Recovery Policy

During the year under review, the project operated without a disaster recovery plan in place. Therefore, the project's preparedness to recover loss data, information or any other important resource of the project in the circumstances there was a disaster could not be confirmed.

Submission by the Accounting Officer

The Northern Kenya Conservation Project credit No.CKE 1036 01H - Kenya Wildlife Service, is under the State Department of Wildlife. The queries have been forwarded to the Principal Secretary, State Department of Wildlife to provide responses on the same to the Public Accounts Committee, the National Treasury and the Auditor General.

Committee Observation and Findings
The Committee noted that the project was under the State Department of Wildlife.

Committee Recommendation
The Accounting Officer for the State Department of Wildlife to submit a response on the query to the Auditor General within three (3) months of adoption of this report.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

938. As required by AFD, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements are in agreement with the accounting records and returns.

CAPACITY DEVELOPMENT PROJECT FOR SUSTAINABLE FOREST MANAGEMENT IN KENYA (CADEP GRANT NO.22) - KENYA FOREST SERVICE

REPORT ON THE FINANCIAL STATEMENTS
Basis for Qualified Opinion

939. Unsupported Direct Purchase of Goods and Services

The statement of receipts and payments reflects direct purchase of goods and services of Kshs.282,000,000 under Note 10.4 to the financial statements. However, the documents in support of the direct purchase of goods and service were not provided for audit. Consequently, the validity and accuracy of the expenditure on direct purchase of goods and services of Kshs.282,000,000 could not be confirmed.

Submission by the Accounting Officer

It is true that the documentation in support of the direct purchases of goods and services were not provided for audit hence the direct purchases of goods and services of Kshs 282,000,000.00 could not be confirmed during the audit. However it is worth to note the following;

In the signed Records of Discussion, JICA (donor) input, among many others was to provide Machinery, equipment and materials for the project. The purchase or procurement of the goods and service is done solely by the JICA (donor) based on Government of Japan procurement rules and regulations. Kenya Forest Service has no control over the purchases made by the donor.

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.

Committee Observations and Findings

The Committee observed that the Accounting Officer had not provided documentation in support of direct purchases of goods and services contrary to section 62 of the Public Audit Act, 2015, due to the documents being with the donor.

Committee Recommendation

The Committee recommends that the Accounting Officer obtains the documents from the donor and avails them to the Auditor General within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

940. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

941. There were no material issues relating to effectiveness of internal controls, risk management and governance.

INTERNATIONAL PARTNERSHIP PROGRAMME – FOREST 2020 PROJECT - KENYA FOREST SERVICE

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

942. Failure to Close or Extend Project

Note 1.7 and Note 1.8 to the financial statements reflects funding summary and summary of overall project performance respectively. The Project was for a duration of 4 years from 2016 to 2020 and the project had no budgeted activities in 2020/2021 financial year. Despite the absence of budget provision, the Project incurred Bank charges of Kshs.4,929 thereby incurring a deficit of Kshs.4,929. The Management has not explained why the project has not been closed or extended, more than one year after the duration of the Project lapsed. This is contrary to Section 15 of the Grant Agreement which states that the Agreement 'shall apply from the date of the Agreement and remain in full force and effect until 31 March, 2020 and may be extended for a further period of two (2) years thereafter on written agreement between the parties in advance of the expiry of the initial term'. However, as at the time of audit, official closure or extension of the Project had not been done more than one (1) year.

Submission by the Accounting Officer

The project was for duration of 3 years and four months i.e. from 1st December, 2016 to 31st March 2020. However, on 10th March 2020, the donor (Ecometrica) gave three (3) months zero cost project time extension from 1st April 2020 to 30th June 2020 so as to allow time for the project to close smoothly and at the same time to align the project end date with the Kenya Government Financial year end date. No funding summary was available for the extended period since it was a zero-cost extension from the side of the donor meaning no additional funding was to be received by the Project. The three months zero cost extension is evidenced by the letter from the donor dated 10th March 2020. Therefore, the project officially ended on 30th June 2020.

The amount of Kshs. 4,929 incurred is related to bank charges. They were incurred as the unpresented cheques were presented and cleared within the months of July and August 2020, and also due to passage of time as the Project awaited BOD resolution extract to have the bank account closed. After the Project officially closed on 30th June 2020, the bank account was not closed immediately. This was occasioned by the fact that the Project had some unpresented cheques. In Addition, KFS Board resolution to close the bank account was to be forwarded to the bank (Kenya Commercial Bank) so as to effect the closure. Considering the KFS BOD Calendar of meetings, an extract of the Board of Directors meeting Minutes resolving to have the bank account closed was ready on 10th February, 2021The project bank account has since been closed.

Committee Observations and Findings

The Committee observed that the Accounting Officer delayed in closing the bank account which occasioned bank charges that could have been avoided. The account was now closed.

Committee Recommendation

The Committee recommends that the Accounting Officer expedites closure of project bank accounts in future.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

943. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

944. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GREEN GROWTH AND EMPLOYMENT THEMATIC PROGRAMME (CR NO:2015-39789) - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

945. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

946. Pending Bills

The Donor issued a six (6) months no cost extension ending on 30 June, 2021. However, as at November, 2021, two (2) pending bills amounting to Kshs.3,068,775 had not been settled. The delay in settlement of the bills may lead to additional costs in terms of interests and penalties.

Submission by the Accounting Officer

The Management would like to clarify that the outstanding two commitments are the commitment to Danida Fellowship Centre for Kshs. 1,134,000 (the officers' training was still ongoing as at the end of the financial year). The payment has since been made to Danida Fellowship Centre. The second is a commitment to Smart data Consultants of Kshs. 1,934,775 which relates to printing of Environmental Performance Index (EPI) and County Environment Performance Index (CEPIs). The supplier was not able to deliver the works, so the LPO was cancelled. Payment voucher was availed.

Committee Observations and Findings

The Committee noted the submission, that the Kshs. 1,934,775 was a pending bill.

Committee Recommendation

The Committee recommends that the Accounting Officer properly classifies amounts henceforth.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

947. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

948. There were no material issues relating to effectivess of internal controls, risk management and governance.

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

Unmodified Opinion

949. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

950. Low Absorption Rate

Review of the Financing Agreement revealed that the Project closing date of 30 June, 2020 was extended to 31 December, 2021 at no cost. Further, the statement of receipts and payments indicates that the Project spent Kshs.107,291,206 in the year under review. The resultant balance of Kshs.15,160,927 represents unutilized project funds being 12.4% of the total project funding of Kshs.122,452,133. However, as at the time of the audit in October, 2021, several project activities had not started casting doubt on the ability of the Management to complete the pending activities.

Submission by the Accounting Officer

The management of NEMA has noted and accepts the above observation. Currently the absorption rate is at 79%. The final procurement process has been rolled out that should translate to over 90% in the next one month. The project has experienced delayed absorption mostly due to long procurement challenges at the Sub Executing Entities. However, to enhance capacity to deliver the project within the remaining period, the management has;

- Centralized the procurement processes and most of the water infrastructure tenders have been awarded and the contractors are on site carrying out the works;
- Iternally strengthened the link between the procurement section and the programme unit to fast-track the process by designating a procurement officer to provide the linkage;
- Provided additional staff to the Programme Unit.

Adaptation Fund Board has granted a no cost extension to 30th September 2022.

Expenditure return is availed.

Committee Observations and Findings
The Committee noted the explanation provided by the Accounting Officer.

Committee Recommendations
The Committee recommends that the Accounting Officer ensures adequate measures are put in place to ensure full realization of planned activities.

Other Matter
951. Budget Overrun on Management Fee
According to the approved projects budget, management fees by implementing agency is set at 8.5% of the project cost which is reflected as US$ 720,326.63 @ 105 or Kshs.75,634,296. However, a total of Kshs.72,366,504 was spent on administration of the project being 96% of the total allocation while the project stands at 57% on implementation. It is not clear how the Management will administer the remaining project activities with a budget of less than Kshs.3,500,000 for project administration.

Submission by the Accounting Officer
The management has noted the observation and wish to state that the National Implementing Entity fee (NIE) fee is indeed 8.5% of the activity budget which is US$ 720,326.63, Kshs.79,235,929 equivalent at an exchange rate of 110 per USD.

Therefore, the total Expenditure for Administration as at 30th June 2021 which was Kshs.72,366,504 is within the administration budget of Kshs.79,235,929. The project management is introducing cost cutting and cost control measures to ensure the Management fees is not exceeded

Committee Observations and Findings
The Committee noted that 96% of administration costs had been expended with only 57% of project being implemented. The expenditure pattern shows that the administration budget will be exceeded despite commitment by the Accounting Officer to the contrary.
Committee Recommendation
The Committee recommends that the Accounting Officer ensures that the budget is complied with.

952. Projects Not Started
Information available indicates that sixteen (16) project activities equivalent to Kshs.236,922,300 (US$2,369,223) were yet to be implemented with less than 3 months to the end of the project. This is an indication of poor project implementation mechanism. In the circumstances, vulnerable communities did not realize any value for these Projects not started.

Submission by the Accounting Officer
The programme activities were considerably slowed down by the COVID-19 pandemic especially in the initial stages of the pandemic.

This necessitated cessation of most activities. However, with the removal and reduction of containment measures and protocols, the project activities picked up and management is doing everything possible to recover lost time.

The management is in close consultations with the adaptation Fund Secretariat, whose members are appreciative of the challenges posed by COVID and other implementation challenges. Adaptation Fund Board granted a no cost extension upto 30th September 2022 in response to delays caused by COVID-19 impacts.

The Authority has awarded contracts costing over 200 Million and the contracts are on going.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

953. Approval to Implement Projects

The statement of receipts and payments reflects Kshs.93,720,691 in respect of acquisition of non-financial assets. The payments relate to various contractors procured and engaged by NEMA to undertake projects at a total contract cost of Kshs.217,607,994. This is contrary to the Financing Agreement where at NEMA as an implementing entity, received funds from Adaptation Fund and disbursed the funds to executing entities such as Kenya Forestry Research Institute (KEFRI), Coast Development Authority (CDA) and Tana and Athi Rivers Development Authority (TARDA) for project implementation. The Management noted that this decision was backed by the NEMA's Board Resolutions and on the need to centralize procurement. However, no evidence was provided to demonstrate that Adaption Fund Board approved for NEMA to directly implement the project activities in line with paragraph 2 of the programme's implementation guidelines of October, 2017 which states that, "execution services will only be provided by implementing entities on an exceptional basis and at the written request by the recipient country, involving designated authorities in the process, and providing rationale for such a request". In the circumstances, Management was in breach of the terms of the Financing Agreement.

Submission by the Accounting Officer
The Management has noted the observation and wishes to state as follows:

i). NEMA is not directly implementing project activities, where there are Executing Entities (EEs). The project activities continue to be executed by the respective EEs and sub-EEs. (**Financing agreement clause 6.01).** The financing agreement between Adaptation Fund states that all procurement of goods and services (including consultancies) for activities funded by the grant will be carried out in accordance with NEMA's standard practices and procedures in accordance with NEMA's Procurement policies including its procurement and consultants' guidelines. In management's understanding, the decision to undertake procurement functions to NEMA did not therefore require an approval from the Adaptation Fund Board because it was a specific provision in the financing agreement. The execution agreements with EEs were amended to reflect this change. The risk of litigation is therefore minimal;

ii). The decision to revert procurement services to NEMA was informed by the need to address procurement and financial related risks that had been identified through various internal audit and programme reviews. Inadequate capacity to undertake procurement, and failure to follow the laid down procurement procedures was identified as a major programme risk. According to the financing agreement, NEMA as an NIE bears full responsibility for the financial management of the programme, and there was need to reduce exposure of NEMA to these risks. Moreover, there was concern that procurement challenges were the main reason for low progress and absorption of the programme for the first three years, and there was need to mitigate this for the programme to achieve its objectives. Where it was found prudent that certain aspects of procurement were more effectively and efficiently handled by an EE, as the case for Coast Development Authority, this was provided for;

iii). The decision to centralize the procurement functions at NEMA was after extensive consultations and concurrence with the Executing Entities. Apart from procurement, all other program activities are still being undertaken by the Executing Entities. Moreover, the Executing Entities are involved in the procurement process especially in specifications, evaluation, and contract management;

iv). This process was subjected to board oversight as evidenced by approval by the NEMA Board of Management;

v). The approach of centralizing procurement to fast track program progress and address potential risks has been reported to the Adaptation Fund in the annual Programme Performance Reports (PPR), as a mitigation measure to the mentioned challenges;

vi). oversight role for the whole programme has been undertaken by the NEMA Board of Management. It approves the budgets, procurement plan, and reviews progress reports.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendation
The matter is therefore marked as resolved.

954. Variation of Smallholder Irrigation Project

Included in the statement of receipts and payments under acquisition of assets figure of Kshs.93,720,691 is payments of Kshs.68,065,050 for the construction of Small-holder Irrigation Project in Thome, Laikipia County. The contract was awarded to a local company at a contract price of Kshs.60,546,432 on 24 December, 2019.However, verification of the final payment certificate dated 30 June, 2021 revealed that the contractor was to receive a total of Kshs.68,065,050 being Kshs.7,518,618 above the original contract price. A contract variation order was issued on 21 December, 2020 which was in contravention of Section 139 (3) of the Public Procurement and Asset Disposal Act, 2015 which states that no contract price shall be varied upwards within twelve months from the date of the signing of the contract.

Consequently, the Project management was in breach of the procurement law.

Submission by the Accounting Officer

The Management has noted the observation and wish to state that the final design had two water pans (25000 and 4000 M^3 respectively) but at the time of bidding, the Program had not received all monies. To comply with the procurement procedures i.e. not to undertake a procurement unless it is backed by a budget, a revision of the BoQ was done to exclude the 4000 cubic water pan. During the execution of the project, the remaining amount was received. The Contractor was awarded the variation as given the project timelines, it would be faster to achieve completion since he was already on site. Secondly, he had knowledge of the project and the amount in question did not exceed 25 percent of contract value which would have required retendering.

Committee Observations and Findings

The Committee observed that the Accounting officer admitted that variation was done 12 months from the contract date in breach of section 139 of the Public Procurement and Asset Disposal Act, 2015. Nothing would have stopped the Accounting Offcier from re-tendering for the new pans.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of the provisions of section 139 (3) of the Public Procurement and Asset Disposal, 2015.

955. Project Verifications

During the year under review, a total of nineteen (19) projects were sampled and verified in Homa-Bay, Kajiado, Laikipia, Kisumu, Machakos, Kwale, and Taita-Taveta Counties. A total of 7 projects with a budget cost of Kshs.33,334,049 had not started, while 7 projects with a budget cost of Kshs.66,481,241 were ongoing and 5 projects with a budget cost of Kshs.87,472,840 were fully complete. There is need for the project management to fast-track the implementation process and ensure that completed projects are handed over formally to the beneficiaries. In the circumstances, the achievement of the objectives for the projects not started and those ongoing could not be confirmed.

Submission by the Accounting Officer

The Management has noted the observation and wish to state as follows;

i. Five Adaptation villages have been constructed in Homa Bay and Kisumu counties and are almost complete; Copy of Payment voucher and Contractor's Payment Certificate are availed;

ii. Seven Adaptation villages have been constructed in Kajiado and Machakos Counties which are complete and operational; Copy of Payment Voucher and Contractor's Payment Certificate are availed;

iii. Five Adaptation Villages have been constructed in Garissa and Wajir counties and are almost 70% complete;

iv. Shoreline stabilization is being undertaken in Kwale. Copy of payment voucher and Contractor's PC are availed;

v. A small-scale Irrigation Scheme has been constructed in Laikipia, Thome area. The project is complete. Copy of payment voucher and Contractor's PC was availed;

vi. Water harvesting structures are being constructed in Taita Taveta County.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

956. Uncompleted Civil Works

Included in the statement of receipts and payments under acquisition of assets figure of Kshs.93,720,691 is an amount of Kshs.3,375,562 paid as construction for civil works which included small holder irrigation schemes, and drilling and installation of boreholes. However, physical verification of project sites in the month of October 2021 revealed that the works had not been completed despite payments having been made as shown below;

Item	Details	Estimated cost (Kshs.)
Solar Panels	8 Panels at Oldorko and Leshugu not delivered.	120,000
Concrete Posts	350 Posts not supplied to various sites.	420,000
Construction of Fish cooling plant	Fish cooling plant at Ndiwa not done.	1,043,102
Construction of Water Pan	Pan One (1) water pan of 5000 m^3 done as opposed to 2 pans in Thome, Laikipia.	1,792,460
Total		**3,375,562**

Consequently, value for money and achievement of the objectives of the projects could not be confirmed.

Submission by the Accounting Officer
The Management has noted the observation and wish to state as follows:

Item	Details	Estimated Cost (Kshs)	Management comments
Solar Panels	8 panels at Oldorko and Leshugu not delivered	120,000	The payments were done based on what was delivery note and the BoQ For solar panels, the installed solar panels are of Eagle PERC 72 JKM365-72 which have an output of 365 Watts while those in the BoQ have output of 260 watts hence

			more watts are achieved using fewer panels. The amount of power required also varies with the pump installed hence the difference in number of panels. Communication from the contractor to DG NEMA is availed
Concrete posts	350 posts not supplied to various site	420,000	The fencing of the sites is in progress and the balance will be delivered as the fencing progresses
Construction of Fish cooling plant	Fish cooling plant at Ndhiwa not done	1,043,102	Payment of works not started at Ndhiwa fish cooling plant was an advance payment which is provided under the contract agreement. To secure this amount, the contractor had executed a bank guarantee for the amount should he default. *The construction is ongoing and is about 43% complete. Bank Guarantee is availed* *Payment details and contract confirming advance payment is availed*
Construction of water pan	One water pan of 5,000 cubic metres not done	1,792,460	Two water pans have been done on site, and this was evidenced during the field site inspection. The volume of the water pans is 25000 M3 and 50000 M3
Total		**3,375,562**	

Committee Observations and Findings

The Committee observed that advance payments were made however some of the works are still incomplete.

Committee Recommendation

The Accounting Officer should provide a status report of the projects to the Committee within three (3) months of adoption of the report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

957. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GCF PROJECT PREPARATION FACILITY: "DEVOLVED CLIMATE CHANGE GOVERNANCE TO STRENGTHEN RESILIENCE OF COMMUNITIES' IN TARGET COUNTIES'' - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

958. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

959. Budgetary Control and Performance

The summary statement of comparative budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs. 34,265,538 respectively. However, the 306 Project spent Kshs. 2,877,553 against an approved budget of Kshs.34,265,538 resulting to an under-expenditure of Kshs. 31,387,985 or 92% of the budget. The underperformance affected the planned activities and may have impacted negatively on service delivery to the stakeholders of the project.

Submission by the Accounting Officer

The Management has noted the observation and wish to state that due to the outbreak of COVID-19 Pandemic the project secretariat was not able to hold meetings and undertake stakeholder engagement. The initial stages of this project were very heavy on doing public meetings and workshops

However, this has since been overcome by easing of COVID protocols and the project activities are now being undertaken with an aim of being completed within the project period.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

960. Failure to Open Project Bank Account

The project Management did not open a separate bank account as required by Section 74(1) where the Public Finance Management Regulations, 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, into which all funds shall be kept. The Act further states that, 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 Management did not obtain authority to open a project account but deposited the project funds in an existing project account for Adaptation Fund A/c No.1218639164 contrary to the requirements of the law.

Submission by the Accounting Officer

The Management has noted the observation and wish to state that that the Authority requested the National Treasury to grant authority to open GCF bank account. The approval is being waited for.

The Authority received funds for planned capacity assessment, project feasibility study, proposal development and trainings which were initial activities required to be undertaken before commencement of the main project as it waits for the approval of the opening of the bank account.

The Authority is still following up with National Treasury for the approval to open GCF bank account, and will not receive funds for the main project before the approval is secured

The Authority continues to reconcile the GCF account balances and will transfer the reconciled balances to the GCF bank account once the National Treasury gives the authority to open the bank account.

Committee Observations and Findings

- **(i) The Committee observed that the Accounting Officer admitted that the project bank account had not been opened at the time of the audit as Treasury approval had not been obtained;**
- **(ii) The Committee noted that there was breach of regulation 74 of the PFM National Government Regulations, 2015**

Committee Recommendation

The Committee recommends that the Accounting Officer submits confirmation of Treasury authority to open the bank account within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

961. There were no material issues relating to effectiveness of internal controls, risk management and governance.

GCF READINESS AND PREPARATORY SUPPORT: "NEMA CAPACITY STRENGTHENING PROGRAMME TOWARDS ACCESSING CLIMATE FINANCE FROM GREEN CLIMATE FUND" - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

962. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

963. Low Absorption of Project Funds

The annual report for the year under review indicates that the Project has been in operation for two (2) years, in which the project is expected to end on 25 December, 2021. However, as at 30 June, 2021, the Project had only absorbed Kshs.5,758,927 out of the total 1st Tranche funding amount of Kshs.25,669,350 (USD258,636) translating to 22% of the funding. Further, Paragraph 4.3 of the Disbursement Schedule of the Cooperation Agreement between the United Nations Office for Project Services (UNOPS) and the Government of Kenya required the Project to utilize 70% of the 1st Tranche before UNOPS would disburse USD 152,424 in the 2nd Tranche. In this regard therefore the Project timelines may lapse without the funds being fully disbursed and utilized as per the Cooperation Agreement.

Submission by the Accounting Officer

The Management has noted the observation and wish to state that the absorption of project funds was negatively affected by the COVID-19 Containment measures which restricted gatherings and movement of citizens. Now that the restrictions have been eased, the Authority will enhance the absorption level in order to realize the projects objectives.

Further, from July 2021 to date the trainings and meetings have been done which brings the total absorption to over 86%. The Authority has therefore requested the donor to release the last Tranche. Letter to the donor requesting for the last Tranche is availed.

Committee Observations and Findings

The Committee observed that the explanation and provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

964. Budgetary Control and Performance

The summary statement of comparative budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs.22,636,464 respectively. However, the Project spent Kshs.2,726,041 against an approved budget of Kshs.22,636,464 resulting to an under-expenditure of Kshs.19,910,423 or 88% of the budget. The underperformance affected the planned activities and may have impacted negatively on service delivery to the stakeholders of the project.

Submission by the Accounting Officer

The Management has noted the observation and would like to clarify that Kshs.25,669,350 was the grant received in the FY 2019/2020.During the 2019/2020 Authority spent Kshs,3032,886 thus leaving a balance of Kshs.22,636,464 at the end of the year. The Kshs.22, 636,464 formed the opening balance in the year under review.

In the year under review Kshs.2,726,041 was spent on the projects representing 12%.

The low absorption rate was attributable to Covid-19 restrictions and other containment measures.

The funds were meant for meetings and trainings in readiness for the main project. However, the meetings and trainings have been done and absorption has now gone over 86% and the Authority has requested for the last Tranche from the donor. Request for the last Tranche from the donor is availed.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
965. Anomalies in Tenders Awarded

965.1. Tender Number NEMA/RFP/034/2019/2020 - (RFP) to Develop Environmental and Social Management Systems (ESMS)
Examination of Tender number NEMA/RFP/034/2019/2020 - (RFP) to develop Environmental and Social Management Systems (ESMS) revealed that the request for proposal was advertised in My Gov Newspaper on 10 March, 2020. The blank bid document downloaded from (www.nema.go.ke), the tender opening minutes, the tender evaluation report and the professional opinion indicated that all the proposals should have been submitted not later than 26th June, 2020 at 2:00 pm. The consultancy firm which was awarded the tender, submitted the proposal on 3 July, 2020, seven (7) days after the deadline and closing of submissions. Bids were opened on 3 July, 2020 and evaluation done from 21st to 24th July, 2020. Management however did not provide any re- advertisement, instead it availed for audit an email dated 19 June, 2020 done by the supply chain office to the bidders who had 308 shown interest before. It was observed that this email was done four (4) days before an addendum dated 23 June, 2020 was issued. Further, the addendum availed for audit was invalid since it had not been approved by the Accounting Officer. Consequently, the regularity of the contract awarded could not be confirmed.

Submission by the Accounting Officer
The Management has noted the observation and wish to state that the bids were to be submitted on or before 25th March 2020 at 11:00am. However, in order to ensure adherence to the Government's directives on the spread of COVID-19, the Authority resolved to terminate the tender on 24th March 2020 through a tender cancellation notice.

The Authority re-advertised the tenders on 18th June 2020 through the websites www.nema.go.ke and www.tenders.go.ke as provided by Sec.96 (5) of the PPADA, 2015. Bidders who had shown interest in the first invitation were notified on 19th June 2020.

The bids were to be submitted on or before June 26th 2020. However, interested bidders requested for an extension of the deadline citing challenges faced as a result of the work-from-home directive issued by the Government in order to contain spread of the COVID-19 pandemic.

The request for extension was granted following consultations with the management and a notice was posted on www.nema.go.ke on 24th June 2020. The bids were received and opened on July 03, 2020 as per the stipulated times.

Committee Observations and Findings

The Committee noted that the Accounting officer did not submit evidence of extension of the deadline.

Committee Recommendation

The Accounting Officer should submit evidence of extension of deadline to the Committee within three (3) months of adoption of this report.

965.2. Tender No: NEMA/RFP/035/2019/2020 - Consultancy Services for Technical Assistance Grant on Environmental and Social Policy for Adaptation Fund Program in Kenya

Examination of tender number NEMA/RFP/035/2019/2020 revealed that a request for proposal was advertised on My Gov Newspaper on 10 March, 2020. The blank bid document downloaded from (www.nema.go.ke), the tender opening minutes, the tender evaluation report and the professional opinion indicated that all the proposals should have been submitted not later than 26th June 2020 at 2:00 pm. The consultancy firm who was awarded the tender, submitted the proposal on 3 July, 2020, seven (7) days after the deadline and closing of submissions. Bids were opened on 3 July, 2020 and evaluation done from 21st to 24th July, 2020. Management however did not provide any re-advertisement, instead it availed for audit an email dated 19 June, 2020 done by the supply chain assistant to the bidders who had shown interest before. It was observed that this email was done four (4) days before an addendum dated 23 June, 2020 was issued. Further, the addendum availed for audit was invalid since it had not been approved by the Accounting Officer.

Consequently, the regularity of the contract awarded, could not be confirmed.

Submission by the Accounting Officer

The Management has noted the observation and wish to state that the bids were to be submitted on or before 25th March 2020 at 11:00am. However, in order to ensure adherence to the Government's directives on the spread of COVID-19, the Authority resolved to terminate the tender on 24th March 2020 through a tender cancellation notice.

The Authority re-advertised the tenders on 18th June 2020 through the websites www.nema.go.ke and www.tenders.go.ke as provided by Sec.96 (5) of the PPADA, 2015. Bidders who had shown interest in the first invitation were notified on 19th June 2020.

The bids were to be submitted on or before June 26th 2020. However, interested bidders requested for an extension of the deadline citing challenges faced as a result of the work-from-home directive issued by the Government in order to contain spread of the COVID-19 pandemic.

The request for extension was granted following consultations with the management and a notice was posted on www.nema.go.ke on 24th June 2020. The bids were received and opened on July 03, 2020 as per the stipulated times.

Committee Observations and Findings

The Committee noted that the Accounting officer did not submit evidence of extension of the deadline.

Committee Recommendation

The Accounting Officer should submit evidence of extension of deadline to the Committee within three (3) months of adoption of this report.

966. Comingling of Project Funds

As previously reported, the Management did not open a separate Programme bank account but instead the Project funds are deposited in the Project Integrated Programme to Build Resilience to Climate Change and Adaptive Capacity of Vulnerable Communities in Kenya's bank account No.1218639164. It was not possible to isolate transactions between the two projects considering that the money is fungible. This was 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 the Central Bank of Kenya into which all funds shall be kept unless it is exempted by the Cabinet Secretary, in writing. The regulation further states that, such an account shall be in the name of the project for which it is opened and each project shall maintain only one bank account. Consequently, Management was in breach of the regulation.

Submission by the Accounting Officer

The management has noted the observation. Management would wish to state that the Authority requested the National Treasury to grant authority to open GCF bank account. The approval is still waited.

The Authority received funds for planned capacity assessment of the authority, project feasibility study, proposal development and trainings which were initial activities required to be undertaken before commencement of the main project as it waits for the approval of the opening of the bank account. The Authority is still following up with National Treasury for the approval to open GCF bank account, and will not receive funds for the main project before the approval is secured NEMA reconciles the GCF account balances and will transfer the balances to GCF bank accounts once the National Treasury gives the authority to open GCF bank account. Letters to the National Treasury is availed.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that the project bank account had not been opened at the time of the audit as Treasury approval had not been obtained;

(ii) The Committee noted that there was breach of regulation 74 of the PFM National Government Regulations, 2015

Committee Recommendation
The Committee recommends that the Accounting Officer submits confirmation of Treasury authority to open the bank account within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
967. There were no material issues relating to effectiveness of internal controls, risk management and governance.

21. MINISTRY OF WATER, SANITATION AND IRRIGATION - VOTE 1109

REPORT ON THE FINANCIAL STATEMENTS

Dr. Paul Kipronoh Ronoh, PhD., the Principal Secretary and Accounting Officer for the State Department for Water and Sanitation appeared before the Committee on 15th March 2023, 11th April 2023 and 19th May 2023 accompanied by the following officers;

1. Eng. SAO Alima - Water Secretary

2. Mr. James K. Karori - Deputy Accountant General
3. Mr. Wycliffe Ojukwu - Assistant Accountant General
4. Mr. Walter J. Oselu - Senior Chief Finance Officer
5. Ms. Muthoni Livingstone - Project Coordinator
6. Eng. Michael Thuita - CEO, AWWDA
7. Mr. Chrispine O. Juma - Ag. CEO, Lake Victoria Works
8. Eng. David Moyangi - Program Coordinator
9. Eng. Charles Muasya - Acting CEO
10. Mr. Wilfred Amwata - Project Coordinator
11. Mr. Tom B. Okello - Finance Manager, Thwake
12. Eng. Phillip Gichuki - Chief Executive Officer, TWWDA
13. Mr. Fredrick T. Mwamati – Chief Executive Officer, TAWWDA
14. CPA Nicholas Kanyeke - TWWDA
15. CPA Nicholas Kariuki - TWWDA

and submitted as follows;

Basis for Qualified Opinion

968.Variances Between the Financial Statements and Confirmations from Other Government Agencies

The statement of receipts and payments reflects transfers to other government units amounting to Kshs.59,624,597,538. However, third party confirmations from the entities which received funding during the year under review differed with the transfers reflected in the financial statements as summarized below

Account Name	**Balance as per Financial Statements (Kshs.)**	**Confirmations from 3rd Parties (Kshs.)**	**Variance (Kshs.)**
Recurrent Account	4,944,866,851	4,764,895,499	179,971,352
Development Account	34,811,135,995	29,224,867,439	5,586,268,556
AIA	19,853,569,403	15,529,398,589	4,324,170,814
Total	**59,609,572,249**	**49,440,618,900**	**10,090,410,722**

Consequently, the accuracy and completeness of the transfers to other government units of Kshs.59, 624,597,538 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts of payments reflected transfer of Ksh.59,609,572,249. The Auditor in his observation reported a variance of Kshs.10,090,410,722. The Ministry received confirmations from 3rd parties and reconciliations has been done as per the table below

	Name of Entity	Balance as Per Ministry	Confirmations By SAGAs	Variance	Remarks

		Financial Statement			
1	Lake Victoria South Water Services Board	1,628,994,853	1,628,994,853	0	Reconciled
2	Water Resource Management Authority	542,499,996	542,499,996	0	Reconciled
3	Athi water Services Board	19,801,906,149	19,835,906,148.07	34,000,000	The variance of Ksh.34, 000,000 is from financial year 2019/2020 but was recognized by the agency as for FY 2020/2021.
4	Northern Water Services Board	1,142,700,000	992,533,336	150,166,664	The variance of ksh. 150,164,664 is as a result of Ksh. 544,166,664 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022. Amounts of Ksh. 394,000,000 in from financial year 2019/2020 but was recognized by the agency as for FY 2020/2021.
5	Central Rift Valley Water Services Board	3,122,611,460	3,358,111,460	(235,500,000)	The variance of ksh. (235,500,000) is as a result of Ksh. 219,000,000 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022.

					Amounts of Ksh. 454,500,000 in from financial year 2019/2020 but was recognized by the agency as for FY 2020/2021.
6	Water Services Trust Fund	1,757,283,911	4,048,151,411	(2,290,867,500)	The variance of ksh.(2,290,867,500) is as a result of funds received from other sources other than the ministry that the agency has reported to having received from the ministry.
7	Kenya Water Institute	227,753,560	227,753,560	0	Reconciled
8	Kenya water Security & Climate resilience Project	2,223,109,064	2,013,972,790	209,136,274	The variance of ksh.209, 136,274 is as a result of Ksh. 209,136,274 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022.
9	National Irrigation Authority	8,844,453,566	8,844,453,566	0	Reconciled
10	Coast Water Services Board	1,446,649,282	1,414,060,298	32,588,984	The variance of ksh. (32,588,984) is as a result of Ksh. 367,060,247 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022.

					Amounts of Ksh. 129,000,000 is in from financial year 2019/2020 but was recognized by the agency as for FY for 2021/2022
11	Tana Water Services Board	2,661,289,511	1,886,311,129	743,374,992	The variance of ksh. 743,374,992- is as a result of Ksh.743,374,992 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022.
12	National Water Harvesting & Storage Authority	3,968,000,000	2,804,750,000	1,163,250,000	The variance of ksh.1, 163,250,000 is as a result of Ksh. 1,470,250,000 that was recognized by the ministry in the financial year 2020/2021 but was recognized by the agency as for F/Y 2021/2022. Amounts of Ksh. 307,000,000 is in from financial year 2019/2020 but was recognized by the agency as for FY for 2021/2022
13	Hydrologist Registration Board	2,000,000	2,000,000	0	Reconciled
14	Water Sanitation Development Programme	6,063,391,888	6,063,391,888	0	Reconciled

The committee heard that the variances between the financial statements and confirmations from other government agencies was as a result of receipts received at the tail end of the financial year.

Further, the Water Services Trust Fund, 2.2 billion came from the World Bank during the Covid-19 pandemic to assist water service providers mitigate against the challenges posed by the pandemic and that it was a grant.

Committee Observations and Findings

(i) The Committee observed that the variances, though reconciled, were not availed to the Office of the Auditor General during auditing; and

(ii) The Committee also observed that 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 Reccommendations;

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.

969.Pending Bills

Note 18.1 to the financial statements reflect pending bills of Kshs.78,530,845 which were not paid during the year under review but were instead carried forward to the financial year 2021/2022.

Failure to settle pending bills in the year to which they relate adversely affects the subsequent year's provisions, since the bills form a first charge to that year's budget provisions.

Submission by the Accounting Officer

The Accounting Officer submitted that pending bills amounting to Kshs.78,530,845 were not paid during the year under review. The bills could not be paid due to insufficient recurrent budget allocation. However, the Ministry has been giving priority to pending bills, some of them have been cleared. The status of pending bills currently is Ksh.64,994,871.

The Accounting Officer also submitted that the Ministry has 380 court cases which are being addressed by the Attorney General on behalf of the Ministry.

The Accounting Officer further submitted that pending bills result from budget cuts and exchequer delays, but committed to follow up with Treasury in order to address the issue wholistically.

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 the regulation 42 of the PFM (National Government) Regulations, 2015.

969.1 Unreported Pending Bills

Note 18.1 to the financial statements on pending accounts payables reflects pending bills totaling to Kshs.78,530,845. Review of pending bills analysis provided for audit verification reflects that the Ministry had pending bills amounting to Kshs.84,160,272 as at 30 June, 2021. The difference of pending bills amounting to Kshs.5,629,427 was not disclosed in the financial statements for the year ended 30 June, 2021. Further, no ageing analysis for these pending bills was provided for audit verification.

Submission by the Accounting Officer

The Accounting Officer submitted that pending bills amounting to Kshs.5, 629,427 were not disclosed in the financial statements. The bills could not be disclosed since they had not been verified; these bills have since been verified and paid as below:

FIRM	AMOUNT	DATE PAID
Ahadama Ltd	1,885,970	5/5/2022
Wagama Enterprises	385,000	26/4/2022
Prenya Enterprises	895,000	8/6/2022
Jombea Investment Ltd	2,430,200	26/4/2022
Taifa Auctioneers	33,258.35	28/6/2022
Total		**5,629,427**

The Accounting Officer further submitted that the State Department has formed a pending bills verification committee to consider and verify all the pending bills.

The Accounting Officer accepted that the failure to disclose all the pending bills and submit the requisite documents to the Auditor General for verification was an oversight on their part.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer failed to disclose all the pending bills during audit review contrary to the law, leading to increase in the bills over time;**

(ii) **The Committee further observed that the Accounting Officer failed to provide information during audit contrary to section 62 of the Public Audit Act, 2015.**

Committee Recommendations;

(i) The Committee reprimands the Accounting Officer for failing to provide information during audit contrary to section 62 of the Public Audit Act, 2015.

(ii) The Accounting Officer should ensure pending bills form first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

969.2 Unsupported Pending Bills

Included in the pending accounts payables balance of Kshs.78,530,845 are pending bills totaling to Kshs.8,230,052 which were not supported with the relevant documents such as invoices numbers, local purchase orders/local service orders, nature of goods supplied/services offered and delivery noted.

Submission by the Accounting Officer

The Accounting Officer submitted that included in accounts payable were pending bills totaling to Kshs.8,230,052 which were not supported with relevant documents. He also reported that the pending accounts payable have always been included in the long outstanding pending bills.

The Accounting Officer further submitted that the pending accounts payables were subjected to audit verification and determined not to be payable and hence eliminated from the current pending bills payables.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer failed to disclose supporting documents to the pending bills during audit review contrary to the law, leading to increase in the bills over time;**

(ii) **The Committee further observed that the Accounting Officer failed to provide information during audit contrary to section 62 of the Public Audit Act, 2015.**

Committee Recommendations;

The Committee reprimands the Accounting Officer for failing to provide information during audit contrary to section 62 of the Public Audit Act, 2015.

969.3 Outstanding Compensation Claims and Legal Fees

Included in the pending accounts payables balance of Kshs.78,530,845 as at 30 June, 2021 is an amount of Kshs.42,468,829 which relates to long outstanding compensation claims and legal fees.

The Management did not explain why the claims and legal fees were not settled.

Non-payment of these compensation claims, and legal fees may attract litigations, interest and penalty charges. Consequently, it was not possible to ascertain the accuracy and validity of the pending bills balance of Kshs.78, 530,845 as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted Included in the pending accounts payables balance of Kshs.78,530,845 as at 30 June, 2021 is an amount of Kshs.42,468,829 which relates to long outstanding compensation claims and legal fees. The compensation is legal claim of Kshs. 42,468,829 have been pending due to lack of sufficient budget allocation.

The Accounting Officer reiterated that the Ministry has made several requests for additional budget from the National Treasury for the purpose of defraying these pending bills but the funds have not been forthcoming. The Ministry managed to pay Kshs. 3,748.572.80 in the financial year 2021/2022.The Accounting Officer will continue engaging the National Treasury to allocate the requested funds to clear these bills.

The Accounting Officer further submitted that a committee has been formed to verify and renegotiate all the legal fees in liaison with the National Treasury.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to pay pending bills as first charge contrary to regulation 42 of the PFM (National Government) Regulations, 2015.

Committee Recommendation

(i) **The Committee recommends that the Accounting Officer should ensure that pending bills are settled as a first charge pursuant to the regulation 42 of the PFM (National Government) Regulations, 2015.**

(ii) **The Committee directs the Accounting Officer to liaise with the Attorney General to get a way forward on the court cases and compensation claims and legal fees.**

Other Matter

970.Budgetary Control and Performance

The summary statement of appropriation - recurrent and development combined reflects budgeted receipts of Kshs.81,801,206,416 against actual receipts of Kshs.67,731,063,442 resulting to an underfunding of Kshs.14,070,142,974 or 17%.

Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.67,716,189,645 and Kshs.81,801,206,416 respectively, resulting to an under expenditure of Kshs.14,085,016,771 or 17% of the budget.

Although Management attributed the underfunding to lack of Exchequer releases from The National Treasury and lengthy procurement process, the Ministry may not have implemented all the planned activities, impacting negatively on delivery of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry had not implemented all the planned activities and therefore impacting negatively on delivery of services to the public. However, the planned activities that were not implemented in the F/Y 2020/2021 due to lack of exchequer were prioritized for implementation in the F/Y 2021/2022 to minimize loss in delivery of services to the public.

In addition, the Ministry in conjunction with the National Treasury has partnered to implement the Public Investment Management (PIM) guidelines No.16 of 2019 which stipulates a raft of measures, key among them being prior acquisition of land before commencement of capital projects. This will ensure faster project implementation since project's commencement will only be undertaken upon completion of land acquisition. This will promote faster project implementation thus improving on funds absorption.

The Ministry was also working closely with the National Treasury by providing cash flow requirements to the National Treasury to enable timely facilitation for exchequer.

i) Slow absorption was occasioned by slow Donor Budget absorption due to lengthy procurement process.
ii) Delay in Treasury approving Donor master lists.
iii) Litigation process that arose due to delay in commencement of the projects.
iv) Low Government counterpart provision to cater for land compensation whereas donor budget is available, the amount for land compensation is not available.
v) Slow process of getting approval from KFS to access forest land for construction of water intakes.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

971.Delay in Exchequer Releases

Review of records maintained by the Ministry in relation to Exchequer Releases revealed that the Ministry received Kshs.14, 135,364,038 as Exchequer releases from The National Treasury in the months of June and July, 2021.

A total of Kshs.10, 608,459,196 or 75% of development Exchequer releases were received in the subsequent year 2021/2022, as detailed below;

No.	Date	Reference No	Vote	Amount
1	22 June, 2021	FT21173RZL11	Recurrent	255,816,670
2	29 June,2021	FT21180PNYT6	Recurrent	330,254,186
3	14 June, 2021	FT21165YGFGY	Development	1,209,067,587
4	21 June, 2021	FT21172LR9XH	Development	103,552,318
5	24 June, 2021	FT211756SH57	Development	1,358,936,78
6	25 June, 2021	FT21176SFBL4	Development	9,136,274
7	29 June, 2021	FT21180B8BT6	Development	260,141,018
8	02 July, 2021	FT21183KLKZZ	Development	8,482,699,383
9	06 July, 2021	FT21187MF5MR	Development	2,125,759,813
			Total	**14,135,364,038**

The delay in Exchequer releases may have resulted in low absorption of the budget and this may have adversely affected the development programmes of the Ministry and provision of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the delay in exchequer releases may have resulted in low absorption of the budget and this may have adversely affected the development programmes of the Ministry and provision of services to the public. The delay happened despite the Ministry raising requisitions to the National Treasury.

Committee Observations and Findings

The Committee noted that the delays were occasioned by late exchequer releases.

Committee Recommendation
The Accounting Officer for Treasury should address the issue of late exchequer releases.

972.Unresolved Prior Years 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 has not resolved the issues or given any explanation for the failure to adhere to the provisions of the Public Sector Accounting Standards Board and The National Treasury's Circular Ref: AG.4/16/2 Vol.3(72) dated 30 June, 2021 on Revised Annual Financial Reporting Template.

Submission by the Accounting Officer

The Accounting Officer submitted that all the matters that were not resolved in the prior year have since been resolved apart from issues that are recurring in nature that include:

- Delay of exchequer releases
- Budgetary performance
- Pending bills.

Committee Findings and observation

The Committee observed that the Accounting Officer failed to resolve all prior year matters as per section 68 (2)(l) of the PFM Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to resolve all prior year matters as per section 68 (2)(l) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

973. Unsatisfactory Implementation of Project - Sagana River Restoration Project

The Ministry awarded one tender reference number MWS/SRRP/IFB/001/2018-2019 to two International Firms in December, 2018 at a contract sum of Kshs.1,194,801,722 for restoration of Sagana River being fully funded by the Kenyan Government. The Project scope of works included construction of Sagana Diversion Weir, construction of two cascading 18-meter-high dams on Kahiti stream, laying of 12 km of 250 to 280 mm ha UPVC water transmission line, construction of one 2500m3 balanced tank, laying and testing of 17 km of 110 mmdia UPVC distribution line and construction of six (6 No.) distribution tanks of capacity 250m3 each.

The Ministry made an advance payment of Kshs.238,960,344 and a further payment of Kshs.78,938,659 vide payment voucher number 4338 on 15 April, 2020 and Kshs.7,893,866 vide payment voucher number 6055 dated 6 July, 2020 all totalling to Kshs.325,792,868. The Project was planned to take eighteen (18) months to be completed by July, 2020. However, audit inspection in the month of November, 2021 revealed that the project is far from completion.

In the circumstance, the value for money may not be realized due to the slow pace of implementation.

Submission by the Accounting Officer

The Accounting Officer submitted that:

i) The contractor used the advance payment for equipment, plant, materials and mobilization as evidenced in paid Interim payment Certificates.

ii) There was an advance payment guarantee for the advance payment of ksh.238,960,344 as of November 2021.

iii) The financial payment progress was at 27.3% against more than 40 % work progress as of November 2021.

iv) The contract commencement date was 20/2/2019 however the Kenya Forest Services issued Special User License on 27/4/2020. Therefore, the work commencement was delayed by 14 months.

v) The Kenya Forest Services (KFS) issued a special user license to construct two dams, two water storage tanks and an 18.589 kilometers pipeline 2 M wide way leave. Three storage tanks are being constructed in community reserved public land. The other two remaining tanks will be constructed on public land or acquired land.

vi) The Ministry processed a 'No Cost' Contract Period Extension and gave instructions to the contractor to hasten the work progress so as to complete the project within the extended period.

As of January 2023, the work achieved and ongoing were-:

i) Ongoing construction of 20-meter-wide across river intake weir on Sagana river.

ii) Materials delivered for 1.57 km. 630 mm dia. conveyance water main from Sagana river intake weir to Kiharanjigi (upper) dam.

iii) Bush clearing and stripping for the 20-meter-high Kiharanjigi (upper) dam ongoing.

iv) Bush clearing, stripping, excavation of core trench and construction of diversion culvert ongoing for the 20 meters high Kahiti (lower) dam ongoing.

v) Construction of a 2,500 m^3 concrete Nyana Hill balancing tank 80% done.

vi) 4 No of the 6 No 225 m^3 distribution ground masonry tanks are at 80% done.

vii) About 25% of the 36 km. 280 - 90 mm dia. distribution pipeline from the 2,500 m^3 Nyana Hill balancing tank to the consumers has been completed.

viii) About 75% of the 12km. 280 mm dia. raw water transmission pipeline from the dam to the 2,500 m^3 Nyana Hill balancing tank has been completed.

Committee Observations and Findings

(i) The Committee expressed concerns on issue of water availability in households despite the State Department's substantial investment of billions of monies in water projects;

(ii) The Committee observed that the State Department was currently implementing a project called 'Maji Nyumbani' with an aim of providing water to one million households per year;

(iii) The Committee noted that twenty percent (20%) advance payment was made to contractors under the contract clause 4.14.1 which allowed advanced payment to contractors up to twenty percent which was authenticated by Central Bank;

(iv) The Committee also noted that as of April 11, 2023, the project was reported to be 60% complete, and Kshs. 354,000,000 had been expended on it. The project is now scheduled for completion on December, 2023;

(v) The Committee further observed that despite the contractors receiving a down payment, the Sagana River Restoration Project had experienced delays in completion, which was originally scheduled for August 2021. The State Department was at risk of attracting interest due to this delay; and

(vi) The Committee acknowledged that the State Department was currently reviewing cost incurred in construction of dams, with the aim of reducing the overall construction costs.

Committee Recommendation

The Accounting Officer ensures timely completion of project and provides status update to the Committee within three (3) months of adoption of this report by the House.

974. Lack of a Complete Fixed Asset Register and Ownership Documents

The fixed asset register of the Ministry as at 30 June, 2021 does not include the four (4) motor vehicles. Though the Management explanation was that these motor vehicles were borrowed from other institutions under the Ministry, no documentary evidence of the Institutions or log books have been provided for verification. This is contrary to Regulation 170(1) of the Public Procurement and Asset Disposal Regulations, 2020.

Further, verification of the Ministry's records revealed that vehicles previously owned by Water Appeals Board which were handed over to the Ministry were still bearing private registration numbers instead of Government of Kenya (GK) numbers. Further, Management has not provided the log books for four (4) vehicles: KBG 835C, KBG 984C, KBG 431C and KBG 834C. This is contrary to Section 72(1) and (2) of the Public Finance Management Act, 2012.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the vehicles officially belong to Athi Water Works Development Agency and were handed over to Water Appeals Board. The Vehicles and Log Books are currently in the custody of the acting CEO Water Appeals Board which is a statutory Board, under the Ministry of Water and Sanitation. The Water Appeals Board operations budget and staff are still managed under the Ministry and therefore their vehicles are fueled and managed by the transport section within the Ministry.

Committee Observations and Findings

(i) The Committee observed that the listed vehicles were procured by Athi Water Works Development Agency for use by Water Appeals Board, and as such, they were currently registered under Athi Water Works Development Agency and were being fueled by the Ministry despite being used by Water Appeals Board; and

(ii) The vehicles were in the process of being transferred to the Water Appeals Board.

(iii)The Committee also noted that the Accounting Officer failed to maintain an updated asset register contraey to regulation 143 of the PFM National Government Regulations 2015.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to maintain an updated asset register contrary to regulation 143 of the PFM National Government Regulations 2015.

975. Irregular Disposal of Motor Vehicles

During the year under audit, the County Government of Migori informed the Ministry vide a letter reference CGM/PROC/GC/2021/VOL.1 and dated 17 February, 2021 that the County Government had disposed motor vehicles with registration numbers GKA 442K and GKA 524K. No evidence has been provided to prove that Management granted permission to the County Government of Migori to proceed with the disposal of the two motor vehicles. There is also no evidence that the vehicles were valued and reserve values set before the disposal took place. Further, there is no evidence that proceeds from the sale of the motor vehicles were remitted to the Ministry.

Consequently, regularity and value for money on the disposal of the two vehicles could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the vehicles were grounded and originally in the custody of the water department in Migori county. When the Constitution changed, Migori County took over all the assets and functions of the water department**.**

The Accounting Officer also submitted that the transfer of the vehicles was not reflected in the handover reports and the vehicles were handed over to Migori County by the then Transition Authority.

Committee Observations and Findings

The Committed observed that the disposal procedure was not followed.

Committee Recommendation

The Committee reprimands the Accounting officer for failing to follow due process.

976. Delayed Projects Completion

976.1 Kanini Irrigation Project Tharaka Nithi

The Ministry awarded tender ref: NMSI/ONT/003/2020-2021 to a construction firm at a contract price of Kshs.34,409,368 for the construction of Kanini Irrigation Project at Tharaka Nithi on 21

May, 2021. The contract duration was scheduled to take 6 months to end on 20 November, 2021. Audit inspection of this project in the month of November, 2021 revealed that the project was scheduled to take 6 months to be completed by 20 November, 2021, the audit progress report indicates that the project may be about 70% when it is supposed to have been completed. Further an amount totalling to Kshs.25,606,899 out of the total contract sum of Kshs.34,409,368 (approximately 74%) had already been paid to the contractor with a balance of Kshs.8,802,468.75 or 26% remaining.

Submission by the Accounting Officer

The Accounting Officer submitted that the project was awarded on 21st May, 2021 and was scheduled to be completed on 20th November 2021. However, the project was not completed on the grounds that the contractor sited which included prevalence of heavy rainfall, difficulties due to the need for extra quantities compared to those in the initial contract arising from the resident engineer's instructions and strict COVID-19 protocols that limited the movement from one region to the other. These affected the rate of project completion.

The contractor requested for two extensions three (3) months each which saw the project completed on 27thJuly 2022 and is currently in use by the community under the defect liability period ending on 27th February 2023. By the time the Interim Payment Certificate No. 2 was generated for payment, the progress report dated 3rd September 2021 indicated that the cumulative percentage of works completed was at 74%. This subsequently informed the decision to approve the payments commensurate to the works done to the contractor.

Committee Observations and Findings

The Committee noted that there was delay in implementation of the project.

Committee Recommendation

The Accounting Officer should initiate recovery of liquidated damages from the contractor as per section 140 of the Public Procurement and Asset Disposal Act, within one (1) month of adoption of this report.

976.2 Maragua Bulk Water Supply and Irrigation Project

The Ministry entered into a contract for the Maragua Bulk Water Supply and Irrigation Project on 14 February, 2020 at a contract price of Kshs.889,397,520. The expected construction period was eighteen (18) months to be completed by August, 2021. The scope of works included construction of a 14-meter-high composite dam, 8,000 m3 per day full water treatment plant at Gakoigo and supply and installation of all valves and fittings for the pipelines and other ancillary works. Review of the project records revealed that the construction of the water treatment plant of 8,000m3 per day capacity was supposed to be constructed on a land parcel owned by Nginda Coffee Farmer's Cooperative Society Limited. However, by the time of audit inspection of this project in the month of November, 2021, the project had not been completed three (3) months after the expiry of contract period.

In the circumstance, the delay in completion of the project may result in additional project costs not in the budget, and the Ministry may not achieve value for money from the projects.

Submission by the Accounting Officer

The Accounting Officer submitted that the Contractor has been granted an extension of time without cost. This safeguards the Ministry from incurring any additional project costs not in the budget and ensure there is value for money.

As at January 2023, the project construction work progress was over 98%. Main components completion status -:

i) Completed construction of 16 meters high dam with a storage capacity of 800,000m^3, embankment length of 112 meter and 3-meter-high free board.

ii) Completed Construction of 3.9 km. 400 mm dia. distribution water main from Gakoigo water treatment works to the Maragua town

iii) Completed Construction of Gakoigo conventional water treatment works with a capacity of treating 8,000m^3/day

iv) Completed Construction of 15 km 500/550 mm dia. raw water transmission pipeline from the dam to Gakoigo water treatment works.

v) Land acquisition for dam site and some parts of water pipeline way leave.

vi) Completed Construction and rehabilitation of 9.27 km access road to the dam site.

vii) Connection of electricity to dam site and at the water treatment sites.

viii) Completed Construction of 2 No grade 9 staff residential houses at Gakoigo water treatment site.

ix) The project is 100% complete and ready for commissioning.

x) The project is under defects liability period up to 1st January 2024.

Committee Observations and Findings

The Committee observed that although the project had been reported as 100% complete, there had been inordinate delays in achieving full completion, resulting in a delay in the provision of services.

Committee Recommendation

The Accounting Officer avails a report on the status of commissioning to the Committee within three (3) months of adoption of this report.

977. Inconsistent Budgeting and Reporting of Projects

Review of the Ministry's budget and financial statements revealed inconsistencies on how the projects were budgeted for and reported in the financial statements. For instance, Thwake Multipurpose Development Project was budgeted for and reported under acquisition of goods while other similar projects were budgeted for and reported under transfers to other government agencies. In addition, a number of Headquarters' projects were budgeted under transfers to other government agencies, yet the amounts were not transferred to other government agencies.

As a result of the inconsistent budget procedures and reporting for similar projects, it may not be possible to obtain comparable project information from the Ministry's financial statements as presented.

Submission by the Accounting Officer

The Accounting Officer submitted that Thwake Multipurpose Water Development Program is involved in the construction of Thwake Dam which is Civil Works in nature. As such the Program's activities were budgeted for under Item 3110500: Civil Works. This classification reflects the economic activity of the Program.

To align the budgeting and reporting of projects and to maintain consistency, Thwake Multipurpose Water Development Program has been budgeted for and report under 'Transfers to Other Government Agencies' with effect from Financial Year 2021/2022.

Committee Observations and Findings

The Committee observed that the Accounting Officer acknowledged that there were inconsistencies in the budgeting and reporting of the projects in the financial statements.

Committee Recommendations

The Committee reprimands the Accounting Officer.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

978. Ineffective Audit Committee

Review of the Internal Audit Function revealed that the Ministry's Audit Committee did not hold meetings during the year under review as required by the Public Finance Management Act, 2012. The Audit Committee forms a key component in the governance process by providing an independent expert to the Ministry by assessment of the activities of top Management, the quality of the risk management, financial reporting, financial management and reviewing the internal audit reports to the top management.

Further, the Audit Committee Members were appointed on 31 January, 2018 for a term of 3 years renewable for another term of three (3) years. By 31 January, 2021, the Audit Committee Members were eligible for reappointment. No evidence has been provided by Management to confirm whether that these Members were reappointed for another term of three years and the calendar of activities of the Audit Committee during the financial year under audit was also not provided.

Consequently, the effectiveness and quality of the internal controls and risk management provided by the Audit Committee could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry's Audit Committee did not hold meetings during the year under review, the Ministry's audit committee term expired in January 2021 and their term was not renewed. The process of recruiting of new audit committee members have been initiated by the Head of Internal Audit Unit.

Committee Observations and Findings

(i) The Committee expressed dissatisfaction with the response provided by the Accounting Officer, as it did not adequately explain the reason for the Audit Committee's failure to convene a meeting; and

(ii) The Committee noted that the State Department was in the process of recruiting members for the committee and intends to establish a functional Audit committee within a month.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failing to ensure that the Audit Committee holds requisite meetings as per regulation 174 of the PFM National Government Regulations 2015.

(ii) The Accounting Officer should ensure compliance with the provisions of section 73 (5) of the Public Finance Management Act, 2012 and regulation 174 of the Public Finance Management (National Government) Regulations, 2015 on audit committees.

DONOR FUNDED PROJECTS

UPPER TANA CATCHMENT NATURAL RESOURCES 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

Unmodified Opinion

979. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

980.Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year under review reflects total budgeted receipts of Kshs.800,000,000 and actual receipts of Kshs.694,367,152 resulting to a budget shortfall of Kshs.105,632,848 or 13%. Further, the statement reflects approved final budgeted expenditure of Kshs.800,000,000 and actual expenditures of Kshs.522,566,151 resulting to under absorption of Kshs.277,433,849 or 35%.

The under absorption of Kshs.277,433,849 or 35% and the budgeted but unrealized receipts of Kshs.105,632,848 or 13% may have negatively impacted on goods and service delivery to the intended beneficiary of the project. As a result, there is need for management of UTaNRMP to evaluate its budget making mechanism with a view to allocating resources to priority areas for higher positive impact and utilization of the budget.

However, the Management attributed under collection of revenue to delay in accessing first disbursement of the additional financing that was received late in the month of June 2021 and it made it difficult for the management to seek for replenishment to enable realize a 100% mobilization of the external financing. Further, the management attributed the underutilization of the budget to the effect of Covid-19 which made implementation of many activities involving community groups participation difficult due to the Ministry of Health Covid-19 protocols. Further, there was delay in finalizing procurement of wildlife electric control fence materials, which led to failure by the project to get and spend Kshs.100 million Appropriation-In-Aid (AIA) part of the budget.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of comparative budget and actual amounts for the year under review reflects total budgeted of Ksh. 800,000,000 and actual expenditure of Ksh. 694,367,152 resulting to under absorption of Ksh. 105,632,848 or 13% under performance. Further the statement reflects approved final budgeted expenditure of Ksh.800,000,000 and actual expenditures of Ksh.522,566,151 resulting to under absorption of Ksh.277,433,849 or 35%.

The under collected revenue of Ksh. 105,632,848 (13% of the budget) was due to delay in accessing 1st disbursement of IFAD Additional Financing that was affected late in the month of June 2021. This was attributed to challenges in meeting strict requirements of conditions precedent to 1st disbursement. This eventually made it difficult for us to spend in time and seek for replenishment to enable us realize a 100% mobilization of the external financing. Delay in finalizing procurement of wildlife electric control fence materials, considering that it was under international competitive bidding process, also led to failure by the Project to get and spend Ksh.100 million part of this budget all under AIA budget during the year under review.

The underutilization of the budget is attributed to:

(i) The effects of Covid19 which made implementation of many of the activities involving community groups participation (training/sensitization/workshops etc) difficult due to Ministry of Health Covid-19 protocols.

(ii) There was also a delay by IFAD in disbursing the initial advance of the additional financing that made effective absorption a challenge.

(iii) Delay in finalizing procurement of wildlife electric control fence materials that led to failure by the Project to get and spend Ksh.100 million AIA part of this budget.

The situation currently is that, the procurement of the 60km solar electric fence materials was completed in 2021/2022 FY and the fence construction was launched on 19th November 2021 by the Cabinet Secretary, MOWSI; The Project was also able to support the approved community activities and the 2021/2022 absorption was 97% of the approved budget. The Project is implementing approved additional community activities and is scheduled to close in June 2023 as per the Loan Agreement.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

981. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

982. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

983. As required by the International Fund for Agricultural Development (IFAD), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

COASTAL REGION WATER SECURITY AND CLIMATE RESILIENCE PROJECT (IDA CREDIT NO. 5543-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

984. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

985. Low Absorption of Project Funds

The annual report for the year under review indicates that the Project has been in operation for six (6) years, which covers 99% of the project duration expected to end on 31 December, 2023. However, as at 30 June, 2021, the Project had only absorbed an amount of Kshs.4,091,202,153 out of the total loan amount of Kshs.20,000,000,000 (USD 200 million) translating to about 20% of the total funding. Further, during the year under review, the Project failed to utilize Kshs.927,817,239 or 55% of its annual budget. As a result of this underperformance, it is unlikely that the Project will utilize the whole loan amount within the funding period, and its expected outputs and objectives may not be achieved.

Submission by the Accounting Officer

The Accounting Officer submitted that the 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 the 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, incorrect land ownership documents and succession disputes, 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 Government has already negotiated with World Bank for a restructured Finance Agreement with extension of the project up to January 2027 to ensure completion of the dam.

The initial challenges that slowed the land compensation and resettlement of PAPs have largely been overcome (correction of land records, resolution of disputes) enabling the Project to complete land acquisition for Priority areas and the contractor has already commenced the construction works.

Committee Observations and Findings

The Committee expresses concern about the Ministry obtaining loans to fund the project, which would accrue interest, prior to completing the acquisition of the land where the project will be implemented.

Committee Recommendation

The Committee reprimands the Accounting Officer for project mismanagement.

986. Delayed Construction of Mwache Multipurpose Dam Project

As reported previously, the Ministry of Water, Sanitation and Irrigation awarded a contract for construction of Mwache dam on 21 March, 2019, but the commencement of the works delayed 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. The work was scheduled to commence on 1 November, 2021.

However, a site visit in October, 2021 revealed that the contractor had not mobilized the site and that implementation aimed at compensating the project-affected persons (PAPs) and acquiring the necessary land required for the Dam construction was yet to be finalized. The delay in commencement of works may result in additional Project costs.

Submission by the Accounting Officer

The Ministry wishes to state that 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. Consequently, no claims will be incurred since the contractor had not mobilized to site. Acquisition of Priority areas 1 and 2 has since been finalized and handed over to the Contractor who has mobilized and commenced construction works. Availed are the land handover letters dated to date.

The following is the work progress:

i. Two Contractors camps in both the main Dam and Lower Check Dams have been constructed 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. Base camp and Administration building - excavation in progress.

v. Aggregate plant - Basement works 90%, sieve installation in progress.

vi. Explosive magazine site-substantially complete. Awaiting inspection from Government Inspections from mines department.

vii. Lower Check Dam diversion channel excavation in progress.

Committee Observations and Findings

(i) The Committee observed that the Ministry tendered and made a deposit of Kshs. 85,267,787 to the contractor, despite not having acquired the land where the dam was intended to be constructed. Interest was already being accrued on the loan obtained for the project even prior to its commencement.

(ii) The Committee noted that the Ministry failed to conduct sufficient background checks and proper project planning.

Committee Recommendation

The Committee recommends that the EACC investigates the procurement process of the project.

987. 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 Grant Agreement. A review of Project records in October 2021 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 have been instructed to avail supporting documents for the un-accounted funds before disbursement of any more funds to them. In addition, the groups have been taken through refresher training on proper accounting documentation to ensure the funds are properly utilized and accounted for. The beneficiary groups have also been linked with county extension officers for necessary technical support and monitoring.

A joint review of accounting documents has certified the expenditures for the unaccounted funds amounting to kshs. 3.3 million. Stringent measures will be observed before any disbursement of more funds to the beneficiary groups.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer admitted to improper use of public funds by the community goups; and

(ii) The Committee observed that the Accounting Officer did not build capacity of the groups on handling public funds and accounting thereby occasioning ineffective use of public funds.

Committee Recommendations

The Committee recommends that the EACC investigates possible misuse of funds in the project.

988. Unresolved Prior Year Matter

988.1 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 determined that the contractor was to pay the Ministry Kshs.27,752,838 as penalties on value of uncompleted work and unrecovered advances. A review of the progress made on the matter in November 2021 revealed that the amount was yet to be received by the Ministry.

Under the circumstances, the intended objectives may not be achieved and there may be loss of 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 have been availed)

A request to Chartered Institute of Arbitrators of Kenya is underway 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. Meanwhile, all the remaining works have been awarded to local contractors using the balance of unutilized funds in lots to ensure the objective of the project is achieved.

Committee Observations and Findings

(i) The Committee noted that the previous Committee had recommended that the Ministry should engage with the Office of the Attorney General to recover the amount of Kshs. 27,752,838;

(ii) The Committee noted that the Accounting Officer failed to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012; and

(iii)The Committee additionally noted that the State Department had initiated an arbitration process; however, there was insufficient follow-up on its progress, and the current status of the arbitration process was unknown.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012; and provides a status report to the Committee within three (3) months of adoption of the report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

989. Delay in Project Implementation

The Ministry of Water, Sanitation and Irrigation under the Coastal Region Water Security and Climate Resilience Project signed contract No. MOWS/KWSCRP-2/004/2017-2018 on 18 October, 2018 with a local construction company for rehabilitation and expansion of Kwale water supply and operation improvement works at a contract sum of Kshs.426,338,937 for a duration of eight (8) months. The construction works commenced on 29 October, 2020 and was expected to be completed by 28 June, 2021. However, an audit review of the project progress reports and fieldwork verification in October 2021 revealed that the overall work was at 25% completion level.

Although the contractor had been granted extension of time to 31 December, 2021, verification of some sub-components of the project revealed the following:

No.	Project Subcomponent	Description and Audit Observation
1	Kwale Town office	(i) Construction of 1 No. 500 meter cube tank not complete. (ii) Rehabilitation of existing concrete water tank not started. (iii) Rehabilitation of existing office had not started. The contractor was not on site and overall progress was 25%
2	Godoni	(i) Construction of1 No. 150 meter cubic elevated concrete tank on a 15-meter-high tower was no completed. (ii) Pipeline of 1.54 km completed. The contractor was not on site

3	Marere Water Works	Construction of 9,000m3 /day conventional water treatment works complete with chemical store and mixing buildings was complete. Handing over by the contractor had not been done.
4	Madabara 1	The overall project completion was about 25%. Construction of ground water tank 250m3 generator house, pump house and rehabilitation of existing pump house was incomplete. The contractor was not on site.

Because of the slow progress of works by the contractor, the project may not be complete within the contract period, and the likelihood of cost escalation is high.

Submission by the Accounting Officer

The accounting office submitted that the initial completion date of 28th June 2021 was extended severally up to 31st January 2023 (No-cost extension) due to delays in possession of part of the site at Marere Treatment works which required clearance by Kenya Forestry Services coupled with adverse ground conditions that slowed the work progress. The civil works which constitute about 55% of the total value of the works are near completion and the outstanding works mainly consists of procurement and installation of electro-mechanical works. The overall work progress stands at 69%. However, the persistent slow delivery by the contractor due to failure to mobilize sufficient resources has been communicated and warning letters issued as provided in the contract. The supervision is being undertaken by an individual consultant as the RE who also provides support in the management of other components and therefore the cost overruns are minimized. The Contractor has been notified that the current request for extension of time (up to 31st November 2023) will be the last to be considered and should therefore strive to complete all the remaining works.

Committee Observations and Findings

(i) The Committee considered the response provided by the Accounting Officer unsatisfactory as it did not align with the terms outlined in the contract;

(ii) The Committee expressed concern regarding contractors who have been consistently underperforming, abandoning project sites.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for failure to perform duty bestowed upon the office in the implementation of the project; and

(ii) The Committee additionally instructs the Accounting Officer to provide a status report within three (3) months of adoption of this report by the House.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

990. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

991. As required by the International Development Association (IDA) I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

THWAKE MULTI-PURPOSE DEVELOPMENT PROGRAM PHASE 1 (AfDB LOAN NO. 210015002993, 2000200003351 AND NO. 5050200000501 AND AfDB GRANT NO. 2100155025973

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

992. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

993. Unresolved Prior Year Audit Matters

The following prior year audit issues remained unresolved as at 30 June, 2021:

993.1 Funding and Continuity of the Program

As reported in the previous year, Phase I of the Program, which entails construction of a Dam and associated structures, is currently under implementation. As at 30 June, 2021, approximately 67% of the work had been completed and the programme of work indicated that the Dam will be completed by September, 2022.

The Program is divided into four phases with an estimated cost of Kshs.81.63 billion. Although the African Development Bank (AfDB) and the Government of Kenya (GOK) funding for the first phase of Kshs.42.365 billion has been approved, funding amounting to Kshs.39.845 billion in respect to the remaining three phases is yet to be secured, planned or sought from financiers. Consequently, it is not clear how the three phases will be financed in the ensuing period towards the Program completion.

Submission by the Accounting Officer

The Accounting Officer submitted that Phase 1 of the Program which is currently under implementation entailed construction of the dam and associated structures. As reported by the Auditor, the Program is divided into phases 1 – 4 with funding of Phase 1 of Kshs 42.365 billion already secured from GOK counterpart funding and African Development Bank. The remaining phases shall be rolled out upon substantial implementation of Phase 1 which currently is at 78% and commitment of funding before the planned period of implementation would have subjected the government into payment of commitment fee on idle funds.

The Ministry has prepared designs for the remaining phases and submitted a request for funding to the National Treasury. However, the National Treasury in its response letter Ref: MOF/ERD/237/32/09 'TY' (87) dated 27th August 2021, advised that the request will be considered in the AfDB Cycle of 2023 – 2024.

The Ministry has further written to the National Treasury in its letter ref: WD/3/3/1423/VOL.VI (74) dated 9th December 2022 as it considers the funding to be crucial in ensuring the remaining phases are completed.

Committee Observations and Findings

(i) **The Committee noted that the previous Committee had instructed the Ministry to provide a report on the implementation status of phase 1 of the Thwake Multi-purpose Development Program, including a revised project work plan;**

(ii) **The Committee observed that the State Department had failed to act upon the recommendation previously given by the Committee. Consequently, audit queries continued to reccur since the recommendations were not implemented; and**

(iii) **The Committee noted that the Accounting Officer failed to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to resolve a prior year matter contrary to section 68 (2) (l) of the PFM Act, 2012, and provides a status report within three (3) months of adoption of this report by the House.

993.2 Water Pollution in Athi River

The Thwake Multi-Purpose Dam is expected to draw water from Athi River whose main tributary is Nairobi River. Studies carried out by various agencies indicate that the Nairobi River is heavily polluted with heavy metal and the water is unfit for human consumption. There was no evidence of efforts by the implementing agency to mitigate against the risk and ensure that the river will be free from pollutants and fit for human consumption before the expected completion of the Program in November, 2022.

Consequently, in the absence of any mitigation efforts to avert the pollution, the water and the food crops to be grown under irrigation in the proposed Dam may not be fit for human consumption and the Program's objective may not be achieved.

Submission by the Accounting Officer

The ministry wishes to state that the Pollution of Athi River is an environmental issue that has been given a coordinated effort by the various stakeholders including Ministry of Environment and Forestry, NEMA, Athi Water Works, and Nairobi County Government. A multi sectoral technical team is in place being coordinated by the Ministry of Water, Sanitation and Irrigation and meets regularly to address this challenge and to advise on the way forward.

It is anticipated that the recently constituted Nairobi Rivers Commission will assist in addressing Athi River pollution in a broader perspective in collaboration with the Ministry and other stakeholders.

Committee Observations and Findings

(i) **The Committee observed that the Accounting officer did not demonstrate that there were any risk management strategies in place to mitigate pollution of the dam. Huge**

amounts had been expended on the project whose water may not be fit for human concumption;

(ii) The Committee's previous report had recommended for measures to address the matter. An inter-ministerial team was reportedly formed but their output was not demonstrated.

Committee Recommendation

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 sttaus report within three (3) months of adoption of this report.

993.3 Contract Variation on Motor Vehicles

It was observed that Item No.1A.36 and 1A.37 b of the Bill of Quantities for the construction contract for Thwake Multi-Purpose Dam required the contractor to supply ten (10) Toyota Land Cruisers and fifteen (15) Toyota Hilux for the employer and engineer, at a cost of Kshs.135,817,768. However, review of the interim payment certificate no. 1 revealed that changes in specifications of the vehicles by the employer resulted to an upward cost variation by Kshs.37,604,672, representing a variation of 28% against the allowable threshold of 25%. There was no evidence that the changes in specifications were dully approved and no explanation on why the specifications were not included in the tender documents at the bidding stage. The variation was contrary to Section 139(1)(a) of the Public Procurement and Asset Disposal Act, 2015, which provides that an amendment or a variation to a contract resulting from a procurement proceeding is effective only if the variation or amendment has been approved in writing, by the respective tender awarding authority, within a procuring entity.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The ministry wishes to state that the variation in the cost of vehicles arose as a result of an upgrade from Toyota Land Cruisers to Toyota Prados so as to meet the employer's requirements within the drawn specifications. Procurement of motor vehicles (which was done directly by the contractor using its procurement procedures), was a bill item in the overall contract between the Ministry and the Contractor.

The affected vehicles were KCT 007G, KCT 008G, KCT 012G, KCT 013G, and KCT 014G.

Acknowledging that the Accounting Officer and the Project Engineer approved the Interim Payment Certificate (IPC) that included the costs of the vehicles, the Ministry shall henceforth make approvals for any variation on an individual basis before any payment certificate is finally approved and certified for payment

Committee Observations and Findings

The Committee observed that there was contravention of section 139 of the Public Procurement and Asset Disposal Act where the contract price was varied by more than 25%. The drawn specifications were known prior to procurement and should have been factored in.

Committee Recommendation

The Committee reprimands the Accounting Officer for contravention of section 139 of the Public Procurment and Asset Disposal Act;

993.4 Non-Construction of Temporary Site Offices

Item No. 1.A/1.30 of the Bill of Quantities for construction contract for the Dam required the contractor to design, construct and furnish temporary site offices for the Employer and Engineer, including air conditioning, office equipment, computers, printers, copiers, computer network, software, among others, all at a cost of Kshs.22,164,684. Review of Program documents revealed that the contactor provided furniture and other equipment at a cost of Kshs.19,994,419. However, there was no evidence that site offices were constructed as stipulated in the contract.

Field verification revealed that the contractor had opted for a lease of building for the Employer and Engineer. There was no evidence that the change was dully approved. In addition, it was not clear whether the balance of Kshs.2,170,265 on the item would cover the lease charges on the property for the construction period.

Consequently, the Program may incur cost overruns, arising from the changes thereby leading to wastage of public resources over the project period.

Submission by the Accounting Officer

The ministry wishes to state that the temporary site offices were not put up due to incomplete acquisition of land at that time. The renting of the offices was considered necessary to minimize time delays, and was approved by the Engineer's Representative vide letter Our Ref: 5083037/2018/6461 dated 04th April 2018.

Committee Observation and Findings

(i) The Committee noted that the delay in acquisition of land shows lack of diligence, care and focus in the duties of the Accounting Officer; and

(ii) The Accounting Officer did not indicate when the site offices shall be put up.

Committee Recommendation

(i) The Committee admonishes the Accounting Officer for failure to perform duty bestowed upon the office in failing to construct the site offices; and

(ii) The Accounting Officer should submit a status report on construction of the site offices to the Committee within three (3) months of adoption of this report by the House.

993.5 Delayed Development of Physical Hydraulic Model

Item No.1C.3 of the Dam construction contract provided for developing and running a physical hydraulic model as per the specifications at a cost of Kshs.30,000,000. Further, Section S1.38.3(3) of the contract specifications states that the contractor shall be prepared to finance the cost of the hydraulic model immediately upon signing of the contract and issuance of instruction to commence the work by the Engineer. This cost was to be reimbursed to the contractor through the interim payment certificates in accordance with the contract. A review of the Program documents revealed that the contractor was yet to procure the physical hydraulic model test which may cause possible delays in the concrete works for the main spillway. Further, field inspection at the Program's site revealed that the contractor had carried out substantial excavation works on the main spillway yet the design was yet to be tested.

Consequently, delays in development of the hydraulic model may result in delayed Program implementation.

Submission by the Accounting Officer

The ministry wishes to state that the delay in the development of the model was caused by test results on the initial run which was unsatisfactory prompting for a design review and change of the LLO. The changes included the extension of lining portion by 25 meters and inclusion of dyes for better flow visualization. These changes therefore required more time to deliver. The Model has since been developed and the results are being used to update the designs.

Committee Observations and Findings

The Committee noted that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The matter is therefore marked as resolved.

994. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects that the Program received an amount of Kshs.6,790,422,462 against the approved budget of Kshs.7,744,000,000 resulting to a shortfall of Kshs.953,577,539 or 12% of the budgeted receipts. Similarly, the Project had budgeted to spend Kshs.7,744,000,000 but utilized an amount of Kshs.6,795,390,680 resulting into under expenditure of Kshs.948,609,320 or 12% of the budget. Management has attributed the under absorption to underfunding and IFMIS challenges that delayed the processing of payments. The under collection of revenue and under expenditure is an indication that some programmes and activities that had been planned for were not implemented.

Submission by the Accounting Officer

The ministry wishes to state that the payment certificates are paid against approved budgets based on the actual work, carried out by the consultants and the contractor, and certified for payment.

The Interim Payment Certificates (IPCs) submitted by the contractor and certified for payment were less than the Budgetary provision by about Ksh 900 million which was payable from the AfDB funds. Other items not paid relate to services and goods not received in the year under review and therefore not certified for payment. Minor challenges were experienced in IFMIS at the end of the year thereby affecting a few payments.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

995. Costly Price Adjustments

Contract for the construction of Thwake Muliti-Purpose Water Development Program was awarded to an international construction company at a contract sum of Kshs.36,971,346,445. Review of records revealed that payments totalling Kshs.21,968,674,282, have since been made to the contractor for certified works as at 30 June, 2021. However, included in these payments are claims totalling Kshs.1,181,442,511 on price/cost adjustment contained in Section 13.8 of the contract specifications which provides that the amounts payable to the contractor shall be adjusted for rises or falls in the cost of labour, goods and other inputs to the works, by addition or deduction of the amounts determined by the formulae prescribed in the contract and schedule of adjustment data for the expenditure items. However, the amount paid so far on certified works of Kshs.1,181,442,511 exceeds a provision of 2% price adjustment allowed in contract agreement of Kshs.569,140,366 by Kshs.612,302,145. Management has not given measures being taken to forestall further cost adjustments over the remaining contract period.

As a result of the price adjustments, the project may incur cost overruns leading to wastage of public resources over the project period.

Submission by the Accounting Officer

The Accounting Officer submitted that the contract signed with the contractor included a 2% Provisional Sum for Price Contingencies which was Ksh 569 million.

The actual price adjustments are however determined by the market dynamics (which is beyond the control of the Ministry) and as stated in the price indices from Kenya National Bureau of Statistics (KNBS). The actual amount over time has been higher than the provisional sum since the prices of goods have escalated over the period of time. The bids were opened in December 2016 and have therefore prices have escalated due to inflation over the years.

The Ministry has taken note of this escalation and intends to include these adjustments in the Technical and Financial Appraisal of the project to be reviewed in 2023.

Committee Observations and Findings

(i) The Committee observed that the contract included a provision for price adjustment, which specified a formula for determining such adjustments;
(ii) The Committee noted that the increase in dam height from 77 to 80.3 meters resulted in additional costs; and
(iii)The Committee observed that the dam was 83% complete and the projected completion date is February 2nd, 2024. Furthermore, the payment made to the contractor amounted to 19 billion.

Committee Recommendations;

The Committee recommends that the Accounting Officer avails a status report by May 2024.

996. Avoidable Interest on Delayed or Late Payments

The statement of receipts and payments reflects acquisition of non-financial assets of Kshs.6,564,071,254 which includes an amount of Kshs.100,903,372 in respect of interest charged on delayed payments to contractor on certified works. Review of the contractor interim payment certificates Nos.4,5,6 and 7 revealed interest claim on the project as a result of delayed/late payments totalling Kshs.294,237,085, out which an amount of Kshs.100,903,372 in respect of interim certificate number 4 had been paid during the year under review.

According to the available records, the interim certificates had been issued but the Program Management did not settle the claims on the due date, and interest was charged as stipulated in the contract agreement as tabulated below:

Interim Payment Certificate (IPC) No.	Interest Amount (Kshs.)
4	100,903,392
5	39,879,914
6	58,700,168
7	94,753,611
Total	294,237,085

Management attributed the delays to amendments to the public debt borrowing threshold from Kshs.6.3 trillion to current Kshs.9 trillion that affected the release of funds by the donor. The interest charged could have been avoided and is a wastage of public funds. Further, the unpaid interest in respect to interim certificates 5, 6 and 7 amounting to Kshs.193,333,693.25 was not disclosed and included in the list of pending bills for the Program as at 30 June, 2021.

Consequently, no value was obtained out of the public funds totalling Kshs.100,903,372 in respect of interest charges paid to the contractor during the year under review.

Submission by the Accounting Officer

The Accounting Officer submitted that the delays in the payment to the contractor was initially caused by late operationalisation of the Additional Financing Agreement as the public debt ceiling had to be increased to Ksh 9 trillion. Other causes for the interest include non-payment of VAT which is attributed to low funding for the GOK counterpart funding. The Ministry is concerned about the outstanding VAT payments and submitted a request to the National Treasury for additional funds, vide its letters Refs: TMWDP/FIN/GEN/144 dated 7th May 2021 and TMWDP/FIN/BGT/053 dated 2nd November 2021. The National Treasury in its response vide letter Ref: RES 1109/21/01/'A' dated 15th November 2021 advised the Ministry to rationalize the budget in that year as it was not in a position to provide the funding. The Ministry has meanwhile been making partial payments based on the resources available and has reduced the VAT burden from Ksh 745 million in May 2021 to the current 372 million in order to reduce the interest charges accruing on delayed payments.

Committee Observations and Findings

(i) The Committee noted a lack of proper project management for the Thwake Dam Project;

(ii) The Committee observed that the interest paid amounts to wasteful expenditure.

Committee Recommendation

(i) The Committee reprimands the Accounting Officer for incurring wasteful expenditure through payment of interest on delayed payments.

(ii) The Accounting Officer for National Treasury should ensure prompt disbursements of exchequer funds in order to avoid such wasteful expenditure. Failure to do so amounts to an offence under section 197 (1) (i) of the PFM Act, 2012.

997. Failure to Revise Contract Sum Due to VAT Exemption on The Program

Contract for the construction of the Thwake Multi-Purpose Water Development Program was awarded in 2015 to an international construction company at a contract sum of Kshs.36,971,346,445 inclusive of 16% totalling Kshs.5,915,415,431. However, the parent Ministry of Water, Sanitation and Irrigation vide letter referenced TMWDP/FIN/GEN/150 dated 20 May, 2021 requested The National Treasury to exempt the Program from VAT which was subsequently granted by the Cabinet Secretary. However, it was noted that there was no addendum revising downward the original contract price by the VAT exempted to Kshs.31,055,931,014.
As a result, there is a risk of overpayment and possibility of future dispute about the amount payable to the contractor.

Submission by the Accounting Officer

The Accounting Officer submitted that the total contract sum is Ksh 36,971,346,445 which is inclusive of VAT amount of Ksh 5,099,496,061.

The provision of tax exemption does not lead to contract variation as the contractor still has to make specific applications whenever it procures vatable goods and services. These applications are normally processed by the Ministry to the National Treasury, based on the contractual sum. Submitted is a sample copy of an application from the contractor and approval from the National Treasury. There is no risk of overpayment as the contractor shall receive the payment net of taxes, as initially provided for in the contract.

Committee Observations and Findings

(i) The Committee observed that the project included Value Added Tax (VAT), but the government would cover a portion of the VAT. Later, the National Treasury issued a circular exempting all donor-funded projects from paying VAT;

(ii) The committee noted that the construction equipment remaining after the completion of the project should be returned to the employer;

(iii)The committee recognized the necessity of implementing changes in the exemption process to prevent the possibility of having tax-exempt materials that are not used on the site.

Committee Recommendation

The Accounting Officer should ensure that changes in the exemption process are implemented to prevent the possibility of having tax-exempt materials that are not used on site.

998. Failure to Adhere to Approved Annual Work Plan

During the year under review, the Project Management failed to adhere to the planned activities for the project as summarized in the table below:

Planned Activities	Planned Expected Outcome	Comments as at June, 2021	Comments as at November, 2021
(i) Continue with Civil works on Dam Axis, Approach channel, Discharge channel, 2 tunnels,	Civil works on Dam Axis, Approach channel, Discharge channel, 2 diversion tunnels, Powerhouse	Civil works at 58%.	Slow progress

Power house and Spillway	and Spillway done to 70%		
(ii)Start construction of saddle and coffer dams	complete construction of saddle and coffer dams	Did not start. The major reasons being land acquisition and review of designs.	Has not started and one of the major reasons being land acquisition has not been resolved. This may lead to further delayed completion.

Management has not provided satisfactory explanation for the failure to implement the activities in the annual work plan.
As a result, the Project may not be completed within the contract period and may lead to cost escalation.

Submission by the Accounting Officer
The Accounting Officer submitted that the project is implemented based on a work plan that details the resources expected and the timeframe for implementation. The civil works on the dam axis, approach and discharge channels, the 2 tunnels, power house and spillway had not reached the expected outcome of 70% due to unforeseen challenges namely slow mobilisation of workers due to COVID 19 and geotechnical rock formation.

Development of the saddle and coffer dams had not started due to delayed acquisition of land where the construction was to be done. Land has since been acquired and there is progress in implementation.

Committee Observations and Findings

(i) The Committee noted that the Ministry cited the delay in land acquisition and the impact of the COVID-19 pandemic as reasons for the failure to implement activities in the annual work plan; and

(ii) The Committee observed that the Ministry was at the time engaged in ongoing revisions of the work plan, and the project is being closely supervised, with completion progress reaching 83%.

Committee Recommendation
The Committee reprimands the Accounting officer for failure to adhere to the annual work plan so as to ensure proper implementation of the project, and submits a status report within three (3) months of adoption of this report.

999. Failure to Drill Community Boreholes
The Thwake Multi-Purpose Water Development Program included drilling and equipping of six (6) community boreholes at a cost of Kshs.4,500,000 each under Corporate Social Responsibilities (CSR) projects in Kitui Rural, Makueni and Mbooni Constituencies. However, an inspection carried out in October, 2021 revealed that the boreholes are yet to be drilled. Further, construction of eight (8) health centers and renovation of forty-one (41) classrooms in various schools was complete but were not labelled or branded to distinguish from projects implemented by other government agencies.

It is not clear whether the community projects will be completed before the expiry of the contract period.

Submission by the Accounting Officer

The Accounting Officer submitted that the planned six (6) boreholes were drilled (2 in Mbooni East, 2 Makueni and 2 in Kitui Rural constituencies) to completion as at 30th September 2022. Three (3) boreholes yielded water (1 borehole in Mbooni East and 2 in Makueni constituencies) and the other three (3) were found to be dry boreholes (1 borehole in Mbooni East and 2 boreholes in Kitui Rural Constituencies). The three water yielding boreholes were equipped and operationalised to supply clean water to the local community and handed over to the local community. Hydrological surveys to identify other suitable sites for the other three dry boreholes were undertaken to completion and arrangements put in place to drill and equip them by 30th March 2023.

Review of the implementation of the Social Responsibility (SR) projects continued with branding of all the completed projects which included the renovated 41 classrooms in 12 schools, the constructed 6 new classrooms in 3 schools, the renovated 2 health facilities, the constructed 2 new facilities (maternity wing and administration block) and the drilled and equipped 3 boreholes. The Branding of SR projects provides a platform for Thwake Dam's social reputation and corporate citizenry in the minds of stakeholders.

Committee Observations and Findings

(i) The Committee noted that the number of drilled dry boreholes was alarming;
(ii) The Committee also observed that the dry boreholes had been replaced and successfully handed over to the community, where they are now operational; and
(iii) The Committee recognized that the State Department had upgraded its water mapping equipment, leading to a reduction in the likelihood of drilling dry boreholes;

Committee Recommendation

The Committee recommends that the Accounting Officer prioritizes branding for all projects, and avails a status report within three (3) months of adoption of this report.

1000. Lump Sum Amount in Bill of Quantities for Access Roads

Review of interim certificates of payments showed that the Program Management made payments amounting to Kshs.361,136,677 for access roads construction. The amount comprised of Kshs.281,959,583 for the construction of the access roads within the project and an amount of Kshs.79,177,094 for the construction of the access bridge for the project. However, the bill of quantities and payments were lump sum without detailed and specific certified works and could not be verified.

As a result, it has not been possible to confirm that the public got value for money on the expenditure of Kshs.361,136,677 on the access roads and bridge.

Submission by the Accounting Officer

The Accounting Officer submitted that the payments are lumpsum in nature as stated in the BOQ and the prices were determined during the bidding period when the contractors visited the site at the pre tendering stage when the layout of the access roads to be used during implementation was proposed. Pricing was based on the lay out. The contractor is required to maintain all the access roads during the entire implementation period. These payments have therefore been carried out as per the contractual obligations.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to provide satisfactory supporting documents, including the bill of quantities contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendations

(i) The Committee reprimands the Accounting Officer for failure to provide satisfactory supporting documents, including the bill of quantities contrary to section 62 of the Public Audit Act, 2015;

(ii) The Accounting Officer submits a status report on the breakdown of payments made, to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1001. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1002. As required by the African Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Program's financial statements agree with the accounting records and returns.

KENYA ITALY DEBT FOR DEVELOPMENT PROGRAMME

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1003. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1004. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.62,200,000 and Kshs.51,033,946 respectively resulting to an under-funding of Kshs.11,166,054 or 18% of the budget. Similarly, the Project spent Kshs.54,182,711 against an approved budget of Kshs.62,200,000 resulting to an under-expenditure of Kshs.8,017,289 or 13% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the stakeholders.

Submission by the Accounting Officer

The ministry wishes to state that the budget underutilization was due to slow and delayed project implementation by the contractors undertaking the projects. Significant delay was for the Manooni Project that had disputes and delayed commencement of the construction and subsequently the disbursement to the project.

Committee Observations and Findings

The Committee observed that the under absportion was occasioned by fault on the Accounting Officer.

Committee Recommendations

The Accounting Officer should ensure adequate measures are put in place to ensure full realization of planned activities.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1005. Long Outstanding Advance

The financial statements reflect an advance of Kshs.12,991,890, as disclosed in Note 8. This amount which as reported in the prior year, was advanced to the State Department of Water vide requisition letter reference MEWNR/ACCTS/233 of 17 September, 2014, and was meant to enable the State Department pay for an outstanding travel bill due to a service provider. The outstanding amount had not been refunded to the project by the close of the financial year under review, or even subsequently by the time of this audit in October, 2021, more than five years since the advance was made. The advance has not been utilized for the intended purpose of the Programme and the State Department risks being required by the Government of the Italian Republic to make repayments, as per Article II.6 of the financing agreement.

Submission by the Accounting Officer

The management takes note of the recommendation for full implementation. The Project management continues to follow-up with the Ministry for the refund of the project funds and utilize the funds for the intended purposes accordingly.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer did not refute the claim that the advance funds were not used for the intended purpose; and

(ii) The Committee also noted that the Accounting officer has not facilitated the refund of the advance thereby risking additional costs such as interest.

Committee Recommendations

The Committee reprimands the Accounting Officer for failing to ensure that the advance funds were used for their intended purposes 5 years down the line thus failing to comply with provisions of Section 71(4) of the PFM Act 2012.

1006. 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, 2020. The project's duration was extended by one year up to 30 June, 2021 vide letter Ref: MOF/ERD/20/96/78/01/(29) dated 8 July, 2020. However, at the time of the audit in October, 2021, the project was yet to be completed despite the expiry of the extension period.
In the circumstances, failure to complete the project may adversely affect the benefits of the objectives of the project despite having invested a substantial amount of money on the project.

Submission by the Accounting Officer
The Accounting Officer submitted that that Manooni Water Supply project was intended for the rehabilitation of the Existing Dam as the source of water and Water Supply Infrastructure to serve the area of Kikumini and Ithumba. Tanathi WWDA went on the ground for design work and public participation and it was established that there were existing unresolved land issues within the dam area and the community insisted on their resolution before any works was commenced. These land disputes delayed the project for approximately 2 years.

Through extensive consultation with The Makueni County Government it was established that the Nolturesh pipeline was another viable water source to serve the intended project area. Manooni Altenative "Nol-Turesh - Kikumini-Ithumba Water Supply Project Phase I" was therefore conceived and technical designs and tender documents undertaken.

The project was advertised through the media and deadline for submission of bids by contractors for the contract was 4th March, 2019. Other land issues for pipeline way leaves arose and the contract was eventually signed on 16th March, 2021.

The Client thereafter declared 30th March 2021 as the official commencement date for the project but the project further faced more delays due to the unavailability of HDPE pipes and travel restrictions occasioned by the COVID-19 pandemic. Eventually the contractor completed the works on 2nd December 2022 and handed it over to Tanathi WWDA. The process of handing over the project to the County Government of Makueni is ongoing. Currently the project is operational and it's being operated by the Nol-Turesh Loitoktok Water and Sanitation Company.

Committee Observations and Findings

(i) The Committee observed that the Minisry attributed the delay in project management to challenges in land acquisition and the impact of the COVID-19 pandemic; and

(ii) The Committee noted that the Manooni dam was initially constructed in 1984 by the Machakos Arid Land Development project, which received funding from the European Union. During that time, the land occupants willingly provided the land for the dam without compensation. However, they later demanded compensation, causing a delay in the project.

Committee Recommendations

The Accounting officer submits a status report to the Committee within three (3) months of adoption of this report.

1007. Budget Over Expenditure

The statement of receipts and payments reflects receipts of Kshs.51,033,946 against expenses of Kshs.54,182,711 thereby incurring a deficit of Kshs.3,148,765. The Management has not explained why expenditure was incurred without adequate budgetary provision. This is contrary to the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018 and 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 applied for purposes for only which they were intended and appropriated by the National Assembly.
Consequently, the Management was in breach of the law.

Submission by the Accounting Officer
The ministry wishes to state that the budget allocation was Ksh. 62,200,000 as indicated above and thus expenditure was authorized accordingly

Committee Observations and Findings
The Committee noted that the Accounting Officer did not provide evidence of his claim of the budget allocation of Kshs. 62,200,000 contrary to section 62 of the Public Audit Act.

Committee Recommendation
The Committee reprimands the Accounting officer for failing to provide evidence of his claim of the budget allocation of Kshs. 62,200,000 contrary to section 62 of the Public Audit Act, and recommends that he submits this evidence within one (1) month of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1008. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA WATER SECURITY AND CLIMATE RESILIENCE PROJECT (IDA CREDIT NO.5268/5674-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1009. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1010.Budgetary Control and Performance
The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.4,120,000,000 and Kshs.1,974,134,243 respectively, resulting in underfunding of Kshs.2,145,865,757 or 52% of the budget. Similarly, the project spent

Kshs.2,902,257,520 against the budgeted amount of Kshs.4,120,000,000 resulting in under expenditure of Kshs.1,217,801,569 representing 30% of the estimated expenditure. Management has attributed the low absorption to slow pace of completing land compensation and delay in release of counterpart funding. The underfunding and under expenditure is an indication that the Project's objectives may not be achieved and may impact negatively on service delivery to the public.

Submission by the Accounting Officer

It is true the project did not utilize the funds as anticipated which is attributed to the lengthy process of land compensation. However, there was a substantial increase in funds transferred to NLC since they have completed compensation for Priority areas 1 and 2 and thus acquired more land that has since been handed over to the contractor to commence construction works which translated to increased absorption in financial year 2021/2022.

Committee Observations and Findings
The Committee observed that the under absportion was occasioned by fault on the Accounting Officer as per the reasons given.

Committee Recommendations
The Accounting Officer should ensure adequate measures are put in place to ensure full realization of planned activities.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1011. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1012. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1013. As required by the International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

WATER AND SANITATION DEVELOPMENT PROJECT (IDA CREDIT NO.6029/6030-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1014. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1015. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts of Kshs.8,563,804,204 against a budget of Kshs.8,580,000,000 resulting into a receipts shortfall of Kshs.16,195,796 or 0.2% of budgeted receipts. Further, the statement reflects final expenditure budget and actual on comparable basis of Kshs.8,580,000,000 and Kshs.3,934,318,336 resulting to an under-expenditure of Kshs.4,645,681,664 or 54% of 329 the budget. Management did not provide satisfactory explanation for the under expenditure, which implies that the overall goals and objectives of the Project were not achieved as planned which may have negatively impacted on service delivery to the public.

Submission by the Accounting Officer

The ministry wishes to state that the variance was due to delay in approval of supplementary budget for the project that was to be disbursed under Conditional Liquidity Support Grant (CLSG). Water Sector Trust Fund subsidiary agreement for CLSG was signed in November 2020 and its budget was not factored in the original printed budget estimates and required supplementary budget. The funds were received in the project account at the end of the financial year that could not allow disbursement to WSTF. The funds were fully disbursed in the beginning of 2021-22FY.

Committee Observations and Findings

The Committee observed that the under absportion was occasioned by fault on the Accounting Officer as per the reasons given.

Committee Recommendations

The Accounting Officer should ensure adequate measures are put in place to ensure full realization of planned activities.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1016. Cash Management

During the year under review, the Water and Sanitation Development project reported a cash and cash equivalents balance of Kshs.4,831,436,975. Out of this balance, the Project had a brought forward balance which stood at Kshs.19,744,850 under Equity Bank account No. 01071032110300. The unutilized funds have remained constant over the two years and appears idle balances, which could have been invested or used for service delivery.

Management did not provide satisfactory explanation for the accumulation of the idle cash balances.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance was due to delay in approval of supplementary budget for the project that was to be disbursed under Conditional Liquidity Support Grant (CLSG).

Water Sector Trust Fund subsidiary agreement for CLSG was signed in November 2020 and its budget was not factored in the original printed budget estimates and required supplementary budget. The funds were received in the project account at the end of the financial year that could not allow disbursement to WSTF. The funds were fully disbursed in the beginning of 2021-22FY.

Committee Observations and Findings

The Committee noted that the Ministry failed to provide supporting documents as evidence that the funds were fully disbursed.

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for failing to provide supporting documents as evidence that the funds were fully disbursed.**

(ii) **The Accounting Officer provides to the Committee supportive documents demonstrating that the funds were fully disbursed within one (1) month of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1017. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1018. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE MINISTRY OF WATER AND SANITATION

LAKE VICTORIA WATER SUPPLY AND SANITATION PROGRAM - (PHASE II) PROJECT NO. P-Z1-EA0-004 (ADF GRANT NO.2100155019967) - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1019. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1020. Budgetary Control and Performance

The Project had an approved budget of Kshs.174,750,000 during the year under review for implementation of project activities. During the same period, the Project recorded expenditure of Kshs.161,026,424 or approximately 92% of the approved budget resulting to under expenditure of

Kshs.13,723,576 or approximately 8% of the approved budget. Although the Management has explained that the delay in utilization of the funds was due to the late release of funds from the ministry, no further action had been taken to ensure that in future there are no such delays. The citizens therefore did not obtain the benefits accruing from the unspent funds.

Submission by the Accounting Officer

The ministry wishes to state that the the disbursement of GoK grants were received after the end of the financial year and therefore could not be reported as the project is using cash basis. The funds received was spend and therefore was reflected in the next financial statements. The pending bills for Zhongmei Engineering amounting to Kshs. 34,228,410.47 was paid on 31st August 2021 together with the current financial year available budget.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

1021. Excess Funds Drawn by the Project

The funding summary under the Project information indicates that the Donor had made commitments amounting to Kshs.1,320,593,041 equivalent of UA10,390,000. However, actual drawdowns as at 30 June, 2021 amounted to Kshs.1,447,105,994 equivalent to UA11,385,363 indicating that the Project had drawn in excess of the funds committed by Kshs.126,512,953. Similarly, the Government of Kenya counterpart funds commitment was Kshs.186,132,490 equivalent to UA1,450,000. However, Kshs.431,274,725 equivalent to UA2,105,275 of the counterpart funds had been drawn indicating that the Project had also drawn in excess of the committed counterpart funds by Kshs.245,142,235.

Although the Management has explained that the over funding was as a result of additional cost on Keroka-Isebania projects through an addendum, retendering cost as a result of termination of the first contract, increase scope of the Project and the exchange rates which were used at the time of signing the agreement being different from those 331 used at the time of receiving grants, no documentary evidence was provided for audit verification in support of the explanations.

Consequently, the increased Project funding of Kshs.371,655,188 cannot be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that over funding was as a result of additional cost of Keroka-Isebania Projects through to addendum, retendering cost as a result of termination of the first Contract, increase scope of the Project and the exchange rates which were used at the time of signing the agreement being different from those used at the time of receiving grants.

Committee Observations and Findings

(i) The Committee noted that the Accounting Officer failed to provide supporting documents to substantiate their response contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for failing to provide documents contrary to section 62 of the Public Audit Act, 2015.**

(ii) **The Accounting Officer provides to the Committee supportive documents, within one (1) month of adoption of this report by the House.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1022. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1023. There were no material issues relating to effectiveness of internal controls, risk management and governance.

LAKE VICTORIA WATER AND SANITATION PROJECT – NUMBER CONVENTION AFD CKE 1093 02 M – LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1024. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1025. Delayed Disbursements and Project Implementation

The program funding summary indicates that EU-AITF had contributed Kshs.234,786,000 equivalent to 39% of the committed funds and the Government of Kenya had contributed Kshs.15,350,000 equivalent to 1.3% of the committee funds for the program. However, no funds have so far been received from AFD and EIB due to delays in the signing of Subsidiary financing agreements between the Government of Kenya and the financiers. Although Management has indicated that the subsidiary agreements were finally signed on 2 October, 2020, there has been no commitment from the financiers as to when the funds will be disbursed to the project.

Consequently, the project may not be implemented and completed within the stipulated time frame of the overall financing agreement.

Submission by the Accounting Officer

Its true there were delays in disbursments and project implementation due to signing of the subsidiary agreements which were signed in 2 october, 2020.

The project is now on course under implementation stage works package following the signing of financing agreement in November 2022.

Committee Observations and Findings

The Committee observed that the delays in signing of the agreements affected the implementation of the project.

Committee Recommendation

The Committee recommends that the Accounting Officer should take due diligence and care to ensure the implementation of the project.

1026. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects an approved budget of Kshs.530,000,000 and actual expenditure of Kshs.121,526,125 representing approximately 23% budget absorption. Although tThe Management attributes the low absorption to delay in signing of the subsidiary agreements with AFD and EIB, the slow negotiation process for land compensation and delays in implementers procurement process. The Management has provided a revised implementation work plan made to ensure that the project implementation is completed as planned.

Consequently, the underfunding and under absorption of funds has denied the public the opportunity of benefiting from the project and the project may not be completed as planned.

Submission by the Accounting Officer

The low absorption was due to the delay in signing the subsidiary agreements with French Development Agency(AFD) and European Investment Bank (EIB), the prolonged negotiation process for the land compensation procurement process which has now been concluded project implemention is now at 10% in line with revised work plan which will ensure that the project is completed as planned.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1027. Unauthorised Expenditure - Lack of Approved Procurement Plan

During the year under review, the Project entered into a contract with various firms for consultancy services out of which an amount of Kshs.121,526,125 was paid. However, the Management did not provide the approved procurement plan for audit verification showing the goods and services to be procured during the year, the procurement methods to be used. In addition, there was no evidence that the project management requested and obtained a letter of no objection from the financier-AFD regarding the drafting and approval of the procurement plan prior to the commencement of the procurement process for Water Resource and Wastewater Master plan. This is contrary to Section 1.6.1 of the AFD Procurement Guidelines.

Consequently, the Management breached the Financing Agreement.

Submission by the Accounting Officer
The Accounting Officer submitted that the procurement plan was available but not availed to the auditors during the audit, however, the approved procurement plan is now availed for audit verification. In addition, all procurements had no objections at each stage of procurement.

Committee Observations and Findings
The Committee noted that the Ministry failed to provide supporting documents as at the time of audit to substantiate their response contrary to section 62 of the Public Audit Act.

Committee Recommendations
The Committee reprimands the Accounting Officer for failing to provide supporting documents contrary to section 62 of the Public Audit Act.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1028. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1029. As required by Agence Francaise De Development Fund (AFD), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

WATER AND SANITATION SERVICES IMPROVEMENT PROJECT (IDA CR. NO.5103-KE) – LAKE VICTORIA NORTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1030. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1031. Unsupported Expenditure

The statement of receipts and payments reflects an expenditure of Kshs.1,818,688 under operating expenses which, as shown under Note 8.8, relates to fuel, advertisement, staff travel, monitoring and evaluation, and others. However, the expenditure was not supported by an approved budget and taskforce reports. No explanation was provided for the failure to support the expenditure, as a result of which, the propriety of the expenditure could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the amounts incurred were budgeted for in the financial year 2019/2020.

Committee Observations and Findings

The Committee noted that the Ministry failed to provide supporting documents to substantiate their response contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendations

- **(i) The Committee reprimands the Accounting Officer for failing to provide supporting documents to substantiate their response contrary to section 62 of the Public Audit Act.**
- **(ii) The Accounting Officer to provide supportive documents to the Committee within one (1) month of adoption of this report.**

1032. Failure to Close the Project

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 2019 but was extended to 2020. However, as at the time of audit, in October, 2021, the project had not been closed. No explanation was provided for the failure to close the project at the expiry of its life time. Consequently, any expenditure and decisions made during the period the project had expired may not be supported by law and the propriety of the involved expenditure may be unlawful.

Submission by the Accounting Officer

The ministry wishes to state that the approval for the project closure was received from the National Treasury and the project was closed.

Committee Observations and Finding

The Committee noted that there was a delay in closing the project.

Committee Recommendation

The Committee recommends that the Accounting Officer should take due diligence and care.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1033. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAM (LOAN NO.2000200000501) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1034. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1035. Low Absorption of Project Funds

The report on project information and overall performance indicates that the project commenced on 9 January, 2017 and was expected to run for a period of five years to end 31 December, 2021. However, the closing date has since been extended to 31 December, 2023. The project therefore has been in operation for about four (4) years and five (5) months which covers 74% of its extended seven (7) year duration expected to end in December, 2023. However, as at 30 June, 2021, the project had only absorbed Kshs.3,975,889,181 out of the total loan amount of Kshs.14,865,821,383 (UA 103,702,540) translating to about 26% of the total funding. In the year under review, the Project did not utilize Kshs.513,100,829 or 27% of its approved annual budget. This under absorption indicates delay in implementation of the project activities as anticipated and thus it is unlikely that the Project will meet its intended objectives.

Submission by the Accounting Officer

The Kenya Towns Sustainable Water and Sanitation Program (KTSWSP) faced the following challenges at its commencement:

- One-year delay in getting tax exemptions for the master lists
- Court injunctions for the works
- Inadequate GoK counterpart for implementation of the Resettlement Action Plan

The project objectives will not be affected because the extension already granted was to enable completion of the project.

Committee Observations and Findings

The Committee observed that the explanation and provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

1036. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects, final receipts budget and actual on comparative basis amount of Kshs.1,925,000,000 and Kshs.1,516,964,855 respectively, resulting to underfunding of Kshs.408,035,145 or 21% of the budget. Further, the Project's approved expenditure was Kshs.1,925,000,000 while the actual expenditure was Kshs.1,411,899,171 resulting in under absorption of Kshs.513,100,829 or 27% of the budget. The Management explained the under absorption as attributed to the fact that the consultant for the grant component did not attain the required milestone 335 by the end of the financial year, and slow progress in the attainment of the planned milestones in Mwala, Changamwe and Machakos water contracts due to slow progress by contractors and land acquisition issues.

The under expenditure of the approved budget indicates that some activities and projects in the annual work plan were not implemented thus affecting the achievement of the intended objectives and negatively affecting service delivery to the public.

Submission by the Accounting Officer

For this project, budget absorption under the project is commensurate with the direct payments processed during the year. Budget absorption was affected by the following:

I. The Contractor Mwala water and sanitation project was not performing and was under termination and thus was not able to disburse.
II. The Contractor Changamwe sewers project was not performing and was under termination and thus was not able to disburse.
III. The AfDB grant components was financing design studies. Since the output milestones had not been attained, disbursement could not be made.
IV. Machakos water and sewerage contracts were slowed down due to court injunction relating to land acquisition issues.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1037. Failure to Maintain Separate Project Bank Account

Article I, Section 1.2 (j) of the Subsidiary Loan Agreement between the Government of Kenya and Tana Water Works Development Agency requires the Programme to open a separate bank account for the purpose of receiving and accounting counterpart funds. However, as at the time of this audit in October, 2021, the Project had not opened the account but continued to receive the counterpart funds through the Agency's development bank account.

Submission by the Accounting Officer

The Agency operates one development bank account for purposes of receiving and accounting for counterpart parts for all projects which do not receive revenue from donors. To ensure accountability for the GoK counterpart funds for each project, the management-maintained fund accountability statements for each project whose GoK counterpart is managed through the development account.

However, to ensure compliance with the tenets of the subsidiary loan agreement, the Agency is in the process of seeking the necessary approvals to enable us open bank accounts for each project. The Agency has received an approval to open separate bank accounts for each project from the board of directors and submitted a request for authorization to open the accounts by the National Treasury and Economic Planning.

The Ministry in its part has forwarded the request to The National Treasury and Economic Planning. The Agency is awaiting authorization by the National Treasury to open the project bank accounts.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer admitted that separate project bank account had not been opened at the time of the audit;

(ii) The Committee noted that there was breach of regulation 76 of the PFM National Government Regulations, 2015

Committee Recommendation

(i) The Committee reprimands the Accounting officer for failing to maintan separate project bank accounts as required by regulation 76 of the Public Finance Management (National Government) Regulation, 2015.

(ii) The Accounting Officer should avail evidence of Treasury approval to open the bank account, within three (3) months of adoption of this report.

1038. Slow Implementation of Projects

An audit inspection of projects and review of contract agreements for works being implemented by Athi Water Works Development Agency, Tana Athi Water Works Development Agency, and Coast Water Works Development Agency show slow progress in implementation of the projects and were behind schedule. Site visits to projects revealed slow progress of works compared with the agreed projects' duration. It was also noted that overall progress was 36%-twenty-six months to the end of the revised sevenyear contract period to end in December, 2023. Further, field verification of Gatundu Water Supply and Sewerage Project revealed progress was about 18% completion level, although the Project Management estimated the works to be 30% complete.

Although the management attributed the delay in implementation of the projects to failure to obtain tax exemption, slow acquisition of land for project by National Land Commission, inadequate counterpart funding and court cases among other reasons, several works may not be completed within the contract period which may lead to cost overruns.

Submission by the Accounting Officer

The Accounting Officer submitted all the contracts under the project lost more than a year due to tax exemption delays, land issues among other challenges. However, that most of the contracts except Changamwe and Mwala are at advanced stages.

The Accounting Officer further confirmed that there is no risk of cost overruns because all the time extensions for the contracts are done without additional cost to the employer.

Committee Observations and Findings
The Committee observed that the projects were fixed contracts, but the contractors were expressing complaints about the need for cost adjustments.

Committee Recommendation

(i) The Committee recommends that the Accounting officer needs to take due diligence and care in the implementation of projects.
(ii) The Accounting Officer to provide documents to the Office of the Auditor General to show the progress/ status of the stalled projects in Changamwe and Mwala for audit in the subsequent financial years.

1039. Stalled Project - Changamwe Re-pooling Sewer Network
Contract for the works was awarded contract cost is Kshs.204,483,295, commencement date was 30 October, 2018 and the expected completion date was 14 June, 2020, which was later extended to 14 January, 2021 and again revised to 14 January, 2022. As at 30 June, 2021 the contractor had received Kshs.72,816,261. A site visit to Changamwe repooling sewer network project revealed that the project had stalled due to an order issued on ongoing lawsuit by the contractor against the Athi Water Works Development Agency for breach of contractual agreement. The order restrained the Agency from removing 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.

Inspection carried out in October, 2021 revealed that the manholes constructed had been vandalized, while piping works were done coring about 3km out of the expected 15km. The overall work completed was only15%. It is also not clear if the works would be completed due to the ongoing lawsuit.

In the circumstances, the intended beneficiaries may not receive services from the project.

Submission by the Accounting Officer
The Accounting Officer submitted that the Changamwe sewerage contractor's non-performance AWWDA initiated the process of contract termination and recalling of bank 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.

The ruling of the case was given on 2nd December 2022 referring the case for arbitration and directing the Chairman of the Architectural Association of Kenya appoints an Arbitrator within 21 days.

The arbitrator has since been appointed; the state department awaits the commencement and direction of the arbitration process for a way forward on this project.

Committee Observations and Findings

The Committee raised concerns about the payment of 35% (Kshs. 72,816,261), against 15% of completed works. The Committee questioned how a non-performing contractor received such a significant payment.

Committee Recommendation

The Accounting Officer to avail to the Committee the status of the arbitration within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1040. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1041. As required by the African Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project’s financial statements are agree with the accounting records and returns.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAM (AfDB LOAN NO.2000200000501) – TANA WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1042. Cash and Cash Equivalents

As pointed out in the previous year, the statement of financial assets as at 30 June, 2021 reflects bank balances of Kshs. 20,295. However, the Implementing Agency did not open the Program`s bank account for purposes of receiving and accounting for counterpart funds as required under Article I, Section 1.2(j) of the Subsidiary Loan Agreement. The Implementing Agency operates one development account No.1101998773 into which all development funds are received and accounted for.

Review of the cash book, bank reconciliation statements and breakdown schedule for the development account No.1101998773 revealed that the account had a closing balance of Kshs.401,562,709.94 as at 30 June, 2021 out of which an amount of Kshs.20,295 was attributed to the Program. However, the completeness and accuracy of the balance of Kshs.20,295 could not be ascertained in the absence of a separate bank account for the Program.

The Management did not provide satisfactory explanation for failing to open the Program's bank account to avoid commingling of funds with those intended for other GOK development projects being implemented by Tana Water Works Development Agency.

Submission by the Accounting Officer

The Accounting Officer submitted that Kenya Towns Sustainable Water Supply and Sanitation Program loan on lent to the Agency is Appropriation-in-Aid (A-I-A) and therefore does not involve funds being disbursed directly to the Agency. In this regard Article I, Section 1.2j of the Subsidiary Loan Agreement does not apply to the Agency as no loan amount is directly received by the Agency. However, the Agency operates one development bank account held at KCB Bank Kenya Limited Nyeri branch A/C No.1101-998-733 with which all development funds are received and accounted for. Counterpart fund is voted and accounted for under development vote.

In addition, the management maintains a vote book system and the allocation of the closing balance of KES 20,295 as at 30th June 2021 attributed to the program was committed for land acquisition. The Program is ongoing and the overall project completion rate is at 80% and the status of the disbursements still remains direct payments.

Committee Observations and Findings

The Committee noticed that it was necessary by law for the Ministry to open a separate bank account.

Committee Recommendation

The Accounting Officer to ensure that each project within the agency has its own bank account as per regulation 76 of the PFM National Government Regulations 2015. This aims to enhance accountability and prevent any confusion or mixing of funds.

1043. Acquisition of Land - Lack of Ownership Documents

The Statement of receipts and payments for the period ended 30 June, 2021 reflects acquisition of non-financial assets expenditure of Kshs.31,904,151 and Kshs.154,917,445, all totalling to Kshs.186,821,596 in respect of acquisition of land and as disclosed under Note 10.6(a) & (b) to the financial statements. Included in this amount is Kshs.169,940,630 and Kshs.16,880,966 for fully paid and partly paid parcels of land respectively. However, although the sale agreements with the vendors for the respective parcels of land were provided for audit verification, there was no evidence that title deeds had been acquired.

In the circumstances, it has not been possible to ascertain the ownership status of the parcel of land amounting to Kshs.186,821,596.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount of KES 154,917,445 relates to Community Land Acquired by TWWDA for implementation of Mandera Water & Sewerage Infrastructure. All the ownership documents have since been acquired.

The amount of KES 31,904,151 relates to land for implementation of Chogoria and Chuka Water and Sewerage Infrastructure. Out of KES 31,904,151 KES 21,059,766 is for fully paid land parcels which the title deeds has been acquired. The pending parcels of land valued at KES 9,187,188 are under succession and were gazetted on 13th August 2021 via gazette notice No. 8294.

Committee Observations and Findings

The Committee observed that the Ministry failed to provide supporting documents, such as title deeds for the land parcel contrary to section 62 of the Public Audit Act, 2015.

Committee Resolution

- **(i) The Committee reprimands the Accounting Officer for failing to provide supporting documents, such as title deeds for the land parcel contrary to section 62 of the Public Audit Act, 2015.**
- **(ii) The Accounting Officer should provide ownership documents to the Committee within one (1) month of adoption of this report.**

Other Matter

1044. Budgetary Control and Performance

During the year under review, the Program had an approved total expenditure budget of Kshs.1,800,000,000 against the actual expenditure of Kshs.1,741,619,366 translating to 97% budget performance. Similarly, out of the budgeted receipts of Kshs.1,800,000,00, the project received Kshs.1,587,328,054 or 88%. Management has attributed the shortfall in receipts to delay in disbursement of the 4 th quarter allocation and unfinalized payment documents submitted to the Parent Ministry for onward transmission to The National Treasury.

Submission by the Accounting Officer

The shortfall indicated by the auditor has since been disbursed.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1045. Delay in Project Implementation

As previously reported, available information and contract agreements for the works being implemented by both Tana Water Works Development Agency and 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. Review of the project status report dated 31 August, 2021, indicated that ten (10) out of sixteen (16) projects were less than 50% complete by 31 August 2021, three months to the end of the contract period.

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.

Submission by the Accounting Officer

The Accounting Officer submitted that the Agency is fast racking completion of the project to ensure that the intended benefit to the community is achieved. The agency has been holding management meetings with the contractor and also Rapid Results Initiative meetings regularly with officers attached to the project 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 80% as shown in table below:

S/No	Project	Overall Progress as at 28th February 2023
1	Chogoria Water Supply Project	100%
2	Kerugoya Kutus Water Supply Project	82%
3	Chuka Water Supply Project	54%
4	Kerugoya Kutus Sewerage Project	82%
5	Chuka Sewerage Project	64%
6	Chogoria Sewerage Project	80%
7	Meru Sewerage Project	57%
8	Marsabit Water Supply Project	100%
9	Marsabit Sewerage Project	88%
10	Mandera Water Supply Project	72%
11	Mandera Sewerage Project	73%
S/No	**Project**	**Overall Progress as at 28th February 2023**
12	Isiolo Water Supply and Sewerage last mile connectivity Project	100%
13	Garissa Water Supply last mile connectivity Project	100%
14	Muranga Urban Water Supply last mile connectivity Project	100%
15	Muranga South Water Supply last mile connectivity Project	100%
16	Othaya Sewerage last mile connectivity Project	100%

Committee Observations and Findings

(i) The Committee observed that the rate at which implementation of projects within the Ministry was delaying and stalling was alarming;

(ii) The Committee expressed concern over the issue of counterpart funding release by the Government of Kenya in donor-funded projects, which is also impacting the acquisition of land; and

Committee Recommendations;

(i) The Committee recommends that the Accounting Officer should conduct a review of the planning and implementation process in order to prevent project delays.

(ii) The Accounting Officer should ensure payment for certified works is prioritized to avoid interest on delayed payment which can lead to project cost escalation.

Project No.	Project Description/ Details	Contract Amount (Kshs.)	Audit Observations	Total Payment as at 30 June, 2021 (Kshs.)
1	Chogoria Water Infrastructures Project	574,317,061	i. Intake works were 80% complete ii. Treatment plant was 60% done iii. Elevated steel tank had not been constructed iv. Staff houses and administration block were at lintel level v. Wayleave/land for the sewer line and construction of 500M3 storage tank at Iruma area had not been granted as the owners were yet to be compensated. Further, construction site for storage tank at Kairuni was yet to be identified and valued Project No. Project Description/ Details Contract Amount (Kshs.) Audit Observations Total Payment as at 30 June, 2021 (Kshs.) by the National Land Commission. vi. The overall project status was 68% complete and given the problem of wayleaves and acquisition of land the Project may not be completed by 03 December, 2021.	253,469,913
2	Chogoria Sewerage Infrastructure Project	374,595,276	(i) An inlet, Anaerobic ponds and sludge beds had not been constructed (ii) Administration offices and staff houses had not been done (iii) Three acres of land were yet to be procured and the land owners were to provide documents of title of ownership so as to allow compensation. (iv) Wayleave for sewer line had not been granted	137,173,289
3	Chuka Sewerage Infrastructure Project	459,368,692	(i) Sewerage treatment plant was at 80% complete (ii) Sewerage line not constructed as a result of noncompensation of land owners for wayleave	225,142,587

4	Meru Sewerage Infrastructure	874,506,524	(i) The sewerage works were ongoing and were only 56% complete 340 Project No. Project Description/ Details Contract Amount (Kshs.) Audit Observations Total Payment as at 30 June, 2021 (Kshs.) (ii) Access road to the project had not been constructed (iii) Fifty-six (56) Kms of sewer line were supposed to have been done but only ten (10) Kms or 20% had been carried out. (iv) Wayleave for the sewer line had not been granted as the land owners were yet to provide ownership documents to the Implementing Agency to facilitate compensation of the crops / vegetation on their land. (v) Two staff houses and laboratory had been constructed but electrical works had not been carried out (vi) The overall Project status was 44% complete and given that it was only one month to the set completion date of 20 October 2021 there is no likelihood of meeting the set contract end period	253,909,782
5	Marsabit Water Supply Infrastructure Project	722,685,030	(i) The construction of water supply infrastructure was about 65% complete	258,008,943
6	Marsabit Sewerage Infrastructure Project	1,001,017,386	(i) Construction of sewerage infrastructure was about 75% complete Project No. Project Description/ Details Contract Amount (Kshs.) Audit Observations Total Payment as at 30 June, 2021 (Kshs.) (ii) Three (Two Toyota twin cab pickup and a land cruiser) with a total cost of Kshs.17,000,000 had not been provided. (iii) Sewer treatment plant is being constructed on thirtyseven and a half (37.5) acres	419,622,765

			of land whose title deed has not been processed. (iv) Capacity building with a provisional sum of Kshs.26,250,000 had not been done.	
7	Isiolo Town Water Supply and Sewerage Project-Last Mile Connectivity	73,238,917	(i) Construction of six sewer lines were complete (ii) Construction of Mwangaza line estimated to cost of Kshs.7,848,517 was 37% complete 49,683,749 Total 4,079,728,886 1,597,011,028	49,683,749
	Total	**4,079,728,886**		**1,597,011,028**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1046. Projects Verification

During the year under review, seven (7) projects with a contract sum of Ksh.4,079,728,886 were visited for verification in the month of September, 2021 and the following observations were made:

1	**Chogoria Water Infrastructures Project** • Intake Works were at 80% • Elevated Steel tank had not been constructed • Staff houses and administration block were at lintel level • Wayleave/Land for the construction of 500m3 storage tank at Iruma area had not been granted as owners had not yet been compensated. Further construction site for storage tank at Kairuni was yet to be identified and valued by National Land Commission • The overall project status was at 68% complete.	• Intake Works complete-100% • Elevated Steel tank complete-100% • Staff houses and administration block complete-100% • Wayleave/Land for the construction of 500m3 storage tank at Iruma area acquired and construction of 500m3 storage tank at Iruma area complete-100% • Overall project status is at 100%
2.	**Chogoria Sewerage Infrastructure Project** • An Inlet, Anaerobic and sludge drying bed had not been constructed • Administration offices and staff houses had not been done • Three acres of land were yet to be procured and the land owners were to provide documents • Wayleave for sewer line had not been granted	• Construction of Inlet is at 95% complete, Anaerobic is at75% complete and sludge drying bed is at 95% complete • Construction of Administration offices is 40% complete and staff houses are 60% complete • Three acres of land has been acquired • 13.96km out of 15.3 km has been compensated and sites handed over to the contractor - 91.2 % Complete • The overall Project status is at 75% complete
3	**Chuka Sewerage Infrastructure Project** • Sewerage treatment plant was at 80% complete • Sewerage line not constructed as a result of non-compensation of land owners for wayleave	• Sewerage treatment plant is 91% complete • 15.9km out of 20.9 km has been compensated and sites handed over to the contractor-76% complete.
4	**Meru Sewerage Infrastructure** • The sewerage works were ongoing and were only 56% complete • Access road to the project had not been constructed • Fifty-six (56) Kms of sewer line were supposed to have been done but only ten (10) Kms or 20% had been carried out. • Wayleave for the sewer line had not been granted as the land owners were yet to provide ownership documents to the Implementing Agency to facilitate compensation of the crops / vegetation on their land.	• sewerage Treatment works is at 67% complete • Access road to the project complete and in use • 22.5 km out of 56km done-40% done. • Wayleave documents for 22.5 km have been provided and owners compensated. Sites already handed over to the contractor • Electrical works for two staff houses and laboratory has been carried out

	• Two staff houses and laboratory had been constructed but electrical works had not been carried out • The overall Project status was 44% complete and given that it was only one month to the set completion date of 20th October 2021 there was no likelihood of meeting the set contract end period	• The overall Project status is at 57 % and completion date was extended to 31st March 2023
5	**Marsabit Water Supply Infrastructure Project** • The construction of water supply infrastructure was about 65% complete	The construction of water supply infrastructure is100% complete
6.	**Marsabit Sewerage Infrastructure Project** • Construction of sewerage infrastructure was about 75% complete • Three (Two Toyota twin cab pickup and a land cruiser) with a total cost of Kshs.17,000,000 had not been provided • Sewer treatment plant is being constructed on thirty- seven and a half (37.5) acres of land whose title deed has not been processed. • Capacity building with provisional sum of Kshs.26,250,000 had not been done	• Construction of sewerage infrastructure is 87.5% complete • Three (Two Toyota twin cab pickup and a land cruiser) with a total cost of Kshs.17,000,000 has been Purchased and are in operation. • Titles deeds for the land where construction of Sewer treatment plant is being constructed are available. • Capacity building will be conducted upon completion of the project.
7.	**Isiolo Town Water Supply and Sewerage Project- Last Mile Connectivity** • Construction of Mwangaza line estimated to cost of Kshs.7,848,517 was 37% complete.	The construction of Mwangaza line is 100% complete.

As a result, there is risk of significant number of works not being completed within the contract period which may result in cost escalations.

Submission by the Accounting Officer

The Accounting Officer admitted to the findings.

Committee Observations and Findings

(i) The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project; and

(ii) The Committee expresses concern about the repayment of loans in the event that the projects, for which the loans were obtained, are not implemented and fail to generate revenue.

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely completion of projects.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1047. As required by African Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Program's financial statements agree with the accounting records and returns.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAMME - RIFT VALLEY WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1048. Inaccuracies of the Financial Statements

A review of financial statements for the year ended 30 June, 2021 submitted for audit revealed the following anomalies:

1048.1 Funding Summary

The funding summary reflected at Note 1.7 to the financial statements on the Project information and overall performance reflects total donor commitment of 111,497,553 Units of Accounts (UAs) equivalent to Kshs.15,944,150,119 which vary with the totals of figures extracted from the loans and grants agreement of UAs 278,562,829 as shown below:

Details	Loan Currency	Amount	Exchange Rate	Amount (UAs)	Loan Number
Loan	US Dollar (USD)	$381,191,000	1UA = USD 1.4029	271,716,445	2000200000501
Loan	Units of Accounts (UA)	5,134,564 UAs		5,134,564	2100150036294
Grant	Units of Accounts (UA)	511,820 UAs		511,820	2100155033467
grant	Units of Accounts (UA)	1,200,000 UAs		1,200,000	5500155011104
Total				**278,562,829**	

The resultant variance of UAs 167,065,276 (Kshs.23,890,334,528) has not been explained or reconciled. Further, the funding summary does not indicate the loans or grants numbers.

In the circumstances, the accuracy of the funding summary statement and reason for its understatement and application of the amount totalling UAs 167,065,276 could not be determined for the year ended 30 June, 2021.

Submission by the Accounting Officer
The Accounting Officer submitted that:

a) The funding summary extract from the audited accounts represents the amounts from the Loans and grants agreement between the government of Kenya and AfDB.

b) The Funding summary contained in the financial statement of the Agency represents one cluster among several other clusters drawn from the main agreement drawn from the main agreement described in (a) above namely subsidiary loan agreements.

c) The Distribution account Numbers 2000200000501, 2100150036294, 2100155033467 and 550015501104 are for all clusters in the water sector for which AfDB make the funds available to all the beneficiary Agencies drawdowns on IPCs submitted.

d) The variance referred to in the funding summary therefore stands for all clusters AfDB funds for the water sector of UA 271,716,444.51 (Kshs 39,834,484,647) as per (a) above, Kshs15,944,150,119 is assignable to the Agency and disclosed as such. Kshs 23,890,334,528 is for the agreement explained in (a) above. The AfDB Loan Distribution is shown in the table below:

e) AfDB Loan Distribution A/C Number 2000200000501

Water Services Boards	Amount USD	exchange Rate 1.4029	Amount UA
Northern	51,956,361	1.4029	37,034,971.13
Tana	55,675,511	1.4029	39,686,015.40
Athi	59,888,368	1.4029	42,688,978.54
Coast	11,135,912	1.4029	7,937,780.31
Tanathi	51,003,844	1.4029	36,356,008.27
Rift Valley	33,490,818	1.4029	23,872,562.55
Lake Victoria South	72,312,204	1.4029	51,544,802.91
Lake Victoria North	45,727,982	1.4029	32,595,325.40
TOTAl	381,191,000		271,716,444.51

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee observed laxity in the handling of accounts in the department.

Committee Recommendation
The Accounting Officer should ensure that all account reconciliation matters are done on time before audit.

1048.2 Prior Year Adjustment

The statement of receipts and payments for the period ended 30 June, 2021 reflects prior year adjustment figure of Kshs.131,083,313 which was not supported with journal entries, payments voucher details such as invoices, supplier statements, inspection and acceptance certificates. Consequently, the accuracy, validity and completeness of the prior year adjustment figure of Kshs.131,083,313 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that:

(a) The bank wrote to the Agency a letter Indicating the figure of Kshs 131,072,313 and its payment details that had been omitted in 2019/2020 financial statements and indicated for correction to be effected.

(b) The agency amended the financial statements for the year ended 2019/2020 and submitted to OAG vide letter Ref: CRVWWDA/CS/FIN/VOL.8(15) dated 10th June,2021 and received on 14th June,2021 for which no formal response was received prior to the audit exercise of the financial statements for the year 2020/2021.

(c) During the audits, it was advised that management maintain the opening balances as per the audited report and the amendments treated as per prior year events since the related to the year 2019/2020.

(d) The following document have now been availed;

1. Interim Payment Certificates (IPCs).
2. Details of Invoices, Supplier statements, Inspection and acceptances certificates.
3. Payment request letters forwarding the IPCs to the Ministry of Water Irrigation & Sanitation for onward processing.
4. Statement of confirmed disbursement from AfDB website.
5. The journal entries were provided and details of the Kshs 131,083,313.
6. The prior year Adjustment figures are captured in page 31, note 15 of the Financial Statements.

Status Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;

The Committee observed laxity in the handling of accounts in the department.

Committee Recommendation

The Accounting Officer should ensure that all account reconciliation matters are done on time before audit.

1048.2.1 Purchase of Goods and Services

The statement of receipts and payments reflects a cumulative to-date figure for purchase of goods and services expenditures totalling Kshs.1,081,797,204 which varies with the figure of Kshs.1,154,942,553 reflected at Note 7 to the financial statements, resulting to unexplained variance of Kshs.73,145,349.

In the circumstances, the accuracy of the cumulative purchase of goods and services expenditures of Kshs.1,081,797,204 cannot be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The cumulative to date figure for Purchase of goods &Services totaling Kshs 1,081,797,204 from the Statement of Receipts and Payments. Differ with note 7 is explained as follows:

a) The Statement of Receipts and Payments has prior year adjustment line, note 15 as captured in page 31 of the financial statements an amount of Kshs 131,083,313 Included in the prior year is Kshs 59,111,213 for Acquisition of Assets.

b) The Prior year adjustment on services Kshs 71,972,100 is included in note 7 thus bringing a total amount to kshs1, 154,942,553.

c) The figure of Kshs 73,145,349 though corrected in the financial statements, include Kshs 71,972,100 being the prior year amount for purchase of goods and services as shown in (b) above and an error picked at the time of opening balance at amended financial statements for the year 2019/2020 that had earlier submitted but not considered.

d) Table below explains events before and after management responses

submitted 29th September,2021	1st draft accounts opening bal	383,007,269	
Amended accounts submitted 4th Nov 2021	error capturing 1st draft opening bal corrected in ML responses	1,185,451	
	opening bal 2019/20 corrected in ML responses	309,849,718	attached copy 2019/20 report
	Prior year adjustment goods and services corrected in management response	71,972,100	

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1049. Unauthorized Over Expenditure

The statement of comparative budget and actual amounts reflects an over expenditure of Kshs.42,526,981 (or 9%) on purchase of goods and services budget of Kshs.455,272,000 which was not explained (or supported). Further, no authority or approval was provided to authenticate its existence for the year ended 30 June, 2021.

Submission by the Accounting Officer
The over expenditure of Kshs 42,526,981 is as a result of expenses on land acquisition on unutilized funds brought forward from financial year 2019/2020. The expenditure was covered with cash and cash equivalents brought down balance from 2019/20 financial year. Availed are the copies of receipts of grants from Government.

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1050. Unresolved Prior Year Audit Issues
The progress on follow-up of auditor recommendations at Note 12 to the financial statements indicates that audit issues have been resolved. However, no documentary evidence such as minutes of the Management meetings, receipts, fixed asset registers and risk management policy were provided to support the resolved issues.

Under the circumstances, the Management failed to comply to the requirements of the Public Sector Accounting Reporting template pertaining to disclosures of progress on follow up of auditor recommendations on previous year, for the year ended 30 June, 2021.

Submission by the Accounting Officer
These matters were discussed during audit except the one outstanding of the opening of a project separate bank account.

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1051. Receipts
1051.1 Transfer from Government Entities
The statement of receipts and payments reflects transfers from government entities figure of Kshs.185,338,665 which varies with the figure of Kshs.236,250,000 reflected in the bank statements resulting to an unexplained variance of Kshs.50,911,334.

Under the circumstance, the accuracy and source of transfer from government entities of Kshs.50,911,334 for the year ended 30 June, 2021, could not be confirmed.

Submission by the Accounting Officer

The receipt of Kshs 236,250,000 in the bank statement relates funds disbursed for several other projects implemented by the Agency included is for KTSWSSP amount of Kshs 62,500,000.00.

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;

The Committee was satisfied with the explanation.

Committee Recommendation

The Committee recommends that the matter is resolved.

1051.2 Direct Payments

The statement of receipts and payments reflects loan from external development partners figure of Kshs.2,094,035,513 which relates to payments made on behalf of the Project. However, the receipts figure was not supported with loan acknowledgement, loan returns and loan arrangement documentation.

In the circumstances, the accuracy, validity and completeness and ownership of loan receipts of Kshs.2,094,035,513 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The amount of Kshs 2,094,035,513 that relates to payment made on behalf of the project was extracted from the Statement of confirmed disbursement from AfDB website was provided during audit.

Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;

The Committee was satisfied with the explanation.

Committee Recommendation

The Committee recommends that the matter is resolved.

1051.3 Low Absorption of Project Funding

The loan agreement was signed on 9 January, 2017 running for five years to 31 December, 2021. The total project funding is UAs 111,497,553 (or Kshs.15,944,150,119) of which only UAs 30,778,285 (or Kshs.4,401,294,776) representing 28% has been drawn with six months remaining. The balance of UAs 80,719,268 (or Kshs.11,542,855,343) equivalent to 73% has not been drawn. Low absorption has the effect of the project not utilizing funds set aside for it and therefore incurring additional cost of commitment charges of 0.25% by the Donor as provided in section 3.07 of the loan agreement.

Under the circumstances, the under absorption will affect proper project implementation.

Submission by the Accounting Officer

The project duration at the time of audit has been extended by two years ending 31st December 2023, therefore no risk of incurring additional cost of commitment charges of 0.25% by the donor.

This was communicated through the aide memoire for AfDB detailing the program extension for 2 years from 1st January 2021 to 31st December, 2023 and this was informed from delays in getting tax exemptions on master list.

The following were provided with the audit responses;

1 The aide memoire from ADB detailing the program extension of 2 years from 1st January, 2021 to 31st December 2023.

2 Document to African development which shows the justification for the extension of time, showing the analysis of the time for various project for approval of master list and also time it took for the disbursement of advance to contractors.

3 The revised completion date is captured in the audited Financial Statements 2020/21-page 1 item 1.2 project. under the heading project information and overall performance

Status ;Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1052. Acquisition of Assets - Land Acquisition
Statement of receipts and payments reflects acquisition of assets figure of Kshs.1,781,572,198 which included acquisition of land expenditure of Kshs.105,346,434 which was not been supported with resettlement action plan and valuation report, name of payees or payment vouchers.
Under the circumstances, the accuracy, validity and propriety of land acquisition expenditure of Kshs.105,346,434 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The acquisition of Land expenditure of Kshs 105,346,434 was supported with payment vouchers availed during audit, including resettlement action plan (RAP) and Valuation reports with names of payees.
Status; Resolved as per the clearance letter from Office of the Auditor General Ref: 2020/2021/1/1102/07 KTSUSWS dated 30th March, 2022.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1053. Cash and Cash Equivalents
1053.1 The statement of financial assets reflects cash and cash equivalent figure of Kshs.100,012,714 as at 30 June, 2021. However, the cash book availed for audit reflected a balance of Kshs.140,863,953 which had not been reconciled with the bank balance figure of Kshs.100,012,714 as at 30 June, 2021. Further, the project bank statements were not availed for audit verification.

1053.2 The bank account is also not maintained specifically for the Project but it also serves as an operations account of the implementing agency (Central Rift Valley Water Works Development Agency). This is contrary to clause 1.2(j) and (h) of the subsidiary loan agreement (SLA) between the Government of Kenya and Central Rift Valley Water Works Development 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 proceeds of foreign grant or loan respectively.

Under the circumstances, the accuracy, completeness and existence of Kshs.100,012,714 cash and cash equivalents as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that;

(i) The Agency bank account is not maintained specifically for the project but it also serves as an operations account.

(ii) There is no foreign currency account that is maintained by the agency to receive portions of foreign grants and loan as all payments once processed are made out from AfDB.

The Accounting Officer explained that there is no foreign currency account maintained by the Agency to receive portions of the foreign grants and loan as all payments once processed are made out from ADB. The payment request letters forwarding the IPCs to the Ministry of Water Irrigation & Sanitation for onward processing were availed during audit.

The agency has opened a separate bank account for operation of KTSWSSP.

Committee Observations and Findings

(i) The Committee observed that the Ministry did not reconcile the financial statement with the Office of Auditor General at the time of audit.

(i) The Committee is dissatisfied with the handling of accounts in the department.

Committee Recommendation
The Accounting Officer should ensure that all account reconciliation matters are done in time for audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
1054. Acquisition of Assets
1054.1 Project Implementation Status
Physical verification undertaken during the month of October, 2021 at the six (6) Programme implementation sites revealed the following:

No.	**Project**	**Contract Sum (Kshs.)**	**Audit Observation**
1	Oyugis Water Supply	608,822,545	Overall Work Progress is at 40% against 85%-time lapse

2	Kendu Bay Water Supply	673,929,361	Overall Work Progress is at 60% against 87%-time lapse
3	Ugunja-Ukwala Water Supply	1,046,858,732	Overall Work Progress is at 57% against 78%-time lapse
4	. Kiptogot - Kolongolo Water Supply System	1,200,043,073	Overall Work Progress is at 60% against 100%- time lapse.
5	Kilgoris - Lolgorian Water Supply and Sanitation Project	518,204,478	Overall Work Progress is at 7% against 33%-time lapse
	Total	**4,047,858,189**	

Failure to complete projects on time denied the stakeholders value for money expected during the year under review.

Submission by the Accounting Officer

All the named projects within there was a 4 -9-month delay as a result of slow processing of tax exemption master lists within that period there was no progress of work on site causing an overall delay of the same duration of the project completion time. However, the Implementing Agency is fast-tracking the completion of these projects since the master list have now been approved and the contractors can now proceed to procure key project materials.

The table below illustrates the time -taken to process tax exemption and the overall delay it costs the project.

S/No	Project	Description	Date	Delay in months
1	Construction Works for Kiptogot - Kolongolo Project	Date Submitted to MoWSI	28th March 2019	10 months delay
		Date Submitted to National Treasury and planning	24th June 2019	
		Approval by National Treasury	16th January 2020	
		Date Submitted to National Treasury and planning	16th September 2019	
		Approval by National Treasury	9th April 2020	

2	Construction works for Kilgoris-lolgorian	Date Submitted to MoWSI	31st January 2021	4 Months Delay
		Date Submitted to National Treasury and planning	14th Feb 2021	
		Approval by National Treasury	28th May 2021	
3	Construction works for UgunjaUkwala Water Supply Project	Date Submitted to MoWSI	14th October 2019	5 Month Delay
		Date Submitted to National Treasury	23rd October 2019	
		Approval by National Treasury	29th January 2020	
4	Construction of Kendu Bay Water Supply project			
		Date Submitted to National Treasury and planning	26th June 2019	
		Approval by National Treasury	3rd March 2020	
5	Construction Works for Oyugis Water Supply and Sanitation Project	Date Submitted to MoWSI	15th May 2019	10 Months Delay
		Date Submitted to National Treasury and planning	26th June 2019	
		Approval by National Treasury	3rd March 2020	

Status

The issue has been resolved and all tax exemption master has been approved.

Current Project Status

No.	Project	Contract Sum (Kshs.)	Current Status
1.	Oyugis Water Supply	608,822,545	Complete and operational awaiting handing over
2.	Kendu Bay Water Supply	673,929,361	Overall work progress is at 86%
3.	Ugunja – Ukwala Water Supply	1,046,858,732	Overall work progress is at 90%
4.	Kiptogot – Kolongolo Water Supply System	1,200,043,073	Complete and operational awaiting handing over
5.	Kilgoris – Logorian Water Supply and Sanitation Project	518,204,478	Overall work progress is at 68%
	Total	4,047,858,189	

Committee Observations and Findings

The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project.

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely completion of projects.

1054.2 Vehicles Ownership

Four (4) project motor vehicles costing Kshs.27,810,000 were registered in the name of the contractor contrary to letter from The National Treasury Circular Ref. No. DFN415/232/011 that requires the motor vehicles be registered in the name of the project as shown below:

No.	Vehicle Type	Registration No.	Cost (Kshs.)
1	Toyota Pickup Double Cab	KDA 053H	6,560,000
2	Toyota Pickup Double Cab	KDA 164G	6,560,000
3	Toyota Pickup Double Cab	KDA 038J	6,560,000
4	Toyota Fortuner SUV	KDA 041H	8,130,000
	total		**27,810,000**

Failure to register the procured four (4) motor vehicles in the name of the Project is in breach of the law.

Submission by the Accounting Officer

The project vehicles belong to the contractor since the project is ongoing. The contractor takes all the risks and obligations with reference to the project vehicles. The project is a non-entity, which means it doesn't have any legal tax obligations and no PIN number or anything equivalent rights. Thus, registering the vehicle under the contractor's name is because it is a company with its own artificial person legal tax obligations that can have legal consequences if breached.

Status

The process of transfers/ join ownership and requested the National Transport and Safety Authority (NTSA) to issue CAVEAT on all those vehicles owned by contractors has been commenced. The issue has been resolved.

Committee Observation;

The Committee observed that the Accounting Officer failed to discharge his duties by properly maintain the assest as per section 72 of the PFM Act, 2012.

Committee Recommendations

The Committee reprimands the Accounting Officer for failure to properly maintain assest register as required under section 72 of the PFM Act, 2012.

1054.3 Project Status Report

An analysis of Project status report for the year ended 30 June, 2021 revealed that Kshs.5,326,703,882 of projects implemented between 2018-2020 have not yet been completed as shown below:

S/No	Project Name	Contract Sum (Kshs.)	Contract Signing Date	Start Date	Expected Completion Date	Extended Completion Date	Project Progress %
1	Olkalou Town Sewerage Project	589,937,192	6 May, 2020	30 Sep 2020	30 Sep 2021	-	49
2	Oyugis - Water Supply and Sanitation Project	608,822,545	13 Sep 2018	1 Apr 2019	1 Oct 2020	1 Nov 2021	40
3	Kendu Bay Water Supply and Sanitation Project	580,973,587	16 Oct 2018	1 Apr 2019	1 Oct 2020	1 Oct 2021	60
4	Ugunja - Ukwala - Sega Water Supply and	1,046,858,732	2 May 2019	1 Oct 2019	23 Mar 2021	31 Dec 2021	57

	Sanitation Project						
5	Last Mile Connectivity Project for Keroka Town (Lot 1)	114,309,996	25 Sep 2020	-	-	-	4
6	Kipkarren dam treatment works and associated pipelines water project	1,185,758,756	13 Dec 2018	24 Jun 2019	24 Mar 2021	31 Dec 2021	19
7	Kiptogot - Kolongolo Water Supply Project	1,200,043,073	15 Nov 2018	1 Jul 2019	31 Jan 2021	28 Jun, 2021	60
	Total	**5,326,703,881**					

Delay in the implementation of the projects within specified contract period attracts a commitment charge of 0.25% of non-disbursed portions of the loan. No letter of objection from the African Development Bank was provided to support the extension of the projects.

Consequently, the citizens failed to get the value for money due to delayed completion of projects.

Submission by the Accounting Officer

All the projects within the program experienced an average of 4 -9-month delay as a result of the processing of tax exemption master list and the slow disbursement of advance payment. However, this concern has been strongly raised to AfDB. During the Appraisal mission, the Bank informed the Agencies through an aide memoire that the program period has been extended by two years up to 31st December 2021.

Current status

S/No.	Project Name	Contract Sum (Kshs)	Contract Signing Date	Start Date	Expected Completion Date	Extended Completion Date	Project Progress %
1.	Olkalou Town Sewerage Project	589,937,192	6th may, 2020	30th Sep 2021	30th Sep 2021		96

2.	Oyugis Water Supply and Sanitation Project.	608,822,545	13th Sep 2018	1st April 2019	1st Oct 2020	1st Nov 2021	Complete
3.	Kendu Bay Water Supply and Sanitation Project.	580,973,587	16th Oct 2018	1st April 2019	1st Oct 2020	1st Oct 2021	86
4.	Ugunja-Ukwala -Sega Water Supply and Sanitation Project	1,046,858,732	2nd May 2019	1st Oct 2019	23rd Mar 2021	31st Dec 2021	90
5.	Last Mile Connectivity Project for Keroka Town (Lot 1)	114,309,996	25th Sep 2020				30
6.	Kipkarren Dam Treatment Works and Associated Pipelines Water Project.	1,185,758,756	13th Dec 2018	24th June 2019	24thMar 2021	31st Dec 2021	62
7.	Kiptogot-Kolongolo Water Supply Project	1,200,043,073	15th Nov 2018	1st July 2019	31st Jan 2021	28th Jun 2021	Complete
	Total	5,326,703,881					

Committee Observations and Findings

(i) The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project; and

(ii) The delays risk exposure to commitment fees which amounts to wasteful expenditure.

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely completion of projects.

1055. Purchase of Goods and Services - Consultancy Services
Included in the consultancy services expenditure of Kshs.417,809,750 reflected in Note 7 to the financial statements is an expenditure of Kshs.13,162,656 incurred on the supply, delivery and installation of an integrated enterprise resource planning (ERP) systems. A review of documents provided for audit revealed that tender evaluation of the tender was conducted on 18 December, 2019 and 240 days later the tender opened on 26 March, 2019 which is outside the bid validity period of 120 days. Further, the contract agreement was signed on 26 February, 2020 almost 12 months after tender opening hence contravening clause 2.59 of the African Development Bank rules and procedures which require the borrower to award contracts within the period of validity of bid, which was stated as 120 days in the standard bid document. In addition, no documentary evidence was availed to confirm that the contract award was published in African Development Bank website online as required.

Under the circumstances, the procurement of Integrated Enterprise Resource Planning (ERP) systems for Kshs.13,162,656 for the year ended 30 June, 2021 was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer submitted that the mentioned procurement was budgeted at UA 279, 000. According to the Bank Procurements Rules as detailed in the technical annexes, for all procurements of goods below a threshold of UA 300,000, the process is a post-review and the bank 'No Objection' is not required. The goods were procured through National Competitive bidding pursuant to clause 3.3 of the bank guidelines for Procurement of Goods and Works May 2008 Edition, Revised July 2012 being a post review, where this method is applied, under clause 3.4, Advertising may be limited to at least a sole electronic portal of free access where the Borrower advertises all government business opportunities or in the absence, in a national newspaper of wide circulation and hence it's not a requirement that it be published at the AfDB website. The Specific Procurement Notice (SPN) was advertised in the Government Advertising Agency publication on 29th January, 2019 and subsequently published in the PPIP portal on the same date.

As part of the procurement process, the employer needed to carry due diligence on the winning bidder owing to the nature of the assignment with past clients, this delayed the process, however the client extended the bid validity to cover the periods beyond the initial anticipated bid validity period prior to awarding the bid.

Committee Observations and Findings
The Committitee noted that there was an unnecessary delay in the bidding process.

Committee Recommendation
The Committee recommends that the Accounting Officer ensures timely completion of projects.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1056. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1057. As required by the African Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Programme's financial statements are in agreement with the accounting records and returns.

SUPPORT TO WATER AND SANITATION SERVICES IN PERI-URBAN AREA PROJECT (LOAN NO.BMZ 2013.6543.6) – ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1058. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1059. Delay in Release of Funding

As disclosed under project information - 1.7 on the funding summary, the project was to be implemented within a revised duration of eight (8) years from September, 2015 to December, 2023 with total funding of Kshs.3,717,130,000 comprising of KfW grant and Loans of Kshs.258,290,000 and Kshs.3,144,400,000 respectively and counterpart funds by the Government of Kenya of Kshs.314,440,000. However, the disbursement of the funding has lagged behind with Kshs.1,397,184,974 or 41% and Kshs.190,270,552 or 39% from donors and GoK respectively totalling Kshs.1,587,445,526 received as at 30 June, 2021 leaving a balance of Kshs.2,129,674,474 or 57% of the total commitment compared the remaining thirty (30) months or 30% to end of the project implementation period.

As a result of the delay, the project is unlikely to fully achieve its expected outputs and objectives.

Submission by the Accounting Officer

The Project is financed through the direct payment method of disbursements' project has cleared most of the bottlenecks relating to land acquisition and Tax exemption and therefore disbursements is expected to pick up in the financial year 2021/2022. Currently the works are at 83% completion and are expected to be fully complete by June 2023.

Committee Observation;

The Committee noted that project has taken inordinately long to complete since 2015.

Committee Recommendations

The Committee recommends that the Accounting Officer improves overall planning and management of projects within the state department.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1060. Failure to Open a Project Bank Account

During the year under review, the Project Management did not open a separate Project bank account, but instead the project funds are deposited in the Athi Water Works Development Agency's development account. This is 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 the Accounting Officer

That the National Treasury and Planning only gave authorization to open a development account to handle all projects which do not receive revenue from the donor.

To ensure accountability for the GoK counterpart funds for each project, the management-maintained fund accountability statements for each project whose GoK counterpart is managed through the development account.

The state department is in the process of seeking the necessary approvals to enable us open bank accounts for each project to ensure compliance with the Public Finance Management regulations, 2015.

The Agency has received an approval to open separate bank accounts for each project from the board of directors and submitted a request for authorization to open the accounts by the National Treasury and Economic Planning. The Ministry of its part has forwarded the request to The National Treasury and Economic Planning.

Committee Observations and Findings

- **(i) The Committee observed that the Accounting Officer admitted that the project bank account had not been opened at the time of the audit;**
- **(ii) The Committee noted that there was breach of regulation 74 of the PFM National Government Regulations, 2015**

Committee Recommendation

The Committee reprimands the Accounting officer for failing to open a project bank account as required by regulation 76 of the Public Finance Management (National Government) Regulation, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1061. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KISII WATER SUPPLY AND SANITATION PROJECT (GRANT NO. ORIO11/KE/21) - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1062. Unsupported Fund Balance
The statement of financial assets as at 30 June, 2021 reflects a comparative fund balance of Kshs.14,190,152 which is indicated as having resulted from the reported surplus for the prior year. However, the current year's opening fund balance is reported as nil although there is no documented movement between the closing balance of Kshs.14,190,152 and the nil opening balance. Although the Management has indicated that the balance of Kshs.14,190,152 is available for utilization in the project development implementation phase two, this has neither been reported in the financial statements nor supported by any documentation. Further, the reason for non-inclusion of the balance in the financial statements was not been provided.

Consequently, the accuracy of the statement of financial assets and liabilities as at 30 June, 2021 cannot be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that that the budget in 2019/20 was 20,000,000, this amount was not fully utilized due to late release of exchequer, leaving a balance of Kshs. 14,190,152. The subsequent financial statements reflected the balance of Kshs 14,190,152.

Committee Observations and Findings
The Committee observed that the explanation by the Accounting officer was still unsupported and thus unsatisfactory, contrary to section 62 of the Public Audit Act, 2015

Committee Recommendation

(i) The Committee reprimands the Accounting officer for failing to provide supporting documents to the fund balance contrary to section 62 of the Public Audit Act, 2015.
(ii) A substantive recommendation is made in the next query, which is related to this.

1063. Cash and Cash Equivalents - Unsupported Cash Movement
The statement of financial assets reflects nil cash balance as at 30 June, 2021 and a comparative balance of Kshs.14,190,152 as at 30 June, 2020. However, the management did not explain how the balance of Kshs.14,190,152 was expended given that the Project did not record any receipts or payments during the year ended 30 June, 2021. Under the circumstances, the accuracy of financial statements as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the budget in 2019/20 was 20,000,000, this amount was not fully utilized due to late release of exchequer, leaving a balance of Kshs. 14,190,152 which is reflected under surplus in the subsequent year financial statements for the project.

Committee Observations and Findings

The Committee observed that the Accounting officer submitted that the amounts were expended in the following financial year.

Committee Recommendation

The Committee recommends that the Auditor General examines the documentation availed for the expenditure of the Kshs. 14,190,152 and report in the subsequent audit.

Other Matter

1064. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects nil budget and nil actuals. Although it has been explained that the project was not funded during the year as the implementation is still under financial proposal progress and sourcing of external financiers, no further information was provided on what the project was to achieve during the year under review as no work plans were provided for audit review. In addition, the Management has not indicated how the project is to be funded, the initial financier having declined to fund the project due to what was indicated as increased scope of the project to include Nyamira network, and price escalation.

Consequently, the project did not deliver any benefits to the intended beneficiaries.

Submission by the Accounting Officer

The ministry wishes to state that
The implementation of Kisii Water supply Project was in two phases;

- Phase I -Development Phase:

This phase was to conduct a feasibility study, design studies, and Environmental Impact Assessment. This was done in 2016 and completed in 2019.

- Phase II-Implementation phase:

This was to commence after confirmation of funding. The ING bank of Netherlands expressed interest to the National Treasury in February 2019, to finance the implementation. The National Treasury is yet to mobilize the funding for implementation.
The Agency could not start work plans for the project which the funding is yet to be mobilized. Work plans will be avail once the Implementing Agent is notified of the finance Agreements for funding of the project.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1065. Absence of Project Cash Book and Bank Account

As reported in the previous year, during the year under review the Management did not maintain a cash book and a separate bank account for the Project as required of them by Clause 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.

Submission by the Accounting Officer

The Accounting Officer submitted that the project's foreign component was paid directly by the financier and the GoK Counterpart was paid through the projects Development Bank account with posting made in cash book which was availed for audit.

Committee Observations and Findings

The Committee observed that the project was AIA and there was no money coming into the agency, however the agency did not have a separate bank account for the counterpart funds.

Committee Recommendation

The Committee directed the Accounting Officer to ensure there is a separate bank account in the agency for the counterpart funds.

1066. 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 by Euro.90,000,000 equivalent to Kshs.11.9 billion from its original cost estimated at Euro.551,475,000 equivalent to Kshs.66 billion. 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, 2021 spent Kshs.86,344,504 on feasibility studies.

Failure of the Project to translate from the development to the implementation stage has put it at risk of not being implemented as planned that could see its objectives not being attained.

Submission by the Accounting Officer

The Lake Victoria South Water Works Development Agency mobilized funding as grant for Feasibility Study, Environmental and Social Impact Assessment. A new Financier, ING BANK of Netherlands had been identified by the BAM International. The Financier through the letter dated 5th February 2019 expressed interest to finance the Project up-to a cost of Euros 90,000,000. The expression of interest was addressed to the National Treasury for consideration. It is understood that the next steps for mobilization of funding for the project were disrupted by the

Impact of COVID -19 pandemic which was just easing. The National Treasury is therefore responsible to mobilize funding for the next stage of implementation.

Committee Observations and Findings
The Committee observed that the delay was inordinate.

Committee Recommendations;
The Committee recommends that the National Treasury submits a report on the project's financing within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1067. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

Basis for Qualified Opinion

1068. Failure to Open Bank Account and Maintain a Separate Cash Book
The statement of financial assets reflects a nil balance for 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 is contrary to Regulation 76 (1) of 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 it is opened and each Project shall maintain only one bank account. Section 6.1 (d) of the financing agreement further 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.

Although it is indicated in the financial statements under project information and overall performance that the Project banker is Kenya Commercial Bank Limited, Kisumu Branch, no cash book or certificate of bank balance was provided to show the existence of the banking facility as at 30 June, 2021.

Under the circumstances, the accuracy of the financial statements could not be ascertained as the Project did not maintain a cash book. Management was also in breach of the law and the Financing Agreement.

Submission by the Accounting Officer

The Accounting Officer submitted that the Agency opened and maintains the development bank account for the GOK Counterpart payment of the project of which the cash book and bank statements were availed for audit verification.

Committee Observations and Findings

The Committee observed that the project was AIA and there was no money coming into the agency, however the agency did not have a separate bank account for the counterpart funds.

Committee Recommendation

The Committee directed the Accounting Officer to ensure there is a separate bank account in the agency for the counterpart funds.

1069. Ownership of Project Vehicles

The fixed assets register as reflected at Annex 3 of the financial statements show total fixed assets amounting to Kshs.170,259,603 comprising motor vehicles, motor cycles, water distribution pipes and equipment and laboratory equipment. However, logbooks provided for audit as proof of ownership indicated that four vehicles valued at Kshs.29,477,500 were registered in the name of the contractor as detailed below:

Registration Number	Value (Kshs.)	Ownership
KCR 854R	6,438,600	Contractor
KCR 855R	6,438,400	Contractor
KCP975M	7,245,000	Contractor
KCP064N	9,355,500	Contractor
Total	**29,477,500**	

Further, the logbook in respect of vehicle registration No. KCR 859R valued at Kshs.6,438,600 was not provided for audit review. Management did not explain the circumstances under which Project vehicles were registered in the name of the contractor neither has there been evidence of efforts to transfer the vehicles to the Project.

Under the circumstances, the ownership of fixed assets amounting to Kshs.35,916,100 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the vehicles were handed over to the Agency by the Contractor on 4th December 2020 and Log books for KCP 975M, KCR 855R & KCP 064N have been transferred and registered in the name of the Agency.

Committee Observations and Findings

(i) **The Committee observed that the vehicles were owned by the contractor until the project was completed, which is why they were registered under the contractor's name;**

(ii) The Committee also observed a lack of diligence in the management of assets as required under section 72 of the PFM Act, 2012; and
(iii) The Committee noted that 1 vehicle was yet to be transferred to the State Department.

Committee Recommendation

(i) The Committee recommends that the Accounting Officer should take due diligence in management of assests as required under section 72 of the PFM Act, 2012.
(ii) The Accounting Officer should provide logbooks to the Committee on vehicle registration number KCR 854R within one (1) month of adoption of this report.

Other Matter

1070. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects an approved budget of Kshs.1,188,508,296 and actual expenditure of Kshs.719, 544,418 or approximately 61% resulting in under-expenditure of Kshs.468,963,878 or approximately 39% of the budget. This clearly indicates that some of the planned activities for the Project were not undertaken, which in turn implies that the Project's objectives may not be achieved.

Failure to use the funds as budgeted means the citizens did not receive the benefits that would have accrued from the implemented Projects.

Submission by the Accounting Officer

The Project has a budget and work plan that is used for guiding the implementation and payment of the contractors and consultants. The revised budget was approved in line with the project budget. The Public resources were properly utilized and the Citizens received benefits from the implemented project.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

1071. Pending Bills

Note 8(1) to the financial statements on other important disclosures and Annexure 2 reflects pending accounts payables balance of Kshs.24,637,368 relating to Government of Kenya (GOK) counterpart funding as at 30 June, 2021 relating to the period 2016 and 2019. Although the Management has explained that the same were paid during the first quarter of 2021/2022, no documentary evidence was provided in support of the paid bills. Failure to clear bills during the year to which they relate distorts the financial statements and adversely affects the implementation of activities of the subsequent year as they are to form a first charge.

Submission by the Accounting Officer

The pending bills were accrued during the year as a result of delay in disbursement of GoK development funds which were received after the financial year end. The pending bills were paid in the subsequent financial year.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to pay pending bills as first charge contrary to regulation 42 of the PFM (National Government) Regulations, 2015.

Committee Recommendation

The Committee recommends that the Accounting Officer should ensure that pending bills are settled as a first charge pursuant to the regulation 42 of the PFM (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1072.Summary of Fixed Assets Register

The summary of fixed assets register at Annexure 3 to the financial statements reflects assets balance of Kshs.170,529,603 as at 30 June, 2021 which includes motor vehicle registration number KCP 064N, Toyota Land Cruiser Prado, valued at Kshs.9,355,500 353 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, 2021. Information available indicates that the motor vehicle was directly handed to the Ministry of Water and Sanitation by the Contractor in 2018 but there is no evidence that the same was authorised by the Chief Executive Officer of the implementing agency. No reason was provided for the handing over of the vehicle to the Ministry, which is contrary to Regulation 139(1)(a) and (b) of the Public Finance Management (National Government) Regulations, 2015, that requires prudent management of public assets.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the vehicle registration number KCP 064N Toyota Land cruiser was duly requested by the Ministry of Water, Sanitation and Irrigation for purposes of supervision of the activities of the program by the Ministry. Copies of the correspondences on the request and handing over of the vehicle were availed for the committee's information and reference.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide information on the motor vehicle at the time of audit contrary to section 62 of the Public Audit Act, 2015.

Committee Resolution

The Committee reprimands the Accounting Officer for failure to provide information on the motor vehicle at the time of audit contrary to section 62 of the Public Audit Act, 2015.

1073. Expansion of Water Supply Systems in Kericho

The statement of receipts and payments reflects acquisition of non-financial assets amounting to Kshs.686,098,281 in respect of rehabilitation of civil works as disclosed in Note 5 to the financial statements. The amount includes expenditure of Kshs.302,909,632 incurred towards the expansion of water supply systems for Kericho through Contract No. LVSWSB/PQ/1/2017-2018/C/LOT3 awarded to a foreign Engineering Company at a contract sum of Kshs.1,189,805,385. Physical verification of the Project in the month of October, 2021 showed that the Project was on-going with the contractor still on site and the Project was at 58% completion. However, according to the Engineer's progress of work report, the ownership of the parcel of land on which the Project stands had not been confirmed as the document of title was yet to be obtained. Although Management has indicated that the County Government of Kericho is in the process of transferring the land ownership of the parcel of land from M/s Unilever, no reason has been provided as to why the process that started in 2017 had not been completed as at the time of audit.

Consequently, it could not be confirmed that the land and development thereon are properly safeguarded.

Submission by the 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 Observation;

The Committee noted that the project commenced before acquisition of title therefore risking loss of public funds.

Committee Recommendation

- **(i) The Committee recommends that the Accounting Officer should take due diligence in execution of duty; and**
- **(ii) The Accounting Officer should submit evidence of title documents to the Committee within three (3) months of adoption of this report.**

1074. Expansion of Water Supply and Sanitation Systems in Kisii and Nyamira

The rehabilitation of civil works expenditure amounting to Kshs.686,098,281 as disclosed in Note 5 to the financial statements includes Kshs.383,188,649 in respect of expansion of Water Supply and Sanitation Systems at Kisii and Nyamira implemented vide Contract No. LVSWSB/PQ/19/2014-15/C/LOT1 awarded to an International Company at a contract price of Kshs.2,289,840,260. Although physical verification of the Project during the month of October, 2021 showed that both Projects at Kisii and Nyamira were complete and had been handed over to the Gusii Water and Sanitation Company (GWASCO) Ltd, the Nyamira Project was not operational and there has been no value generated from the Project. In addition, the production and billing reports generated from the system of the GWASCO in respect of the Project and provided for audit verification showed that the expected water production during the year was to be 2,913,761M3. However, only 58,595M3 was billed during the year under review, which is approximately 2% of the planned production.

Consequently, the citizens did not get value for money in respect of Kshs.2,289,840,260 incurred on the Project.

Submission by the Accounting Officer
The treatment plant is operational. On the material day of the visit by the Auditors, power had been disconnected due to non-payment of outstanding bills. The water production records for GWASCO for the months of May and June 2021 as well as the billing are now availed for reference.

Committee Observation;
The Committee was satisfied with the explanation.

Committee Recommendation
The Committee recommends that the matter is resolved.

1075. Irregular Contract Variation
During the audit, it was noted that Lake Victoria Water Works Development Agency entered into a contract with a Consulting Engineering firm for consultancy services for Kericho, Kisii, Nyamira and Litein BMZ-No 201065861 Project at a contract sum of EUR1,633,966 equivalent to Kshs.189,972,403 on 17 January, 2014. The contract sum was amended five (5) times to a final revised contract of EUR.2,698,350 on 15 June, 2019 equivalent to Kshs.302,727,887. This resulted to a variation of Kshs.112,755,484 which is approximately 59% of the initial contract price contrary to Section 139(4) (c) of the Public Procurement and Asset Disposal Act, 2015 which provides that any variation to a contract shall only be considered if the cumulative value of all contract variations do not result in an increment of a total contract price of more than twenty five per cent of the original contract price.

Further, the amendments and variations were not supported by the respective tender awarding authority within the procuring entity in accordance with Section 139(1)(b) of the Public Procurement and Assets Disposal Act, 2015 which provides that an amendment or a variation to a contract resulting from a procurement proceeding is effective only if the variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity. In addition, amendments 2 and 3 were signed but were not dated to show when the amendment took place. Also, details on varied works that necessitated the five amendments were not provided for audit.

Consequently, Management was in breach of the law.

Submission by the Accounting Officer

The Water Sector Development Program is co-financed by the Federal Government of Germany through KfW Bank. As provided in the Loan Agreement under Sub-Article 9.6, the agreement is governed by the law of the Federal Republic of Germany in all matters including procurement and variation of the contract.

The Separate Agreement which is an integral part of the Loan Agreement provides as follows with regards to contract for services under Article 3.1; All procurements and physical works will be carried out in accordance with the relevant KfW guidelines for Procurement of Supply and Works Contracts.

The procurement and administration of the Consultancy Contract are therefore done in line with the KfW guidelines which only require No Objection from KfW prior to any contract amendment. No Objection from KfW was obtained for all the contract amendments for the contract with CES/MIBP.The details and reasons for the variation of the services are expounded in the documents availed.

Committee Observation and Finding
The Committee observed that the Accounting Officer reviewed the contract price of the project by more that 25% which is contrary to the provisions of section 139 of the Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation
The committee recommends that the Accounting Officer avails the financing agreement and no-objection letters for the variations from the financier within one (1) month of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1076. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1077. As required by KfW Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audi. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

WATER AND SANITATION SERVICES IMPROVEMENT PROJECT (IDA CREDIT NO.5103 KE) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1078. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1079.Budgetary Control and Performance
The statement of comparative budget or actual amounts for the year ended 30 June, 2021 reflects an approved budgeted expenditure of Kshs.1,730,123,209 and actual expenditure of Kshs.1,740,647,305 resulting to an over expenditure of Kshs.10,524,096 or 1% of the total budget

allocation. However, Management has not provided explanation regarding the over expenditure and whether it was authorized.

Submission by the Accounting Officer
The over expenditure of Kshs 10,524,096 or 1% of the total budget allocation was as a result of the balance brought forward from the previous year of Kshs11,622,073. To avoid a recurrence of the same AWWDA ensures the budget captures all available cash balances.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
1080. Delay in Implementation of the Project
Works at the Northern Water Collector Tunnel and Water Intake Project which entails development of river abstraction and water intake structures and construction of a 11.7 kilometers underground tunnel was budgeted to cost USD85,200,000 (equivalent to Kshs.9,031,000,000). The construction commenced on 10 May, 2012 and was expected to be completed by 30 December, 2020. Physical verification of the project in October, 2021 revealed that approximately 99% of the permanent works had been completed. However, supply, fabrication, installation of gates and stop logs, completion of secondary lining for Irati shaft, completion of Makomboki outfall and final site arrangements including all reinstatement works had not been completed.

As a result, it was not possible to confirm whether the project will be completed considering the contract period had expired.

Submission by the Accounting Officer
The Ministry wishes to state that the tunnel was completed in April 2022 and started delivering water to Thika dam for supply to Nairobi.

Committee Observation;
- **(i) The Committee noted that the project delayed for about 2 years; and**
- **(ii) The Committee observed that it was not clear whether extensions were sought from December 2020; and**
- **(iii)The project was now complete and now in use.**

Committee Recommendations;
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1081. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1082. As required by International Development Association (IDA) I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements agree with the accounting records and returns.

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

Unmodified Opinion

1083. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1084. Failure to Open Bank Account and Maintain Cash Book

As reported in the previous year, the statement of financial position reflects a nil balance as at 30 June, 2021 under cash and cash equivalents. However, the Management did not maintain a separate cash book and did not operate a separate bank account for recording transactions in respect of Project funds. This is 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 payments out of the Project funds are made out of the implementing Agency bank accounts and recorded in the Agency's cash book while any receipts in respect of the Project are deposited in the Agency's bank accounts

Consequently, the accuracy and validity of the nil cash and cash equivalents balance as at 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The project donor component was paid directly by the financier through KfW Bank and the GOK Counterpart was paid for in the Development Bank account for the Agency

The Agency appreciated the Auditors recommendation and following the approval of the Board and are in the process of opening specific projects development bank accounts.

Committee Observations and Findings

The Committee observed that the project was AIA and there was no money coming into the agency, however the agency did not have a separate bank account for the counterpart funds.

Committee Recommendation

The Committee directed the Accounting Officer to ensure there is a separate bank account in the agency for the counterpart funds.

1085. Sustainability of the Project

The statement of receipts and payments and the statement of financial assets show that the project did not implement any 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 ref: LVS/SWWMLV/KFW/130(18) 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 will be available during 2021/2022 in addition to counterpart funding received from Government of Kenya in July, 2021 amounting to Kshs.35,000,000. The Management did not provide any workplan for completion of the outstanding project activities.

Consequently, the adequacy of the funds availed and the roadmap for the Project completion cannot be known with certainty.

Submission by the Accounting Officer

The 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, Homabay and Kericho. The Grant has been used as intended and Feasibility Study and Designs completed for the targeted towns. A Completion Report for the assignment has been prepared and submitted by the Consultant.

The Agency has prepared and submitted a Project Concept Note to the Ministry of Water, Sanitation and Irrigation to negotiate funding (loan) for implementation of the designed works. As a result, the Project Sustainability is still secure since the funding for implementation is yet to be secured but is currently being discussed between the National Treasury and the German Development Cooperation through KFW.

The extension of the disbursement window was requested by the Agency only for purposes of settling the outstanding consultancy services which were yet to be paid. However, all the tasks had been executed by the consultant. The National Treasury has accepted the extension of the disbursement window for the project and factored additional budget for the program this financial year in the supplementary budget.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide information on the workplan for completing the project at the time of audit contrary to section 62 of the Public Audit Act, 2015.

Committee Resolution

The Committee reprimands the Accounting Officer for failure to provide information at the time of audit contrary to section 62 of the Public Audit Act, 2015, and directs that he avails the workplan and status report of the project within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1086. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1087. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1088. As required by KfW Development Bank, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

NAIROBI WATER DISTRIBUTION NETWORK PROJECT (CREDIT NO. BMZ 2020.82.527/KV26833) – ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1089. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1090. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects budgeted expenditure of Kshs.1,066,743,115 against actual expenditure of Kshs.994,906,163 resulting to an under expenditure of Kshs.71,836,952 or 7% of the budget allocation. However, Management has not given satisfactory explanation for the underperformance which impacted negatively on the Project Implementation.

Submission by the Accounting Officer

The budget utilization for 2020/21Fy was at 93%, the unutilized amount of Kshs. 71,836,952 was for retention release upon clearance of the snag list as well as clearance of payment for one of the project's affected persons. The two payments were made in the subsequent financial year.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1091. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1092. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1093. As required by the KfW Development Bank I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements agree with the accounting records and returns.

NORTHERN COLLECTOR PHASE 1 AND ADDITIONAL REHABILITATION AND DEVELOPMENT OF THE NETWORK PROJECT - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1094. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1095. Delay in Release of Counterpart Funding
As disclosed under project information 1.7 on the funding summary, the project was to be implemented within a duration of six (6) years from January, 2014 to December, 2021 with total funding of Euros 114.16 million and Kenya shillings 12.834 billion comprising of Loans from Agence Francaise Development and Counterpart Funding from the Government of Kenya respectively. However, disbursement of the counterpart funding has lagged behind with Kshs.7,957.60 million, or 56.03 % having been received as at 30 June, 2021, leaving a balance of Kshs.4,876.40 billion or 43.97 % of the commitment, with less than 6 months remaining to end of

project duration. As a result of the delay, the project is unlikely to fully achieve the intended objectives for the public.

Submission by the Accounting Officer

To facilitate project completion, the government requested project extension to December 2024 which was granted. Additionally, in the year 2021/22 the amounts disbursed was Kshs. 700 m as GoK counterpart. The amount was utilized in the payment of outstanding VAT and land acquisition.

The project is currently at 60% and will be completed in December 2023.

Committee Observations and Findings

(i) The Committee observed that the delay in counterpart funding was occasioned by the National Treasury; and

(ii) The delay in counterpart funding could result in wasteful expenditure in the form of interest for delayed payment to contractors.

Committee Recommendations;

The Accounting Officer for the National Treasury to avail a status report to the Committee within three (3) months of adoption aof this report, and should always comply with regulation 72 (6) of the Public Finance Management (National Government) Regulations, 2015 which requires the National Government to appropriate counterpart funds appropriately.

1096. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,103,000 and Kshs.639,710,000 respectively, resulting in underfunding of Kshs.463,290,000 or 42 % of the budget.

Similarly, the project spent Kshs.869,100,000 against the budgeted amount of Kshs.1,100,000 resulting in under expenditure of Kshs.230,900,000 representing 21% of the estimated expenditure. The underfunding and under expenditure may affect the planned activities and impact negatively on service delivery to the public.

Submission by the Accounting Officer

The resettlement action plan was prioritized during the year and all the funds received during the year were deposited with NLC for compensation. NLC are at an advanced stage and it is expected that the project will greatly improve on budgetary absorption during the subsequent years.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

1097. Delay in Disbursement of Funds for the Project

According to the subsidiary Loan Agreement dated 22 October, 2014, Athi Water Works Development Agency was to receive a total of Euros 114.16 Million. The Board undertook that all funds disbursed shall be fully used at the latest on 31 March, 2020. This has not been met. However, the drawdown period was later extended to 31 January, 2022.

Submission by the Accounting Officer

The credit was for AFD financed Northern Collector Water Project was for 100 million Euros. Due delays in land acquisition and payment of taxes to the contractor, the project implementation was delayed necessitating the project extension. The draw down period has now been extended to January 2024.

Committee Observation;

The Committee noted that delay in disbursement of funds substantially affects projects and may lead to additional costs such as cost adjustments.

Committee Recommendation

The Accounting Officer should ensure funds are availed for the completion of the project as scheduled.

Basis for Conclusion

1098. Delay in Completion of Projects

1098.1 Distribution Component

The financial statements for the years ended 30 June, 2021 and as at 30 June, 2020 indicated that works for the construction of the 55.2 Km Ndakaini- Kigoro- Gigiri transmission pipeline was about 36 % completion level. Although there is progress of works including laying of the additional 18.1 km of pipes, the slow progress may affect the completion of the project within the revised timelines.

The project end date has already been revised and extended for 3 consecutive years from the initial project end date of 31 December, 2018. With less than three (3) months to the revised project end date of 31 December, 2021 completion of the project within the set timelines may not be achieved. No evidence had been provided indicating that the Implementing Agency had informed the lender of any decision or event which might affect the completion of the project within the extended contract period.

Such extension adversely affects the repayment of the loan as more interests will be accrued. This has also affected the production component as there are costs to the component that is 98% complete. And the remaining 2% for the project testing and commissioning.

Submission by the Accounting Officer

The extensions were necessitated by delays in completion of the project are due to challenges in implementation of the Resettlement Action Plan as some land owners obtained court injunctions for stoppage of Works which delayed the project implementation.

Due to the delays highlighted above, The National Treasury sought a No Objection from AFD to extend the disbursement period to January 2024. This extension was agreed upon during the June 2021 supervision mission.

Committee Observations and Findings

- **(i) The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project; and**
- **(ii) The delays risk exposure to commitment fees which amounts to wasteful expenditure.**

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely execution of projects.

1098.2 Ngethu -Gigiri Treated Water Pipeline

A site verification visit in October, 2021 showed slow progress of the pipeline and other associated works for the Thika Dam – Kigoro – Ngethu -Gigiri Treated Water Pipeline. The overall progress as at 30 June, 2021 was 34% compared with eighty-eight (88) months period or 149% of the contract period which lapsed in April, 2019. It is unlikely that the revised deadline of 30 September, 2022 will be met given the current slow pace of works.

No evidence was provided on measures being taken to avoid further delays in implementation of the works.

Submission by the Accounting Officer

The ministry wishes to state that the delays in completion of the project are due to challenges in implementation of the Resettlement Action Plan as some land owners obtained court injunctions which delayed the project implementation.

So far, a total of 28.8 Km pipe laying out the 55.224 Km has been completed and the funds to acquire the entire remaining section has been deposited with the National Land Commission NLC which is already on the ground engaging with the land owners.

Committee Observations and Findings

- **(i) The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project; and**
- **(ii) The delays risk exposure to commitment fees which amounts to wasteful expenditure.**

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely execution of projects.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1099. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1100. As required by the Agence Francaise Development (AFD), I report based on my audit, that, I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project, and the Project's financial statements agree with the accounting records and returns.

NAIROBI SANITATION OUTPUT BASED AID PROJECT (IDA GRANT NO. TF014251 AND NO. TF0A5607) - NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1101. Unremitted Disbursements

As disclosed in Note 11.2 to the financial statements, the statement of receipts and payments indicates cumulative proceeds from domestic and foreign grants of Kshs.486,571,479. However, Paragraph 1.7 Funding Summary under the Project information and overall performance reflect amount received to date of Kshs.497,576,479 resulting to an unreconciled variance of Kshs.11,005,000. According to explanations provided and as disclosed in Note 12 to the financial statements, the variance of Kshs.11,005,000 was an amount withdrawn from the special account and transferred to the Ministry of Water and Sanitation in the year 2016/2017 but was not remitted to the project.

In the circumstances, the actual accumulated grant advanced of Kshs.486,571,479 for the year ending 30 June, 2021 has been misstated.

Submission by the Accounting Officer

The Ministry is in consultation with the agency in order to provide budget allocation in to facilitate the refund of the funds.

Committee Observations and Findings

The Accounting Officer expended Kshs. 11 million on expenditure not related to the project and was due to 'facilitate a refund'.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that he avails proof of the refund, within one (1) month of adoption of this report.

1102. Unreconciled Donor Receipts

The project information and overall performance under Note 1.7 funding summary, reflects amount received to date of US Dollars 4,912,725 while the special account report of Nairobi Sanitation OBA Project IDA Loan Credit No. TF 014251-KE for the year ended 30 June, 2021 reflects amount advanced by IDA to the project amounting to USD 3,567,380 as at 30 June, 2021 leading to an unexplained and unreconciled variance of USD 1,298,335.

In the circumstances, the actual grant advanced has been misstated.

Submission by the Accounting Officer

The ministry wishes to state that the project had two TF accounts viz No.TF014251-KE/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 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 equivalent to Kshs 497,576,479 disbursed to the project.

Committee Observations and Findings

The Committee observed that the explanation was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Emphasis of Matter

1103.Fixed Assets Management

As previously reported and as included in Annex 4 to the financial statements, is a summary of fixed assets register for Nairobi Sanitation Output Based Aid (OBA) Project valued at Kshs.10,800,000. Review of the ownership documents revealed that the assets were still in the name of the contractor, yet the contractor had returned the original logbooks together with a letter and original signed transfer forms on 10 July, 2019. To date, the assets have not been transferred to Nairobi City Water and Sewerage Company Ltd being the implementing entity.

In the circumstances, it was not possible to ascertain the ownership of the assets of the project as at 30 June, 2021.

Submission by the Accounting Officer

The ministry wishes to state that the vehicles are now dully registered in the name of the Company. The Company has taken over the management of the water and sewer network that was constructed.

Committee Observation
The Committee noted the failure in the management of assest in the Department contrary to section 72 of the PFM Act, 2012.

Committee Recommendation
The Committee reprimands the Accounting Officer.

1104. Slow Absorption of Funds
As disclosed in paragraph 1.2 on project information, the project was earmarked to close on 30 June, 2019. However, paragraph 1.7 on funding summary indicates that IDA had made a commitment amounting to Kshs.693,000,000 equivalent of USD 6,930,000 as at 30 June, 2019. However, actual drawdowns during the project's life amounted to Kshs.497,576,479, equivalent to USD 4,912,725, resulting to a balance of Kshs.201,727,500 undrawn. The credit lapsed without being fully utilized and the project's planned deliverables earmarked for completion using the funding may not have been realized.

However, Management has not provided for audit review, documentary evidence to show that the closure process was initiated or any attempt to secure an extension of the project from the Donor.

Submission by the Accounting Officer
The ministry wishes to state that 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 only about 30% of the sustainability funds was drawn because the balance did not meet the conditions to claim. The drought in the period 2017/2018 also led to water shortage hence company was not able to bill the customers due to lack of reliable supply of water.

Committee Observations and Findings
The Committee observed that slow absorption of funds saw a missed drawdown of Kshs. 201,727,500 hence a loss to the public.

Committee Resolution
The Accounting Officer institutes measures to ensure timely implementation and execution of projects.

1105. Project Closure Reports
Paragraph 1.2 of the financial statements revealed that the project was to end on 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, being more than one year after the expiry of the defects liability period. In the absence of this report, it was not possible to ascertain the actual status of the project.

Submission by the Accounting Officer

The ministry wishes to state that the project final report and the final output verification reports have since been provided to the auditor for verification.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not provide documents on the project closure for audit contrary to section 62 of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide documents during audit contrary to section 62 of the Public Audit Act, 2015.

1106. Contingent Liability

As previously reported 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 to the project, whereby Management had failed to pay the contractor an advance payment of Kshs.166,224,772 as agreed in the contract terms. The contractor had completed the project as at the time of the audit carried out in September 2021.

In the circumstances, the probability of the contingent liability materializing is high.

Submission by the Accounting Officer

The ministry wishes to state that the contract signed between Interways Works Ltd and NCWSC provided for advance payment for mobilization at 20% of contract value of Kshs 206,224,772. At the time of commencement of the contract it was realized 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 mobilization. The matter is still under adjudication pending direction from the adjudicator.

Committee Observation;

The Committee noted that the matter was still under arbitration and awaiting adjudication.

Committee Recommendations;

The Accounting Officer avails to the Committee documents for audit review within three (3) months of the adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1107. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1108. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1109. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project, and the Project's financial statements are in agreement with the accounting records and returns.

KENYA URBAN WATER AND SANITATION OBA PROJECT FUND FOR LOW INCOME AREAS - WATER SECTOR TRUST FUND

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1110. There were no material issues noted during the audit of the financial statemnts of the Project.

Other Matter

1111. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts of Kshs.431,884,030 against a budget of 500,500,000 resulting into a receipts shortfall of Kshs.223,198,477 or 52% of budgeted receipts. Further, the statement reflects final expenditure budget and actual on comparable basis of Kshs.500,500,000 and Kshs.503,717,208 resulting to an over-expenditure of Kshs.3,217,208 or 1% of the budget.

Management did not provide satisfactory explanation for the shortfall in revenue, which implies that the overall goals and objectives of the Project were not achieved as planned which impacted negatively on service delivery to the public.

Submission by the Accounting Officer

In addition to the delay in the disbursement of funds by Commercial banks to Water Service Providers (WSPs), Thika and Muranga WSPs were allocated Funds but were dropped due to governance issues. World Bank advised WaterFund not to fund the projects. The monies could therefore not be absorbed as it takes at least two to three years to prepare a WSP to access the facility.

All the necessary approvals for the over-expenditure of 1% of the budget were received from the World Bank. The Programme has been closed and it enabled the Fund to receive the United Nations Award.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

1112. Overall Project Implementation

The Project commenced on 1 December, 2014 with the expected completion date on 30 November, 2020. The implementation period was however extended to 30 June, 2021. However, as disclosed under the Project Information segment Section 1.7 of the financial 364 statements, as at 30 June, 2021, out of initial Donor commitment of Kshs.1,110,700,000, an amount of Kshs.1,039,660,980 was received resulting in an undrawn balance of Kshs.71,039,020.

Management attributed the under absorption of funds to delays in disbursements of funds by Commercial Banks to Water Service Providers and lapse of Project time.

Submission by the Accounting Officer

The ministry wishes to state that in addition to the delay in the disbursement of funds by Commercial banks to Water Service Providers (WSPs), Thika and Muranga WSPs were allocated Funds but were dropped due to governance issues. World Bank advised Water Fund not to fund the projects. The monies could therefore not be absorbed as it takes at least two to three years to prepare a WSP to access the facility.

All the necessary approvals for the over-expenditure of 1% of the budget were received from the World Bank. The programme has since been closed and the balance in the bank transferred to the National Treasury.

Committee Observation;

The Committee was satisfied with the explanation.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1113. Late Submission of Financial Statements

The financial statements of the Project for the year ended 30 June, 2021 were submitted for Audit on 8 October, 2021, eight (8) days after the statutory deadline of 30 September, 2021. This is contrary to Section 81(4) (a) of the Public Finance Management Act, 2012 which requires accounting officers to submit financial statements to the Auditor-General within three (3) months after the end of each financial year for audit.

The Project Management was therefore in breach of the law.

Submission by the Accounting Officer

The ministry wishes to state that Water Sector Trust Fund complied in submitting the Statutory Financial statements on time as per the evidence availed. However, moving forward the state department shall implement the recommendations when submitting financial statements for audit to include separate financial statements for the projects.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to comply with section 81 of the PFM Act, 2012.

Committee Recommendations;

The Committee recommends that the Accounting Officer henceforth submits to the Auditor General separate financial statements.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1114. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1115. As required by the IDA (World Bank) I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project, and the Project's financial statements agree with the accounting records and returns.

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

Unmodified Opinion

1116. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1117. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects that the Program received an amount of Kshs.739,738,147 against the approved budget of Kshs.1,021,124,096 resulting to a shortfall of Kshs.281,385,949 or 28% of the budgeted receipts. Similarly, the project had budgeted to spend Kshs.1,021,124,096 but utilized an amount of Kshs.714,342,681 resulting into under expenditure of Kshs.306,781,416 or 30% of the budget. Management has attributed the under absorption to slow procurement process and mobilization of works by the contractors.

The under collection of revenue and under expenditure is an indication that some programmes and activities that had been planned for, were not implemented.

Submission by the Accounting Officer

The management is in agreement with the auditor's observation. The underutilization was due to slow procurement process and mobilization of works by the contractor. AWWDA has since addressed the issues and works are being fast-tracked to recover lost time

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1118.Slow Progress of Works

Review of Project procurement records revealed that during the year under review, contract for the construction of Kahawa West, Githurai 44 & 45, Kahawa Sukari Reticulation sewer was awarded to a firm 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. However, physical verification carried out in October 2021 revealed that overall progress of works was only at 2% completion level against seven (7) months, or 39% time lapsed of the contract period.

Further, a status review carried out on the construction of Mwiki and Clayworks reticulation sewers which was awarded at a contract sum of Kshs.1,794,140,606, revealed overall progress stood at 0.02% against time lapsed of six (6) months or 33.3% of the eighteen (18) months contract duration from 22 March, 2021 to 20 October, 2022. No satisfactory explanation has been provided for the delays.

The implementation of the project is behind schedule, and it is unlikely that the remaining time will be enough to complete the project and therefore the Program's objectives may not be realized as envisaged.

Submission by the Accounting Officer

The camp for the contractor undertaking construction of Kahawa west mobilized and constructed a contractor's camp on site at Kahawa-Sukari. After its establishment the camp was vandalized and burnt.

The vigilante groups prevented the contractor from accessing the camp site necessitating the implementing agency and the contractor to search for anther suitable site for a new camp. This delayed works by 6 months. Some of the works under the contract for construction of Kasarani-Mwiki, were to be undertaken in the sports stadium which could not be authorized due to the then planned world under twenty athletics championship.

This delayed the project by 3 months as the Agency sought for alternative sites currently at the Kasarani DCCs compound. Construction of Karen-East Nairobi Sewers was also delayed because of objection by the Ngong road forest association from utilizing the Miotone River riparian section within the forest. This delayed the progress 3 months The multiplicity of the issues as discussed above affected the progress of works hence the low budgetary absorption.

Committee Observations and Findings

(i) The Committee observed that project implementation process was slow hence denying Kenyans an opportunity to enjoy value of the project; and

(ii) The delays risk exposure to commitment fees which amounts to wasteful expenditure.

Committee Recommendations

The Committee recommends that the Accounting Officer ensures timely implementation of projects, avails a status report of this project to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1119. There were no material issues relating to internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1120. As required by the African Development Bank and the African Development Fund, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements agree with the accounting records and returns.

BURA REHABILITATION DEVELOPMENT PROJECT (LOAN NUMBERS: BADEA 3530:LA/763, KUWAIT 752, OPEC 1154P) - NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1121. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1122. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final budget and actual on comparable basis of Kshs.1,788,598,120 and Kshs.184,340,685 respectively, resulting to an underfunding of Kshs.1,604,257,435.20 or 90% of the budget. Similarly, the expenditure was limited to the actual receipts of Kshs.184,340,385 which represented an under-expenditure of 90% of the final budget for the year. The Project Management attributed the underfunding and under expenditure to termination of initial contract awarded for the works and delay in awarding the tender to a new contractor.

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 the Accounting Officer
The ministry wishes to state that:

The Project Management attributed the underfunding and under expenditure to termination of initial contract awarded for the works and delay in awarding the tender to a new contractor.

Current Status

The project is being implemented in two lots namely:

Lot 1: Sheet Piling and Associated Korakora Intake Works

Lot 2: Construction of New Main Canal and Associated Civil Works from Korakora to Nanighi

The two lotsare progressing well and at various stages of completion as follows:

Lot 1: Sheet Piling and Associated Korakora Intake Works is currently at 97% with the following achievements

i. Diversion channel -85%
ii. Head regulator -98%
iii. Silting basin -98%

The contract is set to be substantially completed by 30th May 2023

Lot 2: Construction of New Main Canal and Associated Civil Works from Korakora to Nanighiis at 55% completionwith the following achievements

i. Bush clearance done 23 km out of 25 Km.
ii. Excavation and reshaping of the canal 6 Km.
iii. River training works to allow run off cross over the canal
iv. 11 km of service road done
v. 76%of dyke done
vi. Works on 7 structures ongoing, three already complete.

The contract is set to be substantially completed by 30thNovember 2023 which is within the financing period.

Directs payments made to Bura Rehabilitation Development Project Contactors from July 2021 to date

BURA REHABILITATION DEVELOPMENT PROJECT			
DIRECT PAYMENTS MADE BY THE DONORS FROM JULY 2021 TODATE			
KUWAIT			
Posting Date	Document No.	Description	Amount

20-12-22	TUNASCO IPC 4	Payment of Bura civil work TUNASCO	15,016,054.70
13-08-22	TUNASCO IPC 3	Payment of Bura civil work TUNASCO	21,545,310.62
22-06-22	TUNASCI IPC 2	Payment TUNASCO IPC No. 2	22,095,998.88
09-03-22	TUNASCI IPC 1	Payment of TUNASCO ipc 1	15,226,010.17
BADEA			
Posting Date	Document No.	Description	Amount
10-05-22	JILK IPC 5	Payment of JILK IPC No.5	84,801,117.16
13-04-22	JILK IPC 4	Payment of JILK IPC No.4	60,705,822.21
12-01-22	JILK IPC 3	Payment of JILK IPC 3-BADEA grants	68,197,251.55
OPEC			
Posting Date	Document No.	Description	Amount
17-05-22	JILK IPC 5	Payment of JILK IPC No. 5	85,780,084.07
11-04-22	JILK IPC 4	Payment of JILK IPC No. 4	61,770,837.15
12-01-22	JILK IPC 3-1	Payment of JILK IPC 3-OPEC grants	67,000,808.70
Total paid by Kuwait/ Badea /Opec Fund			502,139,295.21

Other Payments made to contractors through GoK counterpart funds from July to date amounts to Kshs. 950,219,507.00. Total amount paid both by donor and the GoK counterpart funds from July 2021 to date amounts to Kshs. 1,452,358,802.00.

Payments made to Bura Rehabilitation Development Contactors from July 2021 to date.

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1123. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1124. There were no material issues relating to effectiveness of internal controls, risk management and governance.

MWEA IRRIGATION DEVELOPMENT PROJECT (LOAN NO. KE-P27) - NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1125. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1126. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects a final receipts budget and actual on comparable basis of Kshs.2,151,000,000 and Kshs.1,566,382,430 respectively resulting to a shortfall of Kshs.584,617,570 or 27% of the approved budget. Further, the statement reflects a final expenditure budget and actual on comparable basis of Kshs.2,151,000,000 and Kshs.1,566,382,430 respectively, resulting to underutilization of Kshs.584,617,570 or 27% of the approved budget. Management has attributed the shortfall in receipts to delay in disbursement of donor funds due to the termination of contract for civil works on irrigation and drainage facilities, on 22 January, 2020. The underfunding and underperformance affected the implementation of the Project's planned programmes and activities.

Submission by the Accounting Officer

Management has attributed the shortfall in receipts to delay in disbursement of donor funds due to termination of contract for civil work on irrigation and drainage facilities on January 2020.

Current Status

After Contract termination by the initial Contractor (SogeaSatom), the Authority procured new contractors to complete the works and they commence the works in March 2021. Currently the works is 60% complete and would be completed within the financing period, which ends on 13th December 2023 when the financing agreement will expire.

Direct payments paid to Mwea Irrigation Development Project contactors from July 2021 to date

MWEA IRRIGATION DEVELOPMENT PROJECT (MIDP)			
DIRECT PAYMENTS MADE TO CONTRACTORS THROUGH JICA FUND FROM JULY 2021 TODATE			
Posting Date	Document No.	Description	Amount (Kshs)
25-01-22	JOYCOT ADV	Advance payment to Joycott General contractors for ICB package 2 lot 1	82,595,017.00
14-12-22	JOYCOT IPC 1	Civil works for Joycott IPC 1	58,476,600.00
14-12-22	JOYCOT IPC 2	Civil works for Joycott IPC 2	35,880,657.00

22-10-21	MUTAHI ADV	Advance payment to Mutahi Engineering Services ForMidp	58,141,452.00
19-04-22	MUTAHI IPC 1	IPC No. 1 for Mutahi Engineering services	40,672,3889.00
12-10-22	MUTAHI IPC 2	Civil works Mutahi IPC 2	31,546,156.00
20-12-22	MUTAHI IPC 3	Civil works Mutahi IPC 3	44,816,976.00
29-07-22	NIPPON FC 061	Consultancy services by Nippon Koei Fc 061	10,822,099.00
29-07-22	NIPPON FC 062	Consultancy services by Nippon Koei Fc 062	16,482,702.00
16-09-22	NIPPON FC 063	Consultancy services by Nippon Koei Fc 063	13,143,149.00
16-09-22	NIPPON FC 064	Consultancy services by Nippon Koei Fc 064	17,500,554.00
16-09-22	NIPPON FC 065	Consultancy services by Nippon Koei Fc 065	11,558,132.00
29-10-21	NIPPON INV. 55	Payment to Nippon Koei Invoice No. 55	92,562.00
26-10-21	NIPPON INV. 56	Payment to Nippon Koei Invoice No. 56	17,459,917.00
29-10-21	NIPPON INV. 57	Payment to Nippon Koei Invoice No. 57	10,317,449.00
17-06-22	NIPPON IPC 58	Payment to Nippon Koei IPC No.58	22,416,157.02
17-06-22	NIPPON IPC 59	Payment to Nippon Koei IPC No.59	10,236,404.96
17-06-22	NIPPON IPC 60	Payment to Nippon Koei IPC No.60	21,070,347.11
30-07-21	STRABAG IPC 22	Payment to Strabag civil works IPC No.22	99,679,629.30
05-11-21	STRABAG IPC 23	Payment to Strabag IPC No.23 for Thiba dam	154,010,777.11
26-11-21	STRABAG IPC 24	Payment to of Strabag IPC No.24 for Thiba dam	151,618,195.59
20-12-21	STRABAG IPC 25	Payment to Strabag IPC No.25 for Thiba dam	187,542,930.78
18-02-22	STRABAG IPC 26	Payment to Thiba dam civil works by Strabag IPC no.26	170,006,123.01
18-02-22	STRABAG IPC 27	Payment of civil works by Strabag IPC no.27	157,226,977.12
17-06-22	STRABAG IPC 28	Payment of civil works by Strabag IPC no.28	11,206,068.46

17-06-22	STRABAG IPC 29	Payment of civil works by Strabag IPC no.29	158,247,071.11
24-06-22	STRABAG IPC 30	Payment of civil works by Strabag IPC no.30	133,715,637.27
24-06-22	STRABAG IPC 31	Payment of civil works by Strabag IPC no.30	153,643,108.32
20-07-22	STRABAG IPC 32	Payment of civil works Strabag IPC 32	116,729,073.42
27-08-22	STRABAG IPC 33	Payment of civil works Strabag IPC 33	82,389,916.08
18-09-22	STRABAG IPC 34	Payment of civil works Strabag IPC 34	71,361,239.87
22-10-22	STRABAG IPC 35	Payment of civil works Strabag IPC 35	86,391,667.21
16-12-22	STRABAG IPC 36	Payment of civil works Strabag IPC 36	335,153,221.85
Total Direct Disbursement			**2,572,150,358.00**

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
1127. Delayed Implementation of Works for Existing Community Irrigation Schemes
Main contract for the project of construction of Thiba dam, appurtenant structures and expansion of irrigation area in Mwea, awarded in December, 2010 required the contractor to carry out improvement or protection works for existing community irrigation schemes at a sum of Kshs.166,373,039.52 as part of corporate social responsibility (CSR) activity. The project which commenced in December, 2010 is expected to end in March, 2022. The CSR works entail improvement and protection works for three (3) existing community Irrigation schemes namely Rukenya, Kimbithe and Komboini Irrigation Schemes. However, physical verification, of the project in October, 2021, revealed that rehabilitation at Rukenya scheme was ongoing and no works had started for Kimbithe and Komboini Irrigation Schemes, with only five (5) months left to end of contract period.

The Management attributed the delay in commencement of the works to the failure by the contractor to gain access to the site due to obstruction by the local community. The Project Management has not provided measures being put in place to ensure completion of the three community irrigation schemes within the contract period.

Submission by the Accounting Officer

The management attributed the delay in commencement of the works to the failure by the contractor to gain access to the site due to obstruction by the local community.

Current status

The three irrigation schemes were part of CSR to the communities living upstream of Thiba dam. The Thiba dam project was completed within the contract period and commissioned on 15th October 2022. Two-community irrigation scheme Kimbithe and Rukenya have been completed and Komboini could not proceed since the community did not give access. Nevertheless, the community has another water project serving the community thus its omission did not disadvantage the community.

Committee Observation;

The Committee was satisfied with the explanation.

Committee Recommendations

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1128. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1129. As required by Loan Agreement No. KE-P27 between the Japan International Corporation Agency (JICA) and the Republic of Kenya, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

RWABURA IRRIGATION DEVELOPMENT PROJECT – NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1130. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1131. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final budget and actual on comparable basis of Kshs.160,000,000 and Kshs.6,071,838 respectively, resulting to an underfunding of Kshs.153,928,162 or 92%. The Project expenditure was limited to the amount received during the year. The underfunding and under expenditure affected the Project's planned activities. However, Management has not provided explanation for the underperformance.

Submission by the Accounting Officer

The statement of comparative budget and actual amounts reflects final budget and actual on comparable basis of Kshs.160, 000,000.00 AND Kshs. 6,071,838 respectively, resulting to an underfunding of Kshs. 153,928,162 or 92%. The project expenditure was limited to the amounts received during the year. The underfunding and under expenditure affected the Project's planned activities.

Current status

The Contact for civil works was awarded to Riegos, Agricolas Espanoles, S.A (Raesa) and so far they have been paid Kshs. 330,511.266 as summarized below;

RWABURA IRRIGATION PROJECT			
DIRECT PAYMENTS MADE TO RAESA THROUGH SPANISH FUND FROM JULY 2021 TODATE			
Posting Date	**Document No.**	**Description**	**Amount (Kshs.)**
15-06-22	**RAESA ADVANCE**	**Journalization of Advance payment to RAESA for Rwabura Civil works**	**128,477,933.82**
15-06-22	**RAESA IPC NO 1**	**Payment to RAESA for Rwabura Civil works IPC No.1**	**5,181,976.50**
15-06-22	**RAESA IPC NO 2**	**Payment to RAESA for Rwabura Civil works IPC No.2**	**2,733,210.33**
15-06-22	**RAESA IPC NO 3**	**Payment to RAESA for Rwabura Civil works IPC No.3**	**2,153,241.78**
15-06-22	**RAESA IPC NO 4**	**Payment to RAESA for Rwabura Civil works IPC No.4**	**2,187,641.90**
15-06-22	**RAESA IPC NO 5**	**Payment to RAESA for Rwabura Civil works IPC No.5**	**4,142,254.12**
15-06-22	**RAESA IPC NO 6**	**Payment to RAESA for Rwabura Civil works IPC No.6**	**142,932,195.65**
15-06-22	**RAESA IPC NO 7**	**Payment to RAESA for Rwabura Civil works IPC No.7**	**837,168.94**
15-06-22	**RAESA IPC NO 8**	**Payment to RAESA for Rwabura Civil works IPC No.8**	**1,733,960.25**
15-06-22	**RAESA IPC NO 9**	**Payment to RAESA for Rwabura Civil works IPC No.9**	**1,250,571.55**
15-06-22	**RAESA IPC NO 10**	**Payment to RAESA for Rwabura Civil works IPC No.10**	**38,881,111.51**
			330,511,266.35

Committee Observations and Findings
The Committee observed that the explanation provided by the Accounting Officer was satisfactory.

Committee Recommendations
The Committee recommends that the matter is resolved.

1132. Delayed Compensation of Project Affected Persons
A review of documents revealed that the Project Management had planned to use a portion of Kshs.130,000,000 counterpart funding from Government of Kenya for compensation of Project affected persons at Rwabura Irrigation Project. However, by the time of concluding the audit in November, 2021, the compensation process was yet to be completed which has led to delay of disbursement of funding by the donor. The Management attributed the delay in compensating the affected persons to redesign of the project and review of way leave acquisition.

As a result of the delayed compensation, the project may not achieve its intended objectives.

Submission by the Accounting Officer
The management attributed the delay in compensating the affected persons to redesign of the project and review of the way leave acquisition.

Current Status

The PAPS have already been compensated.

Committee Observation;
The Committee was satisfied with the explanation hence the matter was marked as resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1133. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1134. There were no material issues relating to effectiveness of internal controls, risk management and governance.

22. MINISTRY OF LANDS AND PHYSICAL PLANNING- VOTE 1112

REPORTS ON THE FINANCIAL STATEMENT

Dr. Nicholas Muraguri, the Principal Secretary and Accounting Officer for the Ministry of lands and Physical Planning (Vote 1112) appeared before the Committee on 12th May, 2022 to adduce evidence on the Audited Financial Statements for the Ministry of lands and Physical Planning (Vote 1112) for the Financial Year 2018/2019. He was accompanied by the following officers:

1. Mr. Walter J. Oselu - Senior Chief Finance Officer
2. CPA Julius K. Mugambi - Director Accounts General
3. CPA Janet M. Mburu - Assistant Accountant General
4. CPA Jackline N. Naburi - Principal Accountant
5. CPA Moses S. Orone - Assistant Accountant General
6. CPA Opondo Rosemary - Principal Accountant
7. Mr. A. O. Nyambeche - Senior Deputy Director, SCMS

And submitted as follows:

1135.Misclassification of expenditures

The financial statement as at 30 June, 2021 reflects Kshs.1,691,360,688 under use of goods and services which includes wrong charging of various accounts items all amounting to Kshs.58,144,693 as detailed below;

Correct Items / Account	Wrongly Charged Item/Account	Amount Kshs
Office and general supplies and services	Training Expenses	442,750
Hospitality supplies and services	Domestic travel and subsistence	1,654,964
Hospitality supplies and services	Foreign Travel and Subsistence	268,379
Domestic travel and subsistence	Foreign Travel and Subsistence	83,975
Hospitality supplies and services	Fuel Oil and Lubricants	258,045
Domestic travel and subsistence	Fuel Oil and Lubricants	175,980
Fuel Oil and Lubricants	Specialized Materials and Services	44,015,600
Fuel Oil and Lubricants	Research, Studies, Project Preparation, Design Supervision	10,000,000
Communication, supplies and services	Refurbishment of buildings	1,245,000
Total		**58,144,693**

Consequently, the accuracy and fair presentation of the above balances included in these financial statements could not be confirmed.

Submission by the Accounting Officer

In regard to this matter, the management confirms that there was misclassification of expenditure. The Ministry sought for reallocation under PFM regulations 48 of 2015. However, the Ministry was not granted authority on time hence the misclassification could not be corrected.

Committee Observations and Findings
The Committee observed that the Accounting Officer ought to have sought permission for reallocation before action.

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform functions bestowed on the office.

1136. Prior Year Adjustments
The statement of assets and liabilities as at 30 June, 2021 reflects a figure for adjustments during the year relating to prior periods amounting to Kshs. (20,422,880) and as detailed in Note 11 to the financial statements. However, presentation of prior year adjustment in the year under review is contrary to Paragraphs 47, 48 and 54 of IPSAS 3 on Accounting Policies, Changes in Accounting Estimates and Errors, which requires an entity, to correct any material errors discovered in the subsequent period in the year the information was presented in the financial statements retrospectively.

Consequently, the accuracy and fair presentation of the prior year adjustment in these financial statements could not be confirmed.

Submission by the Accounting Officer
The Accounting officer submitted that prior year adjustments relate to the following:

- Bank balances that were swept back to Exchequer at the beginning of the financial year amounting to Kshs 5,243;
- Adjustments on receivables of Kshs. 20,417,638 that relate to imprests (Kshs. 166,722.35) advance salaries (Kshs. 162,807.30) and District suspense (Kshs. 20,088,107.85) surrendered during the current year but relate to the prior year.

These adjustments affect the statement of asset and liabilities as they result in the reduction of the Fund Balance Brought Forward. Further, if adjustments were to be made in the year they relate to, this would distort the prior year financial statements that have already been audited and certificate issued.

Description of the error	**Balance b/f FY 2019/2020 as per Financial statements**	**Adjustments**	**Adjusted Balance b/f FY 2019/2020**
	Kshs	**Kshs**	**Kshs**
Bank account balances- RECURRENT	1,866.05	(1,866.05)	-
Bank account balances- DEVELOPMENT	3,376.50	(3,376.50)	-
Cash in hand	-	-	-
Accounts payables	-	-	-
Impressts	260,522.35	(166,722.35)	93,800.00
District Suspense	20,708,107.85	(20,088,107.85)	620,000.00

Salary Advances	172,224.85	(162,807.30)	9,417.55
Others (*specify*)	-		-
TOTAL	**21,146,097.60**	**(20,422,880.05)**	**723,217.55**

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Prior Year Adjustments was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1137. Supply, Delivery, Installation and Commissioning of Global Navigational Satellite
Included in the use of goods and services balance of Kshs. 1,691,360,688 is an expenditure of Kshs. 900,412,653 under specialized materials and services which in turn include Kshs.86,322,495 paid to a firm in respect to supply, delivery installation and delivery of Global Navigational Satellite to Survey of Kenya vide contract No. MLPP/706933/2018-2019 (IFMIS Tender No.706933) through an agreement dated 20 May, 2019 between the Ministry of Lands and Physical planning and the firm. However, there was no evaluation meeting minutes provided to ascertain how the supplier was identified.
Consequently, the validity and authenticity of the expenditure could not be ascertained.

Submission by the Accounting Officer
In regard to this matter, the Accountng Officer submitted that the minutes have since been availed to the auditor for review.

Committee Observations and Findings

The Committee observed that the Accounting Officer did not make available requisite documentation to auditors on time.

Committee Recommendation
The Accounting Officer is reprimanded for failure to adhere to Section 62 (1) of the Public Audit Act, 2015.

1138. Taskforce Allowances
Included in acquisition of assets balance of Kshs.1,261,353,015 is an expenditure of 879,049,757 on research, studies, project preparation, design & supervision which in turn includes Kshs.4,060,000 paid in respect to taskforce allowances to fifty (50) officers who were appointed to a taskforce to response to the audit queries for 2017/2018 financial year through a memo from head of accounts which requested for 20 days for responding to the audit queries for the financial year 2017/2018. However, this contravened circular on taskforce, Circular reference MSPS.2/1A Vol.XLVIII/ (119) dated 2 August,2013 which states that, ‘A taskforce will be constituted by authorized accounting officer, members will be individually appointed in writing and given clear

terms of reference and duration of assignment with well-defined outputs and that the total number of members be limited to a maximum of 15 inclusive of not more than two support staff.

Submission by the Accounting Officer

In regard to this matter, the Accounting Officer submitted that the task-force members exceeded the recommended maximum due to the fact that the teams appointed were to handle different issues arising from the Audit query hence it was necessary to form 4 teams.

Each team was assigned clear terms of reference tied to the nature of the queries they were handling. It is worthy to note that the auditor general in his report for the financial year 2017/2018 had raised quite a number of issues which required immediate response.

On some cases, the audit queries raised were touching on field stations and hence required some coordination between the field officers and the Ministry headquarters, to ensure that the responses are appropriate, adequate and satisfactory. Some of the stations affected included Machakos, Bungoma, Kajiado, Nakuru, and Kisumu among others.

It is therefore clarified that the four teams of the taskforce members were constituted to fast track the responses to the audit queries for the financial year under review and ensure the task is completed before appearance in Parliament in time. This therefore necessitated that the members of the taskforce work beyond working hours including weekends.

Committee Observations and Findings

The Committee observed that the explanation notwithstanding, was in express breach of the circular in terms of the appointing authority and maximum numbers. Moreover, accounts department ought to keep proper records in response to audit responses, rather than an unnecessary taskforce being appointed.

Committee Recommendation

The Accounting Officer ensures that monies paid amounting to Kshs. 4,060,000 be recovered from the various staff within six months of adoption of this report.

1139. Lack of a Risk Management Policy

During the year under review, it was observed that despite the internal audit having a risk matrix that ranks risks and guides their annual internal audit plans, the Ministry did not have in place an institutionalized risk management policy hence no formal approved processes and guidelines on how to mitigate operational, legal and financial risks listed below were in place.

- Identifying business risks relevant to financial reporting objectives
- Estimating the significance of the risks
- Assessing the likelihood of their occurrence
- Deciding about actions to address those risks

As a result, the management may not be able to evaluate, rank and prioritize critical risks and channel resources towards mitigating the identified risks. Ultimately the utilization of resources and quality of service may be negatively affected.

Submission by the Accounting Officer

The management wishes to state that the process has been initiated.

Committee Observations and Findings
The committee observed that the Ministry was yet to have a risk management policy in place.

Committee Recommendation
The Accounting Officer should provide the Committee with the approved Risk Management Policy within three (3) months of adoption of this report.

1140. Inactive Audit Committee
During the financial year under review, the Ministry`s audit committee had never met to discuss the internal audit reports for the Ministry, yet their letter of appointment was dated 17 December 2019. This adversely affects the functioning of the audit committee in providing oversight on financial and risk management. In the absence of a functioning audit committee, monitoring, and review of the effectiveness of the internal audit process, review of internal controls, risk management systems and financial statements among other functions of an audit committee did not occur which may affect good corporate governance at the Ministry.

Submission by the Accounting Officer
In this matter, the management wish to report that the audit committee members have since been recruited and the committee was now active as provided.

Committee Observations and Findings
The Committee observed that the Accounting Officer failed top explain why the Audit Committee was not operational.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to operationalize an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012.

REVENUE STATEMENTS FOR THE MINISTRY OF LANDS AND PHYSICAL PLANNING

REPORT ON REVENUE STATEMENTS

Basis for Qualified Opinion
1141. Overstatement of Stand Premia on Town Plots
The statement of receipts and disbursements for the year ended 30 June, 2021 reflects actual tax receipt of Kshs. 67,171,533 in respect of stand premia on town plots and as disclosed in Note 1 to the financial statements. However, the amount differs with the ledger balance of Kshs 66,064,487 resulting in unexplained and unreconciled variance of Kshs. 1,107,046.
In the circumstances, the accuracy of the stand premia figure of Kshs. 67,171,533 reflected in the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer reported that the variance of Kshs. 1,107,046 in stand premier was an error which has since been corrected through a journal entry.

Committee Observations and Findings

i. **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;**

ii. **The Committee further observed that the Accounting Officer failed 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.**

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) of the Constitution, and section 81(4)(a) of the Public Finance Management Act 2012.

1142. Unreconciled Balance Due for Disbursement to the Exchequer

The statement of receipts and disbursements for the year ended 30 June, 2021 reflects under the financial year 2019/2020 a comparative balance due for disbursement to the exchequer of Kshs. 2,669,255 which was carried forward to 2020/2021 financial year. The statement further reflects total receipts of Kshs. 1,049,897,379 and disbursements to the exchequer of Kshs. 1,017,346,339 during the financial year 2020/2021, leaving a balance of Kshs. 32,551,040 due to the exchequer as at 30 June, 2021.

However, it has not been explained or disclosed how the balance due for disbursement to the exchequer of Kshs. 2,669,255 brought forward from the financial year 2019/2020 was accounted for or surrendered to the exchequer during the year under review

Submission by the Accounting Officer

In regard to this matter, the balance of Kshs 2,669,255 was comprised of bank balance at KCB Revenue holding account (1122659288) of Kshs 578,875.00 and kshs. 2,090,380.00 being unsurrendered revenue from E CITIZEN. The management would wish to confirm that the funds were surrendered. The management has since availed the surrender documents to the auditor.

Committee Observations and Findings

The Committee observed that the management had remitted the unsurrendered revenue to the exchequer, however, the committee expressed concern over delay in remittance.

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) of the Constitution, and section 81(4)(a) of the Public Finance Management Act 2012.

Other Matter

1143. Budgeted Revenue and Actual Collection

A review of the budgeted and the actual revenue collections for the year under review revealed that the ministry was not able to realize all the budgeted revenue in the following revenue items:

Revenue Item	Budgeted Amount (Kshs.)	Actual Amount (Kshs.)	Variance (Kshs)	% Unrealized Revenue
Stamp Duty	12,988,148	4,549,819	8,438,329	65%
Stand Premia on Town Plots	79,837,768	67,171,533	12,666,235	16%
Other Revenue	1,065,771,654	186,087,628	979,684,026	83%
Conveyance Fees	8,886,286	7,570,740	1,315,546	15%
Land Valuation Fee	6,456,878	4,654,970	1,801,908	18%

The reason given for not realizing the budgeted revenue was because of COVID-19 pandemic.

Submission by the Accounting Officer

In regard to this matter, the management would wish to state that the Ministry realized 85% of its overall budgeted revenue.

However, due to appropriate classification of District Registries revenue into the relevant revenue streams this portrays specific revenues streams as having being under collected which is not the case.

Stamp Duty

The under collection of Stamp duty by 65% is attributed to a decrease in the land transfer transactions during the period under review due to COVID 19 pandemic.

It is noted that most clients preferred making stamp duty payment through itax portal (KRA platform) hence the under collection.

Stand Premia on Town Plot

The under collection of Stand Premia on town plots by 16% is attributed to a decrease in the number of allotments of land during the period under review due to COVID 19 pandemic.

Other Land Revenue

Due to appropriate classification of District Registries Revenue into the correct revenue streams this portrays other land revenue as having been under collected by 83% which is not the case.

The under collection was also brought about by the COVID 19 pandemic since Land registries were closed during this period.

The Ministry of Health covid management guidelines like lock down also limited the movement of citizens hence a drop in land transactions.

Conveyance fees

The under collection by 16% in Conveyance Fees is attributed to few transactions due to the covid 19 pandemic that rendered registries closed at some point and also limited citizens movement through lockdowns.

Land Valuation Fees
Appropriate classification of Direct deposits made by clients to headquarter CBK Revenue collection account into the appropriate revenue streams and District Registries Revenue that were previously classified as other land revenue creates the impression that Land Valuation fees has been under collected by 28%.
This can also be attributed to a decline in demand for land valuation services due to the COVID 19 pandemic that referred registries closed at some point and also limited citizens movement through lockdowns.

Committee Observations and Findings
The Committee observed that the documentation provided by the Accounting Officer was not adequate as there was need to evidence the payments made through iTax portal (KRA platform) and the corresponding amount collected through the system

Committee Recommendation
The Accounting Officer to liase with KRA within three (3) months of adoption of this report and provide evidence of the payments made through iTax portal and the corresponding amount collected through the system to the Commitee for review.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1144. Delay in Banking
A review of revenue records held at the Ministry Headquarters and the department of Survey of Kenya revealed delays in banking of revenue collected by more than three (3) days contrary to the PFM Act, 2012 Section 76 (2) which states that the revenue collected by the receiver of revenue shall not later than 3 days be banked as indicated below:

Description	Amount Kshs.	Date Collected	Date Collected	Delayed Days	Station
Surrender voucher (FO.17) for amounts receipted and banked (Lands)	56,684.00	02/06/2021	09/06/2021	5 days	Headquarters
Surrender voucher (FO.17) for amounts receipted and banked (Survey)	1,257,520.00	22/0/2/2021	08/03/2021	10 days	Survey of Kenya
Surrender voucher (FO. 17) for amounts receipted and banked (Survey)	282,070.00	15/03/2021	15/04/2021	One month	Survey of Kenya
Surrender voucher (FO. 17) for amounts receipted and banked (Lands)	595,727.00	17/11/2020	25/11/2020	6 days	Headquarters

Surrender voucher (FO. 17) for amounts receipted and banked (Lands)	3,352,235.00	03/11/2020	13/11/2020	6 days	Headquarters

Further, a review of revenue records held by the Ministry Headquarters also revealed delays in banking of revenue collected between 1 to 20 days as tabulated below;

Collection Date	**CBK V. NO**	**Amount**	**Date of Banking**	**Days delayed in banking**
18/6/2021	313	693,349	25/6/2021	6
11/6/2021	308	33,497	18/6/2021	6
4/6/2021	303	356,495	9/6/2021	4
3/6/2021	302	300,093	9/6/2021	5
2/6/2021	301	158,014	9/6/2021	6
8/9/2020	65	1,196,530	18/9/2020	8
7/9/2020	66	27,127	18/9/2020	10
18/9/2020	73	76,660	28/9/2020	10
10/9/2020	59	562,585	18/9/2020	7
9/9/2020	64	25,107	18/9/2020	8
15/10/2020	95	61,257	23/10/2020	7
16/10/2020	92	24,911	23/10/2020	6
20/8/2020	42	387,466	26/8/2020	5
12/8/2020	41	2,173,500	19/8/2020	6
11/8/2020	35	843,329	19/8/2020	7
2/12/2020	146	854,994	23/12/2020	20
3/12/2020	149	357,892	23/12/2020	19

Submission by the Accounting Officer

In regard to this matter, the delay was occasioned by unreliable means of transport as a result of the nature of field activities of this Ministry whereby vehicles are mostly out in the field hence unavailable for local running. However, the transport officer has allocated two vehicles to Survey of Kenya and Headquarters to facilitate prompt banking of Revenue. Further, the management was at an advance stage of going cashless across all our payment points.

Committee Observations and Findings

The Committee observed that the response was not adequate in consideration of various means of electronic/ mobile banking available, and as such the Accounting Officer was in breach of the Section 76(2) of PFM Act, 2012 by exceeding the required period for banking revenue.

Committee Recommendation

The Committee admonishes the Accounting Officer for having not ensured prompt banking of revenue.

1145. Un-Surrendered Revenue by the County Government of Machakos

In the Report for the previous financial year, reference was made to un-surrendered survey fees amounting to Kshs. 7,261,896 collected during the 2019/220 financial year by the Department of Survey in Machakos Land Registry and remitted to the County Government of Machakos instead of the Ministry of Lands and Physical Planning. The matter remained unresolved as at 30 June, 2021.

In addition, during the year under review, survey fees collected by the County Government of Machakos amounting to Kshs. 7,134,986 was not surrendered to the Ministry of Lands and Physical Planning. This is contrary to Section 76(2) of the Public Finance Management Act, 2012, which requires any public officer, other than a receiver or collector of revenue for the National Government, to deliver the revenue not later than three (3) days after receiving it to a receiver or a collector of revenue for the National Government.

However, no documentary evidence was provided to confirm how the County Government of Machakos was appointed to collect the Survey Fees on behalf of the Ministry. Consequently, the Management is in breach of the law and the collected fees could not be accounted for.

Submission by the Accounting Officer

The Accounting officer submitted that the Machakos Survey Office was erroneously remitting revenue to the County Government of Machakos instead of the National Government.

However, the situation had since been addressed and the Machakos survey is currently remitting revenue to the National Government with effect from the financial year 2021/2022.

Further, the State Department has done a letter to the county government to request it to transfer Kshs. 7,261,896 for 2019/2020 Financial year and 7,134,986 for 2020/2021 Financial Year that had been erroneously remitted to them.

Committee Observations and Findings

(i) The Committee observed that Machakos Survey Office was in breach of Section 76(2) of the Public Finance Management Act, 2012 by failing to remit the revenue to the National Government; and

(ii) The Committee also noted that the Ministry was yet to recover the amounts remitted to County Government of Machakos.

Committee Recommendation

The Accounting Officer liaises with National Treasury and the Controller ofBudget to recover Kshs. 7,261,896 from the County Government of Machakos within three (3) months of adoption of this report.

1146.Failure to Open a Separate Collection Account

Field verification in regional offices during the month of October, 2021 revealed that revenues collected, and funds received by the Ministry as Exchequer releases for operations purposes for the regional offices were posted in the same cash books and deposited similarly in the same bank account in all the fifteen (15) stations visited.

This is contrary to Section 75(2) of the Public Finance Management Act, 2012, which requires a receiver of revenue to account for revenue received separately from other receipts.

Consequently, the management is in breach of the law.

Submission by the Accounting Officer

In regard to this matter, the management would wish to state that most field stations were operating one bank account for both operations and revenue collection. However, the situation had since been addressed by requesting Treasury authority to open 2 separate bank accounts for new registries as issues relating to older stations are addressed.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer had belatedly sought approval to open separate revenue accounts for only two (2) registries and not the entire lot of fifteen (15) registries mentioned in Audit Report.**

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for acting contrary to Section 75(2) of the Public Finance Management Act, 2012;**

(ii) **The Committee recommends that the Accounting Officer seeks approval to open revenue accounts of the remaining thirteen (13) registries within one (1) month from the date of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1147. Inadequate Staffing

It was observed that the Ministry of Lands and Physical Planning did not have their own revenue and accounting staff to handle revenue collections in regional offices but rely on staff from the National Treasury.

Submission by the Accounting Officer

The Accounting Officer submitted that ministry did not have its staff in the sampled field stations. However, this matter has been escalated to Human Resource Management and development department.

Committee Observations and Findings

(i) **The Committee observed that the absence of accounting staff to handle revenue collections in regional offices is a huge lapse in the internal controls of the Department; and**

(ii) **The Accounting Officer also failed to demonstrate, by way of internal communication and/ or communication to Public Service Commission, actions taken to address the matter.**

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that he addresses the staffing shortfall within three (3) months of adoption of this report.

1148. Weak Internal Controls

Physical verification in a sample of fifteen (15) revenue collection stations with the regional offices visited in October, 2021 revealed various internal control weaknesses as highlighted below:

i) Lack of documented guidelines on identifying plots whose owners should pay rent;
ii) Lack of registers for town plots
iii) Lack of defaulters list for the town plots;
iv) Shortage of land fee receipt books;
v) Inadequate funding of regional offices;
vi) Late disbursement of funds for daily operations; and
vii) Lack of assigned police security to the offices to secure important documents.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) Lack of documented guidelines on identifying plots whose owners should pay rent;

The Principal guiding when Land Rent ought to be demanded would therefore be as follows:

In alienation of Public Land for Residential, Commercial, Hotel, Education etc.	Demand Land Rent
In alienation of Public Land to Public bodies, Religious Organizations or non-profit making Organizations	Exempt from payment of Land Rent or demand nominal rent of Kshs.72/= per Annum.
In extension/Renewal of Leases on Leased Public Land	Demand Land Rent
In Subdivisions/Amalgamation of leasehold lands	Demand Land Rent
In instances of changes in land use/Extensions to land use	Demand Land Rent

ii) Lack of registers for town plots

It is the position of the Ministry of Lands and Physical Planning that the task of maintaining of a register of Township Plots that ought to pay Stand Premium would be the function of the National Land Commission which is the body mandated by Law to assess when issuing a Letter of Allotment.

The Ministry will however liaise with the NLC with a view to establishing modalities for transmission of list of plot allotees, the township – where the plots fall, the plot sizes and the Stand Premium payable. This may be communicated on monthly basis or quarterly basis as may be convenient to the Commission.

iii) Lack of defaulters list for the town plots;

The position of the Ministry of Lands and Physical Planning on this subject would be that it may not be possible to maintain such register as the Ministry is not the authority tasked with alienation of Public Land thus may not be in a position to know what has been alienated but not paid for.

The Ministry will liaise with the NLC with a view to establishing modalities for forwarding of comprehensive list of plot allotees and the corresponding details, e.g. the Townships where the plots fall, the plot sizes, the Stand Premium, Annual Rent etc. The communication may be on monthly basis, quarterly or as may be convenient to the Commission.

Committee Observations and Findings

(i) The Committee observed that the Ministry had no explanation on shortage of land fee receipt books, inadequate funding of regional offices, late disbursement of

funds for daily operations, and lack of assigned police security to the offices to secure important documents;

(ii) The Committee further observed that the Ministry neither has guidelines in place supporting the identifying plots whose owners should pay rent nor register of town plots or list of defaulters for town plots; and

(iii) The Committee also noted that the Ministry was of the opinion that the responsibility of maintaining the register and list of defaulters for town plots may not be tenable.

Committee Recommendation

i. **The Committee admonishes the Accounting Officer for breach of the provisions of Section 9(1)(e) of Public Audit Act, 2015 and Section 68(2)(e) of the Public Finance Management Act of 2015 for failure to ensure adequate land fee receipt books, adequate funding of regional offices, late disbursement of funds for daily operations and not assigning police security to secure documents.**

ii. **The Ministry to engage NLC to come up with a framework or guidelines on the modalities of maintaining a register and a comprehensive list of defaulters for town plots and report to the Committee within three (3) months of adoption of this report.**

23. STATE DEPARTMENT FOR INFORMATION COMMUNICATION TECHNOLOGY (ICT) AND INNOVATION- VOTE 1122

REPORTS ON THE FINANCIAL STATEMENT

Mr. Jerome Ochieng, the Principal Secretary and Accounting Officer for the State Department of ICT and Innovation (Vote 1122) appeared before the Committee on 10th May, 2022 to adduce evidence on the Audited Financial Statements for the State Department of ICT and Innovation (Vote 1122) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Mr. Johnson Wambugu	-	Senior Chief Finance Officer
2.	Anthony Njenga	-	Deputy Accountant General
3.	Mr. Ken Ojwando	-	Accountant

And submitted as follows:

Basis for Qualified Opinion

1149. Unconfirmed Proceeds from Foreign Borrowings

As disclosed in Note 2 to the financial statements, the statement of receipts and payments reflects foreign borrowings totaling to Kshs.12, 535, 780,458. The balance relates to direct payments made by a Chinese Bank to the Contractor for undertaking the implementation of Konza Data Centre and Smart City Facilities Project. The payments made comprised of borrowings totaling to Kshs.2, 671,086,095 for Data Centre at Konza Technopolis, an amount of Kshs.608, 984,395 from China for National Optic Fibre Backbone Project and a total of Kshs.9,255,709,966 for Konza Techcity Project respectively. However, the payments were supported by photocopies of documents instead of original documents which the Management indicated that they were forwarded to the lender.

Consequently, it has not been possible to confirm the propriety of payments of totaling to Kshs. 12,535,780,458.

Submission by the Accounting Officer

The Accounting Officer admitted that payments totaling to Kshs. 12,535,780,458 made in respect to Data centre at Konza Technoplis (Kshs. 2,671,086,095), National Optic Fibre Backbone Project (Kshs.608,984,395) and Konza Techcity Project (Kshs.9,255,709,966) were supported by photocopies of documents. This was in compliance with Treasury Circular No 15/2019 dated 11th December, 2019 which requires that after the processing of the payments, where development partners make payments in respect of the contract sum directly to contractors or other persons involved in the implementation of Officially Aid Funded Projects, the MDAs shall submit the processed payments request to the National Treasury and planning for further processing.

Additionally, the State Department through letter Ref MICT&YA/ICT/INN/16 dated 19th February,2021 sought clarification from the Auditor General on the best way to handle these payments.

Committee Observations and Findings

The Committee observed that the State Department submitted the original payment documents to the National Treasury pursuant to Treasury Circular No 15/2019 dated 11th December, 2019. However, the Accounting Officer failed to provide documentary evidence of these documents being forwarded to National Treasury.

Committee Recommendations;

Within one (1) month of the adoption of this report the State Department to acquire certified copies of the supporting documents from The National Treasury and submit them to the Committee.

Other Matter

1150. Pending Bills

As disclosed under Annex 1 to the financial statements, the State Department had pending accounts payable totaling to Kshs.28, 559, 663 as at 30 June, 2021 Which mainly arose during the year. However, Management has not provided satisfactory explanation for failure to settle the bills during the year under review.

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 admitted that the State Department had pending accounts payable totaling to Kshs 28,559,663 as at 30th June, 2021. Most of these bills could not be processed due budget cuts as shown by the revised recurrent expenditure estimates 2020/2021. However, most of these bills have since been settled as shown by report on status of pending bills for FY 2021/2022.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Pending Bills was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1151. 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 resolved under progress on follow up of auditor's recommendation section of the financial statements, the matters remained unresolved as at 30 June 2021.

Submission by the Accounting Officer

The Accounting Officer admitted that some prior years audit matters had been outstanding as at 30th June, 2021. However, most of them were resolved as at 30th September, 2021 being the deadline for submission of the annual reports and financial statements as indicated under progress on follow up of prior years' auditor's recommendations.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unresolved Prior Year lssues is unsatisfactory.

Committee Recommendation

The OAG to confirm compliance in subsequent financial year audit.

1152. Budgetary Control and Performance

The summary statement of appropriation recurrent and development combined reflected actual receipts of Kshs**.**17, 954,849,460 against a budget of Kshs. 19,449,102,512 resulting into a receipts shortfall of Kshs.1, 494,253,052 of the budgeted receipts. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.19,449,102,512 and Kshs.17,870,703,341 respectively resulting to an under-expenditure of Kshs.1,578,399,171 of the budget.

The shortfall in budgeted receipts and under-expenditure implies that the overall goals and objectives of the State Department were not achieved as planned impacting negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer admitted that statement of appropriation recurrent and development reflected receipts shortfall of Kshs 1,494,253,052 and under expenditure of Kshs 1,578,399,171. This shortfall resulted from delays in processing loan AIA payments due to tax issues resulting to under receipt on proceeds from foreign borrowing and under expenditure on the respective expenditure items. The payments have since been processed.

Committee Observation;

The Committee observed that the explanation given by the Accounting Officer with regards to Budgetary Control and Performance is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1153. Court Awards Relating to Public Relations and Communication Contract

Note 17.5 to the financial statements reflects contingent liabilities totaling to Kshs.11, 473, 560 as at 30 June, 2021. As further disclosed in Annex 5 to the financial statements, the liability relates to court case determined in favour of a consultant for marketing services. Available information indicated that the State Department, entered into a contract m 2016 for provision of public relations, communication, and event management agency services at a contract sum of Kshs. 19,122,600.

Ministry however, paid a total of Kshs. 7,649.040 but failed to pay the balance amounting to Kshs.12, 183,473. The consultant sued the Ministry for breach of contract. During the year under review, the case was ruled in favour of the consultant and was awarded Kshs.12,183,473 as principal amount, Kshs.459,492 as legal costs and Kshs.5,243,232 compounded interest at 12 % per annum from 2 February, 2018 to 30 November, 2021 totaling to Kshs.17,886,198. However, the State Department disclosed an amount of Kshs.11, 473,560 resulting in an unexplained variance amounting to Kshs.6, 412,638. Further, the public did not receive value for money additional cost of Kshs.5, 702,724 above the initial contract sum of Kshs.19, 122,600 that could have been avoided had the Management complied with the terms of the contract.

Consequently, the value for money of contingent liabilities totaling to Kshs.11, 473,560 disclosed in the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the Ministry of ICT entered into a contract with M/S Professional Marketing Services for a public relation and communication contract in 2016 at a total contract sum of Ksh.19, 122,600.00. Payment to this contract was based on milestones. An initial amount of Ksh.7, 649,040 was paid leaving a balance of Kshs.11,473,560.00. Internal verification processes to confirm that all deliverables had been met delayed processing of the balance prompting the supplier to go to court. The court case further inhibited the state department from processing the payment until it was determined. This payment has been factored in 2022/2023 budget proposals due to limited provision in the current financial year. A copy of the communication with the attorney general with regard to this payment was availed by for perusal by the Committee.

Additionally, the revised annual and financial statement for the financial year ended 30 June, 2021 under note 17.5 had reflected the correct contingent liabilities amounting to Ksh.17,886,198.

Committee Observation;

The Committee noted the explanation given by the Accounting Officer that internal verification of deliverables caused delay.

Committee Reccomendation;

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

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1154. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECT

EASTERN AFRICA REGIONAL TRANSPORT, TRADE AND DEVELOPMENT FACILITATION PROJECT (IDA CREDIT NO.5638-KE) - INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1155. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

1156. 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.398,668,366 or 13.3% had been released to the Project as at 30 June, 2021. As previously reported, due to continued underfunding, the Project is unlikely to fully achieve the intended objectives. My opinion is not modified in respect of this matter.

Other Matter

1157. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects total actual receipts of Kshs.398,668,366 against estimated amounts of Kshs.400,000,000 resulting in a shortfall of Kshs.1,331,634 or 0.3%. Similarly, the Program had an approved total expenditure budget of Kshs.400,000,000 against the actual expenditure of Kshs.349,025,082 translating to 87% budget utilization. Management has attributed the underperformance to the Covid-19 pandemic which negatively impacted on the Program implementation.

Submission by the Accounting Officer

Accounting Officer admitted that shortfall in budgeted receipts and under-expenditure implies that the overall goals and objectives of the State Department were not achieved as planned. These shortfalls were caused by unfunded exchequers.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regard to budgetary performance was satisfactory as the supporting documents were verified by the Auditor General.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1158. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1159. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1160. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by Project and the Project's financial statements agree with the accounting records and returns

24. STATE DEPARTMENT FOR BROADCASTING AND TELECOMMUNICATIONS – VOTE 1123

REPORT ON THE FINANCIAL STATEMENTS

Dr. Edward Waswa Kisiang'ani, PhD., the Principal Secretary and Accounting officer for the State Department for Broadcasting and Telecommunication appeared before the Committee, accompanied by the following officers;

1. Ms. Juliana Yiapan - Secretary Administration
2. Mr. Karayo Prysaus - Head of Accounting Unit
3. Mr. John O. Nyabwari - Senior Chief Finance officer
4. Mr. Joseph Wambua - Director Planning
5. Mr. Michael Okidi - Acting Director, Government Advertising Agency
6. Ms. Anne Cheruiyot - Senior Information Officer

And subumitted as follows:

Basis for Qualified Opinion

1161. Variances Between the Financial Statements and IFMIS Ledger Balances

A comparison between the financial statements and the supporting IFMIS ledger balance revealed variances as shown below:

Item	IFMIS Balance (Kshs.)	Financial Statement Amount (Kshs.)	Difference (Kshs.)
Recurrent Bank Account	560,349,861	4,933,997	555,415,889
District Recurrent Bank Account	504,943	-	504,943
Development Bank Account	271,220,447	1,975,733	269,244,715
Deposit Bank Account	279,319,245	281,928,092	(2,608,847)
Cash in Hand	589,040,131	244,789	588,795,342
Salary in Advance	132,360	-	132,360
Prepayments	1,411,950	-	1,411,950
R/D Cheques	5,332,522	-	5,332,522
Government Imprests	703,393	664,205	39,188
Suspense and Clearance	630,610	-	630,610
General Deposits	241,807,410	281,928,092	(40,120,682)
Other Liabilities	9,298,544	-	9,298,544
System Required Liabilities	192,716,118	-	192,716,118
Opening Balances Reserve	12,288,008,888	35,102,567	12,252,906,321

The variances have not been explained nor reconciled.
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 above differences were reconciled with technical support from the National Treasury and as such the Financial Statements and the IFMIS Ledger balances are in agreement.

The Accounting Officer also submitted that the IFMIS system had ‘hang’ accepting that that there were challenges in IFMIS for transactions that were not properly entered.

Committee Observations and Findings
The Committee observed that the variances between the Financial Statements and IFMIS Ledger Balances were later reconciled as submitted by the Accounting Officer and confirmed by the Office of the Auditor-General;

Committee Recommendations;
The Committee admonishes the Accounting Officer for failure to submit supporting documentation to the Auditor General on time.

1162. Pending Bills
Note 17.1 to the financial statements reflects pending bills amounting to Kshs.873,106,334 as at 30 June, 2021. However, this amount differs from the amount of Kshs.281,928,092 disclosed under Annex 1 to the financial statements, resulting to an unexplained variance of Kshs.591,178,242. 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. In the circumstances, the accuracy and validity of the reported pending bills of Kshs.873,106,334 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Annex 1 to the Financial Statements reflects an amount of Kshs.281,928,092 which is an analysis of the Accounts Payable-Deposits, as opposed to the pending bills analysis for FY 2020/21 of Kshs.873,106,334.

The Accounting Officer also submitted the pending bills for the FY 2020/21 amounting to Kshs.873,106,334 could not be settled during the financial year to which they relate due to under collection of AIA however, Kshs.522,684,263,54 has been paid as at 21st February, 2023.

The Accounting Officer further submitted that the State Department has an outstanding bill of Kshs.350,319,691.15 as at 21st February, 2023. The bill is as a result of uncollected Appropriation-in-Aid (AIA) under the Government Advertising Agency. He assured the Committee that they would settle the bill once the necessary AIA is received.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1163. Budgetary Control and Performance

The summary statement of appropriation-recurrent and development combined for the year ended 30 June, 2021 reflects budgeted receipts and actual on comparable basis amounting to Kshs.8,041,518,735 and Kshs.7,466,440,047 respectively, resulting to a shortfall of Kshs.575,078,688 or 7% of the budget. Similarly, the Department's approved expenditure budget was Kshs.8,041,518,735 while the actual expenditure was Kshs.7,459,540,479 resulting to under-expenditure of Kshs.581,978,257 or 7% of the budget.

The under funding and under absorption affected the planned activities and could have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the shortfall of 7% on the receipts was due to;

i. under collection of tax receipts for Kenya Film School and Kenya Film Classification Board which was occasioned by closure of the Film theaters and schools due to Covid-19 pandemic and countrywide lockdown hence adversely affecting film activities; and
ii. under collection of Appropriation in Aid (AIA) under proceeds from sale of assets was occasioned by some Ministries, Departments and Agencies inability to pay their dues on time.

Consequently, the under collection of AIA affected the utilization of use of goods and services.

Committee Observations and Findings

The Committee observed that the amounts due from other MDAs must have been budgeted for in the respective MDAs and there was no valid reason for non-payment.

Committee Recommendations;

The Committee recommends that the Accounting Officer collects outstanding AIA and submits a status report to the Committee within three (3) months of adoption of this report.

1164. Unconfirmed Arrears of Appropriations-In-Aid (AIA) Owed By State Agencies

As previously reported, the Government Advertising Agency (GAA) is owed Kshs.483,152,144 by various State Agencies for advertising services. The outstanding amount is expected to supplement the publicity and advertising budget for the State Department. However, outstanding balance of Kshs.303,782,510 as at 30 June, 2021 could not be confirmed as primary records including schedule of the outstanding AIA and specific individual accounts were not provided for audit review.

Submission by the Accounting Officer

The Accounting Officer submitted that the outstanding amount of Appropriations in Aid owed by state agencies as at 30th June, 2021 was Kshs.303,782,510. The primary records which include the specific individual accounts and schedules of the outstanding AIA was provided.

Committee Observations and Findings

(i) The Committee noted with concern that the annexed document had errors and discrepancies which could not be accepted;

(ii) The Committee observed that the explanation and documents submitted by the Accounting Officer were not satisfactory.

Committee Recommendations

(i) The admonishes the Accounting Officer for not providing information to the Auditor General on time;

(ii) Within three (3) months of tabling this report, the Accounting Officer should provide specific individual accounts and schedules of the outstanding AIA to the Committee.

(iii) The Accounting Officer to collect outstanding dues within the financial year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Basis for Conclusion

1165. Accounts Receivables - Long Overdue Imprest

As disclosed in Note 11 to the financial statements, the statement of financial assets and liabilities reflects a balance of Kshs.664,205 under accounts receivables-outstanding imprest and clearance accounts balances. The balance includes outstanding imprest owed by two officers that has remained outstanding since 25 August, 2016. No reason was rendered for the failure to surrender the imprest or recover it from the officers' salaries in accordance with Regulation 93 of the Public Finance Management (National Government) Regulations, 2015.

No satisfactory explanation was given for the failure to recover the imprest as required.

Submission by the Accounting Officer

The Accounting Officer submitted that the outstanding imprests have since been surrendered.

The Accounting Officer also submitted that necessary measures have been put in place to ensure strict adherence with Regulation 93 of the Public Finance Management (National Government) Regulations, 2015.

Committee Observations and Findings

The Committee noted that the Accounting Officer did not institute recoveries on the defaulting officer as per the time prescribed in law.

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to comply with Regulation 93 PFM regulations on imprest management.

1166. Failure to Conduct Media Monitoring of Distribution of MyGOv Publication

The statement of receipts and payments reflects payments of Kshs.1,715,995,564 in respect of use of goods and services for the year ended 30 June, 2021. The expenditure mainly relates to payments made to media houses for publication of MyGov newspaper during the year under review. However, as previously reported, the Government Advertising Agency has never carried out a media monitoring exercise to determine the number of copies published and distributed by the media house, which would have formed a basis for any contractual negotiations on amounts payable for placing of Government and associated advertising in the print media.

In the circumstances, the propriety and value for money on the expenditure of Kshs.1,715,995,564 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that

1. The Government Advertising Agency (GAA) did not carry a Media monitoring exercise for MyGov publication due to budgetary constraints;
2. GAA uses State of the Media Survey from Media Council of Kenya (MCK) for media monitoring;
3. MCK conducts State of the Media Survey annually to review the Media performance besides seeking general public opinion of the media;
4. The annual state of the media survey report makes proposal for possible policy directions in view of the current industry dynamics;
5. In the absence of the Audit Bureau of Circulation, which was hitherto in existence in the 1980s and 1990s, the Media Council of Kenya Survey Report is the basis for ascertaining media consumption patterns; and
6. The MCK's State of the Media Survey report for 2021 ranks the Daily Nation at 58.86% of the national daily's print market share, the Standard at 27.8%, the People daily at 5.04% and the Star at 3%.

Committee Observations and Findings

The Committee observed that there was delay in signing performance management contract by the Government Advertising Agency which might lead to loss of public funds.

Committee Recommendation

The Accounting Officer to avail a signed performance contract to the Committee within three (3) months, and explore use of online platforms which have wider reach.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1167. There were no material issues relating to effectiveness of internal controls, risk management and governance.

25. STATE DEPARTMENT FOR SPORTS- VOTE 1132

REPORT ON THE FINANCIAL STATEMENTS

Mr. Joe Okudo, the Principal Secretary and Accounting Officer for the State Department of Sports and Development (Vote 1132), appeared before the Committee on 4th May 2022 to adduce evidence on the Audited Financial Statements for the State Department of Sports and Development (Vote 1132) for the Financial Year 2020/2021. He was accompanied by the following officers: -

1.	Mr. Samuel Mugambi	- Head of Accounting Unit
2.	Mr. Samson M. Ongalo	- Director Administration
3.	Mr. Mike Kimoko	- Chief Finance Officer
4.	Mr. Felix Omondi	- Personal Assistant to PS

And submitted as follows:

Basis for Qualified Opinion

1168. Irregularities on Award of Tender to Hotel.

As disclosed in Note 5 to the financial statements, the statement of receipts and payments reflects a balance of Kshs.329,844,700 under use of goods and services which further includes an mount of Kshs.77,822,791 relating to hospitality supplies and services. Examination of payment vouchers reveals that Kshs.6,796,952 was paid for provision of accommodation services, banqueting-offices, massage rooms, extra breakfast, extra lunch and dinner services for Continental Tour-Kipkeino Classic. However, examination of supporting records revealed the following anomalies:

(i) The attached professional opinion dated 30 September, 2020 referred to under Section 103 of Public Procurement and Disposal Act, 2015 on direct procurement, does not support the use of this method in the hospitality services since reasonable hotels alternative exists and that the method may have been used to avoid competition.

(ii) Quotations were also forwarded by the event organizer through a letter dated 2 October, 2020 containing six (6) quotations for suppliers. However, the selected Hotel was not on the prequalified list of the suppliers.

(iii) The Management did not provide for audit review specifications for the tender, tender opening register, technical evaluation and minutes of award. It is therefore, not possible to confirm that rates submitted by the Hotel were fair, equitable, transparent, competitive and cost effective.

(iv) An award letter of offer Ref: CT/ADMIN/VOL.1/33/2020 dated 22 September, 2020 was issued to the hotel and an agreement later signed on 2 October, 2020 between Athletics Kenya-Continental Tour Kipkeino Classic and the Hotel while the contract or event period was from 23 September to 4 October, 2020. It was therefore not clear why the agreement was signed nine (9) days after the start of the event, and two (2) days before the end of the event.

Consequently, the propriety of Kshs.6,796,952 expenditure and the value for money could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(i) The direct method on procurement under section 103(c) of public procurement and disposal Act, 2015 states that owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods". The Athletics Kenya –Continental tour Kipkeino classic event took place from 23 September to 4 October, 2020. This was the time Covid -19 (catastrophic event) was at its climax. The Kipkeino classic event was an international event where both local and overseas athletes and delegates were involved and hence the need to take measures to prevent spread of covid -19 infections. The local organizing committee conducted an inspection survey and also taking into consideration the Covid-19 protocols, recommended the hotel to provide services to the personnel involved during the event.

After taking into accounts and minutes of Adhoc negotiation Committee. The report of the inspection, Crowne Plaza Hotel, was found to have fully complied with the government gazette COVID-19 protocols and hence recommended to provide the hotel services in accordance with the Public Procurement and Disposal Act 2015 section 103.

(ii) Quotations were invited from known hotels of similar standards to assess the prevailing market rates for the provision of hotel services. These were intended to ascertain the prevailing market prices and provide a guideline for use of the Direct procurement method. Due to the outbreak of Covid pandemic there were very few hotels that could offer the services and all operating hotels with capacity and standards to host local and international delegates within the proximity of games venue were given the were given an opportunity to quote.

(iii) Detailed Adhoc committee negotiation minutes and local organizing committee inspection report have been provided for audit review. The scope of requested services/tender specifications are as provided in the minutes for the above committee minutes. Technical and financial evaluation and minutes of award is included in the negotiation minutes. (Copy of Local Organizing Committee Survey and Inspection Report and Adhoc Negotiations Committee Minute.)

(iv) The Local Organizing Committee reviewed and adapted the minutes of the adhoc committee awarding the contract to provide hotel services to M/S Crowne Plaza at the negotiated price. Thereafter the two parties engaged in the preparation and signing of the formal contract agreement, which was done on 2nd October 2020.

An Ad-hoc tender evaluation committee was appointed to negotiate with M/s Crowne Plaza Hotel as provided in the PPDA 2015, section 103. This committee deliberated on the quotation provided by Crowne Plaza Hotel and ensured the rates were fair, cost effective and economical, thus ensuring Value for Money. The Local Organizing Committee reviewed the negotiate rates before the process was concluded by approval of professional opinion by the accounting officer.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Award of Contract to the Hotel was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matters

1169. Unresolved Prior Year Matters

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 and recommendations not implemented

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1170. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1171. There were no material issues relating to effectiveness of internal controls, risk management and governance

26. STATE DEPARTMENT FOR CULTURE AND HERITAGE – VOTE 1134

REPORT ON THE FINANCIAL STATEMENTS

Ms. Ummi M. Bashir, the Principal Secretary and Accounting Officer for the State Department for Culture and Heritage, appeared before the Committee on 28th February 2023 accompanied by the following officers:

1.	Dr. Kiprop Lagat	–	Director of Culture
2.	Ms. Beatrice Nyawanda	–	Acting Director of Human Resource
3.	Mr. Peter Kabese	–	Head of Account Unit
4.	Mr. Joseph Kimani	–	Senior Principal Finance Officer

and submitted as follows;

Basis for Qualified Opinion

1172. Use of Goods and Services

The statement of receipts and payments reflects use of goods and services amount of Kshs.215,294,652. However, the respective Note 5 to the financial statements cast to Kshs.216,227,801 resulting in an un-explained difference of Kshs.933,149.

Under the circumstances, the accuracy of use of goods and services amount of Kshs.215,294,652 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount stated of Ksh.215,294,652 as the total under use of goods is the correct amount. However, when the breakdown of the specific items were being recorded there was a casting error which resulted to the difference of Ksh.933,149. The amount has since been corrected in the financial statements.

The Accounting Officer acknowledged that the error was an oversight on their part and ensured the Committee of improvement going forward.

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 for failing to prepare & keep proper accounting records contrary to Section 68(2) of the PFM Act 2012.

1173. Unsupported Accounts Payables-Retention

As disclosed in Note11 to the financial statements, the statement of assets and liabilities reflects an accounts payables balance of Kshs.31,130,268 as at 30 June, 2021. The balance includes an amount of Kshs.4,544,668 in respect of retention money, out of which a balance of Kshs.4,098,684 was transferred to the State Department after split of the Ministry of Sports Culture and Arts into two State Departments. The State Department vide letter Ref. SDCH/Ac/1 Vol. 1(153) dated 13 November, 2019 wrote to the State Department for Sports requesting them to provide details of the retentions to determine what the projects related to for purposes of payment. However, as at the time of the audit, details of the retentions had not been provided and therefore their ownership could not be confirmed.

In addition, the retention balance of Kshs.4,544,668 includes a balance of Kshs.445,984 in respect to refurbishment services provided by a contractor for which project completion documents had not been availed to the Department to facilitate payment.

Consequently, the accuracy and validity of the accounts payables-retention balance of Kshs.4,544,668 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that with regard to Ksh.4,098,684 the Department has not yet received any response from the State Department for Sports on the details of the retentions and supporting documents concerning the same to enable them process the payments, while the balance of Ksh.445,984 which relates to refurbishment services provided by Patience Services Limited is still awaiting project completion documents to process the payment. However, they had received Authority from Treasury to transfer the retention money to the Exchequer which is pending beyond five (5) years.

Committee Observations and Findings

The Committee observed that:

(i) There was inordinate delay in supply of information from the State Department for Sports;

(ii) There was insufficient follow-up and communication with the State Department for Sports caused by laxity in the State Department for Culture;

(iii)The attached documents were not dated and could thus not be verified.

Committee Recommendations;

(i) The Committee directs the Accounting Officer together with that of the State Department for Sports reconcile the figure of Kshs. 4,098,684 within a month of adoption of this report; and

(ii) The Accounting Officer liaises with the State Department for Public Works for project completion within one (1) month of adoption of this report.

1174. Unsupported Prior Year Adjustment on Cash in Hand

Note 13 to financial statements reflects a prior year adjustment of Kshs.1,155,347 which includes adjustment on cash in hand of Kshs.54,810. The total amount under adjustment of Kshs.1,155,347 relates to unspent balances for the financial year 2019/2020 recovered by The National Treasury and the State Department. Analysis of management response and support documents however revealed that total recoveries supported was Kshs.1,100,535 leaving a balance of Kshs.54,810 relating to cash in hand whose support documents authenticity could not be confirmed.

Consequently, it was not possible to ascertain the validity of the prior year adjustment of Kshs.54,810 on cash in hand as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that Ksh.54,810 related to unspent cash in hand at the end of the financial year 2020/2021. The amount was surrendered at the beginning of the financial year 2021/2022 to Treasury.

Committee Observations and Findings

The Committee observed that the Accounting Officer indicated the cash in hand of Ksh.54,810 was surrendered to Treasury at the beginning of the 2021/2022 financial year.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1175. Pending Bills

Annex I to the financial statements reflects pending bills totalling to Kshs.74,437,396 as at 30 June, 2021. Out of this balance, Kshs.59,857,711 relates to financial year 2019/2020 as analyzed in Note 17.1, resulting to an increase of Kshs.14,579,685 (20%). It was not clear why the prior year pending bills of Kshs.59,857,711 were not paid when they became due or why they did not form first charge in the year 2020/2021. In addition, out of the total pending bills balance of Kshs.74,437,396, an amount of Kshs.31,507,892 equivalent to 42% represents rent arrears owed to the Kenya National Library Service Board (KNLSB) that remained outstanding as at 30 June, 2021. Failure to settle bills in the year to which they relate adversely affect the implementation of the subsequent year's budgeted programs as the pending bills form a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that out of the Kshs.74,437,396, Ksh.14,579,685 related to historical pending bills which are not payable due to lack of supporting documents. Included in the total pending bills was Ksh. 31,507,892 for rent to Kenya National Library Service Board (KNLSB) which has since been paid.

The Accounting Officer also submitted that out of Kshs.74,437,396 of the pending bills Kshs.47,170,207.50 have been cleared leaving a balance of Kshs.27,267,188.54. The Accounting Officer further submitted the State Department was running on a low budgetary provisions and exhausted its first half of budget by the time they were verifying pending bills.

In addition, the Accounting Officer submitted that the contract with the Standard Media Group was missing, and the Department liaised with the Attorney General for advisory opinion on whether to pay the pending bills despite the lack of the requisite documentation.

Committee Observations and Findings

(i) The Committee observed that there was no contractual agreement between the State Department and the Standard Media Group despite them offering services;

(ii) The Committee also observed that the pending bill of Ksh. 14,579,685 was long overdue.

Committee Recommendation

The Accounting officer to expedite liaison with the Attorney General and resolve the matter of outstanding payments within three (3) months of adoption of this report.

1176. Unresolved Prior Year Issues

Various prior year audit issues remained unresolved as at 30 June, 2021. 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 unresolved prior year issues realed to unsupported transfers to other Government units, unsupported accounts payables, unsupported pending bills and an incomplete fixed asset register.

Prior year issues have been resolved with the exception of few where the State Department is awaiting further direction and advice from the National Treasury and the Solicitor-General.

Committee Observations and Findings

(i) The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee directed the Accounting Officer to fast track resolving of prior year unresolved audit issues and provide progress report within three (3) months following the adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1177. Failure to Conduct Training Needs Assessment, Prepare Staff Training and Development Policy and Training Master Plan

Note 5 to the financial statements on use of goods and services reflects training expenses of Kshs.4,016,290. However, there was no evidence that the State Department prepared and operationalized a staff training and development policy, training master plan and training needs assessment. Therefore, the trainings were not based on identified needs and could therefore not be confirmed to be beneficial to the employees of the State Department. This violates Regulation 43(1)(b) of Public Finance Management (National Government) Regulation, 2015 which provides that an Accounting Officer should ensure that funds entrusted to their care are properly safeguarded and applied for the purposes for only which they were intended and appropriated by the National Assembly.

Submission by the Accounting Officer

The Accounting Officer submitted that during the financial year 2020/2021 the State Department was unable to conduct training needs assessment due to COVID 19 pandemic which affected most of the department activities including training processes.

Committee Observations and Findings

(i) The Committee observed that the State Department did not have a Training Development Policy and a Training Master Plan and relied on the one for the Public Service Commission;
(ii) The Committee also observed that the State Department did not conduct training needs assessment to identify the training requirements and gaps for its staff; and
(iii)The Committee therefore observed that the expenditure was not justified.

Committee Recommendation
The Committee reprimands the Accounting Officer and recommends that the State Department puts in place a training and development policy, and periodically conduct a training needs assessment for staff as required; and

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1178. Assets Management
1178.1. Untagged and Unallocated Assets
An inspection of the State Department's assets revealed that the assets were not tagged for ease of identification and safeguard against loss. In addition, review of the assets register revealed that serial numbers for some office equipment were not recorded for ease of identification. In addition, five iPad issued to the records management office valued at Kshs.593,750 were not allocated to any particular officer for safety and accountability. Failure to tag and allocate assets is an indication of weak internal controls over assets.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department has embarked on the exercise of identifying the assets and tagging them for ease of identification and ownership.

The Accounting Officer also submitted that the five (5) IPADs were procured for Integrated Public Records Information Management System (IPRIMIS) and issued to the Records Management Department and allocated for various office function.

Committee Observations and Findings
(i) The Committee observed that there was poor maintenance of records in the State Department;
(ii) The Committee also observed negligence in the procurement department for failing to identify assets in the State Department.

Committee Recommendation

The Committee directed the Accounting Officer to expedite tagging and proper identification of all assets in the State Department and report progress within three (3) months of the adoption of this report by the House.

1178.2. Disposal of Motor Vehicles

Review of documents and inspection of motor vehicles revealed that five motor vehicles listed below have been grounded at various garages for long periods.

Reg. No.	Model	Remarks by Management
GK A106 U	VW Passat	Grounded at CMC Ltd. Earmarked for Disposal but not disposed due to high reserve price
GK A 170U	VW Passat	Grounded at CMC Ltd Earmarked for Disposal but not disposed due to high reserve price
GK A 208A	Peugeot 504 Saloon	Grounded at NSSF but not disposed due to high reserve price
GK A 422L	Peugeot 406	Grounded at Urysia but not disposed due to high reserve price

In the circumstances, the vehicles are exposed to the risk of further deterioration and loss of value.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department had received the reserve price from State Department for Public Works, and the process of disposing off the four vehicles is ongoing.

Committee Observations and Findings

(i) **The Committee observed that the State Department was in the process of disposing of four vehicles and intended to complete the process before the end of the 2022/2023 financial year;**

(ii) **The Committee also observed that motor vehicle registration numbers GKA 170U, GKA 106U, GKA 422L and GKA 208A were valued at Ksh. 200,000, Ksh. 250,000, Ksh. 54,000 and Ksh. 40,000 respectively; and**

Committee Recommendation

The Committee directed the Accounting Officer completes disposal of the four vehicles within three (3) months following the adoption of this report by the House.

1178.3. Ownership of Motor Vehicles

Twenty-three (23) motor vehicles of various models were registered under other Government Agencies. Although Management explained that the logbooks for the twenty-three (23) vehicles were submitted to the National Transport Safety Authority for transfer on 27 September, 2021, the transfer had not been effected as at the time of the audit.

Submission by the Accounting Officer

The Accounting Officer submitted that the logbooks for the twenty-three (23) motor vehicles, which were registered under other Government Agencies have since been transferred to the State Department's name.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer on the ownership of the motor vehicles were satisfactory.
Committee Observations and Findings
The Committee recommends that the matter is resolved.

1179. Understaffing

A review of Human Resource records indicated that the State Department had an authorized establishment of 1,531 as at 30 June, 2021 against actual in post of 195 resulting in a staff deficit of 1,336 personnel. The staff shortage, if not addressed could impact negatively on the operations of the State Department.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department is still liaising with the Public Service Commission to have the vacant positions filled.

Committee Observations and Findings

(i) The Committee observed that the State Department was facing an acute staff shortage, where 195 staff were doing work in an establishment of 1531.
(ii) The Committee also observed that there was laxity in the Human Resource Department as it recommended shortlisting of 138 candidates who do not qualify to PSC.

Committee Recommendation
The Committee reprimands the Accounting officer and directs that he submits a report on understaffing in the State Department to the PSC to address staff shortage within three months of adoption of this report by the house.

27. MINISTRY OF ENERGY- VOTE 1152

REPORT ON THE FINANCIAL STATEMENTS

Maj. Gen (Rtd) Gordon Kihalangwa, CBS, the Principal Secretary and Accounting Officer the Ministry of Energy (Vote 1152) appeared before the Committee on 28th April, 2022 to adduce evidence on the audited financial statement for the Ministry of Energy (Vote 1152) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Mr. Moses Gitau	-	Deputy Accountant General
2.	Mr. J. J Gitonga	-	Deputy Director Renewable Energy
3.	Ms. Judith Okumu	-	Senior Finance Officer
4.	Mr. Catusim Mugo	-	Principal Accountant

And submitted as follows:

Basis of Qualified Opinion

1180. Use of Goods and Services

The statement of receipts and payments reflects use of goods and services of expenditure totaling Kshs.496,087,643, as further reflected in Note 7. However, the balances reflect the following anomalies;

1180.1. Unsupported Expenditure

The following payments totaling Kshs.4, 283,700 made at the close of the financial year from 28 to 30 June, 2021 were not supported with records on the nature and dates of the activities:

No.	Expenditure Item	Amount (Kshs)
1	Domestic Travel	2,904,600
3	Training Expenses	213,000
4	Office and General Supplies	617,000
5	Routine Maintenance -Other Assets	439.100
6	Fuel and Other Lubricants	110,000
7	Total	**4,283,700**

Submission by the Accounting Officer

The Accounting Officer submitted that the payments made between 28th and 30th June 2021 were as per the Ministerial performance contract and Work Plans which were fully supported and reviewed by Audit team.

Committee Observations and Findings

i. **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;**

ii. **The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015;**

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to act in conformity with the provisions of Section 68(2)(b) of the PFM Act 2012 and the Public Audit Act 2015.

1180.2. Training Expenses

The use of goods and Services expenditure includes training expenses totaling Kshs.17,582,215 as indicated in Note 7 to the financial statements. However, records on the payment indicated that expenses totaling to Kshs.10,224,197 were incurred on non-training items such as office expenses and allowances paid to various officers. Further, Management did not provide records to confirm that the reallocations were made in accordance with the provisions of the applicable provisions of Section 43 of the Public Finance Management Act,2012.

In the view of the anomalies, the training expense balance totaling to Kshs.17,582,215 as at 30 June 2021 may not be fairly stated.

Submission by the Accounting Officer

The Accounting Officer submitted that Note 7 to the financial statements reflects training expenses of Kshs.17,582,215. The said amount was expensed in training and relates to activities on training officers engaged in land acquisition exercise which is a key deliverable for the Ministry and were confirmed by the Audit team on site.

Committee Recommendation

The Committee observed that the Accounting Officer failed to seek for reallocation of the expenses in accordance to Section 43 of the Public Finance Management Act, 2012, despite justifying the expenditure with requisite documentation.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1180.3. Routine Maintenance

The goods and Services Expenditure balance further includes routine maintenance expenses-other assets totaling Kshs.83,944,712, as indicated in Note 7 to the Financial Statements. Expenses totaling Kshs.72,600,390 included in the balance relate to Authority to Incur expenditure (AIEs) disbursed to various Energy Centers established by the Ministry. However, returns on actual expenditure incurred by the Centers were not provided for audit and as a result, the accuracy, completeness and validity of routine Maintenance-Other asset expense totaling Kshs.83,944,712 could not be confirmed.

Submission by the Accounting Officer

Accounting Officer admitted that Note 7 to the financial statements reflects routine maintenance expenses of Kshs.83,944,712. The Kshs.72,600,390 were in respect of Authority to Incur expenditure for the Energy Centers and the said amounts were transferred to energy centers as per the approved budget. The Energy Centers further forwarded their returns via the National Treasury Vote book portal. The Audit team also visited the Energy Centre for further independent confirmation.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to keep proper books of accounts in accordance to Section 68(2)(b) of the PFM Act,2012.

1180.4. Office and General Supplies

Note 7 to the financial statements reflects Office and General supplies expenses totaling Kshs.22,151,720. Examination of the Financial records indicated that expenses totaling Kshs.5,266,540 related to undefined cash office expenses and payments of allowances and imprests. However, Contrary to Section 43(b) of the Public Finance Management Act, 2012, management did not provide documents to explain the nature of expense, including the approvals, if any for the reallocation of the funds.

Consequently, the occurrence, accuracy and validity of the office and general supplies expenses of Kshs.22,151,720 as at 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that note 7 to the financial statements reflects Office and General supplies expenses of Kshs.22,151,720. The Expenditure in question relates to low value items which are below the Kshs.50,000.00 thresholds specifically acquired under paragraph 92 and 93 of the Public Finance Management Regulations (PFMR) 2012 and whose cap could only be determined by the Accounting Officer or his authorized representative.

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer failed to prepare and keep proper accounting records in contravention of Section 43 (b) of the PFM Act, 2012.**

ii. **The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.**

Committee Recommendation

i. **The Committee reprimands the Accounting Officer for acting in breach of Section 43 (b) of the PFM Act, 2012.**

ii. **The Accounting Officer is directed to provide documents in support of the undefined expenses and payments of allowances and imprests to the Auditor General within one month following the adoption of this report.**

1180.5. Hospitality, Supplies and Services

In addition, the use of goods and services balance includes hospitality, supplies and services amounting to Kshs.48,875,797 which in turn includes the following payments.

	Item	Amount (Kshs)
1	Allowances to Staff for undertaking their normal duties	1,890,000
2	Ungazetted allowances for transport and logistics	1,600,000
3	Unsupported sub-committee allowances on finalization of budget	2,175,000
4	Refund on transport expenses	1,000,000
	Total	**6,665,000**

However, record on authorizations for payments were not provided for audit review and as a result, the propriety of the payments could not be confirmed.

In view of the anomalies observed in relation to payment for use of goods and services, the accuracy, validity and fair statement of the expenditure balance totaling Kshs 496,087,643 reflected in the statement of receipt and payments could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that included under use of goods and services in Note 7 to the financial statements is hospitality, supplies and services amounting to Kshs. 48,875,797. The payments in question were supported by the National Treasury Circulars in regard to Preparation and execution of the budget. The payment had all the necessary approvals pursuant to the National Treasury Circulars.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012.

1181. Acquisition of Assets

The Statement of receipts and payments reflects acquisition of assets totaling Kshs. 16,982,483,963 as further disclosed in Note 9 to the financial statements. However, the following anomalies were noted in respect of the balance:

1181.1. Rehabilitation of Civil Works

Note 9 to the financial Statement indicates that Kshs. 71,873,092 was spent on rehabilitations of civil works out of which Kshs. 28,125,000 was denoted as transfer to Ministry's energy centers located in various counties. However, the transfers were not supported with records on civil works undertaken at the Centers and as a result, it was not possible to confirm the occurrence and validity of the expenditure of civil works.

In addition, expenditure records indicated that daily subsistence totaling to Kshs. 10, 719,829 were paid to various officers. However, the payments were not supported with approved work plans, and further dates of the activities were not disclosed.

In the circumstances, the propriety and accuracy of the payments totaling Kshs. 71,873,092 in respect of rehabilitation of civil works as at 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

The statement of receipts and payments for the year ended 30 June 2021 reflects acquisition of assets of Kshs. 71,873,082. The expenditure in question relates to Authority to Incur Expenditure for the Energy Centers and were transferred to energy centers as per the approved budget. The Energy Centers further forwarded their returns via the National Treasury Vote book portal.

Further daily subsistence totaling to 10, 719,829 were paid to various officers as per the Ministerial performance contract and Work Plans.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee admonishes the Accounting Officer for failing to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012.

1181.2. Construction and Civil Works

Note 9 to the Financial statements further reflects expenditure totaling Kshs. 16,285,826,843 spent on construction and civil works. The balance includes payments totaling Kshs. 16,231,249,088 made by the Ministry on behalf of which relate to the Government agencies for projects executed by the agencies. Therefore, the amount is inappropriately accounted for as it should have been included in transfers totaling Kshs 32,003,846,607 reported in the Statements of Receipts and Payments and Note 8 to the Financial Statements as having been made by the Ministry to other Government Agencies in the year under review. Further, the balance includes daily subsistence allowances payments totaling to Kshs. 2,434,000 made to various officers. Management did not provide record or explain why the payments for operational expenses were included in the construction and Civil works account.

In the circumstances, the accuracy, completeness and fair statement of Construction and civil works balance totaling Kshs. 16,301,132,250 as at 30 June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statements of receipts and payments and note 9 to the financial statements reflects an amount of Kshs. 16,285,826,843 in respect of construction and civil works. The Kshs. 16,231,249,088 are donor funds from Official Aid Funded Projects to support various projects in the wider energy sector and not transfers to other Government Agencies. The monies are expended by recognizing commitment for withdrawal applications from the Agencies and onward transmission to National Treasury for payments. In this case the approved work plans are for the implementing Agencies and not the Ministry of Energy. A Treasury Circular No 15/2019 was availed for perusal by the Committee detailing requirements for any payment to Contractors on the Official Aid Funded Projects**.**

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Construction and Civil Works was now Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1181.3. Research, Studies, Project Preparation

Note 9 to the financial statements further reflects research, studies, Project preparation, design and supervision expenditures totaling Kshs. 583,493,000. However examination of the respective records revealed the following anomalies;

i. Imprest payments totaling Kshs.83,130,458 were made to 250 officers at the close of the Financial year under review in June 2021. Out of this balance Kshs.47,604,700 was paid to 130 officers between 22 and 30 June 2021. However, the imprest were not supported with approved work plans and were not accounted for by the officers. They were instead expensed without records on the respective activities they were spent on.

ii. Expenditure records indicated that AIEs totaling Kshs. 9,087,500 were issued to sixteen (16) Energy Centers and Kshs.4,844,000 paid out as daily subsistence allowances to officers on working visits to the centres. However, for both expenditure, no record was provided to support or explain the spending.

iii. A sum of Kshs. 5,000,000 was paid a fuel supplier against a Proforma invoice dated 29 June 2021 which implied that the fuel may not have been supplied and utilized by the end of the Financial year one day later on 30th June 2021. Further, the payment was not supported with detail orders, fuel register, works tickets and suppliers records showing use of the fuel. Therefore, the validity and propriety of the expenditure totaling Kshs.5,000,000 on fuel could not be confirmed.

iv. Daily subsistence allowances payments totaling Kshs.4,500,000 was paid to 30 officers undertaking their normal duties at their work stations. Further, the officers were not required to account for the funds which were instead directly expensed in the books of account.

In view of the foregoing, the propriety of research, Studies, Project preparation, design and supervision payment totaling Kshs. 583,493,000 reported in the year under review could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Note 9 to the financial statements reflects research, studies, preparation, design and supervision expenditures of Kshs.583,493,000.

i. The expenditure paid on 22 and 30 June 2021 has been fully accounted for and fully supported .

ii. An amount of Kshs. 9,087,500 issued to 16 Energy Centers in form of Authority to Incur expenditure.

iii. An amount of Kshs.5,000,000 was paid to M/s Total(K) Ltd for the fuel consumption in the month of June 202. The fuel statement was availed for perusal by the Committee

iv. Payments made to officers were fully approved and supported by the work plans Performance Contracts and relevant circulars

Committee Recommendation
The Committee observed that the explanation given by the Accounting Officer with regards to Research, Studies, Project Preparation was Satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1181.4. Irregular payment of Allowances

Note 9 to the financial statements reflects expenditure on refurbishment of buildings totaling to Kshs 8,226,574. Included in the balance are facilitation allowance payments totaling to Kshs 3,494,028 paid to various officers. However, payments were not supported with approved work plans and records on travel activities undertaken by the officers. In addition, contrary to Regulation 93(5) of Public Finance Management Regulations, 2015, there were no records showing how the officers accounted for the imprests. As a result, the propriety of the payments totaling to Kshs 3,494,028, could not be confirmed.

In view of these issues, the accuracy and validity of the acquisition of assets balance totaling to Kshs.16, 982,482,963 reflected in the Statements of receipts and payments could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that payments made to officers were fully approved and supported. Further, Imprest register was submitted to show that the payments were fully accounted for.

Committee Observations and Findings

i. **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.**
ii. **The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.**

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012.

1182. Bank Balances

The Statement of Assets and Liabilities reflects bank balance totaling Kshs.424, 965,555 as further disclosed in Note 10A to financial statements. Examination of bank reconciliation statement for the month of June, 2021 for the Development and Recurrent bank account disclosed unpresented cheques totaling Kshs 4,681,006,617 and Kshs. 29,461,825 respectively.

The cheques included imprests payments to various officers totaling to Kshs.23,025,394 under recurrent account and Kshs.12,210,998 under the Development account for the activities scheduled for the following (2021/22) financial year. However, the imprests were expensed upon payment. As a result, the payments totaling Kshs 35,236,39, and fair statement of bank balance totaling Kshs 424,965,555 reflected in the Statement of Assets and Liabilities as at 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that all the Imprest in question relates to activities for the Financial year 2020/2021. The Imprest were duly surrendered as indicated in the IFMIS Imprest Register. There were no receivables since the accounts were presented using the IPSAS Cash basis of Accounting. Further, the National Treasury extended closure period to accommodate late approval of Supplementary budget and late disbursements of Exchequers to avoid unnecessary pending bills.

Committee observations and findings

The Committee was satisfied by the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter is resolved.

1183. Accounts Payables – Long Outstanding Retentions Monies

The Statements of Assets and Liabilities reflects accounts payables totaling Kshs. 183,247,173 as at 30th June 2021 as further disclosed in Note 11 to the financial statements. The balance of retentions monies totaling to Kshs.112,753,222 payable to various vendors and contractors. Annex 5 of the Financial Statements indicates that Kshs 89,160,030 of these retentions have been outstanding for more than three years as at 30 June 2021.

Further, retention monies and deposit totaling to Kshs.70,493,951.25 included in the Kshs 112, 753,222 balance and attributed to the Principal Secretary to the Ministry were not supported with sufficient record and as a result, their nature and origin could not be confirmed.

In view of these issues, the accuracy and the validity of the accounts payable balance totaling to Kshs 183, 247,173 reflected in the statement of assets and liabilities as at 30th June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the accounts payables- deposit and retentions of Kshs 183,247,173 revealed that retention amounting to Kshs 89,160,030 have not been paid for long period in some cases for even longer than 3 years. This deposit relates to retentions from contractors which are refundable upon successful completion of the contract and issuance of final certificate. The Ministry issues original Miscellaneous receipts which forms the basis of the claim together with other supporting documentation as required. The Ministry has requested all the relevant technical departments to Fastrack the refund process.

Further, a schedule explaining the source of deposits amounting to Kshs. 70,493,951.25 had since been availed.

Committee observations and findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to ensure that proper books of accounts are kept in accordance to Section 68(2)(b) of the PFM Act,2012.

1184. Fixed Assets Register

Annex 1 – Summary of Fixed Assets reflects Fixed Assets with historical costs totaling Kshs 285,647,117,842 which includes land costed at Kshs 8,226,575. As reported in previous years and as disclosed in Annex I – State Department did not have title deeds the following eight (8) plots of land, measuring a total of 21.42 hectares in aggregated and estimated by the Ministry to have an aggregated Market value Kshs.180,700,000 as at 30th June 2021:

No.	Land Parcel	Size (Hectares)	Location (County)	Approximate Value (Kshs)	Condition
1.	Kericho Energy Centre	0.8	Kericho	15,000,000	Developed and fenced
2.	Kisii Energy Centre	1	Kisii	12,000,000	Developed and fenced
3.	Migori Energy Centre	0.4	Migori	2,200,000	Developed and fenced
4.	Bukura Energy Centre	2	Kakamega	3,500,000	Developed and fenced
5.	Uasin Gishu Energy Centre	0.8	Uasin Gishu	12,000,000	Developed and fenced
6.	Kitui Energy Centre	10.4	Kitui	53,000,000	Developed and fenced
7.	Wambugu Energy Centre	4	Nyeri	80,000,000	Developed and fenced
8.	Mitunguu Energy Centre	2.02	Meru	3,000,000	Developed and fenced
	Total	**21.42**		**180,700,000**	

Information provided by the management indicated that the process of acquiring title deeds for some plots have been underway for several years.

In the absence of title documents, it was not possible to confirm ownership of the lands by the Ministry and the accuracy and completeness of the Ministry's Fixed Asset balance totaling to Kshs 268,664,633,879 as at 30th June, 2021 reflected in Annex 1 of financial statements.

Submission by the Accounting Officer

The Accounting Officer admitted that the State Department for Energy does not have title deeds for eight (8) parcels of land it occupies totaling 21.42 hectares valued at approximately Kshs.180, 700,000.

The Accounting Officer further admitted that the process of acquiring titles for some of the land parcels has been underway.

The Ministry confirms that the measures taken in pursuit of acquiring title deeds has continued to yield positive results as detailed in the availed comprehensive report.

The highlights of the report include the following:

1. An allotment letter has been issued for Kitui Energy Centre by the National Land Commission vide their letter to the Cabinet Secretary for Energy Ref. No. 310147/112 of 19th November 2019. The requisite fees have been paid and the Ministry has requested Ministry of Lands and Physical Planning to expedite the process (Letter to MOLPP Ref. MOE/1/17/3 dated 4 February 2020.
2. For Kericho Energy Centre, the Ministry of Lands and Physical Planning submitted quotations for carrying out cadastral survey of the energy Centre vide their letter Ref. KER/64/QT/VOL. 1/55 dated 21 June 2019. The survey exercise is targeted to be completed during the third quarter of the current Financial Year.
3. For Uasin Gishu Energy Centre, the Ministry in addition to the visit to the County Authorities wrote to Ministry of Lands and Physical Planning to resurvey the land to facilitate issuance of tile deed (See letter Ref. No. MOE/1/17/3 dated 4 February 2020.
4. Through the support of surveyors from the Ministry of Lands, survey maps were prepared for all of the Energy Centers following the fact-finding mission carried out in July 2019 by the inter-ministerial Committee. The fact-finding report provides detailed land titling status of every Energy Centre
5. The Ministry further tasked the respective Energy Centers to continuously follow the land title deeds and submit regular progress reports. Towards this end, a meeting was held between the Energy Centre Managers and the Headquarter Officers of Renewable Energy Directorates in October 2019. The meeting among other things received reports from the Centre Managers on the title deeds and discussed further actions;

The details of the progress made in pursuit of the Energy Centers title deeds are contained in the comprehensive report now availed. Moreover, the Rural Electrification and Renewable Energy Corporation, whose expanded mandate as per Energy Act 2019 will include the Energy Centre functions, have in the meantime been incorporated in the inter-ministerial committee dealing with the acquisition of title deeds for the Energy Centers. Two officers have been nominated into the said committee as per their letter Ref. No. REREC/CEO/M/1 dated 17 February 2020.

The above information was included as a foot note as a disclosure in our financial statement.

Further, Section 12 (2) (g) of PFM Act states that the National Treasury shall "be the custodian of all inventory of national government assets except as may be provided by other legislation or the Constitution. To affirm this position, the National Treasury in consultation with the Public Sector Accounting Standard Board (PSASB) issued a circular on the preparation of Assets and Liabilities Registers in the Public Sector. This will assist in consolidation of all the National Assets by the National Treasury who are the custodian of all assets in Government. Land is one of the Key assets as classified in the templates and guidelines which is under the purview of the National Treasury.

Committee observations and findings

The Committee observed that the process on titling was ongoing.

Committee Recommendation

The Accounting Officer is directed to expedite the process of acquiring the title deeds in collaboration with the National Land Commission (NLC), and submit a status report to the Committee within three (3) months of adoption of this report.

Other Matter

1185. Budgetary Performance and Control

The summary Statement of Appropriation - Recurrent and Development Combined, indicates that the Ministry revenue budget for the year under review amounted to Kshs. 79,164,432,735 but actual receipts were Kshs. 50,040,924,077 resulting to a revenue shortfall of Kshs. 29,123,508,658 or 37% of the budget. Additionally, the Ministry budgeted Expenditure amounted to Kshs. 79,164,432,735 but actual spending amounted to Kshs. 49,877,987,166 or 63% of the budget resulting to an under-expenditure of Kshs. 29,286,445,569. Further, a review of the Programme and Sub-programme implemented by the Ministry indicated under expenditure on various Sub-Programmes as highlighted in the following table:

Programme/Sub-programme	Final Budget	Actual on comparable basis	Budget utilization difference	% of Utilization
General Administration Planning and Support Services				
Administrative Services	265,941,789	224,173,519	41,768,270	84%
Planning and Project Monitoring	29,796,447	29,434,387	362,060	99%
Financial Services	244,585,160	230,019,664	14,565,496	94%
Power Generation				
Geothermal generation	14,643,030,351	9,565,310,933	5,077,719,418	65%
Development of Nuclear Energy	813,557,756	813,557,756	-	100%
Coal Exploration and Mining	399,000,000	341,246,040	57,753,960	86%
Power Transmission and Distribution				
National Grid System	51,377,625,049	31,754,265,483	19,623,359,566	62%
Rural Electrification	9,411,457,171	5,917,899,906	3,493,557,265	63%
Alternative Energy Technologies				
Alternative Energy Technologies	1,979,439,012	984,080,620	995,358,392	50%

In view of the above, the under expenditure, programme outputs planned for the year may not have been attained.

Submission by the Accounting Officer

The Accounting Officer admitted that during the year under review the Ministry budgeted to receive Kshs. 79,164,432,735 but received Kshs. 50,040,924,077 funding resulting to under receipt of Kshs. 29,123,508,658 or 37%.

The Accounting Officer further admitted that the Ministry projected to spend Kshs. 79,164,432,735 on various budget lines but incurred an expenditure amounting to Kshs.49,877,987,166 or 63% resulting to an overall under absorption of Kshs.29,286,445,569.

The reason for the under receipt of Kshs. 29,123,508,658 or 37% was as a result of reduced activities caused by the effects of Covid 19 pandemic. The Ministry was not able to realize all the budgeted AIA's both local and donor.

The same also affected implementation of activities in the Ministry. The implementation of the work plan lagged behind resulting into under absorption of the approved budget.

Further the late approval of supplementary budget 2 for FY 2020/21 affected also the implementation of the activities in the work plan.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1186. Late Exchequer Releases from National Treasury

Audit review on the exchequer releases received by the Ministry indicated that Development vote Funds totaling to Kshs. 4,446,857,887 were received on 2 July, and 3 July 2021 after the end of Financial year on 30th June, 2020.

Consequently, the delayed Exchequer releases may have hindered timely implementation of the Ministry's programmes.

Submission by the Accounting Officer

The Accounting Officer admitted that the Ministry received development Funds amounting to Kshs. 4,446,857,887 after the year end. The Ministry had requisitioned for exchequer before 30th June 2021. The requisition letter was availed for perusal by the Committee. The National Treasury Releases Funds based on the liquidity position in the consolidated fund and Government priorities

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1187. Unexplained use of Petroleum Development Funds

Revenue records indicated that Kshs. 500,000,000 was received by the Ministry from the Petroleum Development Fund for the year under review. The purpose of the transfer of the Funds to the Ministry, including the activities the funds were to be spent on, was not adequately explained. Section 4(4) of the Petroleum Development Fund Act 1991 requires that such funds only be spent

on development of common facilities for distribution or testing of oil products and matters relating to the development of the oil industry.
The records further indicated that Kshs. 35,000,000 of the Kshs. 500,000,000 receipts was transferred to Kenya Association of Manufacturers (KAM) which is not a public entity. However, the framework or contract for disbursement of the funds to KAM was not provided for audit review.
In view of these anomalies, it was not possible to confirm whether the funds totaling Kshs 500,000,000 were spent in compliance with requirements of the Petroleum Development Fund.

Submission by the Accounting Officer
The Accounting Officer admitted that an amount of Kshs.35,000,000 was received from the Petroleum Development Fund and subsequently transferred to the Kenya Association of Manufacturers (KAM). Section 4(5) of the Petroleum Development Fund Act, 2012 states that the expenditure from the Fund shall be on the basis and limited to the Annual budget which shall be submitted to the Treasury for approval before the beginning of the Financial year to which the budget relates. The transfers in questions was budgeted for and approved by the National Assembly as guided by the National Treasury in the Financial year 2020/2021.
This fund is utilised in Energy Efficiency Programme Audits and fully approved for that purpose.

Committee observations and findings

(i) 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.
(ii) The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to ensure that proper books of accounts are kept in accordance to Section 68(2)(b) of the PFM Act,2012.

1188. Overstaffing
Audit review of staffing records indicated that there were 75 Officers above the numbers prescribed in the authorized staff establishment. Five out of the officers held posts that were not provided for in the establishment. Management explained the over-staffing as having arisen from promotions made by the Public Service Commission in the entire civil service for the purpose of managing succession of staff expected to retire from the service
In the absence of an updated approved staff establishment, the Ministry may be over-staffed and may be incurring unnecessary employee costs.

Submission by the Accounting Officer
The Accounting Officer submitted that the over-establishment of positions is as a result of succession management promotions undertaken by the Public Service Commission to address succession gaps in the entire civil service. Officers in different cadres were promoted under succession management and staff redistribution to ministries by the respective administrators of schemes also brought in new officers on posting. The staffing levels will be rationalized when the promotions under succession Management programme is finalized by PSC**.**

Committee Observations

The Committee observed that the explanation given by the Accounting Officer with regards to Overstaffing was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1189. Lack of Risk Management Policy Framework

Regulation 165(1) of the Public Finance Management Regulations, 2015, requires each National Government entity to develop risk management strategies which should include fraud prevention mechanisms, a disaster recovery plan and a system of risk management and internal control that builds robust operations. However, as similarly noted in the previous year, the Ministry did not have a risk management policy framework in the year under review.

In absence of an approved risk management framework, management's ability to identify, measures and mitigate operational and other risk faced by the Ministry may have been constrained.

Submission by the Accounting Officer

The Accounting Officer admitted that the Ministry has not effectively developed a risk management policy Framework to assist the Ministry evaluate a systematic risk and internal control that builds robust operations within the Ministry. The Principal Secretary has constituted a Risk Management Committee composed of all heads of departments in the ministry chaired by the Secretary Administration. The team has been tasked to develop a risk management policy, risk management framework and risk management register that will be updated periodically. The committee is set to commence its tasks in the financial year 2021/2022 having been affected by Covid-19 pandemic in the financial year ended 2020/2021.

Committee Observations and Findings

The Committee observed that the formulation of risk management frame work and risk management register was ongoing.

Committee Recommendation

The Accounting Officer to submit a report to the Committee on the status of formulation of risk management frame work and risk management register within three (3) months of the adoption of this report.

1190. Lack of Fixed Assets Register

The summary of fixed assets register at Annex 1, indicates the Ministry had fixed assets with a total historical cost of Kshs. 285,647,117,842 as at 30 June, 2021. However, contrary to the requirement of Circular 1 No. 5/2020 of 25 February, 2020 issued by the National Treasury the assets register provided for audit did not include an analysis of the various categories of assets included in the balance. In addition, not all Land and building owned by the Ministry were disclosed in the register. In particular, the register did not reflect assets located at the various Energy Centers established by the Ministry. Further, assets records indicated that the Ministry disposed of eight (8) Motor Vehicles in the year under review but no adjustments were made in the register to recognize the sales.

In the absence of an accurate and comprehensive register of assets, control on fixed assets records were inadequate. In addition, the accuracy, completeness of fixed assets balance totaling Kshs 285, 647,117,842 and safe custody of the respective ssets, could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that Ministry prepared its Fixed Asset Register for the period ending 30th June, 2021 and the same forwarded to the National Treasury on 14th July, 2021 vide letter ref. MOE/PROC/GEN/2021-2022.

a) Non-categorization of the Fixed Assets
The Accounting Officer admitted that the Fixed Assets were not categorized as required under the reporting framework.
The fixed assets though not listed as per the respective reporting categories, had all been captured except a few items in the nature of land and buildings. All the captured assets had however been listed with all the relevant available information including the description, location, relevant unique identification, quantity, year of purchase, the historical purchase cost and their condition.
The ministry is now in the process of rearranging the fixed assets to align them to the required reporting categories as required under the referenced circular and the required reporting framework.

b) Incompleteness of the Fixed Assets Register (FAR)
The Accounting Officer admitted that all the critical assets of land and buildings were not comprehensively included in the Fixed Asset Register. The major assets of land and building though, which is KAWI complex was properly captured in the Fixed Asset Register. The other critical asset in the Ministry in the nature of land and building include the energy centres which are spread across the country and will be included in the Fixed Asset Register once properly valued.

c) Inclusion of disposed vehicles in the Register
The Accounting Officer admitted that the Fixed Asset Register as prepared for the period 2020/2021 financial year included eight (8) vehicles that had been disposed of during the course of the financial Year. This was inadvertent and has since been corrected.

Committee Observations and Findings
The Committee observed that the list register was availed though not in the correct format;

Committee Recommendation
The Accounting Officer to avail a fixed asset register in the correct format set according to the Public Audit Act, 2015, within three (3) months of adoption of this report by the House.

DONOR FUNDED PROJECTS

KENYA ELECTRICITY MODERNIZATION PROJECT – (IDA CR. NO. 5587 –KE) REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1191. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1192. Budgetary control and performance

The statement of comparative budget and actual amounts reflects budgeted receipts of Kshs. 179,000,000 and actual receipts of Kshs. 14,068,258 resulting to under receipt of Kshs. 164,931,742 or 92%. Similarly, the Project budgeted Kshs. 154,000,000 under purchase of goods and services but incurred Kshs. 20,848,467 or utilization of only 13.5% Management has attributed the underutilization to the long procurement process on various consultancies – hence the low absorption.

Consequently, 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

The Accounting Officer admitted that there was an underutilization of the budget. This was occasioned by long procurement processes on various consultancies and the complex World Bank procurement procedures. Measures have been put in place to ensure that the absorption is accelerated.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for conclusion

1193. Acquisition of Non-Financial Assets

The statements of receipts and payments reflects acquisition of non-financial assets of Kshs. 6,047,694 Out of this balance, an amount of Kshs. 5,878,154 was paid to consultant as an advance payment in respect of contract for design, supply, installation, testing and commissioning of SCADA Software. According to the financial records, the project entered into a consultancy services contract with the consultant on 31 March 2020 at a contract sum of USD 354,095 (approx. Kshs. 35,409,500). The duration of the contract was estimated to be six (6) weeks from the date of signing of the contract. However, it was noted that the implementation of the project had delayed for over 18 months. The management has explained the delay attributable to the lockdown of the country at the onset of covid 19 pandemic.

Further, according to the contract agreement, the contract required security in form of a bank guarantee security for any advance payment in this case an advance of Kshs. 5,878,154 paid being 15% of the contract. However, the bank guarantee expired on 30 April, 2021 and has not been renewed as at the time of the audit.
The Management has, however, explained that the consultant who had delivered 80% of the contract has requested for extension of contract, which is still in the process of being reviewed.
Consequently, the expiry of the bank guarantee may expose the project to loss in the event that the contract obligations are not met and the Project may not have received value for money in respect of the procurement.

Submission by the Accounting Officer
The Accounting Officer admitted that the bank guarantee security expired and the consultant requested for extension of time. This request is being reviewed by the project and a response to the consultant will be done in view of an extension to the bank guarantee which has been extended. However, the consultant has delivered 80% of the contract as per the enclosed documents with regard to delivery of equipment. In addition, training on the use of the equipment's has been conducted.

Committee observations and findings
The Committee observed that the project had taken inordinately long, initially envisioned for 6 weeks, but was still outstanding.

Committee Recommendation
The Accounting Officer ensures that the project is completed and avails a status report to the Committee within three (3) months of adoption of this report.

1194. Project Performance Information
Analysis of the budget performance against the actual amount for the year under review indicated that the annual budget was Kshs. 179,000,000 against actual receipts of Kshs. 14,068,258 and actual payments totaling Kshs. 26,896,161. Further, the project timelines were projected as seven years three months with a gross budget of Kshs. 456,000,000. As at 30 June, 2021, project implementation had been on for five years and nine months representing 79.3% of the time while the payments were at Kshs. 291,398,737 representing 63.9% of the budget. This clearly shows the project is behind schedule and may, therefore, not attain the targeted achievement at the expiry date of the project. In addition, no information on achievement against approved work plan were provided for audit review.
The management has, once more attributed project under-performance to the complexity of World Bank procurement process and the numerous consultations between the project Management and the World Bank.

Submission by the Accounting Officer
The Accounting Officer admitted that the project is behind schedule which is attributed to long procurement processes which requires numerous consultations between the Project and the World Bank. Most of the activities have been completed as per the availed work plan**.**

Committee observations and findings

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1195. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA OFF-GRID SOLAR ACCESS PROJECT FOR UNDERSERVED COUNTIES (IDA CR. NO. 6135 KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1196. There were no material issues noted during the audit of the financial statements of the Project

Other Matter

1197. Budgetary Control and Performance

The statement of comparative budget and actual amounts in the financial statements reflects receipts budget and actual amounts on comparable basis of Kshs.1,200,000,000 and Kshs.393,973,313 respectively resulting to a deficit of Kshs.806,026,687 or 67% of the budget. Similarly, the Project spent an amount of Kshs.400,751,930 against the approved budget of Kshs.1,200,000,000 resulting to an under-absorption of Kshs.799,248,070 or 67% below the approved budget.

Submission by the Accounting Officer

Management attributed the under absorption to long approval process of procurable items and low implementation by the key facility managers of standalone solar systems and clean cooking solutions for households under component 2 hence the project was not able to charge the reimbursable costs to them.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer was unsatisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for poor project implementation and recommends that a status update be availed to the Committee within three (3) months of adoption of this report.

1198. Project Implementation Status

According to the Project's monitoring and evaluation progress report together with the annual work plan, the project is behind schedule considering that the expected completion date was agreed to be 30 June, 2023 and significant work still remains to be done. According to the Management, the delay is attributable to low implementation of other components i.e components 1, 2 and 3 which are to be implemented by Kenya Power and Lighting Company PLC, Rural Electrification and Renewable Energy Corporation and key facility managers. This in turn affects the overall performance of the project. Consequently, the Project may not be completed as planned. This will, no doubt, result in delayed service delivery to the public and possible cost overruns.

Submission by the Accounting Officer

The Accounting Officer submitted that the project was allocated a total of Kshs. 15 billion of which it has drawn a total of over Kshs. 2.8 billion. The project was to end on 30th June 2023. The delays were caused by the long process in the land acquisition and covid-19 Pandemic. However, discussions between the Ministry and the World Bank were underway in restructuring the project.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Project implementation status was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1199. There were no material issues relating to lawfulness and effectiveness in use of public money.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1200. There were no material issues relating to effectiveness of internal controls, risk management and governance.

KENYA OFF-GRID SOLAR ACCESS PROJECT FOR UNDERSERVED COUNTIES (IDA CR. NO. 6135 KE) – MINISTRY OF ENERGY AND SNV NETHERLANDS DEVELOPMENT ORGANIZATION

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1201. Interest Income

The statement of receipts and payment under Note 2 indicates interest income amounting to Kshs.43,581,597. Included in the interest income is an amount of Kshs.41,455,627 received from

Kenya Commercial Bank (KCB), which differs from the interest computation schedule for the period amounting to Kshs.70,003,231. This amount varies from Kshs.41,455,627 actually received and reported in the financial statements resulting to under remittance of Kshs.28,548,015. The Management stated that they were in the process of engaging KCB to credit the remaining balance. Further, information provided for audit review indicates that the project's bank account was opened at KCB Bank on 2 September, 2019 and an amount of Kshs.2,223,466,000 deposited into the account on 11 March, 2020. However, the interest recognition as reflected in the financial statements started in March, 2021. This implies that the Project did not receive any interest income for the period March, 2020 to February, 2021 though the funds had already been received from the financier. The Management has not explained why the project did not receive any interest during the period. Consequently, the accuracy and completeness of the interest income received of Kshs.43,581,597 in the statement of receipts and payments for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting officer confirmed that the interest income was partially deposited. KOSAP bank account was opened on 2nd September 2019, and the account was credited on 10th March 2020 with Kshs. 2,223,466,000 as per the bank statement and not on 2nd Sept 2019 as indicated in the query above. Subsequently, the account was set up to earn interest from 10th March 2020 when the funds were credited by Ministry of Energy. However, Kenya Commercial Bank (KCB) credited the account with back dated interest in March 2021. Letters sent to Kenya Commercial Bank to follow-up on crediting of the interest, which was delayed and communicated by the KOSAP Facilities Manager have been availed.

The interest earned in the periods from 10th March 2020 to 30th June 2021 have been captured in the bank confirmation dated 16th October 2020 on accrued interest as at 30th June 2020, and the statement of interest calculation. Communication with Kenya Commercial Bank on the interest rates and the payments made to complete the interest crediting has been availed.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Interest Income was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1202. Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services amounting to Kshs.17,401,773. Out of the balance, an amount of Kshs.11,170 230 is in respect of specialized materials and services. However, review of the details of the payments indicates that the expenditure was in respect of marketing services, training and accommodation expenses which are not specialized materials and services. Further, payments were not supported by an approved workplan and their relevant documentation to show that the activities were in line with project objectives.

Consequently, the accuracy, completeness, and propriety of the expenditure of Kshs.11,170,230 in respect of specialized materials and services for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer confirmed that the classification of the expenditure was made under Purchase of Goods and Services and the re-classification of the cited costs to specialized materials and services was in line with Public Sector Accounting Standards Board reporting (PSASB) Requirements.

The payments were reviewed to ensure (i) conformity with Recipient Contract and budgets; (ii) conformity with work plans submitted to the Facilities Manager in line with the Contract, and (iii) Supporting documentation. Samples of workplans submitted by Recipients for Clean Cooking Stove (CCS) and Solar Service Provider (SSP) were availed for perusal by the Committee.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands that the Accounting Officer for failing to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012.

1203. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects accumulated total payments amounting to Kshs.17,401,777 while the statement of budget and actual amounts indicates total payments of Kshs.97,400,367 resulting in a variance of Kshs.79,998,590. Further, statement of application of funds indicates unutilized balance of Kshs.2,132,283,976 while the statement of receipts and payments indicates fund balance of Kshs.2,249,645,824 resulting in a variance of Kshs.111,361,848.

Consequently, the accuracy and completeness of the financial statements as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

Part 1: The variance of Kshs. 79,998,590 between the payments as per the statement of receipts and payments and as per the statement of budget and actual amounts had now been explained.

Part 2: The difference between the statement of application of funds Kshs. 2,132,283,976 and the statement of receipts and payments balance of Kshs. 2,249,645,824 is Kshs. 117,361,848 and not Kshs. 111,361,848 as indicated in the query. The difference of Kshs. 117,361,848 has been explained in the table below.

Table explaining difference between statement of receipt balance and application of funds balance.

Statement of payments and receipts		2,249,645,824
Unutilised balance under application of funds		2,132,284,476
Variance		117,361,348
Explanation of variance		
Payments as per statement of receipt		- 17,401,773.00
Advance disbursement to Recipients		
SSP RBF Facility	40,037,911.00	
CCS RBF Facility	31,898,601.00	
Debt Facility	19,245,512.00	91,182,024.00
Interest generated in the account		
Bank interest	41,455,627	
Debt Interest	2,125,970	43,581,597
		- 117,361,848
Data entry error		**-500.00**

The error above is a data entry error in the advance disbursement to recipients in statement of receipts and payments indicated as 91,181,524 instead of 91,182,024.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that the Accounting Officer failed 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.

Committee Recommendation

The Committee reprimands the Accounting Officer.

Other Matters

1204. Budgetary Performance and Control

The statement of comparative budget and actual amounts reflects receipts budget of Kshs. 4,743,581,597 and actual receipts amounting to Kshs.2,267,047,597 respectively resulting in a shortfall of Kshs.2,476,534,000 or 52%. Similarly, the Project spent an amount of Kshs.97,400,367 against the approved budget of Kshs.4,706,218,343 resulting to an under absorption of Kshs.4,608,817976 or 98% of the approved budget.

The under absorption of the funds received clearly indicates that the bulk of planned activities were not implemented.

Further, according to the Project's monitoring and evaluation progress report, the Project is behind schedule considering that the expected completion date is 30 June 2023 and significant work remains to be done as shown below;

Key Performance Indicator	July 2020- June 2021 Cumulative Status
a) Solar Service Providers Results Based Financing (SSP RBF) Facility	
250,000 solar home systems sold	63,322 units sold pending verification by the IVA

Key Performance Indicator	July 2020- June 2021 Cumulative Status
Kshs 1.2 Billion to be disbursed out for Result-based Financing	Kshs 40,037,911 has been disbursed as part of ex-ante drawdown pending verification of IVA
1.1 million people receive electricity from off-grid solar	316,610 people received electricity from off-grid solar subject to verification by IVA assuming 5 people per Household.
b) Clean Cooking Solution Results Based Financing (CCS RBF) Facility	
150,000 of higher tier stoves sold	3,809 units have been sold
Kshs 0.5 Billion to be disbursed out for CCS RBF Facility	10 Recipients are under agreement with Ministry of Energy with Kshs 31.9 M having been disbursed to them. However, the expected ex-post disbursement, currently stand at KSHS 6.1 M pending IVA verification.
c) Solar Service Providers Debt (SSP Debt) Facility	
Kshs 3.0 Billion working capital for the participating Solar Service Providers which was identified as a key gap during the design of KOSAP in 2015	The debt facility has managed to make one transaction despite diligent efforts.

Consequently, the Project may not be completed within the stipulated timelines and this may result in delayed service delivery to the public and possible cost overruns

Submission by the Accounting Officer

The Accounting Officer admitted that the implementation is behind schedule, and this has been due to effect of the COVID-19 since the market forces drive the component where the purchasing power of the users was heavily affected by the restrictions of the COVID -19 imposed by the Ministry of Health. However, the Facilities Manager has engaged the recipient to enhance their strategies to ensure that there are increased sales.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1205. Unaccounted for Accounts Receivables

The statement of financial assets as at 30 June 2021 reflects accounts receivables of Kshs. 77,606, 105, being advance to suppliers of clean cooking solution, solar service providers and debt facility providers as disclosed in Note 5 to the financial statements These amounts were issued during the year and ought to have been repaid or accounted for during the year. The amount had however not been accounted for or repaid as at 30 June 2021.The Management did not explain why the funds remained unpaid or unaccounted for.

Under the circumstance, recoverability of the funds remained doubtful.

Submission by the Accounting Officer

The Accounting Officer submitted that these amounts are not unaccounted for as accounts receivables, but funds duly held by the Recipients for ongoing expenditure per their Contracts with MOE. In the RBF Facility design, advances to Recipients are not typical debtor-type receivables to be recovered, but ex-ante incentives advanced by the Project to the Recipients for them to expend as per the project design and the Facilities Implementation Manual. The Recipients are accounting for these funds as they implement in the field, and this will continue being the case until the end of the project.

The project management holds meetings every month, in addition to field visits, to review the progress of the Recipients in implementation of their work plans. The Recipients are required to report progress and their expenditures on a quarterly basis. Full accounting for the advanced funds is expected by the end of their contract term and not on an annual calendar basis.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Unaccounted for Account Receivable was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1206. Failure to Appoint an Independent Verification Agent (IVA)

The KOSAP Facility Implementation Manuals Clause 1.3.5, stipulates that the Facility Managers are to provide recommendations to the Ministry of Energy on contracting and outsourcing arrangements of a third-party Independent Verification Agent(s) (IVA), including a framework on verification of data points.

It was however noted that, the procurement and appointment of the Independent Verification Agent (IVA) for the Standalone Community System and the Home Systems had not been concluded at the time of the audit. According to the management, the evaluation of the technical and financial bids submitted for the above-mentioned assignment recommended that the contract be awarded to the lowest evaluated bidder. However, the lowest bidder and the quoted amount of USD 2.2 Million against the approved estimated budget of USO 0.7 Million as per the KOSAP Project Procurement strategy for Development (PPSD) was higher by 314% of the budgeted while the next most responsive bidder quoted approx. USD 3.33m

Although, the procurement proceedings should have been halted since there were no sufficient funds to meet the obligation as required by section 53(8) of the Public Procurement and Asset Disposal Act, 2015 and hence all bids were non responsive, the professional opinion on the combined evaluation report was issued on 15 January, 2021 recommending the award and the same submitted to the World Bank. The Management also requested for a No Objection from World Bank for procurement of the service at enhanced cost which was granted on 24 March 2021. However, as at the time of the audit, the Independent Verification Agent was yet to be contracted as the contract negotiation was still in process.

Consequently, the issuance of the professional opinion was in breach of Section 53(8) of the Public Procurement and Asset Disposal Act, 2015 while the continued absence of Independent Verification Agent in the Project implementation may lead to delayed independent verification of

Project deliverables, delays in financial disbursement to the Service providers and delayed achievement of overall Project objectives.

Submission by the Accounting Officer

The Accounting Officer admitted that the Independent verification agent (IVA) was not on boarded to the project as at 30 June 2021. However, the Independent Verification Agent has since been procured as provided for in Financing Agreement.

Committee Observation

The Committee observed that the Accounting Officer did not provide valid reasons for the delay.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to appoint an Independent Verification Agent in breach of Section 53(8) of the Public Procurement and Asset Disposal Act, 2015.

1207. Delay in Project Implementation

The financing agreement reflects the Project commencement date to be 23 November 2018 with a completion date of 30 June 2023.The Project has therefore been on for 31 months which is equivalent to 55.4% of the approved timeline. However, there was a utilization of only Kshs. 11,170,230 compared to the approved commitment of Kshs. 4,700,000,000 which is equivalent to 0.2% of the budget.

Further, the Management did not provide an approved work plan for audit review, and it was therefore not possible to ascertain the project performance against the plan.

The low utilization of Project funds clearly shows that the planned programmes and activities have not been implemented therefore making it very difficult to achieve Project's objectives.

Submission by the Accounting Officer

The Accounting Officer submitted that the actual committed funds amount to Kshs 540,032,584 as at June 2021 and Kshs 999,982,732 to date, out of the Kshs 2,223,466,000 in the account, as per the table below. The Kshs 91,182,024 cited, therefore, does not reflect the traction of the Facilities. The correct comparative per project design is the Kshs 999,982,732, which represents 45% potential utilization. Related implementation is ongoing in the 14 Counties.

The Kshs 91,182,024 comprises (i) Kshs 71,936,512 results-based financing (RBF) ex-ante incentives and Kshs19,245,512 loan under the debt facility. The project being a market-based initiative, is receiving performance reports from Recipients, against which incentives are to be paid.

In addition to the already paid Kshs 91,182,024, a total of Kshs 89,477,272 has accrued (payable), which will be paid after verification by an Independent Verification Agent (IVA). Utilization of accrued amounts will therefore significantly rise once the IVA has undertaken verification.

The funds received have been committed to projects as follows:

Facility	Provisional Demarcation	Committed Round 1	Committed Round 2	Committed Total
CCS RBF Funds	236,538,936	199,991,408		
SSP RBF Funds	567,693,447	290,041,176	459,950,148	749,991,324
Debt Funds	1,419,233,617	50,000,000		
Total	**2,223,466,000**	**540,032,584**	**459,950,148**	**999,982,732**
Under Implementation		24%	21%	45%

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Failure to Delay in Project Implementation was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1208. There were no material issues relating to effectiveness of internal controls, risk management and governance.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE MINISTRY OF ENERGY

BOGORIA SILALI GEOTHERMAL PROJECT (LOAN NO.2013.66.103) - GEOTHERMAL DEVELOPMENT COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1209. Cash and Cash Equivalents

The statement of financial assets for the year ended 30 June, 2021 reflects cash and cash equivalents of Kshs.870,796,000 comprising of bank balances for four accounts held at Kenya Commercial Bank, Cooperative Bank of Kenya and NCBA Bank. However, the balance of Kshs.322,045,000 in respect of the account held at Cooperative Bank as reflected in Note 10.9 to the financial statements differs with cash book balance of Kshs.60,948,99 resulting in a variance of Kshs.261,096,001. The difference between the two balances was not reconciled. Consequently, the accuracy of the cash and cash equivalents balance of Kshs.870,796,000 included in the statement of financial assets for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the assignment Agreement stipulates that all AIA (Steam Charge receipts) be channeled through the Co-operative bank account. Transfers/allocations are then made to the respective Projects accounts and Head office.

The cashbook balance of Ksh 60,948,999 is the net amount for all the projects as below:

Bogoria Silali	Kshs. 322, 044,453
Head Office/Suswa	Kshs. 546, 665,684……….(a)
Menengai Project	Kshs. (807,761,137)………(b)
Total	Kshs. 60,949,000

The difference of Kshs.261,096,001 is represented by the account balances for Head Office/Suswa and Menengai projects as indicated in (a) and (b) above.

Committee Observations and Findings

i. **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.**

ii. **The Committee further observed that the Accounting Officer failed 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.**

Committee Recommendation

The Committee reprimands the Accounting Officer.

Other Matter

1210. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects total budgeted expenditure of Kshs 2,079,000,000 against the actual expenditure of Kshs.1,069,898,000 resulting in an under-expenditure of Kshs.1,009,102,000 or 49% of the total budget. The under expenditure implies that planned activities during the year were not implemented thus affecting service delivery to citizens.

Submission by the Accounting Officer

The budget of Ksh 2,079,000,000 for the project comprised of funds from exchequer of Ksh 579,000,000 and Development partner funds of Ksh 1,500,000,000.

The exchequer funds of Ksh 579,000 were fully utilized while funds from development partners were not fully utilized. There was a delay in disbursement of KfW funds which were received on 20th April 2021 ultimately impacting on the utilization of funds as at year end due to elongated procurement processes while on the other hand the GRMF funds were not received in the year hence not utilized.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer regarding Budgetary Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1211. Commingling of Funds

Due to Failure to Observe PFM Regulations During the year under review, the Company operated a bank account opened and dedicated to the project. However, a number of payments relating to the Project were made outside the Project's bank account contrary to the Financing Agreement and Regulation 76(1) of the Public Finance Management (National Government Regulations, 2015 which requires a project account to be opened, maintained and operated in the name of the Project for which it is opened.

Submission by the Accounting Officer

The Accounting Officer submitted that the project is funded by the exchequer, Appropriation in Aid (A-I-A) and funds from Development partners.

The Company maintains separate bank accounts for the project in line with the financing agreements by the respective development partners. The accounts for KfW and GRMF are NCBA and Co-operative Bank _GRMF

The Assignment Agreement stipulates that all AIA (Steam Charge receipts) be received through the Co-operative Bank Account. Transfers/allocations are then made to the respective Projects accounts and Head office.

Exchequer and AIA funds for the project are received through the KCB account.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer was satistactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1212. Stalled Geothermal Development at Silali Prospective Site

The amended Loan Agreement between the German Development Bank (KfW) and the Kenya Government dated 26 August, 2020 for steam field development at Bogoria-Silali 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 showed 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 referenced GDC/MD/02/3a/GMM-jat 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 December, 2021. Lack of approval and authorization from the County Government of Turkana has occasioned delay in commencement of drilling activities at the Silali prospected site.

Submission by the Accounting Officer

The Accounting Officer submitted that the Company has continued to engage the County Government of Turkana with the help of the National Government and it is expected that preparatory works for drilling will commence before the end of the financial year.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

Within three (3) months of the adoption of this report, the Accounting Officer together with the County Government of Turkana should submit documents showing the status/commencement of the project.

1213. Failure to Prioritize Payments of Pending Bills

As disclosed in Note 11 to the financial statements, the Project had pending bills amounting to Kshs.184,801,000 as at 30 June, 2021. Examination of documents provided for audit revealed that bills amounting to Kshs.33,938,773 were brought forward from 2019/2020 financial year and ought to have been paid as a first charge in 2020/2021 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 showed that invoices for all the pending bills had been received by the Company by 30 June, 2021. No explanation has, therefore, been given for the failure to give priority to prior year pending bills.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills have since been settled except for Ksh 21,600,000 to M/s National Environmental Management Authority (NEMA). This is pending resolution of the dispute.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendations;

The Accounting Officer should within sixty (60) days of tabling and adoption of this report to submit documents and schedules to support pending bills due of Ksh.21,600,000 to National Environmental Management Authority (NEMA) to the Auditor General for verification.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1214. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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

Unmodified Opinion

1215. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

1216. Expiry of the Loan Agreement

As reported in the previous years, the loan agreement between the Republic of Kenya and African Development Bank expired in 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, 2021 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. Therefore, it has not been possible to confirm whether or when the project will be completed.

Submission by the Accounting Officer

The Accounting Officer submitted that the African Development Bank financing agreement expired and was cancelled/closed inDecember 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. KETRACOhas engaged The National Treasury through Ministry of Energy to seek alternative financing for completion of the project. This will allow for completion of the project hence realization of the investment in the project.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The National Treasury through Ministry of Energy to submit a report to the National Assembly on the status of the project and whether alternative sources of financing have been acquired for completion of the project within three (3) months of adoption of this report.

1217. 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 favour of the contractor for Euro 37,365,690 equivalent Kshs.4.5 billion. However, Management is of the opinion that the decision made by the arbitrator is 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. It is therefore 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. My opinion is not modified in respect of this matter. Other Matter

Submission by the Accounting Officer

The Accounting Officer submitted that 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 HighCourt 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.

Management has engaged The National Treasury through Ministry of Energy to finance completion of the project. This will allow for completion of the project hence realization of service delivery to the intended beneficiaries.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should report to the National Assembly on the current status of the project.

1218. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflect actual receipt of Kshs.18,750,000 against the budgeted amount of Kshs.500,000,000 resulting to a shortfall of Kshs.481,250,000 or 96% of the budget. Similarly, the statement reflects final payments budget of Kshs.500,000,000 against the actual expenditure of Kshs.76,469,760 resulting to under expenditure of Kshs.423,530,240 or 85% of the budget. The under expenditure affects the planned activities and may impact negatively on service delivery to the beneficiaries.

Submission by the Accounting Officer

The Accounting Officer submitted that the actual receipt of Kshs.18,750,000 relate to 4th quarter receipts from GOK for financial year 2019/2020 which were received in July 2020(FY 2020/2021). Howeverthe 4th quarter receipts from GOK amounting to KShs.500,000,000 for financial year 2020/2021 were received in July 2021 (FY 2021/2022) hence the shortfall does not ariseas the variance was as a result of timing difference. This is because the project accountsare prepared on cash basis.

The low absorption of funds was due to slow wayleaves compensation occasioned by insufficient documentation from certified landowners and the effect of project termination.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer was satistactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1219. Pending Bills - Goods and Services

As reported in the previous year, the project management contracted works and services amounting to Kshs.4,196,353,894 as disclosed in Annex 2A. The amount certified as payable totalled to Kshs.3,453,000,803 out of which Kshs.3,006,460,944 was paid during the year leaving a balance of Kshs.446,539,858 as pending bills. The unpaid bills are likely to attract interest and penalties and or litigation and related legal expenses which will lead to wasteful expenditure.

Submission by the Accounting Officer

The Accounting Officer submitted that out of the outstanding amount of KShs.446,539,858 at the end of 30th June 2021, KShs.416,993,484 has already been settled hence a balance of KShs.29,546,374. This outstanding amount of KShs.29,546,374 was due to AECOM, the consultants for the project whose contract expired in 2017. The invoice for the consultant has not been settled, due to the ongoing Case at the High court which is yet to be determined. The billwill be settled once the matter is finalized.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
Within one (1) month of the adoption of this report, The Accounting Officer to submit a report on the status on the outstanding amount of KShs.29,546,374 due to AECOM.

1220. 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.1,723,576,364 as disclosed in Annex 2B to the financial statements with an amount of Kshs.7,467,753 having been added in the year under review. Management paid Kshs.1,388,308,698 leaving an unpaid amount of Kshs.335,267,667. 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 land owners coupled with various court injunctions on disputed cases.

Submission by the Accounting Officer

The Accounting Officer submitted that the project was adequately funded in the FY 2020/2021 however the slow wayleaves compensation is occasioned by insufficient documentation from certified landowners for the grant easement registration in acquiring the right of way.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation

Within three (3) months after tabling and adoption of this report, the Accounting Officer should provide the documents for extra budget requisitions and correspondences between the state department and National treasury on the issue to the National Assembly.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1221. 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. Under the circumstances, there is potential loss in excess of Kshs.4.5b if the judgement is upheld at the next level and it is not possible to confirm that there is value for money obtained from the project.

Submission by the Accounting Officer

The Accounting Officer submitted that management has engaged The National Treasury through Ministry of Energy to finance completion of the project. This will allow for completion of the project hence realization of value for money from the project.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should report to the National Assembly on the current status of the project.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1222. 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 worksheet. Consequently, the manual interventions may result in errors in the financial statements.

Submission by the Accounting Officer

The Accounting Officer submitted that the company is currently using SAP for project and other financial reports, however it is noted that SAP requires additional installation of Business Intelligence reporting module to facilitate automation of project financial reporting.

Based on the above the Company has commenced the process of recruiting a Business development consultant/Personnel to develop customed reports for project financial reporting.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
The Accounting Officer to ensure that all reporting processes are automated and submits a report to the Committee within three (3) months of the adoption of this report.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1223. As required by the African Development Fund, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements are in agreement with the accounting records and returns.

MULTINATIONAL KENYA-TANZANIA POWER INTERCONNECTION PROJECT (KENYAN COMPONENT) (ADF LOAN NO.2100150032846) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1224. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1225. Long Outstanding Wayleave Compensation
As reported in the previous year, the total compensation payments owed to landowners for wayleaves acquired since inception of the Project on 5 December, 2012 amounted to Kshs.1,363,055,825 as disclosed in Annex C of the financial statements. The amount certified and payable amounted to Kshs.734,992,812 and the payments made were Kshs.500,507,996 leaving a balance of Kshs.234,484,816 unpaid as at 30 June, 2021. It was observed that continued delay in wayleave compensation hindered the timely implementation of the Project. 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. Since the implementation of the Project is behind schedule, any further delay in resolving these issues is likely to delay its completion and may lead to cost escalation.

Submission by the Accounting Officer
The Accounting Officer submitted that the unpaid balances have been occasioned by insufficient budgetary allocations in previous years as well absentee landlords, succession matters and long negotiations withthe landowners. Management continues to monitor any changes in the above-mentionedfactors and will process payment upon resolution of the issues listed above.

In the year under review. Covid-19 disruptions also affected the wayleaves acquisition process especially in the last quarter due to travel restrictions and slowed operations in numerous county land offices.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
Within three (3) months after tabling and adoption of this report, the Accounting Officer to liaise with National Treasury and set aside enough funds to fully compensate the certified land owners.

1226. Delay in Project Implementation
The Project started on 14 February, 2017 with an expected completion time of April, 2020. As at 30 June, 2021, the Project was at 86% 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 Accounting Officer submitted that the project delay was as a result of insufficient budget allocation from the National Treasury to cater for wayleave compensation of the project affected persons. This contributed to challenges in acquiring the right of way for the contractor to work. Management has requested additional funding in the supplementary budget and 2023/2024 proposed budget to finance wayleave and contractual works to complete theproject in August 2023.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
The Accounting Officer to submit a report to the Committee on the status of the project within three months of adoption of this report.

1227. 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 3A of the financial statements. The amount certified as payable totalled Kshs.2,561,907,217 out of which payments totalling Kshs.2,323,460,022 were made over the years leaving an unpaid balance of Kshs.138,447,196. Delay in settling pending bills may result to wasteful expenditure on interest, penalties and litigation costs.

Submission by the Accounting Officer
The Accounting Officer submitted that since the Project Account are reported on cash basis, The balances outstanding of Ksh.138,447,196 are attributable to outstanding invoices for goods/services received but not settled as at that date as they were still being subjected to reviews by our Technical team.These invoices have subsequently been settled.

Committee Observation
The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1228. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion
1229. 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 Accounting Officer submitted that the company is currently using SAP for project and other financial reports, however it is noted that SAP requires additional installation of Business Intelligence reporting module to facilitate automation of project financial reporting.

Based on the above the Company has commenced the process of recruiting a Business development consultant/Personnel to develop customed reports for project financial reporting.

Committee Observation
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
The Accounting Officer to ensure that all reporting processes are automated and reports to the Committee within three (3) months of the adoption of this report.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1230. As required by African Development Fund (ADF), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept by the Project and the Project's financial statements are in agreement with the accounting records and returns.

DONOR FUNDED PROJECTS

1231. The Committee observes that despite request for responses for queries cited under donor (Nos. 1316-1318) projects vide letter Ref. NA/DAASC/PAC/2023/226 dated 1st November 2023, the Accounting Officer had not responded by the deadline given, and as at the time of adoption of this report.

1232. The Committee reprimands the Accounting Officer and will make substantive recommendations for the cited queries in its report for the FY 2021/22.

28. STATE DEPARTMENT FOR LIVESTOCK - VOTE 1162

REPORT ON THE FINANCIAL STATEMENTS

Mr. Harry Kimtai, the Principal Secretary and Accounting Officer for the State Department for Livestock Development appeared before the Committee on 16th March 2023 accompanied by the following officers;

1. Mr. Joseph Nyamora - Deputy Accountant General
2. Mr. Peter K. Mbugua - Parliamentary Liaison Officer
3. Mr. Joseph Mwangi - Senior Principal Finance officer
4. Mr. Stanley Mwaura - Deputy Head, Accounting Unit
5. Mr. Paul Wangombe - Principal Accountant
6. Mr. Dennis Kitheka - Accountant
7. Mr. Nicholas Mwangi - Accountant

and submitted as follows;

Basis for Qualified Opinion

1318. Specialized Materials and Supplies

The statement of receipts and payments reflects an expenditure of Kshs.938,392,958 under use of goods and services, which as disclosed in Note 5 to the financial statements, includes an amount of Kshs.270,387,574 in respect of specialized materials and supplies. However, the ledger reflects an amount of Kshs.271, 219, 567 as at 30 June, 2021, resulting in an unexplained variance of Kshs.831, 993.

Consequently, the accuracy and completeness of the expenditure of Kshs.270, 387,574 reflected in the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Financial Statements reported Kshs.270,387,573.60 on specialized materials and supplies while the ledger reflected a balance of 271,219,566.60 as observed by the Auditor General.

The Accounting Officer also submitted that the difference of Kshs.831,993 was as a result of misposting in the IFMIS system. He reiterated that the error was rectified and a new trial balance produced with the correct status.

Committee Observations and Findings
The Committee observed a lack of diligence in balancing of financial statements.

Committee Recommendation
The Committee admonishes the Accounting Officer.

1319. Prior Year Adjustments

The statement of assets and liabilities reflects prior year adjustments amounting to Kshs.100,259,066. However, Note 13 to the financial statements reflects adjustments during the year relating to prior periods of Kshs.120,476,600 resulting in an unexplained and unreconciled variance of Kshs.20, 217,534.

Consequently, the accuracy, validity and fair presentation of the prior year adjustments in the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance arose due to an error in the IFMIS system that led to duplication of statements in the financial year 2019/2020. During that year, the system generated a figure of Kshs. (667,663,530) which has been manually reconciled in the subsequent years. During the year under consideration, the reconciling figure was Kshs.20,217,534.

The Accounting Officer also submitted that they have further reconciled the said figure to Kshs.11,422,646 committing that the State Department for Livestock will continuously engage with IFMIS department of the National Treasury in order to completely resolve the matter during the current financial year. The agency however claimed that the re-engineering of the IFMIS system brought about the duplication and the unexplained variances.

Committee Observations and Findings

(i)The Committee noted that prior year adjustments should not exist as it relates to prior year statements that were not captured correctly hence not a normal practice in accounting;

(ii)The Committee observed that errors that came as a result of the IFMIS system.

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with Treasury and addresses IFMIS issues.

1320. Unsupported Proceeds from Sales of Assets

The statement of receipts and payments reflects an amount of Kshs.18, 672,004 in respect of proceeds from sale of assets. The amount was derived from collections from sale of certified seeds, breeding stocks, sale of inventories and commodities from across the country captured as Appropriations-In-Aid (AIA) by the Sub-County Accountants, and recorded in the miscellaneous receipts for onward surrender to the State Department for Livestock. The State Department for Livestock, however, did not maintain at the Headquarters any documentation in support of the proceeds from sale of assets.

In the circumstances, it was not possible to confirm the completeness and accuracy of the proceeds from sale of assets of Kshs. 18,672,004 for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under consideration the State Department for Livestock had collected Kshs. 18,672,004 inform of A.I.A from the sale of assets. The Accounting Officer also submitted that the funds were received in the State Department's recurrent bank account held at Central Bank of Kenya. The State Department further maintains IFMIS ledger for sale proceeds. The Accounting Officer further took personal responsibility and reiterated the need to ensure that documents reach the Office of the Auditor-General at the appropriate time and reduce unnecessary delays in reporting.

The Accounting Officer assured the Committee that the State Department would develop a movement register that would indicate when documents are submitted to the OAG to enhance accountability.

Committee Observation
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1321. Non-Accounting for Revenue from Institutes

The statement of receipts and payments reflects total receipts of Kshs.4, 359,093,493 for the year ended 30 June, 2021. Review of bank statements and cash book revealed that revenue had been collected from Animal Health and Industry Training Institute - Ndomba, Meat Training Institute - Machakos, Animal Health and Industry Training Institute -Nyahururu, and Dairy Training Institute - Naivasha of Kshs.22,197,835, Kshs.2,120,450, Kshs.4,605,604 and Kshs.14,803,111, respectively.

However, these fees and levies amounting to Kshs.43,727, 000 collected at the four training institutes operated by the State Department for Livestock were apparently spent at the source and were not included in the receipts disclosed in the financial statements for the year ended 30 June, 2021.

Consequently, the accuracy and completeness of the total receipts of Kshs.4,359,093,493 reflected in the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the stated funds of Kshs.43,727,000 was not indicated in the receipts disbursed due to the following reasons;

a) The funds are collected under welfare funds for students in the institutions;
b) The nature of funds are not included in the annual budget estimates passed by the National Assembly hence including the funds in their Financial Statements would have over stated their annual receipts;
c) The funds are primarily used by the students during the period of study in their institutions. The funds mainly comprise of insurance, caution money and practical courses and are usually withdrawn in short notices at the institutions; and
d) The management of the funds is through deposit accounts at Sub County Treasuries maintenance of manual cashbooks in line with the training policy guidelines.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter
1322. Pending Bills

Disclosed in Annex 1 to the financial statements are pending bills relating to the financial year 2020/2021 of Kshs.341, 516,639 and 2019/2020 of Kshs.88, 588,014 all totalling Kshs.430, 104,653 as at 30 June, 2021.
These pending bills were not settled in the year under review but were carried forward to 2021/2022 financial year. 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.
Further, included in the pending bills of Kshs.88,588,014 for 2019/2020 are bills amounting to Kshs.37,347,338 which had been validated and request for funding made to the National Treasury on 9 November, 2020. The funds were received on 27 January, 2021 according to the verified bank statement. However, these bills were still pending as at 30 June, 2021. No satisfactory explanation was provided for failure to settle these bills.

Submission by the Accounting Officer
The Accounting Officer submitted that the State Department for Livestock had a total pending bills Kshs.430,104,653 as at 30th June, 2021. These pending bills arose as a result of Budget reductions which were experienced during the previous year. He affirmed that the operations of the subsequent year are affected as the pending bills form the first charge of the allocation. The funds were received from the National Treasury for settlement of the bills however, due to rationalization of the budget, the Pending Bills amounting to Kshs.37,347,338 could not be settled.

The National Treasury vide a circular dated 9th November, 2020 directed rationalization and recalled the Kshs.580,268,842.95 from their development bank account which led the failure to clear the pending bills. The Accounting Officer further affirmed that the pending bills have since been settled.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.
REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1323. Full Payment for Incomplete Works - Marimanti Sheep and Goat Farm

Disclosed in Note 8 to the financial statements under acquisition of assets is an expenditure of Kshs.764, 591,161 in respect of construction and civil works. Included in the expenditure is an amount of Kshs.19, 848,632 for the construction of a hatchery and a poultry house at Marimanti sheep and goat station in Tharaka Nithi County whose contract had been awarded at a sum of Kshs.19, 848,632.

The first payment certificate of Kshs.19,848,632 and a certificate of practical completion were issued on 12 June, 2020 by the State Department of Public Works to the State Department of Livestock, advising the latter to pay 100% of the value of works. This was done contrary to the site meeting minutes of 11 June, 2020 which indicated that the contract's overall progress was at 82% according to the architect's report. In addition, the project's implementation progress report dated 26 June, 2020 also indicated the project to be at 85% completion.

As at the time of audit verification in the month of October, 2021, although the full contract sum of Kshs.19, 848,632 had been paid, construction of ceiling and cold-room were still pending. In addition, cracks were noted on various walls of the hatchery and the veranda was detaching from the building a clear indication of poor workmanship.

It was further noted that despite incomplete works in the first contract, the same contractor was awarded another tender for construction of additional works at hatcheries unit, vide contract number MOALF&C/SDL/DLP/RT/12/2020-2021 at a contract sum of Kshs.14, 695,077.

In the circumstances, the regularity and value for money for the amount of Kshs.19,848,632 paid to the contractor could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department made the payment upon advise by way of certificate of practical completion issued by State Department of Public Works. The percentage indicated have been clearly analysed with the detailed comments on how they were computed up to the completion of the project.

State Department for Public Works advised payment certificate of 100%

The Project Manager for the project held a site meeting and deliberations made on 11th June, 2020 and noted that the contractor had fully accomplished the works as per the earlier design and placed a payment request for settlement. The State Department for Works advised that the contractor's certificate of 100% being settlement for works contracted before change of design. The site instructions issued by the Project Manager to accommodate good air circulator, ventilation and transparent light and cyclones the scope of work increased on the works executed by the main contractor. Based on these grounds 100% payment certificate was technically advised to the procuring entity.

Project Managers report on 82% completion - The percentage of the work was based on the priced bill of quantities that the main contractor had executed after change of design for the project.

Progress implementation report 85% - The percentage of the works was based on an approximate assessment by Progress Implementation without technical valuation input. Poor workmanship ceiling & cold room works pending, cracks on various walls and verandah detachments Site instructions issued by the Project Manager to omit the ceilings design in order to accommodate good air circulation, ventilation, transparent light and mechanical cyclones because there were no provisions for external windows in the washing area. Materials used for the construction of the cold room were largely imported. The contractor early warning sign letter indicated delays in the high seas and the post COVID-19 pandemic that was being experienced.

Value for money for this project was attained as the hatchery and poultry house is fully complete and was handed over to the user. Handing over report and a certificate of practical completion issued. The cited defects i.e. cracked walls and verandah detachments were fully rectified by the contractor at no cost implications to the client and without compromising the workmanship as spelt out in the bill of quantities and the project manager concession that the building is structurally sound.

The current status report and still photos as at 18th February 2022 specify that the works were fully completed and the condition of the project is structurally sound to the satisfaction of the user and the Progress Implementation team.

Tender No. MOALF&C/SDL/RT/12/2020-2021 For the Proposed Civil and External Works at Hatcheries unit in Marimanti Sheep and Goats Station-Tharaka Nithi County.

To ensure the successfully smooth operation and bio security measures of the hatchery, civil and external works were required. To that end, the end user requested for procurement of this works, which subsequently were approved and the procurement process initiated. Prequalified contractors were invited and the lowest responsive bidder was awarded the tender.

Committee Observations and Findings

- **(i) The Committee observed that the State Department for Public Works approved 100% payment despite the project being incomplete. This was done a day after the site meeting placed the project at 82%;**
- **(ii) The Committee observed that that the contractor was awarded another project pointing to possible collusion with the State Department.**

Committee Recommendation

The Committee recommends that the EACC commences investigations into the matter.

1324. Non-Operational Livestock Value Chain Support Project (LVCSP) Equipment

Disclosed in Note 8 to the financial statements also under acquisition of assets is an expenditure of Kshs.68,221,628 for purchase of specialized plant equipment and Machinery. This expenditure includes an amount of Kshs.31,824,000 spent on the purchase of milk cooling plants under the Livestock Value Chain Support Project (LVCSP) for various Farmers' Co-operative Societies. The following unsatisfactory matters were observed from the sampled societies visited:

1324.1 Tagho Dairy Farmer's Co-operative Society

The solar water heating panels had been installed but had not functioned since installation. There was no evidence of physical visits by the milk cooling plant installation sub-contractor to ensure that the plant was in use as expected.

Submission by the Accounting Officer

The Accounting Officer submitted that the observations by the Auditor at the time of audit were adequately addressed by the contractor on 28th November, 2021 and a certificate of making good defects issued.

The contractor visited the site and attended to the solar water heating system and is currently functional. The latest report of the project team confirms that equipment is in use.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1324.2 Masii Farmer's Co-operative Society

The solar water heating panels were delivered with broken tubes and were therefore not functional hence, not installed. The contractor was yet to visit the plant in order to correct the defective tubes. There was no evidence of monitoring and evaluation by the milk cooling plant installation sub-contractor during the warranty period to confirm if it was operational.

Submission by the Accounting Officer

The Accounting Officer submitted that as observed by the Auditor at the time of audit, the tubes broke during importation and could not be installed until other tubes were imported and replaced. The contractor visited the site 26th November, 2021 and replaced the broken tubes. The system is now functional. A copy of certificate of making good defects was provided.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1324.3 Yatta Kwavonza Dairy Farmer's Co-operative Society

Interviews with the members of the society revealed that the solar water heating system had not been functional since inception. The contractor had apparently delivered the solar heating system with broken tubes. The milk cooling plant was therefore not in use.

Submission by the Accounting Officer

The Accounting Officer submitted that as observed by the Auditor, the heating system consist of fragile tubes which break easily during transportation. However, the contractor visited the site on 24th November, 2021and replaced the broken tubes. The heating system is now functional. A copy of certificate of making good defects was provided.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1324.4 Kibwezi Dairy Farmers Co-operative Society Ltd

The solar panels were not functional as at the date of audit verification. Interviews with the group members revealed that the solar water heating system had not been functional since inception and the plant was therefore not in use.

Submission by the Accounting Officer

The Accounting Officer submitted that the general observation of the Auditor on the broken tubes of the solar system was correct. The broken tubes required replacement. The contractor visited the site 26th November, 2021 and attended to the solar water system and is currently functional. A copy of certificate of making good defects was provided.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1324.5 Mwiwe Dairy Farmers Co-operative Society Ltd

The plant was delivered to the society but had never been used for the intended purpose since the date of delivery. Due to lack of premises by the target beneficiaries, the milk cooling plant had been improperly stored in an open-air market and at times held at different locations by the society members.

Consequently, value for money for the expenditure of Kshs.31,824,000 incurred on the purchase of milk cooling plants for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Mwiwe cooperative society was one of the beneficiaries of the Bulk cooler issued by the National Government in Kitui County. The project was to reduce post-harvest milk losses while increasing household incomes. The bulk milk cooler and accessories were supplied and installed at a premise owned by the group within Migwani Centre in 2019 and handed over to the cooperative society.

Upon construction of Kibwezi -Mutomo-Kitui-Kabati-Migwani road the premises housing the cooler and accessories was demolished hence exposing the equipment. The beneficiary cooperative society was supposed to make available land for the cooler equipment with premises, connect the required electricity power and water. Upon demolition the society had to look for alternative premises for the cooler equipment. When the State Department for Livestock got notification of the demolition of the premises the Director Livestock Production in July 2022 wrote to the county Government of Kitui requesting the county to intervene and assist the group to find an alternative facility to install the equipment.

The recent inspection report on bulk milk cooler by the State Department identified the following;

a. The equipment is kept within an enclosed place and wrapped in protective material against rain, water and dust.
b. The Cooperative Society has employed a guard for both day and night.
c. The alternative piece of land at the center has been purchased for the cooler
d. The site was inspected and established that actual construction works are ongoing.
e. The completion period of the premises is expected by end of March, 2023 to pave way for installation of the equipment.

The Accounting Officer submitted that the nature of the programme required beneficiary groups to establish installation premises with adequate provisions on water, electricity and sanitation. This was realized by the groups in partnership with respective County Governments. On its part, the State Department delivered, installed and commissioned the equipment. The equipment have since been handed over to respective County Governments.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1325. Lack of Active Audit Committee

The State Department for Livestock did not provide documentary evidence to show that Audit Committee meetings were held during the year under review. In the absence of such meetings, the State Department failed in ensuring that external audit recommendations were fully addressed, that quality of internal audit was of an appropriate standard, and that line management had full regard to internal audit recommendations.

Submission by the Accounting Officer
The Accounting Officer submitted that during the year under consideration, the Ministerial Audit Committee had not met for long due to restrictions that had been imposed on physical meetings by the Ministry of Health to curb the spread of Covid 19. The nature of audit committee meetings required physical meetings for ease of execution of its business. However, the audit committee is currently active and meets regularly as required by law.

Committee Observations and Findings
The Committee noted the explanation submitted by the Accounting Officer but observes that the audit committee ought to have met virtually.

Committee Recommendation
The Accounting Officer should ensure the State Department has an independent and active Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012.

1326. Failure to Update Imprests Register

Review of payment vouchers and supporting schedules in respect of domestic travel and subsistence and other transportation costs and imprests register revealed that a total of 474 imprest warrants amounting to Kshs.195, 983, 271 were issued during the year ended 30 June, 2021.

However, 14 imprest warrants amounting to Kshs.8, 496,771 had been issued but not recorded in the imprests register. Therefore, lack of effective control over imprests existed during the period under review as a result of failure to update the imprests register as and when the imprests were issued.

Submission by the Accounting Officer
The Accounting Officer submitted that the observation by the Auditor on omitted fourteen (14) imprest was analyzed out of which six were left out in the manual register though they appeared in IFMIS system. However, the same were updated and fully surrendered at the closure of the financial year 2020/2021.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1327. Lack of Effective Internal Control over Non-current Assets and Biological Assets

1327.1 Incomplete Assets Register

Review of two asset registers provided revealed that the registers were incomplete. The registers reported on five categories of assets: office equipment, furniture and fittings; laboratory equipment; machinery and equipment; biological assets and vehicles. The fixed assets registers did not show complete information on the:

i. Date on which the asset was acquired or brought into use;
ii. Purchase/ original cost, the revalued amount and/or the fair value;
iii. Supplier details;
iv. Payment voucher details;
v. Serial number of relevant assets;
vi. Engine and chassis numbers for motor vehicles; and
vii. Disposal dates and prices.

Further, the registers did not indicate the value of land, buildings, intangible assets, household furniture, institutional equipment and ICT equipment as at 30 June, 2021. Included in the undisclosed value of land were Kabete Veterinary Farm L.R No.189R (1634 acres) and L.R No.2952 (1278 acres).

Consequently, the total value of the assets that the State Department holds all over the country including their specific descriptions, location, value and ownership could not be determined.

Submission by the Accounting Officer

The Accounting Officer submitted that as observed by the auditor during the year under consideration, the State Department provided an asset register that did not fully describe various categories. He also submitted that the State Department for Livestock has progressively updated the register and shall commence the process of digitalizing the register to completion. In addition, the State Department has a complete inventory of all its land parcels.

In regard to the Kabete Veterinary Farm L.R No.189R (1634 acres) and L.R No.2952 (1278 acres). the Agency said that it would share further information because part of the land had been grabbed.

The Accounting Officer reiterated that the State Department was making good progress to complete its asset register and will invite the OAG to verify the status of the register and thereafter submit a report to the Committee.

Committee Observations and Findings

The Committee observed that the formulation of a comprehensive asset register was ongoing.

Committee Recommendation

The Accounting Officer should ensure that a complete fixed asset register is maintained pursuant to Regulation 143(1) of the PFM (National Government) Regulations 2015, and avail the same to the Committee within three (3) months.

1327.2 Lack of Works in Progress Register

Disclosed in Note 8 to the financial statements under acquisition of assets are expenditures on construction of buildings – Kshs.438,800 refurbishment of buildings Kshs.12,155,300, construction of civil works – Kshs.764,591,161 and overhaul and Refurbishment of construction and civil works –Kshs.4, 949,900 for the year ended 30 June, 2021.

However, a project implementation status report and a report on the status of contracts in the year under review were not provided for audit. It was therefore not possible to confirm if there were works in progress as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that work in progress Register for projects is to be maintained. To establish the register, the State Department relies on Project Managers reports from the State Department for Public Works which has compiled a comprehensive work in progress register and the same submitted to the Auditor for verification on the projects in progress.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were not satisfactory.

Committee Recommendation

The Committee directs the Accounting Officer liaise with the department for public works and provide the Work In Progress register, and report the same to the Committee within three months of the adoption of this report.

1327.3 Non-Disclosure of Data Related to Specific Biological Assets

The assets register provided for audit review reflected biological assets with total historical cost of Kshs.55, 461,000. These assets comprised various farm animals from fifteen stations. However, the register did not separately disclose data relating to each individual biological asset such the fair unit value and the total value for each classification of animal but instead combined value for all the animals in each station. It was therefore not possible to confirm the fair value assigned for each of the animals.

Submission by the Accounting Officer

The Accounting Officer submitted that the observation by the Auditor on Biological Assets has been implemented capturing separately each segment of the Asset and properly captured in the Register. The Agency further said that they had created a taskforce that would oversee the record and digitization of the whole system including biological assets.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

DONOR FUNDED PROJECT

REGIONAL PASTORAL LIVELIHOODS RESILIENCE PROJECT (IDA CREDIT NO. KE 53880-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1328. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1329. 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 038R 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 of October, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that Africa Merchants Assurance Company Limited has not paid an outstanding claim of Kshs.3,474,000 for GKB 038R and Kshs.7,650,000 for GKB 412R. The State Department through the Ministry's Legal Division is doing a follow up on the matter and are waiting for settlements of the claims. The Agency has further changed the insurer.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were not satisfactory.

Committee Recommendations;

The Committee recommends that the Accounting Officer follows up with the Insurer to resolve the matter conclusively and report progress within three (3) months of adoption of this report.

1330. Underfunding of Counterpart Fund by the Government of Kenya

The project information and overall performance indicates that the Government of Kenya committed to provide counterpart funds to the project amounting to Kshs.1,830,000,000but has so far disbursed a total of only Kshs.493,512,814, which is approximately 27%yet the project is ending by 31 December, 2021.

In the circumstances, the Government of Kenya underfunding amounting toKshs.1, 336,487,186 or about 73% may have derailed implementation of various project activities and intended objectives.

Submission by the Accounting Officer

The Accounting Officer submitted that the Finance Agreement provided for Government of Kenya counterpart funding of Kshs.1, 830,000,000. The funding supported the project's component on project management and institutional support in 14 ASAL counties.

The said component comprised community safeguards, staff costs, training, monitoring and evaluation, office supplies and maintenance of office buildings. The counterpart funding and expenditure as at closure of the project was Kshs.1,785,913,844 representing funding and expenditure levels of 98%. The amount of Kshs.493, 512,814 was the project's budget during the year of audit. The project has since been closed. The Accounting Officer reiterated that the Project was completed successfully and there was value for money.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1331. Non-Review of Internal Audit Reports

Review of the audit committee reports revealed that the committee did not discuss internal audit reports for the project during the year under review. Under the circumstances, the effectiveness of internal control and risk management in relation to the project for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the Internal Audit reports were not discussed by the Audit committee as it was newly constituted and the covid 19 challenges made it difficult for the committee to be inaugurated so as to commence operations.

The Accounting Officer informed the Committee that the Internal Audit Committee is constituted properly and is carrying out its functions effectively.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

29. STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY – VOTE 1166

REPORT ON THE FINANCIAL STATEMENTS

Ms. Betsy Muthoni Njagi, the Principal Secretary and Accounting Officer for the State Department for Blue Economy and Fisheries, appeared before the Committee on 7th March 2023, 28th March 2023, 17th April 2023, 3rd May 2023 and 18th May 2023 accompanied by the following officers:

1.	Mr. Alan Machari	–	Secretary of Administration
2.	Ms. Lucy A. Obungu	–	Ag. Fisheries and Blue Economy Secretary
3.	Mr. Daniel Mungai	–	Director General, Kenya Fisheries Services
4.	Dr. Simon Macharia	–	Director of Fisheries
5.	Ms. Jane W. Macharia	–	Deputy Director, Human Resource Management
6.	Mr. Sammy Okonji	–	Deputy Director, Supply Chain Management
7.	Mr. Henry Mbugua	–	Assistant Director of Fisheries
8.	Mr. Sammy Macharia	–	National programme coordinator Aquaculture Business Development Programme
9.	Mr. Patrick Kiara	–	National Project Coordinator
10.	Dr. Isaac Wamalwa	–	Deputy Programme Coordinator
11.	Ms. Ruth Ng'aarua	–	Finance and Administration Manager
12.	Mr. Martin Wamwea	–	Senior Chief Finance Officer
13.	Mr. Henry Ondara	–	Principal Accountant
14.	Mr. Joseph Kamau	–	Accountant I
15.	Mr. Festus Njau	–	State Department Blue Economy

and submitted as follows;

Basis for Qualified Opinion

1332. Unsupported Training Expenses

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects an expenditure on use of goods and services of Kshs. 680,841,785 which includes training expenses of Kshs. 168,174,182. The latter balance includes an advance payment of Kshs. 43,289,344 made to the Bandari Maritime Academy for fishermen training services. However, the contract agreement was not provided to confirm that the advance payment was provided for in the contract.

Further, included in the training expenses are expenditure returns amounting to Kshs. 145,290,396 and Kshs. 5,499,996 from Mombasa and Kirinyaga West regional offices, respectively. However, these returns were not supported with the relevant documents such as training needs assessment report, training program, time tables and a list of all those who attended the training. Consequently, the validity and accuracy of the training expenses of Kshs. 168,174,182 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the contract agreement, training needs assessment report, training program, timetables and a list of all those who attended the training have been availed to the auditors. The contract agreement confirms advance payments.

Committee Observations and Findings

(i) The Committee observed that there was no contract with Bandari Maritime Authority.

(ii) The Committee observed that the State Department was providing training to fishermen who were not employed by the department, rendering a training needs assessment irrelevant in this situation.

(iii) The Committee observed that the State Department was unable to meet its training target of training one thousand fishermen, and instead only managed to train six hundred and eighteen fishermen due to budget cuts;

Committee Recommendation

The Committee directs the Accounting Officer to avail a roster of names of trained fishermen as well as the list of individuals who have been selected for training per constituency, within three (3) months of the adoption of this report.

1333. Unsupported Expenditure

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects an expenditure on acquisition of assets of Kshs.524,776,123. The expenditure includes an amount of Kshs.24,902,472 for purchase of specialized plant, equipment and machinery, which was extracted from the expenditure returns from five (5) regional offices in Kirinyaga West, Kieni East, Kisumu East, Mombasa and Turkana.

Further, the expenditure on acquisition of assets of Kshs.524,776,123, as disclosed in Note 7 to the financial statements, includes an amount of Kshs.90,272,521 for construction and civil works. The latter includes Authority to Incur Expenditure (AIEs) of Kshs.82,249,999 issued to Kieni East and Kirinyaga West regional offices. However, the expenditure returns were not supported with the relevant documents including payment vouchers, requisitions from the user departments, invoices, delivery notes, inspection and acceptance committee reports, tender opening and evaluation reports, award letters and ownership records for the assets acquired.

In addition, no records were provided to indicate the type and nature of the assets that were acquired. The assets acquired could also not be traced in the assets register for the State Department. Consequently, the validity and accuracy of the expenditure of Kshs.107,152,471 on acquisition of assets could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the expenditure returns are supported by the relevant documents including payment vouchers, requisitions from the user departments, invoices, delivery notes, inspection and acceptance committee reports, tender opening and evaluation reports and award letters. The assets were delivered in schools that is why they are not in the departments register.

Committee Observations and Findings
The Committee observed that the State Department's submissions were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1334. Unconfirmed Expenditure on Purchase of Certified Seeds, Breeding Stock and Live Animals.

As disclosed in Note 7 to the financial statements, the expenditure on acquisition assets of Kshs.524,776,123 includes an amount of Kshs.46,500,000 in respect of purchase of certified seeds, breeding stock and live animals. The amount relates to Authority to Incur Expenditure (AIEs) issued to the regional offices in Kirinyaga West of Kshs.31,000,000 and Kieni East of Kshs.15,500,000. The expenditure returns were not, however, provided for audit review.

Consequently, the validity and accuracy of the expenditure of Kshs.46,500,000 on purchase of certified seeds, breeding stock and live animals could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that the returns have already been availed to the auditor together with copies of payment vouchers and the requisite supporting documents.

Committee Observations and Findings

(i) The Committee noted that the documents provided by the state department were unsatisfactory;

(ii) The Committee observed that the Accounting Officer was in breach of Section 62 of the Public Audit Act, 2015 by failing to provide the information required for audit purposes.

Committee Recommendation
The Committee admonishes the Accounting Officer for acting in breach of Section 62 of the Public Audit Act 2015.

Other Matter

1335. Pending Bills

Included under other important disclosures to the financial statements are pending accounts payable/bills amounting to Kshs.252,422,165, relating to construction of buildings and supply of goods and services as at 30 June, 2021. These bills were not settled in the year under review but were carried forward to 2021/2022 financial year. 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
The Accounting Officer submitted that there were pending accounts payable/bills which was due to lack of exchequer by the closure of financial year.

Committee Observations and Findings

(i) The Committee observed that as of June 30, 2022, the State Department had paid off pending bills totaling Ksh.178,671,920.96, and there was still an outstanding balance of Ksh.73,750,243.24;

(ii) The Committee noted that the pending bills accumulated due to lack of exchequer which had a negative impact on the State Department's ability to carry out its programmes.

Committee Recommendation

The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan pursuant to the provisions of Section 68(2) (h) of the PFM Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1336. Irregular Issuance of Multiple Imprests

Analysis of the imprests register revealed that officers had overlapping imprests totalling Kshs. 42,965,636 during the year under review. The officers had been issued with additional imprests before surrendering the previous ones contrary to Regulation 93(4)(b) of the Public Finance Management (National Government) Regulations, 2015. Consequently, the State Department was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that 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. It should be noted that an officer can only account for an imprest if she/he has been paid and because of non-payment of imprest for a longer period an officer may have more than one imprest outstanding. All the imprests were surrendered at the end of the financial year.

Committee Observations and Findings

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

The Committee reprimands the Accounting Officer for acting in breach of Regulation 93(8) of the PFM (National Government) Regulations, 2015.

1337. Over-Commitment of Salaries beyond Two Thirds of Basic Pay

As disclosed under Note 3 to the financial statements, the statement of receipts and payments reflects expenditure on compensation of employees of Kshs. 297,971,677. Analysis of the IPPD payroll revealed that 98 officers earned less than one third of their basic salary contrary to Section C.1(3) of the Human Resource Policies and Procedures Manual for the Public Service of May, 2016. Consequently, the State Department was in breach of the provisions of the Human Resource Policies and Procedures Manual.

Submission by the Accounting Officer

The Accounting Officer submitted that officers committed more than two thirds of their basic salary contrary to the provisions of the Human Resource policies and procedures manual for the Public Service of May 2016. This is because of the following;

1) During COVID-19 period from April 2020 to January 2021, the government granted employees a tax relief on PAYE. This increased the officers net pay which led to some officers committing their salaries in equal measure. However, the lifting of the tax waiver reduced the net pay which resulted to violation of the 1/3 rule.
2) Implementation of the mandatory Superannuation Pension Scheme with effect from 2021 to date of 2%, 5% and 7.5% respectively.

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.

Committee Observations and Findings

The Committee observed that the over-commitment of salaries was occasioned by extraneous factors.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures incremental compliance.

1338. Stalled Projects

Analysis of projects status report as at 30 June, 2021 revealed that eighteen (18) projects with a contract sum Kshs.1,797,912,745 and certified and paid works to date of Kshs.866,526,472 had stalled. No satisfactory explanation was provided for the stalling of works or delay in the projects completion. Failure to complete the projects in time may deny the public the benefits derived from the use of these projects and value for money may not be achieved.

Submission by the Accounting Officer

The Accounting Officer submitted that the stalling of works and delayed project completion was mainly caused by inadequate funding, non-remittance of exchequer that led to delayed payment of certificates and non-performance from contractors of various projects. Out of the 18 projects, 12 projects have since been completed as shown in the table below. Three (3) projects (Nos. 9, 12 and 15) out the 18 have been terminated due to non-performance of contractors as indicated in the table below. One (1) project (No. 6) is stalled at roofing stage of completion and the delay in completion is as a result of non-performance of the contractor who has been issued with warning letter and default notice. Two (2) projects (Nos. 4 and 10) have been mutually wound up. These are: -

a) The Proposed Construction of Canteen, Ablution Block, Sentry at Shimoni was mutually wound up following a presidential directive to build a modern fish port at the same site.

b) The Proposed Construction of Cold Rooms at Liwatoni Fisheries Complex was mutually wound up to allow the contractor of the Ultra-Modern Hazard Analysis Critical Control Point (HACCP) Compliant Fish Processing Plant take over the site

S/ NO	CONTRACT NO	CONTRACT DESCRIPTION	CONTRACT SUM IN KSH	AMT PAID IN KSHs. AS AT JUNE, 2021	AMOUNT PAID TO DATE (KSHS.)	CURRENT STATUS
1.	MOALF&I/SDF&BE/09/2018-2019	Proposed Renovation and Rehabilitation Works at The Liwatoni Fisheries Complex, Mombasa	317,285,670.00	250,600,493.00	256,400,792	Completed
2.	MOAL&F/SDFA&BE/06/2020-2021	Proposed Construction of Liwatoni Sea Wall	38,783,640.00	17,175,415.00	38,742,060	Completed
3.	MOALF&I/SDF&BE/05/2020-2021	Proposed Rehabilitation and Remodeling of Fish Processing Plant at Liwatoni Fisheries Complex, Mombasa	69,337,565.00	68,748,390.00	69,325,790	Completed
4.	MOALF&C/SDFA&BE/028/2019-2020	Proposed Construction of Cold Room Works at Liwatoni Fisheries Complex, Mombasa	71,754,720.00	17,273,270.00	34,146,601	Mutually wound up at 45%
5.	MOALF&I/SDF&BE/029/2018-2019	Proposed Laboratory Works and Reconstruction of Perimeter Fence at The Fish Quality Control	13,068,100	11,522,179.00	12,743,151.04	Completed

		Laboratory, Mombasa				
6.	MOALF&I/SDF&BE/024/2018-2019	Proposed Construction of Likoni Fish Market, Mombasa County	91,509,585.00	13,848,320.00	28,037,243	Stalled at 65% Warning letters and default notice issued
7.	MOALF&I/SDF&BE/028/2018-2019	Proposed Extension to The Monitoring, Control Surveillance (MCS), Centre Mombasa	42,750,432.00	13,139,489.00	13,139,489	Completed Awaiting Hand over
8.	MOALF&I/SDF&BE/017/2018-2019	Proposed Renovations and Rehabilitation Works at The Gazi Fish Landing Site, Kwale County	39,618,320.00	37,976,937.00	17,518,680	Completed
9.	MOALF&I/SDF&BE/018/2018-2019	Proposed Renovations and Rehabilitation Works at The Kibuyuni Fish Landing Site, Kwale County	48,924,444.00	12,440,460.08	14,201,788	Terminated at 45%
10.	MOALF&I/SDF&BE/023/2018-2019	Proposed Construction of Canteen, Ablution Block and Sentry at Shimoni, Kwale County	41,515,445.00	12,751,356.00	17,693.307.2	Mutually wound up at 65%. handed over to KPA
11.	MOALF&I/SDF&BE/021/2018-2019	Proposed Renovation and Rehabilitation at Vanga Fish Landing Site, Kwale County	23,812,696.00	7,393,436.00	15,934,362	Completed awaiting handing over
12.	MOALF&I/SDF&BE/030/2018-2019	Proposed Construction of	734,002,095.00	280,774,839.00	355,341,033.16	Terminatedat 60%

		National Mariculture Resource Centre at Shimoni, Kwal				
13.	MOALF&I/SDF&BE/019/2018-2019	Proposed Renovation and Rehabilitation Works at Ngomeni Fish Landing Site, Kilifi County	48,628,817,50	22,462,817.00	28,090,646.6	Completed awaiting handing over
14.	MOALF&I/SDF&BE/020/2018-2019	Proposed Renovation and Rehabilitation at The Kichwa Cha Kati Fish Landing Site, Kilifi County	51,780,883.00	22,809,189.00	32,535,510.78	Completed awaiting handing over
15.	MOALF&I/SDF&BE/025/2018-2019	Proposed Construction of a Fish Banda at Malindi, Kilifi County	39,475,433.00	11,198,766.00	17,316,864.55	Terminated at 65%
16.	MOALF&C/SDFA&BE/022/2018-2019	Proposed Construction of Access Road Parking and Storm Water Drainage at Fish Quality Control Laboratories, South C	53,351,010.00	52,488,653.00	53,351,010	Completed
17.	MOALF&I/SDF&BE/09A/2020-2021	Proposed Construction of Bio Digester and Associated Civil Works at The Fish Quality Control Laboratories, South C	28,505,849.00	NIL	28,091,140	Completed
18.	MOALF/SDF&BE/011/2019-2020	Proposed Renovations, Rehabilitation Works and Construction of	43,808,040.00	26,363,013.00	26,342,618.8	Completed

		Perimeter Fence at Fish Quality Control Laboratory, Kisumu				
	TOTAL		**1,797,912,745**	**866,526,472**	**1,041,258,780**	

Committee Observations and Findings

(i) **The Committee observed that out of eighteen (18) projects; eight (8) are fully complete, four (4) are complete awaiting handover, three (3) terminated for non-performance, two (2) wound-up for other projects and one (1) classified as stalled;**

(ii) **The Committee further observed that for the three (3) terminated projects, a project manager had been deployed to the site to take measurements.**

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report of all incomplete projects to the Committee within three (3) months of adoption of this report.

1339. Construction of National Mariculture Resource Centre at Shimoni

A tender for construction of National Mariculture Resource Centre at Shimoni was awarded to a company at a contract sum of Kshs. 734,002,095. The contract which was signed on 5 June, 2019 did not, however, indicate the commencement and completion dates of the project. According to the engineer's report, the period for the works was 25 weeks commencing on 5 June, 2019 to 15 January, 2020 and the performance bond was running up to 30 November, 2020. The certified amount was Kshs. 280,774,839 while 60% of the works were completed as of 30 June, 2021. Management did not confirm the extension of the contract or performance guarantee despite the fact that the project is still ongoing. Further, included in the Bill of Quantities were preliminaries expenses totaling Kshs. 26,890,000 for which the relevant documentation to support the payments were not provided for audit review. Consequently, the regularity of the contract and the payments could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the commencement date for works contract is normally agreed upon by the project manager and contractor after site handover and agreeing on mobilization period. Mobilization period varies depending on the nature of the contract. In the particular contract, the commencement date was 14th June, 2019 and site hand over on 5th June, 2019. The contract and performance bond were not extended. The contractor abandoned site despite various warnings from the project manager.

Committee Observations and Findings

(i) **The Committee noted that the contractor abandoned the site with work done at 60%. The Accounting Officer admitted having delayed payment to the contractor by over a year. By then the performance bond had expired and the contractor was dissatisfied with delayed payments;**

(ii) The preliminaries of Kshs. 26,890,000 was expended on the project vehicle which has since been repossessed, site clearance, signages, performance bond among others whose documentation were belatedly submitted to the Committee;

(iii) The Accounting Officer submitted that final accounts were done as per level of completion and contract terminated. The World Bank has since expressed willingness to complete the project with discussions ongoing.

Committee Recommendation

i) The Committee reprimands the Accounting Officer for failure to submit supporting documents on time;

ii) The Accounting Officer submits a status report on completion plans of the project within three (3) months of adoption of this report.

1340. Construction of Canteen, Ablution Block and Sentry at Shimoni

During the year under review, the State Department awarded a tender for construction of Canteen, Ablution Block and Sentry at Shimoni to a company at a contract sum of Kshs. 41,515,445. The contract was signed on 4 June, 2019. The contract period was indicated as 24 weeks but the commencement and end dates were not included in the contract. The validity period for the performance bond could not be ascertained as the same was not included in the contract. Percentage of work done as stated in the report provided by the State Department was 74%. However, certificates of works done were not provided for audit review.

During the field visit in November, 2021 the following unsatisfactory matters were noted:

(i) The ablution block doors and gutters had not been fixed. The stair cases also were yet to be done.

(ii) The ground and first floors of the canteen building had been done partially but the roof was yet to be fixed. Wiring was done but switches were not installed.

In the absence of mandatory information in the contract document and certificates of work done, the validity of the contract and value for money of the project could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the commencement date of works contract is agreed upon by the project manager and contractor after site handover. It is normally after agreed mobilization period which may vary depending on the nature of works. The site was handed over on 4th June, 2019 and commencement date was 14th June, 2019 and completion date was 6th December, 2019. Contract period was 25weeks. The validity period of performance bond was up to 27th May, 2020 issued on 28th May, 2019. This project was handed over to KPA at 65% complete following presidential directive to develop a Modern Fishing Port at the same site.

Committee Observations and Findings

(i) The Committee noted that the project was handed over to KPA at 65% through a presidential directive for the modern fish port and the latter adopted the site as is and a mutual winding up was signed;

(ii) The committee observed that the Office of the Auditor General did not receive the required documents, such as certificates of works done, during the audit process.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to submit audit documentation on time subject to Section 9 (1) (e) of Public Audit Act, 2015.

1341. Renovation Works at Landing Sites in Lake Victoria Region

Included under other important disclosures to the financial statements are pending accounts payable of Kshs. 252,422,165 out of which an amount of Kshs. 163,956,847 relates to construction of buildings. The State Department through various tenders commenced the process of renovating six (6) landing sites along Lake Victoria beaches namely; Ogal, Sori, Luanda Kotieno, Mulukoba, Nyandiwa and Wich Lum.

The renovation works had begun in these landing sites but the works stalled after the sites were submerged by the water due to heavy rains. The contracts for the renovations were eventually terminated and mutual winding up done but the bills were not settled.

During physical verification of the landing sites in November, 2021 it was observed that the works done in Ogal landing site were sub-standard and the ceiling boards installed had begun falling off. In Wich Lum landing site in Siaya County, the building had collapsed and the foundation sunk. Some materials such as steel tower bars and plumbing pipes delivered to these landing sites remained unused and could be lost or stolen. The cold room machines and generators were delivered to the Kisumu Regional Office but remained idle when the renovations stalled.

Consequently, the State Department was not effective in the execution, supervision and completion of the renovation works.

Submission by the Accounting Officer

The Accounting Officer submitted that all the bills resulting from the mutual winding up of renovation works were settled as shown in the table below;

No.	Project Name	Contract Sum (Kshs)	Final Amt Paid (Kshs)	Current Status
1	Luanda K'Otieno	52,873,335.00	12,954,918.83	Mutually Terminated
2	Sori	61,069,500.00	12,336,063.28	Mutually Terminated
3	Ogal	53,688,235.00	9,617,370.66	Mutually Terminated
4	Mulukoba	51,973,065.00	11,572,345.87	Mutually Terminated
5	Nyandiwa	37,146,678.00	5,248,268.00	Mutually Terminated
6	Wich Lum			Contract not Awarded

The amounts could not be settled then because of lack of budget. The rising water levels at the lake affected the structural integrity of the buildings. The renovations works were not carried out in Wichlum because by the time the water levels rose and submerged the surrounding buildings there was no contract in place for Wichlum. The tender for Wichlum was re-advertised after failing to get responsive contractor in the first round. Materials on various sites like pipes were in the custody of the fisheries officers in charge of the landing sites who are the beneficiaries and proper inventory was taken by the regional coordinator for the same hence safe. The machines including cold rooms are stored in the Kisumu regional office and safe for use when funds are availed for construction of the landing sites on higher areas in the affected landing sites. The submerging of the landing sites was not foreseen before the renovation works commenced.

Committee Observations and Findings

(i) **The Committee observed that the State Department conducted renovations on landing sites in areas that were originally part of the lake, resulting in their submersion;**

(ii) **The Committee also noted that the Luanda K'Otieno and Sori projects have been fully completed and are currently in use. The Mulukoba project is 85% complete and is expected to be finished within the next two months. Furthermore, the Ogal, Nyandiwa, and Wich Lum projects were included in the budget for the 2023/24 financial year.**

Committee Recommendation

The Committee recommends that the Accounting Officer ensures completion of the Ogal, Nyandiwa, and Wich Lum projects within reasonable time.

1342. Irregularities in Supply and Delivery of Fingerlings

A tender for supply and delivery of fingerlings across the country was awarded to a company in four lots as shown below:

LOT	Quantity (No. of Fingerlings)	Price (Kshs.)
LOT 1	500,000	7,500,000
LOT 2	500,000	7,500,000
LOT 3	400,000	6,000,000
LOT 4	600,000	9,000,000
Total	2,000,000	30,000,000

The company supplied the fingerlings for LOT 1 and LOT 2 at a sum of Kshs.15,000,000 in the 2020/2021 financial year to different dams across the country. However, according to the delivery notes, some fingerlings were delivered to dams that were not in the users' requisitions as detailed below:

County	Dam	Quantity as per Delivery Note (No. of fingerlings)	Amount (Kshs.)
Kakamega	Mwanzo	20,000	300,000
	Mulama	20,000	300,000
Kisii	Ichumi Primary	20,000	300,000
	Bunyonge	10,000	150,000
	RiaKiriama	20,000	300,000

Further, it was noted that six (6) counties namely; Busia, Siaya, Narok, Trans Nzoia, Uasin Gishu and Laikipia did not have specific dams or lakes to which the fingerlings were delivered. Each of the six (6) counties was to receive 100,000 fingerlings each at a cost of Kshs.1,500,000 per county.

In the circumstances, 600,000 fingerlings amounting to Kshs.9,000,000 for the six (6) counties could not be accounted for.

LOT 3 comprising 400,000 fingerlings valued at Kshs.6,000,000 was to be delivered to Njukiini, Karura, Kiambere, Kamburu, Masinga and Lake Kenyatta dams. Whereas LOT 4 comprising 600,000 fingerlings valued at Kshs.9,000,000 was to be delivered to Kiambere, Kamburu, Masinga and Lake Kenyatta dams. The payment vouchers for LOTS 3 and 4 were still pending as at the end of the financial year for 2020/2021.

Physical verification of some of the dams in November, 2021 revealed the following unsatisfactory matters:

(i) Buyonge Dam in Kisii County - No access road to the dam. Desilting had not been done. The presence of fish in the dam could not be confirmed.
(ii) Riakiriama/Nyangusu Dam in Kisii County- According to the delivery note, the dam received 20,000 fingerlings valued at Kshs.300,000 which were stocked on 14 January, 2021. However, the community officials reported that only 10,000 fingerlings were restocked in this dam and thus, resulting in 10,000 fingerlings worth Kshs.150,000 being unaccounted for.
(iii) Busia County - According to the delivery note,100,000 fingerlings valued at Kshs.1,500,000 were delivered to Busia County without specifying the dams they were delivered to. The County Director of Fisheries and his officers indicated that the State Department did not deliver any fingerlings to Busia County.

Consequently, the State Department may not have obtained value for the procurement of fingerlings.

Submission by the Accounting Officer
The Accounting Officer submitted that according to the user requisition, the following dams were to be restocked in Kakamega and Kisii Counties during the restocking Programme.

County	**Dams earmarked**
Kisii	Ibeno
Kakamega	Musembe
	X-Rasa
	Lugulu
	Lumino
	Mumunyonzo.

The Accounting Officer also submitted that as per their communication through Joint Agriculture Sector Consultation and Cooperation Mechanism (JASCOM) dated 28th December 2020, in the stocking schedule which indicated the potential dams to be stocked based on the user requisition in Kakamega, Bungoma, Nyamira, Kisii and Siaya. However, the County Governments of Kakamega and Kisii made changes on the dams to be restocked as shown by the Audit through notification to the Director General in line with the communication sent through JASCOM, which recommended that in the event of any change based on their own realities and other technical considerations, they were expected to make the same in writing to Director General, Kenya Fisheries Service.

Anticipating the changes, a similar communication dated 28th of December 2020 was sent to the contractor to abide by the decision of stakeholders in the respective counties. To corroborate the aforementioned information, the following officers from the national Government were part of the team that supervised the stocking in the mentioned counties: -

a) Dr. Isaac Wafula Wamalwa
b) Paul Alex Lukwendah

The dams stocked in mentioned counties were not indicated on the delivery notes, however they are explicitly shown on acknowledgement certificates and reports from the respective county government officials as shown on the table below.

Busia	Namalenga Dam
Siaya	Yenga, Mwer, Milambo, Ochilo and Mauna
Narok	Soromwa. Osilanga. Enkoika, Olosheti, Limeshuki, ole Sentu, Tepesonik, Tuyabei Enkoiku, Poroko W.pan
Tranzoia	Waumini, kibometi, Gidea, lipoma, Bukweti, Kirita, Moreem
Uasin Gishu	Kesses, Kerita, Kilagan, Chepkemel, Sesia, Manyatta
Laikipia	King,uka,Olmutunyi, Marura,Njorua, Lobere, Limunga, Kaiti, Ngarashi, Salama

Each of the six (6) counties were supplied with 100,000 fingerlings. To corroborate the aforementioned information, the following officers from the national Government were part of the team that supervised the stocking in the mentioned counties: -

a) Hon. Linah Chebii Kilimo, CAS, MOALF&C
b) Patrick Mwangi, Director of Administration, SDF& BE
c) Dr Isaac Wamalwa
d) Dr Simon Macharia
e) Hilda Njoroge
f) Stellah Mayore

The payment for Lot 3 and 4 has not be done up to date and is therefore one of the pending bills due to budget constraints. The dam was identified by the county government for restocking with consideration of its suitability and accessibility. Being a wetland area, the weather extreme such as floods might have interfered with the accessibility of the dam, however stocking was done in the presence of 2 community members. The supplier delivered 20 000 fingerlings to Riakiriama Dam as per the acknowledgement certificate duly signed by the County Director Kisii Mr. Edwin Muga and the delivery note duly signed by Paul Werreh the supplies assistant.

In Busia, restocking was done at Namalenga Dam in Matayos Subcounty, which can be verified by the delivery note and acknowledgement certificate from the County Director of Busia.

Committee Observations and Findings

The Committee observed that the project was ill conceived and value for money may not be ascertained because there was no demonstratable way of ascertaining numbers at delivery, tracking the growth and eventual harvesting of fish, despite submission of evidence of

replacement of fingerlings found unsuitable. There has not been any statistics availed that the entire project saw the country improve its food security.

Committee Recommendation

i) **The Committee reprimands the Accounting Officer for failure to ensure prudent project conceptualization and implementation;**

ii) **The Auditor General to conduct a special audit on the entire programme and report to the Committee within six (6) months of adoption of this report.**

1343. Procurement, Ownership and Utilization of Medium Sized Fishing Boats

During the financial year 2018/2019, the State Department awarded a tender for supply of medium sized fishing boats to a firm at a sum of Kshs.60,815,205. The contract was signed on the 4 June, 2019. The boats were delivered at Liwatoni on 28 May, 2020 and payment for the same was made on 18 December, 2020.

However, ownership documents and insurance cover for the boats were not provided for audit review. Further, physical verification of the boats in November, 2021 revealed that the boats were not being used because they did meet the specification of a fishing boat.

Submission by the Accounting Officer

The Accounting Officer submitted that the boats procured were designed and built based on provided specifications of a fishing boat and after delivery, they were inspected and accepted to have met the provided specification by inspection and acceptance committee. The boats were further inspected by the Kenya Maritime Authority (KMA) for their sea worthiness and an inspection certificate issued. The boats were then licensed by KMA and issued with a licence to operate after qualifying for Local safety certificate. KMA is the entity charged with issuing ownership documents and they only issue logbooks to vessels of more than 25m long. The vessels are each 12m long and the ownership documents are in the custody of Kenya Fish Industries Corporation (KFIC).

The boats were further issued to Kwale, Kilifi and Lamu counties and they are currently not in use due to lack of fishing gears (nets and other equipment). The fishing nets were not procured together with the boats due to budget cuts at the time. Plans are underway to provide the gears under other programmes to put the boats into use and the budget is provided in the next financial year. Once the fishing gears are acquired, the insurance will be procured as the boats will be ready for use.

Committee Observations and Findings

(i) **The Committee noted that the State Department acquired four (4) boats that were rendered unusable due to the absence of fishing gear, for which no budget allocation was made at the time. The Accounting Officer submitted that the fishing gear were currently being obtained through a world bank funded project;**

(ii) **The Committee observed that the boats purchased in the year 2020 have remained unused for two years, resulting in their deterioration and loss of value.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure value for money by failing to procure the fishing gear together with the boats, and directs that the Accounting Officer ensures they are operational within six months of adoption of this report, and report to the Committee.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1344. Lack of Ownership Documents and Incomplete Fixed Asset Register

Annex 1 to the financial statements reflects a summary of fixed assets register with total historical cost of Kshs. 6,209,866,655 as at 30 June, 2021. Review of records revealed that the fixed asset register provided was incomplete and did not indicate clearly the assets owned, dates of acquisition and costs. Further, ownership documents for the assets acquired during the year and over the years were not provided for audit. Lack of detailed information on the assets in the register and ownership documents is an indication of weak internal control over the assets.

Submission by the Accounting Officer

The Accounting Officer submitted that ownership documents for motor vehicles (logbooks) and vessel licenses acquired during and over the years have been availed to the auditors for verification. This includes 54 logbooks and 3 vessel licenses. The PS further said that the Department has acquired four vehicles over duration of time.

The State Department was 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.

On incomplete asset register, the Accounting Officer submitted that the State department is currently in the process of updating the asset register. The Accounting Officer conceded that the issue of Assets register had a gap and that it was being addressed including the training of their officers.

Committee Observations and Findings

The Committee observed that the State Department did not have a complete Fixed Assets Register.

Committee Recommendation

The Committee directs the Accounting Officer to avail a comprehensive fixed assets register to the Committee within three (3) months of adoption of this report.

1345. Lack of a Risk Management Policy

During the year under review, the State Department did not have a Risk Management Policy. Consequently, the procedures and strategies put in place to assess, identify, measure, prioritize and mitigate risks in the State Department could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there is an Institutional Risk Management Policy Framework finalized and in place. This will inform the development of the risk management policy for the State Department.

Committee Observations and Findings

i. **The Committee noted that even though a framework towards developing the policy has been established, initially there was no policy whatsoever as observed by the auditors;**

ii. **The Committee noted that the framework was being developed and will be established within six (6) months.**

Committee Recommendation

The Committee recommends that the Accounting Officer submits the risk management policy and ensure its operationalization within three (3) months of adoption of this report.

REVENUE STATEMENTS OF THE STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY

REPORT ON THE REVENUE STATEMENTS

Basis for Qualified Opinion

1346. Undisclosed Revenue from Rent

During field verification of projects in Kisumu County in November, 2021, it was noted that a private company which manufactures water buses was being hosted in the State Department`s property. Although the Management explained that the company had leased the premises since the year 2014 at a monthly rent of Kshs. 30,000, no documentary evidence was provided to support the explanation including a signed contract or lease agreement, valuation report, invoices and receipt vouchers. Further, the monthly rental receipts could not be traced to the State Department`s bank statement or cash book. Hence the rent which the company ought to have paid from the year 2014 to the financial year under review totalling Kshs. 2,700,000 had not been accounted for. Information available also revealed that the company had communicated to the State Department vide a letter dated 26 September, 2013 indicating that it had leased the site for the last six (6) years. However, it was not possible to confirm whether the rent for the earlier six years had been collected and accounted for. Consequently, the accuracy and completeness of the revenue collected for the year under review totalling Kshs. 135,454,044 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that 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 Ksh. 30,000.00.

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.

Regarding the revenue collected from the rent, copies of receipts for the rent amounting to Kshs. 2,490,000.00 (Kenya shillings two million, four hundred and ninety thousand only) for a period of six years nine months have been availed.

The State Department engaged the Ministry of Lands to initiate the valuation of the land parcel which will form the lease agreement. Revenue from Rent is banked directly by client to CBK Account.

Committee Observations and Findings

i. **The Committee noted that the OAG were not provided with lease agreements to carry out audit; and**

ii. **The Committee also noted that the Ksh. 30,000 monthly rent that has continued to be paid since the year 2014 in Kisumu did not reflect market rates.**

Committee Recommendation

The Committee reprimands the Accounting Officer for abrogation of duty and directs that he avails proper lease agreements, and that an adjustment of the rent is made to reflect the current market rates; and provide a status report to the Committee within three (3) months of adoption of report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1347. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1348. Weak Controls over Revenue Collection at the Lake Victoria Beaches

During field verification in November, 2021 of various fish landing sites in Lake Victoria region it was observed that the beach management units did not maintain a database of all fishing vessels and persons required to pay fishermen’s fees and boat licenses. Further, there were no defined timetables and schedules of work for collecting revenue by the staff in the regional offices. In addition, although revenue collection through 447 licenses for fishermen and registration of local fishing vessels is the mandate of the State Department, the County Governments of Siaya and Migori were also charging licenses and collecting fees for the same. Further, members of the beach management units lacked training on best practices in the management of the beaches and knowledge on the best equipment to use for fishing.

Submission by the Accounting Officer

The Accounting Officer submitted that systems are now in place for data collection, dissemination and management. Registers are in place for vessels that are due for licensing. A matrix of BMUs database and licensing schedule were availed to the auditors for verification. A timetable for revenue collection had been developed for 2020-2021 and was attached for inspection.

The Accounting Officer also submitted that under the transfer of functions to the County Governments of August 2013, Counties are allowed to charge fees at landing sites.

The Accounting Officer further submitted that the Beach Management Unit has periodically trained on fisheries management, fish quality assurance and deep sea fishing technology. In addition, deployed staff at the landing sites carry out routine day-to-day training on best practices in the management of beaches and on recommended gears and methods for fishing.

The Accounting Officer said that there is no double taxation as the taxes are being paid at the county level and that the agency did not have staff on the ground to do licensing. The Agency said that they will seek to have staff on the ground the next financial year and that they are working with the Treasury to come up with a training programme.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1349. Ineffective Collection of Revenue by Kenya Fishing Industry Corporation
During field verification in November, 2021 at Kenya Fishing Industry Corporation, Mombasa, it was noted that the Corporation collected revenue amounting to Kshs. 4,130,350 and remitted it to the revenue account of the State Department. The revenue collected by the Corporation included fish off-loading and security charges from only one fish landing site, Liwatoni, Mombasa and not all the seventy-seven (77) fish landing sites along the coastline of Kenya specified in the Fisheries Act, 2012. The Management claimed that the Corporation did not have enough staff to make the collection of revenue from those other sites. Consequently, the Corporation is denying the Government revenue by not being able to collect levies and fees from the other seventy-six (76) fish landing sites as required under its mandate.

Submission by the Accounting Officer
The Accounting Officer submitted that the Kenya Fishing Industries Corporation (KFIC) was established under State Corporation Act, 2018 (Legal Notice No. 214). The mandate of the institution is exploit fishery resources in Kenya fishery waters and high seas by promoting establishment and efficiency of businesses engaged in fishing and fishing-related activities.

Currently the Fisheries Management and Development Act of 2016 is the one in use and it provides that new landing sites will be gazetted. The Corporation manages established fish ports under the State Department and collects revenue for the use of berth (berthing fee) by fishing vessels and by providing security for the fishing vessels docked at the designated fish ports. Section 50(2) of the Fisheries Management and Development Act (No. 35 of 2016) establishes Liwatoni (Mombasa), Shimoni (Kwale) and Mkokoni (Lamu) as designated fishing ports and not fish landing stations. The two other designated fishing ports (Shimoni and Mkokoni) are yet to be operationalized. KFIC only collects in Liwatoni.

The Accounting Officer also submitted that KFIC is just focusing on deep sea industrial fishing and reiterated that the Agency is committed to running the landing sites without leaving them to counties as they will be ran down.

Committee Observations and Findings

The Committee noted that there was possible loss of revenue due to incapacity to collect revenue from the 76 and other fish landing sites.

Committee Recommendation

The Committee recommends that the State Department engages KRA as a collector of revenue as prescribed under Section 75 of the PFM Act within three (3) months of adoption of this report.

1350. Lack of Audit by Internal Audit

During the year under review, it was observed that revenue collection records and revenue statements had not been reviewed by the Internal Audit Unit of the State Department. Lack of review by the Internal Audit exposes the State Department to the risks of loss and/or under - collection of revenue and obscures the accountability required to assess the root cause of revenue issues.

Submission by the Accounting Officer

The Accounting Officer affirmed that the revenue statements were not reviewed by the internal audit but in future the revenue statement will be given to internal audit for review before being forwarded to Auditor General.

Committee Observations and Findings

The Committee observed failure by the Accounting Officer to ensure the project was audited by the internal audit function.

Committee Recommendation

i. **The Committee reprimands the Accounting Officer for acting in breach of provisions of Section 73(1)(a) of the Public Finance Management Act, 2012.**
ii. **The Accounting Officer must at all times ensure that they have appropriate arrangements in place for conducting internal audit according to the guidelines of the Public Sector Accounting Standards Board pursuant to the provisions of Section 73(1)(a) of the Public Finance Management Act, 2012.**

DONOR FUNDED PROJECTS

KENYA MARINE FISHERIES AND SOCIO-ECONOMIC DEVELOPMENT PROJECT (IDA CREDIT NO.65400-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1351. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1352. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final budgeted receipts of Kshs.660,000,000 against actual receipts of Kshs.639,939,594, resulting in underfunding of Kshs.20,060,406 or 3% of the budget. budgeted expenditure of Kshs.660,000,000 against actual expenditure of Kshs.200,139,977, resulting in an under expenditure of Kshs.459,860,023 or 70% of the budget. The under-funding and under expenditure may impact negatively on delivery of services to the intended recipient.

Submission by the Accounting Officer

The Accounting Officer submitted that 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) EUR0 5,000,000.00. The project at the time had more than half the balance and this delayed withdrawal application hence the shortfall of Kshs. 20,060,406 in budget funding.

The Accounting Officer also submitted that the under-expenditure was as a result of the failure by the project to undertake two major component activities that had been planned. These are development of governance tools and community mobilization and training for complementary livelihoods which involve participatory approaches.

The Accounting Officer further submitted that the project puts in place affirmative action activities designed to ensure that the minorities and marginalized participate in governance and other spheres of their lives, thus participation of large numbers of persons was required in order to comply to the social and environmental safeguards. In addition, the Constitution of Kenya, 2010 obligates for public involvement and public participation before any community activity is implemented and during development of regulations and policies. Key activities targeted under the complementary livelihood included training of Trainer of Trainers and Trainer of Facilitators on the Participatory Integrated Community Development (PICD) the main approach to project implementation.

The COVID 19 pandemic, therefore, negatively impacted on the project implementation as the target activities involved large numbers of participant and movements not allowed by the Ministry of Health restrictions on movement and COVID 19 Protocols. Non-implementation of these planned activities therefore, vastly affected the project expenditure.

Committee Observations and Findings
The Committee observed that the submission and explanation provided by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1353. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion

1354. There were no material issues relating to effectiveness of internal controls, risk management and governance.

AQUACULTURE BUSINESS DEVELOPMENT PROGRAMME (IFAD LOAN NO.2000002052)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1355. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1356. Budgetary Control and Performance
The Programme's approved expenditure budget for the financial year 2020/2021 amounted to Kshs.1,696,015,565 with actual on comparable basis of Kshs.1,324,312,696, resulting in an under expenditure of Kshs.371,702,869 or 22%.

Submission by the Accounting Officer
The Accounting Officer submitted that the under expenditure was as a result of community activities that could not be conducted due to the COVID 19 restrictions, as shown in the table below;

AQUACULTURE BUSINESS DEVELOPMENT PROGRAMME FY2020/2021 UNUTILISED FUNDS		
Code	**Activity**	**Kes**
01	**Smallholder Aquaculture Development**	
01.01.02	Participatory Needs Assessment/Consultation /c	1,262,632
01.01.03	Group Formation /d	10,523,610
01.01.04	Organisational Skills Trainings for SAGs /e	24,586,796
01.01.06	Community Development Specialist	2,759,517
01.01.07	Gender, Youth and Nutrition Specialist	6,315,617
01.10.18	Refresher Training of Trainers (28 participants drwan from 1 County)	12,089,000
01.01.19	Train ToTs (Extension officers) on module 7 Post harvest handling and value addition and marketing	14,600,000
01.01.21	Implementation of Farmer Field Schools (including Nutrition Sensitive Trainings)	44,583,641
01.01.22	Online Training and Discussion Platform (Include Open Data Kit)	1,955,700
01.01.24	County Suitability Mapping of Existing/potential Ponds/reservoirs	6,821,583
01.01.25	Environmental Assessment of Existing/new Ponds/reservoirs	7,101,300
01.01.34	Training of fingerling producers on hatchery management including brood stock management(Capacity building of fingerling industry).	1,729,000
01.01.36	Fruit Tree Planting around Community Dams	4,243,500
01.01.37	Development of Dam Management Strategy	3,280,400
01.02.02	Identification of Youth Champions and Youths in ASEs	3,502,530
01.02.03	Training of Selected Champions of Youth Entrepreneurs	8,781,700
01.02.05	Support for ASE Business plans-Seed Money	45,000,000
01.02.07	Follow-up and Backstopping by ILO	5,000,000
01.03.02	Goods & Materials - School fish feeding programmes	2,544,000
01.03.04	Preparation of videos, drama, TV, Radio Communication Materials in Communities	22,681,350

01.03.07	Food Surveys for 3 Periodic Times (baseline, midterm, completion)	4,124,000
01.03.08	Household Methodology & Nutrition (study on Nutrition-Gender Nexus	4,703,850
01.04.04	Field Allowances for Extension Agents	10,010,482
02	**Support for Aquaculture Value Chains Development**	
02.01.01	Aquaculture Business/PPPP Advisor /a	2,329,989
02.01.02	Detailed Value Chain Assessment	8,652,700
02.01.23	Regional Forums with FD Officers and Stakeholders (Aquaculture Business & PPPP)	2,400,000
02.01.24	Meetings with FD Officers, Aggregators and SAG/ASE Groups	5,268,390
02.02.09	Training of Extension Officers	1,696,687
02.02.15	RIAT Training Center Facilities for Aquaculture	10,555,350
02.02.17	Training of ToTs (Extension officers and representatives of small holder aquaculture groups) on Aquaculture Business development.	4,789,676
02.02.18	Training of Extension Officers from Western Regions in RIAT	11,042,862
02.02.20	Strain Performance and Feed Comparison Experiments - Research Institutions Strengthening	18,203,528
02.02.23	Study for Planning Quality Assurance Interventions	3,185,000
02.02.24	Aquaculture Quality & Residues Monitoring - QA services	4,000,486
02.02.32	Aquaculture Blue book	2,538,573
02.03.01	Daily Subsistence for Extension Officers	2,404,230
02.03.02	O&M of Cars (Insurance, Gas, etc.) - Extension Operation Costs	4,011,831
02.03.03	O&M of Motorcycles (Insurance, Gas, etc.) - Extension Operation Costs	1,132,284
03	**Programme Management, Monitoring & Evalution, Knowledge Management**	
03.01.27	Baseline Survey	12,526,405
03.01.31	Impact Studies	5,831,500

03.01.35	Electronic Database Development	15,192,500
03.01.41	Radio and TV Programs	7,740,670
	TOTAL	**371,702,869**

Committee Observations and Findings
The Committee observed that the submission and explanation provided by the Accounting Officer were satisfactory.

Committee Recommendation
The matter was marked as resolved.

1357. Procurement of Fingerlings
The statement of receipts and payments reflects expenditure on purchase of goods and services amounting to Kshs.663,117,677 and as disclosed under Note 6 to the financial statements. Included in this amount is expenditure on specialized materials and services of Kshs.85,652,537 relating to procurement of fingerlings for various counties.
Records indicate that fifteen counties were identified under the project and each county was to identify two dams for stocking of fingerlings. A total of 47 dams were restocked with 990,000 fingerlings. Records also indicate that 20,000 fingerlings were to be procured for each dam. However, during the procurement process each dam was added 2,000 fingerlings translating to unapproved procurement of Kshs.1,500,000. No explanation was provided for the anomaly. Further, there were no requisitions from the counties indicating the capacity of the dams and the number of fingerlings the respective dams could hold. In addition, it was not explained how the number of fingerlings per dam was determined given that the dams are of various sizes and capacity.
Consequently, the accuracy, validity and value for money of the stocking of fingerlings amounting to Kshs.85,652,537 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that an additional 2,000 fingerlings per dam was through the approval of the AWPB and the Procurement Plan done by the Programme Steering Committee and IFAD. This was aimed at supporting Community Dam Aquaculture which is an emerging avenue to enhance the aquaculture production base in the ABDP implementing counties in line with the Programme Development.

The Accounting Officer also submitted that on requisition from Counties for stocking the dams indicating capacity of the dams and quantities to be stocked for each dam, the Counties submitted their requirements through the Annual Work Plan & Budget and all requirements were consolidated and were in the approved Procurement Plan. The requisition of procurement was done by the Aquaculture Specialist Component Lead.

The Accounting Officer further submitted that the initial stocking/restocking was uniform across the dams for equitable distribution of available resources across the ABDP implementing counties.

The Accounting Officer reiterated that a technical committee receives the fingerlings and the requirement is based on community needs.

Committee Observations and Findings

The Committee observed that the work-plan approving the procurement of the extra fingerlings were belatedly availed to the Committee. Eventual expenditure did not exceed budgetary allocation.

Committee Recommendation

The Committee recommends that the matter is resolved.

1358. Lack of Fishing Equipment and Monitoring and Evaluation Reports

Field visits done in the year 2021 revealed that the dams` committees were to manage fish harvesting which was supposed to be between 12 months after restocking. However, the farmers raised a challenge of lack of fishing equipment like nets and boats. Consequently, the farmers have been denied opportunity to harvest and sell fish which was to empower them economically.
Review of the current budget and procurement plan revealed no provision for the support of the farmers in terms of fishing equipment. In addition, no monitoring and evaluation reports were provided to confirm the impact of fish farming on the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that the need for fish harvesting equipment had been noted and a budget line for acquisition of motorized fish harvesting boats with gear under the concept of Agriculture Mechanization Services (AMS) had been provided for in the draft AWPB for 2020/21 FY. However, a review of the AWPB by the Joint IFAD-GoK supervision Mission of May-June 2021 recommended that the plans be shelved until IFAD approved the same during the Mid-Term review of the Programme.

During FY 21/22, a budget was provided for a Dam Sampling Exercise targeting all the stocked/restocked dams, an activity that was undertaken in collaboration with KMFRI to monitor the impacts of restocking and assess viability and sustainability of Dam Aquaculture ventures. The outcome of the survey is well documented, including a factsheet and a scientific paper published on the same.

Committee Observations and findings

The Committee observed that the documents and explanation provided by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1359. Non-Use of an Accounting System

The Programme Management single sourced an accounting software from a company in the financial year 2019/2020 at a contract sum of Kshs.7,437,472 and paid for annual license and maintenance fees of Kshs.764, 788 in the financial year 2020/2021. However, the audit noted that the system had not been put to use since installation. Ledgers and 450 financial statements are prepared manually which may lead to misstatement of the financial figures.

Submission by the Accounting Officer

The Accounting Officer submitted that in line with the IFAD procurement regulations, ABDP wrote to the donor to request the use of restricted tender (not single sourcing) to procure Sun system Software. This was so as to standardize the type of accounting system used by other IFAD funded projects as was advised by the IFAD office. The Donor Issued a No objection to use restricted tender and to purchase Sun system Software via No Objection Dated 24th May 2019.

The Accounting Officer also submitted that during audit, some modules were still under configuration, however the current position is that the system is now in use and all modules are functional.

Committee findings and observations;

The Committee observed that the documents and explanation provided by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

30. STATE DEPARTMENT FOR CROP DEVELOPMENT AND AGRICULTURAL RESEARCH- VOTE 1169

REPORT ON THE FINANCIAL STATEMENTS

Dr. Francis O. Owino, the Acting Principal Secretary and Accounting Officer for the State Department for Crop Development and Agricultural Research (Vote 1169) appeared before the Committee on 28th April, 2022 to adduce evidence on the Audited Financial Statements for the State Department for Crop Development and Agricultural Research (Vote 1169) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Ms. Charity Muriuki	-	Deputy Accountant General
2.	Mr. Charles Minjire	-	Assistant Accountant General
3.	Mr. Tobias Osano	-	Chief Finance Officer
4.	Ms. Josephine Mbio	-	Director AIRC
5.	Mr. Elijah Obebo	-	Head Supply Chain Management Services
6.	Mr. David Ndorongo	-	Accountant – ASASP Programme
7.	Mr. Gerald Korema	-	Director – RSLP
8.	Mr. David Ombalo	-	MOALF&C - AGRA
9.	Eng. G. W. Kahuro	-	DRSLP, SIVAP & RLACC
10.	Mr. Adoyo Onyango	-	Accountant
11.	Mr. Robert Gwadoya	-	MOALF&C – AGRA

Basis for Qualified Opinion

1361. Unsupported Capital Grants

The statement of receipts and payments reflects an expenditure on transfer to other government entities of Kshs.27,907,075,235. The expenditure, as disclosed in Note 8 to the financial statements, includes an amount of Kshs.13,663,760,956 in respect of capital grants. The latter amount included Kshs.643,179,912 described as transfer to Kenya Climate Smart Agriculture Project on expenditure related to 2019/2020 but realized in 2020/2021 for which, no supporting documentation was provided for audit verification.

Consequently, the accuracy and completeness of the capital grants of Kshs.13,663,760,956 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that KCSAP spent an amount of Kshs.643,179,912.30 which related to the financial year 2019/20. The expenditures were within their approved work plan and no objection by the World Bank obtained for all the activities which were to be carried within the approved time frame. The world bank having been satisfied approved withdrawal application that allowed release of money to National Treasury which subsequently released the same to the project bank account through the State Department. However, supplementary budget was not passed in time to enable capture of the expenditure against it. The expenditure was realized in 2020/21 as correctly put by the auditor and the relevant supporting IFMIS journals have since been availed.

Committee Observations and Findings

i) **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;**

ii) **The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to act in accordance with Section 68(2)(b) of the PFM Act 2012.

1362. Expensing of AIEs Disbursed to Agricultural Technological Development Centers (ATDCs)

The statement of receipts and payments reflects an expenditure on acquisition of assets of Kshs.7,436,588,489 which includes AIEs issued to various Agricultural Technological Development Centers (ATDCs) amounting to Kshs.12,000,000 and charged to construction of buildings. These AIEs were expensed immediately before they were actually spent by the Agricultural Technological Development Centers (ATDCs).

Consequently, the validity, accuracy and completeness of the expenditure totaling Kshs.12,000,000 relating to the AIEs issued to the Agricultural Technological Development Centers (ATDCs) could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the AIEs to Agricultural Technological Development Centers (ATDCs) were expensed directly to the institutions. The state department had been newly created through Executive Order No. 1 of 2020 and relevant geographical codes for ATDCs that would have enabled transfer of AIEs had not been created in the IFMIS System. The Kshs.12,000,000 was hence transferred directly to the institutions. It has been confirmed that the amounts were expensed correctly. The IFMIS department –National Treasury has since activated the geographical codes. The State Department has written to IFMIS Department-National Treasury for AIE transfer responsibilities to enable processing of the transfers.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Expensing of AIEs Disbursed to Agricultural Technological Development Centers (ATDCs) was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1363. Unsupported Acquisition of Strategic Stocks and Commodities

As disclosed in Note 10 to the financial statements, the expenditure on acquisition of assets of Kshs.7,436,588,489 includes an amount of Kshs.5,584,034,231 on acquisition of strategic stocks and commodities, which relates to settlement of maize subsidy pending bills. Audit review of sampled pending bills payment records revealed that an expenditure amounting to Kshs.945,746,538 was not supported with invoices, delivery notes, inspection and acceptance reports, counter receipt voucher (S13), clearance from EACC investigations and initial purchase orders.

Consequently, that the validity, accuracy and completeness of the acquisition of strategic stocks and commodities expenditure of Kshs.945,746,538 could not be confirmed.

Submission by the Accounting Officer

The pending bills related to maize subsidy programme. Maize millers lodged complaint to the tribunal. A joint task force was established to look into the pending bills and do verification of the same. All supporting documentation and correspondences were cross examined and the task force came up with the report recommending payment to the millers after they were satisfied that indeed the claims were genuine and payable. The report was availed for audit verification.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Acquisition of Strategic Stocks and Commodities was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1364. Non-Disclosure of Bank Balances for Emergency Locust Response Project

The statement of assets and liabilities as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs.2,277,130,984. However, the balance excludes an amount of Kshs.562,596,391 relating to bank balances held in various participating counties under Emergency Locust Response Project as at 30 June, 2021.

Consequently, the accuracy and validity of cash and cash equivalents balance of Kshs.2,277,130,984 could not be ascertained.

Submission by the Accounting Officer

The State Department transferred Kshs 600,000,000 to the Emergency Locust Response Project (ELRP) counties. This was expensed as grants at the time of transferring thus being an expenditure to the State Department. The bank balance of Kshs 562,596,391 is not related to the bank balances of the State Department. The Accounting Officer reported on all the Bank balances which he has been authorized by the National Treasury. The balances of Kshs 562,596,391 were reported in the respective counties who had authority to report on them. However, the Emergency Locust Response Project (ELRP) made appropriate disclosure of the amounts in their Financial Management Report (FMR). The financial statements has been audited and the unqualified report submitted to the Donor. (World Bank).

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Non-Disclosure of Bank Balances for Emergency Locust Response Project was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1365. Unsupported Prior Year Adjustments

As disclosed in Note 15 to the financial statements, the statement of assets and liabilities reflects prior year adjustment amounting to Kshs.15, 692,109. However, the prior year adjustments in the year under review were not supported by documentary evidence or corrected retrospectively.

Submission by the Accounting Officer

The Accounting Officer submitted that the National Agricultural and Rural Inclusive Growth Project (NARIGP) project revised their 2019/20 financial statements and included some imprest surrenders that had been inadvertently left out. This revision was during the audit process and hence the State Department came to know about it when the certificate had been issued.

This was corrected as part of prior year adjustments in the subsequent financial year statement.

Committee Recommendation

The Committee observed that the error was corrected in the subsequent Financial Year.

Committee Recommendation

The Committee recommends that the matter is resolved.

1366. Incorrect Accounts Receivables - Outstanding Imprests

The statement of assets and liabilities as at 30 June, 2021 reflects an accounts receivables balance of Kshs.4,222,000 relating to outstanding imprests as disclosed in Note 12 to the financial statements. However, the balance of Kshs.4,222,000 excludes Kenya Climate Smart Agriculture Project outstanding imprests balance of Kshs.48,122,740 as at 30 June, 2021.

In the circumstances, the accuracy, completeness and validity of the accounts receivable balance of Kshs.4,222,000 could not be confirmed.

Submission by the Accounting Officer

NARIGP had an outstanding imprest of Kshs 4,222,000 through their commercial bank account which was not part of their 2020/21 expenditure.

For Kenya Climate Smart Agriculture Project (KCSAP) all the imprests were surrendered and the surrender vouchers taken to Kenya Climate Smart Agriculture Project (KCSAP) offices. The State Department cleared the said imprest in the IFMIS System and manual registers as required. The difference of Kshs 48,122,740 is attributed to the treatment of the same where (Kenya Climate Smart Agriculture Project) KCSAP did not recognize surrender of imprests that were received in their office after 30th June. This has since been cleared.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Incorrect Accounts Receivables - Outstanding Imprests was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1367. Long Outstanding Pending Bills

Note 18.1 to the financial statements reflects pending bills amounting to Kshs.10,782,845,180 as at 30 June, 2021 which were not settled in the year under review but were carried forward to

2021/2022 financial year. 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. Further, review of expenditure documents in support of the pending bills revealed that bills amounting to Kshs.29,905,723 were not supported with relevant documents and authority as stipulated under Regulation 104 of the Public Finance Management (National Government) Regulations, 2015.

In addition, review of Annex 1 to the financial statements revealed that pending bills relating to recurrent vote of Kshs.8,565,920,782 and development vote of Kshs.1,953,843,720 all totalling Kshs.10,519,764,502 had been outstanding since 2018/2019 and earlier years. It is not clear why the State Department did not treat pending bills carried forward from the previous years as the first charge to the appropriation for the year under review as required under Regulation 42(1)(a) of the Public Financial Management (National Government) Regulations, 2015.

Submission by the Accounting Officer
The Accounting Officer admitted that a huge amount of pending bills amounting to Kshs.10,519,764,502 has remained outstanding. The bulk of it relates to fertilizer and maize subsidy programmes. These bills relate to prior period and the State Department has not been able to get budgetary provision for the total execution of these pending bills. The State Department is in touch with the National Treasury to unlock the impulse. The State Department commits to clear all the debts once funds are availed.

Committee Observations and Findings
The Committee observed that the pending bills remained unpaid to date.

Committee Recommendation
The Accounting Officer must ensure that pending bills are settled as first charge in the subsequent financial year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Basis for Conclusion
1368. Non-Compliance to a Third Rule on Salary Deductions
Analysis of the payroll data for the year ended 30 June, 2021 revealed that twenty one (21) employees had payroll deductions in excess of two thirds of their gross pay in the month of June, 2021. This contravenes Section 19(3) of the Employment Act, 2007 which requires 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 made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages.

Submission by the Accounting Officer
The Accounting Officer admitted that (21) employees had their payroll deduction in excess of two thirds of their gross pay in the month of June 2021. During COVID 19 pandemic the government took some measures to cushion the low earning staff. Officers earning less than Kshs.24,000 were exempted from tax and other categories of tax relief granted from 30% to 25%. This gave some staff some leverage and hence took some additional loans, increased their share contribution and others restructured their loan repayment schedules. There was also implementation of new pension scheme which took effect from 1st January 2021 for officers aged 45 years and below which lead

to reduction of 2.5% of basic salary. When the relief was lifted, the effect was that some of these officers surpassed their balance threshold. The officers were communicated to and through formal engagement, action was taken and the matter has since been resolved**.**

Committee Observations and Findings
The Committee observed that the situation was caused by extraneous factors.

Committee Recommendation
The Committee urges the Accounting Officer to incrementally enforce Section 19(3) of the Employment Act, 2007 on the affected officers.

1369. Failure to Maintain an Up-to-Date Assets Register

Disclosed in Annex 2 to the financial statements is a summary of fixed assets register with a historical cost balance of Kshs.17,512,719,015 as at 30 June, 2021. However, the State Department did not maintain an up to date fixed assets register contrary to Regulation 143 of the Public Finance Management (National Government) Regulations, 2015.

Submission by the Accounting Officer
The Accounting Officer submitted that the State department has updated the asset register up to 70%. The 30% remaining will be attained by the end of the financial year 2021/2022.

Committee observations and findings
The Committee observed that the updating of Asset Register was ongoing.

Committee Recommendation

i. **The Committee reprimands the Accounting officer for breaching Regulation 143 of the Public Finance Management (National Government) Regulations, 2015;**
ii. **Within three (3) of adoption of this report, the Accounting Officer should submit asset register to the Committee.**

1370. Avoidable Interest on Delayed Payments on Acquisition of Strategic Stocks and Commodities

As disclosed in Note 10 to the financial statements, the expenditure on acquisition of strategic stocks and commodities of Kshs.5, 584,034,231 includes avoidable interest on delayed payments amounting to Kshs.1,326,443,395. Audit examination of relevant contracts supporting the payments revealed that the contracts did not provide for payment of interest on delayed payments.

Although the Management explained that the interest rate was awarded by the court, failure by Management to honor the bills as and when they fell due is contrary to Section 68(1) of the Public Finance Management Act, 2012 which requires the Accounting Officer to ensure that public resources are managed effectively, efficiently and economically.

Submission by the Accounting Officer

The Accounting Officer submitted that the contract was entered into when the government launched the maize flour subsidy program with the aim of cushioning consumers by maintaining maize flour at affordable price.

The FY 2016/2017 budget provided was not sufficient to clear all the accrued bills. This resulted in pending bills which remained outstanding for more than three years. Because of the delayed payments, the affected parties went to court and the court gave a ruling as per the awards document. After the ruling, the State Department sought the approval of the Cabinet and the approval was given and communicated through a letter Ref: OP/CAB 58/4A.

Committee Observations and Findings

Committee observed that the explanation given by the Accounting Officer with regards to Avoidable Interest on Delayed Payments on Acquisition of Strategic Stocks and Commodities was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1371. Failure to Surrender Appropriation-In-Aid (A.I.A) Collected at Kenya School of Agriculture

Review of the Budget of the State Department for Crop Development and Agricultural Research revealed that the State Department budgeted to collect A.I.A. amounting to Kshs.4,000,000 from the Kenya School of Agriculture (KSA). Further, examination of invoices, receipts, bank statements and payment vouchers maintained at KSA revealed that the school collected A.I.A amounting to Kshs.4,037,330 and Kshs.647,555 through deposit and recurrent accounts respectively, both totalling Kshs.4,684,885. However, the A.I.A. collected was not surrendered to the State Department and accounted for in the financial statements for the year ended 30 June, 2021.

The Management was therefore in breach of Regulation 43(c) of the Public Finance and Management (National government) Regulations, 2015 that requires the Accounting Officer to ensure that all Appropriation-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

During the 2020/2021 financial year, Kenya School of Agriculture collected Kshs.4,037,330.00 as revenue from training programs and facilities. The revenue was deposited in the school's deposit account which was opened in September 2020. As per the guidance letter from the PS (letter Ref. No. MOA/FIN/3/8 dated 25th June 2021) which authorized the school to retain certain proportions of the training revenue for internal use, the state department apportioned the revenue accordingly and the amount for surrendered as AIA revenue to the Ministry headquarters is Kshs.609,328.35, while Kshs.3,428,001.65 is retained for KSA internal use. In this regard the school retained Kshs.3,428,001.65 as authorized and remitted the balance of Kshs.609,328.35 to the State Department A/C number 1000456957 on 6th September 2021.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Failure to Surrender Appropriation-In-Aid (A.I.A) was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1372. Lack of Risk Management Policy and Disaster Recovery Plan

As previously reported, the State Department did not have a Risk Management Policy and a Disaster Recovery Plan contrary to Regulation 165 of the Public Finance Management (National Government) Regulations, 2015 which requires the Accounting Officer to ensure that a national government entity develops risk management strategies, which include fraud prevention mechanism and a system of risk management and internal control that builds robust business operations.

This compounds exposure of the State Department's operations to risks, which could impact negatively on achievement of strategic objectives as well as service delivery and accountability of public resources.

Submission by the Accounting Officer
The state department did not have a disaster recovery plan and risk management policy by the time of audit. The process of establishing Risk management policy and a disaster recovery plan was delayed due to Covid 19 Pandemic. The process has started and the Risk management policy and disaster recovery plan will be available by the closure of financial year 2021/22.

Committee Observations and Findings
The Committee observed that the policy was not in place.

Committee Recommendation
The Committee reprimands the Accounting Officer and directs that he avails the policy within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA CEREAL ENHANCEMENT PROGRAMME - CLIMATE RESILIENT AGRICULTURAL LIVELIHOOD WINDOW (EU GRANT NO.200000623 EU, GRANT NO.2000001522, IFAD NO. LOAN 2000001121, AND ASAP GRANT NO.2000001122)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1373. There were no material issues noted during the audit of the financial statements of the Project.
Other matter
1374. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts amounting to Kshs.1,732,637,791.30 against a budget provision of Kshs.2,175,000,000, resulting in a shortfall of Kshs.442,362,208.70 or 20%. Further, the Programme budgeted to spend Kshs.2,175,000,000 compared to the actual expenditure of Kshs.1,769,544,135.77 resulting in an under expenditure of Kshs.405,455,864.23 or 19%.

The slow budget absorption may affect delivery of goods and services to the intended beneficiaries.

Submission by the Accounting Officer

The state department agrees with the figures of budgetary absorption shortfall of Kshs.442,362,208.70 in budgeted receipts of Kshs.2,175,000,000 against the actual receipt of Kshs.1,732,637,791.30, the Programme would wish to clarify that one of the Grant (EU COVID 19 recovery Grant no. 2000003493) was signed on 19th March 2021 and captured in Supplementary 2 budget estimates which was approved later in June 2021. The funds disbursed by the donor amounting to Euro. 2,000,000 could not be fully processed to the Project operational account and remained in the Project designated Account No. 1000213485 in CBK as at 30th June 2021. The funds were processed in the subsequent financial year 2021/2022. Moreover, the outbreak of Covid 19 pandemic led to restrictions in movement which slowed down implementation of field activities resulting in reduced expenditure.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1375. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1376. There were no material issues relating to effectiveness of internal controls, risk management and governance.

MULTI-NATIONAL DROUGHT RESILIENCE AND SUSTAINABLE LIVELIHOODS PROGRAMME IN THE HORN OF AFRICA (ADF LOAN NO.2100150028345)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1377. Unexplained Variances and Inaccuracies in the Statement of Comparative Budget and Actual Amounts

The statement of comparative budget and actual amounts reflects total actual receipts and payments of Kshs.627,392,678 and Kshs.571,589,531 respectively. However, the statement of receipts and payments on the other hand reflects total receipts of Kshs.901,865,445 and payments of Kshs.927,753,801 resulting in unexplained variances of Kshs.274,472,767 and Kshs.356,164,270 for receipts and payments respectively.

Further, the description and grouping of the receipts and payment items differs across the two statements, contrary to the prescribed financial reporting template by the Public Sector Accounting Standards Board.

In view of the above, the accuracy and completeness of the statement of comparative budget and actual amounts for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the anomalies have been noted and the financial statements for the year 2021/2022 will be adjusted to reflect the correct balances for Receipts and payments. In the addition, the groupings of items across the statements for receipts and payments and the statement of comparative budget and actual amounts will be amended to reflect the prescription of the financial reporting template by the Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings

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

Committee Recommendation

The Committee reprimands the Accounting Officer and directs that he ensures 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.

1378. Loan from External Development Partners

The statement of receipts and payments reflects a comparative amount of Kshs. 878,476,575 in respect of Loan from External Development Partners under payments made by third parties for the financial year 2019/2020. This figure differs with the audited financial statements for the year 2019/2020 which reflects an amount of Kshs. 812,853,404, resulting in an unexplained variance of Kshs. 65,623,171.

Consequently, the accuracy and completeness of the comparative figure of Kshs. 878,476,575 in respect of Loan from External Development Partners under payments made by third parties could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance of Kshs. 65,623,171 relates to erroneously omitted payments to third parties (as direct payments to contractors) which were incurred during the financial year 2019/2020 and captured in the amended financial statement of 2020/2021 as adjustments to comparative cumulative balances.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in contravention of Sections 68 (2) (b) and 81(4)(a) of the PFM Act, 2012.

1379. Acquisition of Non-Financial Assets

The statement of receipts and payments for the year ended 30 June, 2021 reflects expenditure on acquisition of non-financial assets amounting to Kshs.889,149,949 and as disclosed in Note 8 to the financial statements. The expenditure was in respect to construction of civil works. The following unsatisfactory issues were noted:

1379.1 Unsupported Expenditure

Included in the acquisition of non-financial assets expenditure of Kshs.889,149,949 were payments totalling Kshs.515,177,603.82 for which the supporting documents and records were not provided for audit review.

Consequently, the propriety, validity and accuracy of the expenditure of Kshs.515,177,603.82 on civil works for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Management has provided the payment records of the direct payments totalling Kshs.515,177,603.82 to various contractors for audit review and verification.

Committee Observations and Findings

i. 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.

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in breach of Section 68 (2) (b) of the PFM Act, 2012 and Section 9 (1) (e) of the Public Audit Act, 2015.

1379.2 Variance Between Financial Statements and Vote Book

The expenditure of Kshs.889,149,949 on acquisition of non-financial assets as reflected in the financial statements differs with the vote book cumulative expenditure of Kshs.412,444,086 for the year ended 30 June, 2021, resulting in an unexplained variance of Kshs.476,705,863.

In the circumstances, the accuracy of the acquisition of non-financial assets expenditure amounting to Kshs.889,149,949 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the figure of Kshs.889,149,949 relates to all direct payments to various contractors made by the African Development Bank (AfDB) for the period 1st July 2020 to 30th June 2021. The figure of Kshs.476,705,863 relates to expenditure incurred as direct payments in the year ended 30th June 2020 but of which payments were effected in the financial year ended 30th June 2021.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in breach of Section 68 (2) (b) and section 81(4)(a) of the PFM Act, 2012.

1379.3 Construction of Access Roads in Baringo County

Included in the expenditure on acquisition of non-financial assets of Kshs.889,149,949 is an amount of Kshs.20,231,608 in respect of construction of 16 kilometers of access roads in Baringo County at a contract sum of Kshs.31,821,118.43. However, the tender advertisement, bids submitted, tender opening, tender evaluation, comparison minutes and schedules, professional opinion, and letters of notification and acceptance were not provided for audit review.

Consequently, the accuracy, validity and completeness of the contract sum of Kshs.31,821,118.43 for access roads could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer provided the tender advertisement, report on bids submitted, tender opening, tender evaluation, comparison minutes & schedules, professional opinions, and letters of notification and acceptance for audit review and verification.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015;

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in breach of Section 68 (2) (b) of the PFM Act, 2012 and Section 9 (1) (e) of the Public Audit Act, 2015.

1380 Purchase of Goods and Services

1380.1 Variance between Statement of Receipts and Payments and Note 6 to the Financial Statements

The statement of receipts and payments for the year ended 30 June, 2021 reflects expenditure on purchase of goods and services of Kshs.29,853,852 which however differs with the corresponding amount of Kshs.30,021,852 disclosed in Note 6 to the financial statements. The resulting variance of Kshs.168,000 was not explained.

Consequently, the accuracy and completeness of the purchase of goods and services figure of Kshs.29,853,852 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The error has been noted and the comparative balance shall be restated in the 2021/2022 Financial Statements.

Committee Observations and Findings

The Committee observed that the failed to keep proper financial records.

Committee Recommendation

The Committee reprimands the Accounting Officer against breaching Section 9 (1) (e) of the Public Audit Act, 2015 for failing to provide accurate records and other supporting documents.

1380.2 Unsupported Expenditure on Domestic Travel and Subsistence

Note 6 to the financial statements reflects an expenditure of Kshs.25,956,482 in respect of domestic travel and subsistence allowance under payments made by the entity in cash. Included in this amount is a payment of Kshs.1,934,100 made against Imprest Warrant No.4022654, issued for a request for facilitation to undertake a joint approach surveillance in the reduction of tsetse fly menace affecting the calving pattern and market weight gain in Samburu County. However, the surveillance report was not provided for audit review.

Further, included in the approval was a budget breakdown on planned purchase of 160 litres of chemicals for spraying tsetse flies and purchase of protective gear and lab reagents totalling Kshs.840,000. However, no documentary evidence was provided to account for purchase, delivery, issue and use of the said chemicals, protective gears and lab reagents.

In view of the foregoing, the propriety, validity, accuracy and completeness of the expenditure totalling Kshs.2,774,482 claimed to have been incurred on reduction of ticks and tsetse fly in Samburu County for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the management confirms that the expenditure which was incurred was for Kshs.1,934,100.00 as per diem facilitation to officers who were engaged in the exercise. Kindly note that although there was a budget for purchase of chemicals of Kshs.840,000.00, the same was not funded and thus no expenditure incurred. The exercise was undertaken successfully and a back to office report has been provided for audit review and verification.

Committee Observations and Findings
The Committee observed that the failed to keep proper financial records.

Committee Recommendation
The Committee reprimands the Accounting Officer against breaching Section 9 (1) (e) of the Public Audit Act, 2015 for failing to provide accurate records and other supporting documents.

Other Matter

1381. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.883,046,916 and Kshs.627,392,678, respectively resulting in an under- funding of Kshs.255,654,241 or 29% of the budget.

Further, the statement of comparative budget and actual amounts reflects final payments budget and actual on comparable basis of Kshs.883,046,916 and Kshs.571,589,531, respectively, resulting in under-expenditure of Kshs.311,457,385 or 35% of the budget.

The under-funding and the low budget utilization may affect realization of the planned activities.

Submission by the Accounting Officer

The Accounting Officer submitted that the underutilization of the budget was as result of underfunding. The Management will in future strive to ensure that its funded budget is substantially utilized. Furthermore, it's hoped that the National Treasury will fund the budgets in a timely manner for the full implementation and realization of the planned activities and projects' developmental objectives.

Committee Observation
The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion

1382. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1383.Unconfirmed Monthly Cash Book Balances

A review of the monthly bank reconciliation statements, bank statements and cash book revealed that the cash book was not regularly balanced at the end of the month. In the circumstances, the controls over cash and cash equivalent are not adequate.

Submission by the Accounting Officer

The Accounting Officer submitted that management has noted the anomaly and taken measures to correct it by regularly balancing the cash book at the end of every month as required.

Committee Observations

i. 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;

ii. The Committee further observed that the Accounting Officer failed 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.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in contravention of Section 68 (2) (b) and section 81(4)(a) of the Public Finance Management Act 2012.

1384. As required by the African Development Fund, I report based on the audit, that the Programme's funds and counterpart funds have been used in accordance with the conditions of the Loan Agreement. Further, goods and services financed have been procured in accordance with the Loan Agreement and the necessary supporting documents, records and accounts have been kept in respect of all Programme's activities. In addition, internal controls to monitor expenditure and other financial transactions and ensure safe custody of assets and ledgers and fixed assets register for the Programme's assets are maintained.

SMALL-SCALE IRRIGATION AND VALUE ADDITION PROJECT (ADF LOAN NO.2000130014530 AND GRANT NO.5570155000751)

Basis for Qualified Opinion

1385. Unsupported Over-payment in Respect of Contract for Construction of Makanyaga Irrigation Scheme

The statement of receipts and payments reflects an expenditure of Kshs.515,386,932 under payments made by third parties in respect of acquisition of non-financial assets and as disclosed in Note 8 to the financial statements. The expenditure was incurred on construction of civil works. Included in this figure is an amount of Kshs.20,917,383 paid to a contractor for the construction of Makanyaga Irrigation in Tharaka Niithi County during the year ended 30 June, 2021.

Records made available for audit indicated that a firm was contracted at a tender sum of Kshs.164,694,456 for the construction of the Irrigation Scheme. However, examination of related expenditure records which included payment vouchers, payment certificates and supporting documents revealed that the contractor was paid a total of Kshs.189,207,651.50 instead of the contract sum of Kshs.164,694,456, hence an unexplained overpayment of Kshs.24,513,195.50.
In the circumstances, the accuracy and validity of the excess payment of Kshs.24,513,195.50, which includes an amount of Kshs.20,917,383 paid to the contractor during the year under review could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer confirmed that the Contract for the construction of Makanyanga Irrigation Scheme was varied by Kshs.24,513,195.50 being the approved variation of 14.8% on the original contract sum of Ksh.164,694,456 to Kshs189, 207,651.50. The variation was as a result of omission of some items in the bidding document and variances in the quantities indicated in the tender and actuals on the ground. The African Development Bank through the Task Manager gave "a No Objection" approving the variation vide an email dated 17th October 2019.

Committee Observation
The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Over-payment in Respect of Contract for Construction of Makanyaga Irrigation Scheme was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1386. Unsupported Expenditure on Seeds and Seedlings
The expenditure of Kshs.167,182,953 in respect to use of goods and services and as disclosed in Note 6 to the financial statements, includes a payment of Kshs.12,752,500 for the supply and delivery of agricultural materials - assorted seeds and seedlings. These seeds and seedlings were procured from two suppliers for Kshs.10,652,500 and Kshs.2,100,000, respectively.
Approved requisition indicating the number of assorted seeds and seedlings required and the intended beneficiaries were not however made available for audit review. In addition, it was not possible to ascertain whether the seeds and seedlings were delivered to the project and distributed to the user stations since neither document for receipt nor for issuance were made available for audit review. Moreover, a payment to one supplier was made without a corresponding invoice.
Consequently, the propriety, accuracy and completeness of the expenditure of Kshs.12,752,500 for assorted seeds and seedlings for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer confirmed that the requisitions for the purchase of assorted seeds and seedlings from Simlaw Seeds and Jkuat Enterprises Limited were approved by the Principal Secretary for direct procurement from Government owned enterprises. The seeds and seedlings were further distributed to the respective SIVAP counties. Documents were availed for audit review and verification.

Committee Observation

The Committee observed that documents were not availed to the Auditor General for review.

Committee Recommendation

The Committee reprimands the Accounting Officer and directs compliance with provisions of Section 68 (2) of the PFM Act 2012 and that complete financial and accounting records are presented to the Auditor General pursuant to the provisions of Article 229 of the Constitution of Kenya 2010 and Section 68 (2) (k) of the PFM Act 2012.

Other Matter

1387. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,231,170,775 and Kshs.685,819,263, respectively, resulting in an under funding of Kshs.545,251,512 or 44% of the budget.

Further, the statement of comparative budget and actual amounts reflects final expenditure budget and actual on comparable basis of Kshs.1,426,032,035 and Kshs.686,415,095, respectively resulting in an under-expenditure of Kshs.739,616,940 or 52% of the budget.

The underfunding and the slow budget utilization may affect implementation of the budgeted activities.

Submission by the Accounting Officer

The Accounting Officer submitted that the underutilization of the budget was as result of underfunding. The Management will in future strive to ensure that its funded budget is substantially utilized. Furthermore, it's hoped that the National Treasury will fund the budgets in a timely manner for the full implementation and realization of the planned activities and projects' developmental objectives.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1388. Slow Rate of Funds Absorption

The donor commitment reflected in other information accompanying the financial statements was USD 24,000,000 and USD 39,546,000 for grant and loan, respectively. As at 30 June, 2021, approximately 12 months to the closure, the project had only absorbed USD.4,851,049.58 and USD 17,878,659.44 for loan and grant, accounting for 20% and 45% of the donor commitment, respectively.

The slow rate of absorption of funds implies that some activities in the project will not be implemented which will negatively impact on achievement of the goals of the project.

Submission by the Accounting Officer

The Accounting Officer submitted that management wish to confirm that the current status of funds absorption is as follows:

1. SIVAP Loan

Total Commitments as a percentage of the total Loan: 78%
Total Payments as a percentage of the total Loan: 51%

2. SIVAP Grant

Total Commitments as a percentage of the total Grant: 69%
Total Payments as a percentage of the total Grant: 37%

This is an improvement compared to the status as at the time of Audit. Furthermore, the management is committed to absorbing the remaining balances before the closure of the project on 30th June 2023.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Slow Rate of Funds Absorption was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1389. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENTAND GOVERNANCE

Basis for Conclusion

1390. Lack of a Separate Imprests Register for the Project

A review of records on imprests management revealed that the Project used the same imprests register which was being maintained for two other projects namely; Rural Livelihoods Adaptation to Climate Change Project and Drought Resilience and Sustainable Livelihoods Programme.

Further, the register was not being updated regularly upon issuance of imprests to officers and the warrant numbers were not serially sequential.

It was, therefore, not possible to determine individual and aggregate imprests outstanding for each staff and specific projects respectively, at any particular time.

Submission by the Accounting Officer

The Accounting officer submitted that the management has opened separate imprests Registers for all the projects being managed from the Project Coordinating Unit.

Committee Observation

The Committee observed that there was no imprest register.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of Regulations 52(1)(j) and 93(4)(c) of the PFM (National Government) Regulations, 2015.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1391. As required by the African Development Bank, I report based on the audit that the Project funds and counterpart funds have been used in accordance with the conditions of Loan Agreement and Protocol of Grant Agreement with due attention to economy, efficiency and effectiveness for the purposes for which they were provided. Further, goods and services financed have been procured in accordance with the Loan Agreement and Protocol of Grant Agreement, and the Bank`s rules and procedures and necessary supporting documents, records and accounts have been kept in respect of all Project activities. In addition, adequate internal control to monitor expenditure and other financial transactions and ensure safe custody of assets exist and ledgers and fixed assets register for the Project's assets are maintained as required.

CAPACITY DEVELOPMENT PROJECT FOR ENHANCEMENT OF RICE PRODUCTION IN IRRIGATION SCHEMES IN KENYA – (PROJECT GRANT/CREDIT NO: 1161001009)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1392. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1393. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1394. There were no material issues relating to effectiveness of internal controls, risk management and governance

NATIONAL AGRICULTURAL AND RURAL INCLUSIVE GROWTH PROJECT (IDA CREDIT NO.5900-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1395. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1396. Non-Remittance of Counterpart Funds

Note 11.1 to the financial statements reflects transfer from Government Entities of Kshs.176,597,158 in the financial year 2020/2021. Review of records relating to the transfers revealed that the National and County Governments had not remitted cumulative funds amounting to Kshs.161,379,616 and Kshs.282,837,995, respectively to the Project as of 30 June, 2021. This is contrary to Schedule 2 of the Financing Agreement signed between IDA and the Republic of Kenya, which indicates that IDA will Fund 91% of every year`s activities/expenditure of the Project while the Government of Kenya (GOK) will fund an average of 9% of every year`s Project expenditure.

Submission by the Accounting Officer

The Accounting Officer submitted that according to the Financing Agreement the World Bank and the GoK are required to deposit their respective contributions in the project account to finance the expenditures as indicated in the following table: -

Project Components	**Project Cost (US$ Million)**	**IDA Financing (US$ Million)**	**GoK Financing (US$ Million)**	**Financing % by IDA**	**Financing % by GoK**
Component 1: Supporting Community-Driven Development	80	75	5	94%	6%
Component 2: Strengthening Producer Organizations and Value-Chain Development	50	45	5	90%	10%
Component 3: Supporting County Community-Led Development	72	65	7	90%	10%
Component 4: Project Coordination and Management	17	15	2	88%	12%
Total Project Costs	**219**	**200**	**19**	**91%**	**9%**

The reported counterpart deficits amounting to Kshs.161,379,616 and Kshs.282,837,995 are the cumulative figures brought up by insufficient budget allocation from the National Treasury as indicated below:-

NARIGP
Summary of Receipts and Expenditures in Kes

	NPCU		Counties	
Receipts	**IDA**	**GoK**	**IDA**	**GoK**
FY 2017/18	176,656,307	-	1,062,806,963	80,513,664
FY 2018/19	469,276,512	-	1,050,000,000	82,909,582
FY 2019/20	975,128,465	-	4,564,299,325	188,355,092
FY 2020/21	308,360,163	23,000,000	4,252,631,236	153,597,158
Total	**1,929,421,447**	**23,000,000**	**10,929,737,525**	**505,375,496**
Expenditures	**IDA**	**GoK**		
FY 2017/18	72,331,207	9,863,346	21,814,312	2,524,592
FY 2018/19	460,579,340	51,372,072	691,018,581	66,683,279
FY 2019/20	493,911,836	41,778,266	3,760,345,821	310,315,384
FY 2020/21	409,145,615	81,365,932	4,696,019,141	408,690,237
Total	**1,435,967,998**	**184,379,616**	**9,169,197,855**	**788,213,492**
Balance	**493,453,449**	**(161,379,616)**	**1,760,539,670**	**(282,837,996)**

The project received the first deposit of the counterpart funding of Kshs.23,000,000 (Twenty-Three Million Shillings Only) under the National Government in the year under audit. The project management is working with the State Department on the deposit of the counterpart contribution and during Financial Year 2021/22 a further Kshs.15,413,165 (Fifteen Million Four Hundred and Thirteen Thousand One Hundred and Sixty Five Shillings Only) has already been deposited to the project account being 50% allocation for the financial year while the remaining 50% is being processed noting that the supplementary budget was loaded in April 2022. Further, in Financial Year 2022/23, a provision of Kshs.110 Million has been made by the National Government towards reducing the counterpart deficit and also cover the agreed financing proportions.

The project management has sent letters to the counties reminding them to honour their portion of the counterpart contribution.

Committee Observations and Findings

i. **The Committee observed that the State Department has budgeted Ksh.110 Million in the Financial Year 2022/2023 towards reducing the counterpart deficit;**

ii. **The Committee also observed that the State Department was in agreement of non-compliance with the contract agreement by allowing service provider engaged several other sub-contractors without prior approval as stipulated in the contract.**

Committee Recommendation

The Committee reprimands the Accounting Officer for not following the terms of the contract.

1397. Unbudgeted Expenditure

The statement of receipts and payments reflects acquisition of non-financial assets expenditure of Kshs.28,989,204 and as disclosed under Note 11.4 to the financial statements. Further, the statement of comparative budget versus actual on comparable basis reflects a final budget on acquisition of non-financial assets of Kshs.28,989,204. However, the approved estimates for the year 2020/2021 did not have budget allocation for acquisition of assets and no approval for reallocation was provided for audit.

Submission by the Accounting Officer

The Accounting Officer submitted that the acquisition of motor vehicles was budgeted for in the Financial Year 2019/20 under the direct payment method. The project submitted the payment documents to the Bank for clearance but only the IDA portion of 88% was honored. The remaining 12% was to be met by the counterpart contribution. The 12% was not settled in Financial Year 2019/20 due to the shortfall in the counterpart contribution resulting in a pending bill which subsequently formed a first charge in the year under review.

In addition, the procurement of the other assets was captured in the approved procurement plan.

The management will ensure that the project incurs expenditure in line with the approved work plans and budgets

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Unbudgeted Expenditure was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1398. Idle Assets

The statement of receipts and payments reflects transfer to County Governments of Kshs.4,406,228,395 in the year 2020/2021 and as disclosed under Note 11.6 to the financial statements. Review of expenditure for County Government of Kitui revealed that an amount of Kshs.6,085,140 was paid vide payment voucher number 280621 dated 24 June, 2021 to a company for supply of twenty (20) Yamaha YRB motorcycles. However, verification of the stores on 8 October, 2021 revealed that the motor cycles were still in the store awaiting dispatch to various wards in the county. No satisfactory explanation was given for the delay in distributing the motorcycles, four months after being received in the stores.

Submission by the Accounting Officer

The Accounting Officer submitted that the project procured 20 motor bikes for each of the 20 implementing wards in Kitui County to assist in project extension services. The County Executive / Chief Officer Agriculture had confirmed issuance of the motorbikes before 31st December 2021. (Annex v. Motor Bike distribution list) however this was not achieved. The project management did a follow up letter [MOALF/NARIG/AUD/26/Vol. 1/ (55) dated 24 January to the County through the Council of Governors. The county has initiated the issue of the motorbikes to the community and as at 22 April 2022 the county had issued 5 motor and committed to issue the remaining 15 motorbikes by 27th April 2022. Failure to issue the assets will lead to remedial action including, suspension of further disbursements to the County.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Idle Assets was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1399. Non-Tagging and Non-Serialization of Assets

During the year, National Project Coordination Unit (NPCU) procured office equipment, furniture and fittings and ICT equipment worth Kshs.3,415,856 as disclosed under Note 11.4 to the financial statements, resulting in an accumulated cost of office equipment, furniture and fittings and ICT equipment procured by the Project since inception to Kshs.122,379,693. Verification of the assets revealed, however, that they were not tagged or serialized, thus making it difficult to confirm their existence and location.

Submission by the Accounting Officer

The Accounting Officer submitted that management has come up with a plan and strategy to ensure all assets are tagged to avert loss of assets. The project has initiated the procurement of an asset tagging machine as per the quotations. All the project assets will be tagged by 31 May 2022.

Committee observations and Findings

The Committee observed that there was no Asset register listing all those assets, their location and the core details regarding them.

Committee Recommendation

The Committee reprimands the Accounting Officer and directs he submits a complete asset register to the Committee within three (3) months of adoption of this report.

KENYA CLIMATE SMART AGRICULTURE PROJECT (IDA CREDIT NO.5945 – KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1400. Understatement of Loan Amount from External Development Partners

The statement of receipts and payments reflects a loan from external development partners of Kshs.10,763,331,756 as disclosed under Note 11.2 to the financial statements. Included in this amount is a receipt of Kshs.989,500,000. This receipt differs with corresponding National Treasury credit advice reference No. PA 125479 dated 30 November, 2020 that reflect an amount of Kshs.989,550,000 which was disbursed vide transaction No. FT/20335/4XCSP, resulting to an understatement of Kshs.50,000 of receipts in the statement of receipts and payments.

Consequently, the accuracy and completeness of loan amount from external development partners of Kshs.10,763,331,756 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the project management through the Principal Secretary has already written to the Principal Secretary National Treasury requesting for the release of the Ksh 50,000 erroneously retained at the National Treasury. The letter was provided to the Committee and the funds shall be released when the supplementary budget is approved.

Committee Observation
The Committee observed that the explanation given by the Accounting Officer with regards to Understatement of Loan Amount from External Development Partners was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1401. Non-Reconciling Items in the Bank Reconciliation
The statement of financial assets as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs.1,148,939,638. However, included in the reconciling items for the Project's bank reconciliation statement for A/c No.100192558 as at 30 June, 2021 were outstanding RTGS transactions amounting to Kshs.3,623,723 which were over six months old with some dating back to April 2019. These were not reversed in the cash book.

Consequently, the accuracy and validity of cash and cash equivalents balance of Kshs.1,148,939,638 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that RTGS transactions amounting to Kshs.3,623,723 were still outstanding in the bank reconciliation as at 30th June 2021. Of this amount Kshs.1,662,398.87 relates to unremitted Kenya Revenue Authority (KRA) deductions which could not go through due to a challenge in IFMIS. The difference of Kshs.1,961,324.13 related to other payments that had not gone through but had already been captured in the cashbook. All these payments have now been reversed in the cashbook. A copy of the cashbook is has been availed.

Committee Observations and Findings
i. 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;
ii. The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform functions bestowed on the office.

1402. Unsupported Subsistence Allowances for Contingency Emergency Response
The expenditure of Kshs.1,331,260,216 under purchase of goods and services as disclosed under Note 11.4 to the financial statements includes an amount of Kshs.305,330,753 on contingency

emergency response. The latter amount included AIEs Nos B112100 and B112101 of Kshs.12,150,000 and Kshs.24,182,800, respectively, totalling to Kshs.36,332,800. The AIEs were issued to the State Department for Public Service to cater for daily subsistence allowances to National Youth Service (NYS) officers involved in locust control activities. However, expenditure returns and supporting schedules from the State Department of Public Service were not provided for audit review.

Consequently, the propriety, accuracy and validity of the expenditure of Kshs.36,332,800 included under contingency emergency response of Kshs.305,330,753 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the project through the State Department made transfers to National Youth Service on contingency emergency response of Kshs.36,332,800. This was to cover subsistence allowances to NYS staff while combating the locusts in the affected areas of the country. The overall objective was achieved and the State Department for Public Service did account for the money within their accounting records.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Subsistence Allowances for Contingency Emergency Response was Satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1403. Proposed Rehabilitation and Upgrading of Wajir Livestock Training Institute

The tender for the contract for the proposed rehabilitation and upgrading of Wajir Livestock Training Institute was advertised in the local newspapers on 23 April, 2020. The tender closed on 22 May, 2020 and fifteen (15No.) bidders submitted their bids.

The contract was awarded to a Company at a tender sum of Kshs.97,240,810. The State Department for Crop Development and Agricultural Research entered into a contract with the firm on 25 September, 2020 for a contract period of 48 weeks to 25 August, 2021. Examination of the tender and contract records and documents revealed the following unsatisfactory matters:

1403.1 Inadequacies in Tender Evaluation

According to Section 111 of the bidding document on evaluation and qualification criteria, one of the mandatory conditions to be met by bidders for a bid to be found responsive was that it ought not to have any arithmetical errors. This condition is against Section 82 of the Public Procurement and Assets Disposal Act, 2015 and Clause 2.50 of the World Bank's Guidelines that anticipates that a bid may have errors and provides how to treat the same.

However, another Company had provided a bid of Kshs.93,929,220 which was below the winning bid price of Kshs.97,240,810 by Kshs.3,311,590. The bid price of Kshs.93,929,220 from this Company had arithmetic errors. The evaluation committee corrected the arithmetic errors to the bid and correct amount was reported as Kshs.79,741,105. The evaluation committee concluded that the bid was found unresponsive only because of arithmetic errors noted.

Submission by the Accounting Officer

The Accounting Officer submitted that the bidder of bid price of Kshs.93,929,220 had a marginal error of Kshs.14,188,115 bringing a corrected tender sum to Kshs.79,741,105.

In view of the above the bid price of Kshs.93,929,220 had a serious arithmetical error. This resulted in awarding of the contract to MS Anole Construction Ltd who has since completed the assignment and has also been awarded the completion certificate from the state Department of public Works.

Committee observations and findings

The Committee observed that the explanation by the Accounting Officer was unsatisfactory as Kshs. 14,188,115 was not marginal.

Committee Recommendation

The Committee reprimands the Accounting Officer for violating Section 82 of the Public Procurement and Assets Disposal Act, 2015 and Clause 2.50 of the World Bank's Guidelines.

1403.2 Expired Performance Bond

The contractor submitted a performance bank guarantee No: MD2026166572 dated 18 September, 2020 of Kshs.9,724,081 which expired on 18 September, 2021 before completion of work. Evidence that the Contractor had renewed the guarantee was not provided for audit review.

Submission by the Accounting Officer

The Accounting Officer submitted that by this time, the works were at 100% complete and there was no risk to the Government since a substantial amount of work had been achieved. The project was within the defects liability period which was 180 days as per GCC 36.1 The project has since been successfully completed and the contractor awarded the completion certificate.

Committee observations and findings

The Committee observed that despite works being complete, the Accounting Officer failed to secure public interest.

Committee Recommendation

The Committee reprimands the Accounting officer for failure to ensure the presence of a valid performance bond throughout the tenure of the project.

1403.3 Lapsed Contract Period

Section IX-Particular Conditions of contract GCC.1.1 (R) states that the intended completion date for the whole of the work shall be 48 weeks from the signing of the contract. The contract period had lapsed on 25 August, 2021 and the works were not completed. The contractor had been paid

Kshs.71,547,776 to date against the contract sum of Kshs.97,240,810 which was 74% of the contract sum.

Submission by the Accounting Officer

The Accounting Officer submitted that by the time the contract was lapsing, the works were at 100% complete. This period contract was within Defects Liability Period of 180 days as allowed under clause GCC 36.1 in the contract. This contract has now been fully completed and a completion certificate issued by the State Department of Public Works.

Committee observations and findings

The Committee observed that despite works being complete, the Accounting Officer failed to secure public interest.

Committee Recommendation

The Committee reprimands the Accounting officer for failure to ensure the presence of a valid contract throughout the tenure of the project.

1403.4 Failure to Prepare Monthly Progress of Works

Section 152 of Public Procurement and Asset Disposal Act, 2015 requires the head of the procurement function to prepare monthly progress reports of all procurement contracts of the procuring entity and submit them to the Accounting Officer. Further, clause 28 of the General Conditions of Contract requires the contractor to monitor progress of the works and submit to the manager a progress report showing actual progress achieved and effect of progress achieved on the time remaining. However, monthly progress reports on rehabilitation of Wajir Livestock Training Institute were not provided for audit review.

Submission by the Accounting Officer

The Accounting Officer admitted thatmonthly progress works reports were not availed for auditing since the project had used the implementation committee minutes for tracking progress. However, the project was implemented smoothly and is now complete. A completion certificate from the State Department of Public Works is available.

The project is committed to monitoring project investments through periodic progress implementation reports in future.

Committee observations and findings

The Committee observed that the Accounting Officer acted in breach of Section 152 of Public Procurement and Asset Disposal Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform functions bestowed on the office.

1403.5 Project not in Budget

Examination of the Kenya Climate Smart Agriculture Project budget for the 2020/2021 financial year revealed that there was no provision for the Proposed Rehabilitation and Upgrading of Wajir Livestock Training Institute. It is not clear, therefore, how the contract was awarded without a budget.

Submission by the Accounting Officer

The Accounting Officer submitted that the project was already approved in the work plan and the Systematic Tracking of Exchanges in Procurement (STEP) and the World bank had already released the funds including for this project.

Committee observations and findings

The Committee observed noted the submission by the Accounting Officer.

Committee Recommendation

The Accounting Officer must henceforth align the workplans and the budget.

1403.6 Non-Remittance of Value Added Tax

Contrary to Section 21 of the Value Added Tax Act, information available indicates that Value Added Tax amounting to Kshs.1,662,398.87 withheld during the period April, 2019 to December, 2020 had not been remitted to Kenya Revenue Authority.

Submission by the Accounting Officer

The Accounting Officer submitted that the above observation is true. It was occasioned by a malfunction in IFMIS whereby the withheld VAT could not be remitted automatically to the Kenya Revenue Authority (KRA). The payment is in progress.

Committee observations and findings

i. **The Committee observed that the Accounting Officer failed to submit withheld VAT to the Kenya Revenue Authority contrary to Section 21 of the VAT Act.**
ii. **The Committee further observed that the non-remittance may lead to interest and penalties.**

Committee Recommendation

The Accounting officer to within three (3) months of adoption of this report, report to the Committee whether interest and penalties have been accrued from the non remittance of the taxes to the Kenya Revenue Authority.

1404. Preservation of Project Documents and Records in the Counties

Component 1 of the KCSAP Project is implemented through funding Community Investment Groups (CIGs), Vulnerable and Marginalized Groups (VMGs) and Producer Organizations. Audit review of various counties implementing the Project revealed that accounting records and procurement documents are maintained at the community level by the Community Driven Development Committees (CDDC) and Producer Organizations (PO) and not at the County Project Coordinating Units.

Consequently, preservation of the documents for the prescribed number of years as prescribed under Regulations 100, 104(1) and 119(3) of the Public Finance Management (National Government) Regulations, 2015 is not guaranteed.

Submission by the Accounting Officer

The Accounting Officer admitted that as at the time of audit the financial and procurement documents were still held by the CDDC's and Po's. This was because the project aims at empowering the farmers through their structures but eventually surrender the documents at the

County Project Coordination Unit (CPCU) when the process is over. As at now the documents of all the completed processes within the CDDC's and PO's are stored at the CPCU's following a circular by the Project Management unit dated 1st March 2022.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015;

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform functions bestowed on the office.

1405. Amount not Received in Special Purpose Account (SPA) in Baringo County

An audit examination of the Project's cash book revealed that out of the Kshs.263,705,512 disbursed to Baringo County during the year under review, an amount of Kshs.73,116,010 had not been received in the Special Purpose Account for onward transfer to the Operations Account.

Therefore, failure to transfer funds to Special Purpose Account violates the provisions of the Project Appraisal Document (PAD) and hinders achievement of the desired objectives of the Project.

Submission by the Accounting Officer

The Accounting Officer admitted that as at the time of audit Kshs.73,116,010 belonging to CPCU Baringo had not been transferred from the CRF to the Special Purpose Account ((SPA) of the project. The County has so far transferred Kshs.70,874,991 to the project SPA and a balance of Kshs.2,241,019 is still outstanding. The SPA bank statement to support the above receipt is available.

The project is however committed to ensuring the balance is reverted back to the project account by 31st June 2022.

Committee Observations and Findings

The Committee observed that the Kshs.70,874,991 have since been transferred to the project account and the balance is anticipated to be settled in the subsequent financial year.

Committee Recommendation

The Accounting Officer to provide supporting documents showing the balance was paid to the Special Purpose Account of Baringo County to the Committee within one (1) month of adoption of this report.

1406. Irregular Diversion of Project Funds in Isiolo County

Clause 14 of the KCSAP Project Appraisal Document requires financial management arrangements to be put in place to ensure among other things that project resources are used to finance only the intended activities efficiently and economically.

Review of the Project`s Special Purpose bank statements for Isiolo County revealed that Kshs.60,000,000 was transferred on 04 June, 2021 to a Kenya Commercial Bank Account belonging to Isiolo County Government. Although, the funds were transferred back to KCSAP Project account on 31 August, 2021 this amounts to unauthorized diversion of project funds.

Submission by the Accounting Officer

The Accounting Officer submitted that the above observation is correct. The county will ensure that moving forward project funds shall only be transferred to designated project accounts to finance eligible project expenditures.

Committee observations and findings

The Committee observed that the Isiolo County Government irregularly diverted funds.

Committee Recommendation

The Committee reprimands the Isiolo County Government for violation of the provisions Section 154(1) of the Public Finance Management Act 2012.

1407. Unsupported Expenditure in Isiolo County

Audit review of Special Purpose Account bank statement for Isiolo County revealed payments of Kshs.10,411,821 made to a firm on 17 March, 2021 by the County Treasury. However, these payments were not supported by payment vouchers and relevant documentation. As a result, the validity and eligibility of the expenditure of Kshs.10,411,821 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the voucher which was availed during the audit was amounting to 11,162,395.90. This amount was inclusive of the VAT. The net was to lead to the above figure. Unfortunately, the taxes were paid in the subsequent year during the month of August 2021 on the 12^{TH} day of the month from Special Purpose Account (SPA).

This made the payment to appear as a different one having 10,411,821 on the statement.

Please find the tabulation below to make it clearer.

Gross Amount:	11,162,395.25
Withholding Tax:	(192,455.1)
VAT	(558,119.8)
NeT	10,411,820.35

Committee Observations and Findings

The Committee observed that the Isiolo County Government failed to remit statutory deductions

Committee Recommendation

The Committee reprimands the Isiolo County Government.

1408. Expenditure on Procurement of Grass Seeds in Isiolo County

The County Project Coordinator requested a Chief Officer vide internal memo dated 30 October, 2019 to facilitate purchase of grass seeds for Parkuruk Catchment Rehabilitation. The Project awarded the contract for supply and delivery of grass seeds for Parkuruk Catchment Rehabilitation to a supplier at a sum of Kshs.2,000,000 through request for quotation.

The audit could not confirm receipt and issues of grass seeds since relevant documents were not provided for audit review. During physical verification carried on 19 October, 2021 at Parkuruk Catchment Rehabilitation, no trace of any grass planted was observed.

Consequently, the validity and eligibility of the expenditure of Kshs.2,000,000 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that as at the time of audit the S13 for receipt of grass seeds and S11 for issuance were not availed for audit. The documents are now available for verification. However, the grass was planted during the season, it germinated well but the rains were not enough to support the growth.

Committee Observations and Findings
The Committee observed that the expenditure on grass was not justified and was wasteful.

Committee Recommendation
The Committee recommends that the EACC commences investigations on the expenditure.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1409. There were no material issues relating to effectiveness of internal controls, risk management and governance.

ENABLE YOUTH KENYA PROGRAM – (ADF LOAN NO. 2100150038895)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1410. There were no material issues noted during the audit of the financial statements of the Project.
Other Matter
1411. Budgetary Control and Performance
The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.198,340,396 and Kshs.81,893,355, respectively resulting in an under-funding of Kshs.116,447,041 or about 59% of the budget.
Similarly, the Project expended Kshs.76,283,644 against an approved budget of Kshs.198,340,396 resulting in an under-expenditure of Kshs.122,056,752 or about 62% of the budget.
The under-funding and under-expenditure may affect the planned activities and impact negatively on service delivery to the intended beneficiaries.

Submission by the Accounting Officer
The Accounting Officer submitted that the underfunding was occasioned by the budget cuts which was effected in the second half of the financial year. The under expenditure was due to the lengthy

process of procurement between the donor and the project which consumed a lot of time leading to the lapse of the financial year.
However, most of the contracts have been awarded and works already ongoing.

Committee Recommendation
The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommnedation
The Committee recommends that the matter is resolved.

1412. Delay in Execution of Scheduled Program Activities

Audit examination of the Program`s Annual Work Plans (AWP) revealed critical activities relating to Youth Agribusiness Incubation Centers (YABICs) that were budgeted for in 2019/2020 financial year and scheduled for completion by December, 2019 as per the Program Implementation Manual (PIM), were instead carried forward to the annual work plan for financial year 2020/2021. Further, audit and physical inspection revealed that the scheduled activities had not been executed by 30 June, 2021 as tabulated below:

Key Activities	**Outputs**	**Target**	**Completion Period as per PIM**	**Completion Period as per Work Plan 2020/2021**	**Total Budget Amount Kshs.**
Rehabilitate and upgrade YABICs	YABICs rehabilitated, upgraded	Eight (8) YABICs	December, 2019	July, 2020 to December, 2020	90,000,000
Procure for and equip YABICs	YABICs fully equipped for incubation and training of youth agri-preneurs	Eight (8) YABICs	December,2019	July, 2020 to December, 2020	50,000,000
Establish measures in YABICs to ensure retention such as child care support, disability access and boarding rooms	YABICs upgraded, equipped and operationalized.	Eight (8) YABICs	December, 2019	October, 2020 to June, 2021	1,000,000

Total					141,000,000

No satisfactory explanation was provided for delay and failure to execute the activities as scheduled in the Program Implementation Manual and the Annual Work Plans.

Submission by the Accounting Officer

Accounting Officer admitted that there was delay in the implementation of planned activities which was occasioned by the outbreak of Covid 19 Pandemic. Restriction of movement and contraction of the virus by some of the staff delayed site hand over and field activities therefore postponing most of the activities hence falling short of the project targets.

The program has however tried to fast track the activities as per the Progress status report. The State Department has managed to hand over sites to the respective contractors and most Youth Agribusiness Incubation Centers (YABICs) rehabilitation works are over 50% complete.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Delay in Execution of Scheduled Program Activities was satisfactory.

Committee Recommnedation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1413. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1414. Lack of Internal Audit Report

Review of the approved Internal Audit Work-plan for financial Year 2020/2021 for the State Department for Crops Development and Agricultural Research revealed that Internal Audit Unit had planned an internal audit exercise for Enable Youth Kenya Program. However, no audit report was provided for audit review. Management explained that scheduled audit exercise by the Internal Audit Unit could not be carried out due to contraction of Covid-19 by some staff.

Consequently, it could not be confirmed whether or not the Program Management complied with Annex B.4 of Enable Youth Kenya Project Appraisal Report, on Financial Management and Disbursement Arrangements which states that the Ministry's Internal Audit Unit will cover the Program.

Submission by the Accounting Officer

The Accounting Officer admitted that the planned internal audit of the project activities did not take place due to Covid 19 contraction by some of the staff in financial year 2020/2021 leading to the closure of the Ministry office for fifteen days. The project staff also contracted Covid 19 and had to quarantine thereby affecting the audit schedule.

However, the internal audit office has organized the internal audit and the audit is to start in May 2022.

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.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1415. As required by African Development Fund, I report based on my audit, that the Program's funds and counterpart funds have been used in accordance with the conditions of the Loan Agreement with due attention to economy, efficiency and effectiveness, and for the purposes for which they were provided. Further, goods and services financed have been procured in accordance with the Loan Agreement and the Fund`s rules and procedures and necessary supporting documents, records and accounts have been kept in respect of all Program activities. In addition, adequate internal control to monitor expenditure and other financial transactions and ensure safe custody of assets exists.

AGRICULTURAL SECTOR DEVELOPMENT SUPPORT PROGRAMME II (SIDA GRANT NO. 51110109)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1416. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1417. Under Funding and Under Expenditure on Budget

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,216,954,518 and Kshs.1,057,151,793, respectively resulting in an under-funding of Kshs.159,802,725 or 13% of the budget.

Similarly, the Programme expended Kshs.933,253,617 against actual receipt of Kshs.1,057,151,793, resulting in an under-absorption of Kshs.123, 898,176 or 12% of the actual receipts.

The under-funding and 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

The Accounting Officer submitted that the management agree with the observations. The implementation of the programme was affected by the following;

- For under funding, there was a budget cut by Half of the allocation of the National Government counterpart funds, effected by the National Treasury in the 2Nd half of the Fy 2020/2021 under review.
- Covid19 pandemic especially capacity building and field activities that could not be carried out virtually.
- Delays in the setting up coordination structures, County Agriculture Sector Steering Committees (CASSCOM) in some Counties and changes in county leadership.
- Delay in the revision of Strategic Integrated Value Chain Action Plans (SIVCAPs): Over 95 % of the Funds disbursed to the counties are meant for the implementation of SIVCAPs through extended capacity building and innovation concepts. The concepts also require to be approved by the County Agriculture Sector Steering Committees (CASSCOMs) and the Embassy (innovation concepts) for implementation.
- Delay in release of funds of which most funds were released in the final quarter. 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 2021/2022.
- Delay in transfer of funds from the County Revenue Fund (CRF) to the Programme designated Account (SPA) and to the operational Commercial Bank account.

However, the implementation has been accelerated in the FY 2021/2022 and the effect will be accessed in the Audit review of FY 2021/2022

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Under Funding and Under Expenditure on Budget was satisfactory.

Committee Recommnedation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1418. Irregular Disbursement

The statement of receipts and payments reflects expenditure for purchase of goods and services amounting to Kshs.224,427,938 and as disclosed under Note 10.8 to the financial statements. Included in this amount is Kshs.98,659,675 in respect of other operating expenses/feasibility studies. The latter further includes Kshs.2,000,000 disbursed to Kisii County Revenue Fund as reimbursement of its share of Government of Kenya contribution after an erroneous transfer of money to Kirinyaga County meant for Kisii County vide an internal memo ref: JAS/PROJECTS/3/VOL.III/125 dated 19 February, 2021. Review of the status at the time of audit in October, 2021 revealed that the Kirinyaga County Government had not refunded the excess disbursement.

Submission by the Accounting Officer

The Accounting Officer submitted that the management agree with the observations.

The State Department has engaged Kirinyaga County management and the Kenya Commercial Bank for the refund vide letter Ref: MOAL&C/ASDSP/FINANCE/VOL 12/ (172) dated 22[Nd] April, 2022.
The management promise to continue engaging with the bank for the refunds within 7 days.

Committee Observations and Findings
The Committee observed that the irregular transfer was not explained.

Committee Recommendation
Within one (1) months of adoption of this report, the Accounting Officer should ensure the excess disbursement to Kirinyaga County is refunded.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1419. There were no material issues relating to effectiveness of internal controls, risk management and governance.

EMERGENCY LOCUST RESPONSE PROJECT (IDA CREDIT NO.6648-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion
1420. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter
1421. Budget Control and Performance
The statement of comparative budget and actual amounts reflects loan from external development partners final budget and actual on comparable basis of Kshs.1,457,000,000 and Kshs.1,347,337,000, respectively resulting in an under-funding of Kshs.109,663,000 or 7.5% of the budget.
Similarly, the Project expended Kshs.688,580,890 against an approved budget of Kshs.1,457,000,000 resulting in an under-expenditure of Kshs.768,419,110 or 52.7% of the budget. 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
As correctly observed, The Accounting Officer admitted that the project received Kshs.1,347,337,000, against a budget of Kshs.1,457,000,000 that resulted to an under-funding of Kshs.109,663,000 (7.5%) of the budget. Further, the Project expended Kshs.688,580,890 against an approved budget of Kshs.1,457,000,000 that resulted to an under-expenditure of Kshs.768,419,110 (52.7%) of the budget.
This variance in funding did not affect activity implementation since over 80% of the expenditure was meant for procurement of vehicles, pesticides and other Desert Locust control Equipment as precautionary measure. The procurement of vehicles was initiated but not finalized within the FY

2020/2021. So, no payments were made in respect to procurement. In addition, 600million was meant to support 15 counties implementing component 2 on Livelihood Restoration and Protection and since the project was declared effective after CARA had been passed by the National Assembly, funds disbursement to the counties was done towards the end of the FY that led under expenditure.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommnedation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1422. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1423. There were no material issues relating to effectiveness of internal controls, risk management and governance.

MULTI-NATIONAL RURAL LIVELIHOODS ADAPTATION TO CLIMATE CHANGE IN THE HORN OF AFRICA (ADB/ADF GRANT NO.5550155001201)

Basis for Qualified Opinion

1424. Variances Between Financial Statements and IFMIS Ledger

The statement of receipts and payments reflects expenditure on purchase of goods and services of Kshs.43,736,154 and as detailed in Note 6 to the financial statements. However, some reported expenses had variances amounting to Kshs.7,128,365 with the IFMIS ledger as tabulated below:

Details of Expenditure Items	**Actuals as per IFMIS Ledger (Kshs.)**	**Actuals as per Financial Statements (Kshs.)**	**Variance (Kshs.)**
Utilities, Supplies and Services	6,135,255	448,908	5,686,347
Telephone, Telex, Facsimile and Mobile Phone Services	500,000	840,420	(340,420)
Domestic Travel and Subsistence	-	22,738,227	(22,738,227)

Details of Expenditure Items	Actuals as per IFMIS Ledger (Kshs.)	Actuals as per Financial Statements (Kshs.)	Variance (Kshs.)
Training Expenses - Travel Allowance	12,733,180	12,208,527	524,653
Training Expenses - Production and Printing of Training Materials	952,440	-	952,440
General Office Supplies (papers, pencils, forms, small office equipment)	579,100	-	579,100
Contracted Professional Services	4,798,766	-	4,798,766
Contracted Technical Services	4,051,379	-	4,051,379
Maintenance Expenses - Motor Vehicles	6,500,000	-	6,500,000
Pre-feasibility, Feasibility and Appraisal Studies	2,464,735	-	2,464,735
Pre-feasibility, Feasibility and Appraisal Studies	4,649,592	-	4,649,592
Total	**43,364,447**	**36,236,082**	**7,128,365**

Consequently, the accuracy and completeness of the above expenditure amounts as reflected in the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Management has noted the observation and has instituted measures to ensure that the financial statement balances for the year 2021/2022 will reflect the same as those in the IFMIS Ledger.

Committee Observations and Findings

(v) The Committee observed that the explanation given by the Accounting Officer with regards to Variance between Financial Statements and Trial Balance Figures was unsatisfactory;

(vi) The Committee similarly 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;

(vii) In addition, the Committee observed that the Accounting Officer failed 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.

Committee Recommendations

i. **The committee reprimands the Accounting Officer for breach of the provisions of section 9 (1) (e) of Public Audit Act, 2015.**
ii. **Within three months of tabling and adoption of this report, the Accounting Officer should avail supporting documentation to the Committee.**

1425. Irregular Charging of Expenditure on Fuel Oil and Lubricants

The expenditure of Kshs.43,736,154 in respect to purchase of goods and services as disclosed in Note 6 to the financial statements includes an amount of Kshs.7,500,000 relating to fuel, oil and lubricants. Review of cash book and other supporting documents revealed that an expenditure of Kshs.4,000,000 charged to fuel, oil and lubricants was not related to the Programme but related to Drought Resilience and Sustainable Livelihoods Project.

Consequently, the accuracy and completeness of the total expenditure of Kshs.4,000,000 on fuel, oil and lubricants for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer confirmed that the Expenditure of Kshs.4,000,000 was paid to the Drought Resilience and Sustainable Livelihoods Project (DRSLP) Fuel Account in the National Oil Corporation. This is because, the RLACC project was designed to complement and climate proof the various infrastructure constructed by the DRSLP project. Therefore, being a sister and complementing Project to the DRSLP, the Management decided it wise to use the already existing DRSLP Account. Moreover, the fuel is usually expended through fuel cards assigned to DRSLP PCU vehicles since the RLACC project did not purchase its vehicle but uses the DRSLP vehicles for project implementation. Further More, the fuel control records for the same has been availed for audit review and verification.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Irregular Charging of Expenditure on Fuel Oil and Lubricants was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1426. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.98,262,141 and Kshs.78,262,140.70 respectively, resulting in an under funding of Kshs.20,000,000.30 or 20% of the budget.

Further, the statement of comparative budget and actual amounts reflects final expenditure budget and actual on comparable basis of Kshs.98,262,141 and Kshs.43,736,154 respectively, resulting in an under-expenditure of Kshs.54,525,987 or 55% of the budget

The under-funding and under-expenditure of the budget may affect the implementation of the planned activities.

Submission by the Accounting Officer

The Accounting Officer submitted that the underutilization of the budget was as result of underfunding. The Management will in future strive to ensure that its funded budget is substantially utilized. Furthermore, it's hoped that the National Treasury will fund the budgets in a timely manner for the full implementation and realization of the planned activities and projects' developmental objectives.

Committee Observation
The Committee observed that the explanation given by the Accounting Officer with regards to Budget Control and Performance was satisfactory.

Committee Recommnedation
The Committee recommends that the matter is resolved.

1427. Projects' Status Report
A review of a status report for contracts implemented in the year ended 30 June, 2021 indicated that the Programme Management signed sixteen (16) contracts valued at Kshs.62,464,851 which were scheduled to be completed by 30 June, 2021. Out of these, eight (8) contracts were for consultancy services valued at Kshs.28,301,894, while the other eight (8) worth Kshs.34,162,957 were in relation to various physical projects.
Review of the contract documents revealed that out of the eight (8) contracts for physical projects, only two (2) amounting to Kshs.10,721,265 were complete while six (6) with a total contract sum of Kshs.23,441,692 were partially complete.

Submission by the Accounting Officer
The Accounting Officer submitted that five (5) contracts out of the original six (6) have since been fully completed. The remaining one contract (1) will be re-tendered before 30th June 2022.

Contract Number.	**Project Name**	**Total project cost in Kshs Million**	**Current Project status (%)**
MOALF/RLACC/Q012/2020-2021	Construction of Kanaodong Producer Group Shallow Well	2,843,340.52	100% completed
MOALF/RLACC/Q001/2020-2021	Construction of Naotin and Simaillele Self Help Group Honey Processing Houses	4,695,245.69	To be re-tendered
MOALF/RLACC/Q005/2020-2021	Construction of Okonwonin Water Pan and Kiboi Hay Shed Erosion Control Structures	5,215,213.79	100% completed
MOALF/RLACC/Q003/2020-2021	Construction of Simailele Cut-Off Drain, Construction of Nakwapua Sub-Surface Dam Erosion Control Structures and Construction of Kotaruk Water Pan Erosion Control Measures	4,193,340.52	100% completed

MOALF/RLACC/Q010/2020-2021	Purchase of Fruit Tree Seedlings for Establishment of Agro-Forestry Demos in RLACC Soil conservation sites and Purchase of Agro-Forestry Tree Seeds for Turkana and Baringo Counties	3,271,551.72	100% completed
MOALF/RLACC/Q009/2020-2021	Supply and Delivery of Bee Keeping Equipment and Restocking of Livestock for Kalokoru Business Group	3,223,000.00	100% completed
MOALF/RLACC/Q015/2020-2021	Rehabilitation of 7.5 km of Rural Access Roads in Simailele-Katilu Ward in Turkana County	4,221,265.52	100% completed
MOALF/RLACC/Q011/2020-2021	Supply and Delivery of Pasture Seeds	6,500,000.00	100% completed

Committee Observation
The Committee observed that the explanation given by the Accounting Officer with regards to Projects' Status Report was satisfactory.

Committee Recommnedation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1428. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1429. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1430. As required by African Development Bank and African Development Fund, I report based on the audit that the Programme funds have been used in accordance with the conditions of Protocol of Grant Agreement with due attention to economy, efficiency and effectiveness for the purposes for which they were provided. Further, goods and services financed have been procured in accordance with the Protocol of Grant Agreement and the Bank`s and Fund`s rules and procedures and necessary supporting documents, records and accounts have been kept in respect of all Programme activities. In addition, adequate internal control to monitor expenditure and other financial transactions and ensure safe custody of assets exist and ledgers and fixed assets register for the Programme assets are maintained as required.

STRENGTHENING FERTILIZER QUALITY AND REGULATORY STANDARDS IN KENYA PROJECT (AGRA GRANT NO.2013 SHP001)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1431. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

1432. Project Completion Status

According to the financing agreement dated 23 July, 2014, (Schedule II - Conditions of the Grant Agreement) the Project ought to have been concluded by 30 June, 2017. The grant period was, however, extended through a letter from AGRA dated 19 February, 2018, for a period of six months effective from January to June, 2018, after which the unspent fund balance was to be refunded to AGRA. Further, the Project has ceased operations and had not been active for over three (3) years while the handing over of the Project and its assets to the parent Ministry of Agriculture, Livestock, Fisheries and Corporative – State Department for Crop Development and Agricultural Research has not been done.

In addition, the unspent amount of Kshs.7,315,322 has not been surrendered to AGRA contrary to Clause 7 of the Financing Agreement which states that, “any unused grant funds not spent or committed for purposes of the Project must be promptly returned to the donor at the end of the grant period”.

Submission by the Accounting Officer

The Accounting Officer admitted that the unspent closing balance of Kshs.7,315,321.75 at the project conclusion in June 2018 had not been returned back to the donor at the point of Submission of Financial Statement for Financial Year 2020/ 2021.

However, the State Department has since been furnished with the Relevant Bank Details by the Donor and the funds have been refunded to Alliance for a Green Revolution in Africa (AGRA).

The project has also handed over the project Assets to the parent Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer with regards to Project Completion Status was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion
1433. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion
1434. There were no material issues relating to effectiveness of internal controls, risk management and governance.

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 THE FINANCIAL STATEMENTS
Basis for Qualified Opinion
1435. Inaccuracies in the Statement of Comparative Budget and Actual Amounts
The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects receipts and expenditure budget of Kshs.86,072,671 and Kshs.85,209,058.39, respectively. However, the approved budget for the financial year 2020/2021 provided for audit indicated a total budget of Kshs.87,086,900, resulting in an unexplained variance of Kshs.1,014,229 under receipts and Kshs.1,877,841.61 under expenditure, respectively.

In addition, the summary of overall project performance under other information accompanying the financial statements reflects total budget for 2020/2021 financial year of Kshs.85,320,453.50 which differs with the statement of comparative budget and actual amounts final budget of Kshs.86,072,671 resulting in an unexplained variance of Kshs.752,217.50.

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 also reflects actual receipts on comparable basis of Kshs.86,072,671 while the statement of receipts and payments reflects actual receipts of Kshs.62,252,944.45 resulting in an unexplained variance of Kshs.23,819,726.55.50.
The statement of comparative budget and actual amounts reflects a final budget of Kshs.1,027,256 in respect of acquisition of non-financial assets. However, an adjustment made of Kshs.252,256 is not reflected in the final budget for the item hence overstatement of the final budget by the same amount.
In the circumstances, the accuracy and completeness of the statement of comparative budget and actual amounts for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that the statement of comparative budget and actual amounts is inaccurate occasioned by the bank balance brought forward of Kshs.23,072,671.00 from the previous financial year 2019/2020 which was erroneously captured as a receipt for financial year 2020/2021 instead of it being a variance of bank balance brought forward from the previous year.

The statement of comparative budget and actual amounts will be restated while preparing the financial statement for 2021/2022.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee reprimands the Accounting Officer.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1436. Use of Funds on Non-Project Related Expenditure

The statement of receipts and payments reflects payments amounting Kshs.83,731,902.39 in respect of purchase of goods and services and as disclosed under Note 6 to the financial statements. Included in this amount is Kshs.561,928 relating to communication, supplies and services which was paid vide cheque number 0001587 dated 20 May, 2021 for supply of telephone exchange services to the State Department for Crop Development and Agricultural Research. However, this expenditure item was not among the budgeted activities for financing through the project funds.

Submission by the Accounting Officer

The Accounting Officer submitted that there was need for installation of internet connectivity which was much needed for use in the offices used by the project staff who work from within and also for State department for Crop Development and Agricultural Research officers. This was necessitated by the wide use of online meetings during the Covid-19 pandemic period. The expenditure item was among the budgeted activities as per the approval of the Accounting Officer under item 2210200.

Committee observations and findings

The Committee observed that the Accounting Officer applied project funds on an expenditure that was not budgeted for.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1437. Under-funding of the Project Activities

Note 1.7- Funding Summary on pages vii and viii under other information accompanying the financial statements reflects total funding to-date (30-06-2021) of Kshs.92,983,178.80 (USD 871,558) comprising USD 294,515) and USD 577,043 for financial years 2019/2020 and 2020/2021, respectively.

The Project requested for exchequer release of USD 577,043 in the financial year 2020/2021. However, The National Treasury released Kshs.61,788,150 (USD 555,000) only to the project`s bank account maintained at NCBA on 21 December, 2020, resulting in a shortfall of USD 22,043 and thus, underfunding of the project`s activities. This is contrary to Paragraph 5 of the Grant Agreement which require that all the grant funds received from AGRA for the project must be maintained in a separate account dedicated to the charitable purposes of the project.

Submission by the Accounting Officer

The Accounting Officer submitted that the Project requested for exchequer release of USD 577,043.00 in the financial year 2020/2021. However, The National Treasury released USD 555,000.00 to the project`s bank account on 21st December, 2020, resulting in a shortfall of USD 22,043.00. However, the balance of USD 22,043.00 was included in the subsequent exchequer release together with the 3rd tranche of USD 371,253.00, totaling to USD 393,296.00(Ksh.42,688,347.80) on 4th August, 2021.

Committee Recommendation

The Committee observed that the explanation given by the Accounting Officer with regards to Under-funding of the Project Activities was satisfactory.

Committee Recommnedation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1438. Inadequate Internal Controls Over Fuel Purchased and Drawn

The expenditure on purchase of goods and services disclosed under Note 6 to the financial statements includes an amount of Kshs.580,736 relating to routine maintenance – vehicles and other transport equipment. Expenditure records on fuel show that an amount of Kshs.500,000 was paid vide cheque number 000033 dated 28 October, 2020 for provision of fuel in bulk to the Project. The fuel management records, however, reflected the following anomalies and internal control weaknesses:

i. There was no correlation between the fuel register and the payment of Kshs.500,000 because Local Purchase Order or any relevant document was not referenced there to.

ii. The fuel register was not properly maintained and details of fuel drawn were not recorded.

iii. There was no reconciliation between the supplier's statement and the project management`s statements. The statement from the supplier, on a random check, differed with the fuel register and the supporting receipts. Further, the supplier's statement did not show the date the fuel was drawn hence making reconciliation difficult.

Submission by the Accounting Officer

The Accounting Officer submitted that a proper fuel register is being maintained showing the fuel drawn in litres and figures in reducing balances.

A reconciliation between the supplier's statement and the project management's statements has also been done.

Committee Observations and Findings

i. 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;

ii. The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform functions bestowed on the office.

1439. Lack of Internal Audit Review

During the year under review, 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

In reference to the above, the Accounting Officer submitted that the Internal Audit Committee Secretary vide his letter Ref. No. MOALF/IAU/7(109) dated 9th November, 2021 has acknowledged that the Unit had not included the project for review. However, the Unit has planned to include a review of the project's activities in the current annual work plan.

Committee Observation

The Committee observed that the project had not been reviewed by internal audit

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure internal audit review.

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AGENCY UNDER THE STATE DEPARTMENT FOR CROP DEVELOPMENT AND AGRICULTURAL RESEARCH CENTRE OF EXCELLENCE IN SUSTAINABLE AGRICULTURAL AND AGRIBUSINESS MANAGEMENT (CESAAM) CREDIT NO.5798-KE – EGERTON UNIVERSITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1440. CESAAM Office Block Design

Included in the enhancing institutional readiness and operations expenditure of Kshs.19,518,996 reflected in the statement of receipts and payments under Note 8.11 to the financial statements is an expenditure of Kshs.10,138,030 incurred on design of CESAAM office block. However, the completion interim certificates were not issued by the inspection and acceptance committee as stipulated in Section 48(4)(e) of the Public Procurement and Assets Disposal Act, 2015. The Management also indicates that the Vice Chancellor appointed the project implementation committee to supervise and implement the contract together with the consultant as part of the project implementation team, in accordance with Section 151 of the Public Procurement and Disposal Act, 2015. However, the project implementation committee is not mandated by the procurement laws and regulations to issue interim certificates for goods, works and services delivered. 479 Under the circumstances, the propriety of Kshs.10,138,030 incurred on the Centre of Excellence in Sustainable Agriculture and Agribusiness Management (CESAAM) office block design for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the project hired Egerton University Faculty of Engineering & Technology as the consultant, who worked with the project implementation team. The building was completed and a certificate of completion and occupancy issued by the County Government of Nakuru.

Committee Observation

The Committee observed that the inspection & acceptance report was not availed.

Committee Recommendation

The Committee recommends that the Accounting Officer avails all requisite documentation to the Auditor General for subsequent audit.

1441. Outstanding Imprests and Advances

The outstanding imprests and advances reflected in the statement of financial assets and liabilities of Kshs.23,136,827 is at variance with the amount of Kshs.22,559,843 disclosed under Note 8.14 to the financial statements resulting to unexplained variance of Kshs.576,984. In the circumstances, the accuracy and completeness of the outstanding imprests and advances of Kshs.23,136,827 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The imprests were for other projects attracted by support of CESAAM but not IDA funds. Management reported net imprests of Kshs. 23,136,827 with liabilities of Kshs. 576,984 neted off financial assets. Thus the variance was a pending payment of Kshs. 576,984 as disclosed in note 9.1 of page 19 of the audited financial statements.

Committee Observation
The Committee observed that the explanation was unsatisfactory.

Committee Recommendation
The Committee recommends that the Auditor General reviews the documentation submitted and report in subsequent audit.

Emphasis of Matter
1442. Bank Reconciliation
The bank reconciliation statement at Appendix 3 to the financial statements is for the month ended 31 July, 2021 instead of the month ended 30 June, 2021. This is contrary to the financial reporting template provided by the Public Sector Accounting Standards Board for the year ended 30 June, 2021.
Submission by the Accounting Officer
This was corrected and submitted with the date correctly stated as 30 June 2021. The error was a typo.

Committee Observation
The Committee noted the admission of the Accounting Officer.

Committee Recommendation
The Committee reprimands the Accounting Officer.

1443. Project Information
The report and financial statements on page(iii) reflects the project start date as 24 August, 2016. However, the correct project start date is 4 July, 2016 as per the credit agreement signed between GOK and International Development Association (IDA).

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Conclusion
1444. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE
Conclusion
1445. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1446. As required by International Development Association-Credit No.5798-KE, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting

records have been and the financial statements are in agreement with the accounting records and returns.

31. STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT – VOTE 1174

REPORT ON THE FINANCIAL STATEMENTS

Mr. Alfred K'ombundo, the Principal Secretary and Accounting Officer for the State Department for Trade appeared before the Committee on 26th April 2023 accompanied by the following officers:

1.	Mr. Leornard Kwinga	–	Director, Planning
2.	Mr. Nichola Kamau	–	Head of Finance
3.	Mr. Oliver Konje	–	Acting Director External Trade
4.	Mr. John Mwaura	–	Acting Director Weights and Measures
5.	Mr. Kennedy Nyokwoy	–	Acting Director Internal Trade
6.	Mr. Philip Barchok	–	Deputy Director Human Resource Management
7.	Mr. Tom Odundo	–	Deputy Accountant General
8.	Mr. Kimani Kiiru	–	Parliamentary Liaison Officer

and submitted as follows;

Unmodified Opinion

1450. There were no material issues noted during the audit of the financial statements of the State Department.

Emphasis of Matter

1451. Government Assets

1451.1. 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 long to conclude.

Submission by the Accounting Officer

The Accounting Officer submitted that the 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 noted that the State Department had not provided sufficient follow-up on the matter, as the latest update was dated March 21st 2022;**

(ii) **The Committee acknowledged that the State Department was actively pursuing the case, despite it being 16 years old, as they are determined to identify the underlying cause of the issue and ascertain if there is any criminal activity that took place. This is to prevent similar incidents from happening in the future;**

(iii) **The Committee expressed concern about the safety of government vehicles in the hands of the police, questioning their ability to protect state property if they cannot safeguard it properly.**

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with the DCI and address the long overdue issue and submit a report to the Committee with three (3) months of adoption of this report.

1451.2. Lack of Ownership Documents for Parcel of Land in South C Nairobi

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 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

The Accounting Officer submitted 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 Accounting Officer also submitted that 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) 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 State Department failed to adequately pursue the acquisition of title deed and ownership documents for the land from the National Lands Commission;**

(ii) The Committee further observed that the State Department constructed on the piece of land without verifying ownership;

(iii) The Committee acknowledged that the State Department was increasingly attracting land grabbers as they continued to occupy the land without proper ownership documents.

Committee Recommendation

The Committee recommended that within three (3) months of adoption of this report, the Accounting Officer to liaise with the National Land Commission to obtain the title and ownership documents for the parcel of land on which the Weights and Measures Complex in South C Nairobi is built.

Other Matter

1452. Budgetary Control and Performance

The State Department received Exchequer receipts totalling Kshs.3,401,811,887 against an approved budget of Kshs.3,450,437,732 resulting to a shortfall of Kshs.48,625,845 of the approved budget. Similarly, actual expenditure amounted to Kshs.3,389,289,408 against the approved budget of Kshs.3,450,437,732 resulting to an under absorption of Kshs.61,148,324 which occurred mainly under other grants and transfers and social security benefits.

The shortfall in budgeted receipts and under-absorption implies that the overall goals and objectives of the State Department were not achieved as planned.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department received exchequer receipts totaling to Kshs.3,401,811,887 against an approved budget of Ksh.3,450,437,732 resulting to a shortfall of Ksh.48,625,845 or 1.4% of the approved budget. It is also true that actual expenditure amounted to Kshs.3,389,289,408 against an approved budget of Ksh3, 450,437,732 resulting to an under absorption of Kshs.61,148,324 or 1.8% which occurred mainly under other grants and transfers and social security benefits. However, the shortfall in the exchequer receipts was caused by non-release of full Exchequer from The National Treasury to the State Department. The under absorption was also occasioned by non-release of the Exchequer from the national Treasury.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1453. Lack of Expenditure Returns for Disbursements to Foreign Missions

As disclosed in Note 10 to the financial statements, the statement of assets and liabilities reflects an accounts receivables balance of Kshs.31,443,610 in respect to disbursements by the State Department to foreign missions whose expenditure returns were not provided for audit review. Although the Management had previously explained that the responsibility of providing the expenditure returns for the expenditure in foreign missions lies with the Principal Secretary, Ministry of Foreign Affairs, no evidence was provided for verification showing the actions being taken by the Department to ensure that returns are made available as and when required.

In view of the above, the regularity of the unaccounted for AIEs held by foreign missions could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of assets and liabilities reflects an accounts receivable balance of Kshs.31,443,610 in respect to disbursement by the State Department to Foreign Missions.

The amount represents unspent balances held by the Foreign Missions as follows:

1.	Washington DC, USA	-	Kshs.3,049,676.63
2.	Juba, South Sudan	-	Kshs.1,483,380.15
3.	Addis Ababa, Ethiopia	-	Kshs.13,434,891.89
4.	Islamabad, Pakistan	-	Kshs.4,481,171.97
5.	Kampala, Uganda	-	Kshs.8,175,625.41
6.	Pretoria, South Africa	-	Kshs.818,865.25
	Total	**-**	**Kshs.31,443,611.31**

The Accounting Officer also submitted that the State Department is in consultation with the Ministry of Foreign Affairs for submission of payments made in foreign embassies, who have been instructed to return the unspent balances for onward transmission to The National Treasury.

Committee Observations and Findings

The Committee observed that the State Department had not made any effort or shown any commitment to recovering the funds, as evidenced by the fact that the most recent follow-up letter was dated October 1st, 2021.

Committee Recommnedation

The Committee directs the Accounting Officer to coordinate with the Ministry of Foreign Affairs and provide clarification on the six cases, namely Washington DC (USA), Juba (South Sudan), Addis Ababa (Ethiopia), Islamabad (Pakistan), Kampala (Uganda) and Pretoria (South Africa), indicating whether they have a trade agency account or a joint account. The Accounting Officer to submit his findings to the Committee within three (3) months after the adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1454. Exchequer Releases Received After Year End

The statement of receipts and payments reflects Exchequer releases amounting to Kshs.3,363,202,764, as disclosed in Note 1 to the financial statements. Included in this figure is Kshs.1,330,015,992 relating to Exchequer released by The National Treasury to the State Department for Quarter 4, which further includes Kshs.150,000,000, which was released and received on 02 July, 2021.

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 service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payment reflects exchequer releases amounting to Kshs.3,363,202,764 as disclosed in Note 1 to the financial Statements. Included in this is a figure of Kshs.1,330,015, 992 relating to exchequer released by the National Treasury to the State Department for Quarter 4, which further includes Kshs.150,000,000 which was released and received on 2nd July 2021.

The Accounting Officer also submitted that 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 service delivery to the public. The delay was occasioned by the late approval of the supplementary estimates which subsequently caused the delay in release of funds for the operations of the fourth quarter.

Committee Observations and Findings

The Committee noted that the delay in the release of funds was caused by the late approval of the supplementary budget.

Committee recommendation

The Committee recommends that the matter is resolved.

1455. Delayed Completion of Contract - Kenya Institute of Business Training (KIBT) Phase II

The State Department for Trade entered into a contract with a contractor for partitioning of offices for the Kenya Institute of Business Training (KIBT) at Parklands Complex at a contract sum of Kshs.146,600,150 which was to be implemented in six months commencing on 17 September, 2018 and ending on 17 March, 2019.

Review of the project file revealed that the contractor sought and obtained several extensions of time, with the first being from 17 March, 2019 to 17 May, 2019, then to 30 June, 2019 and thereafter to 24 September, 2019. However, an audit inspection carried out on the Project in the month of October, 2021 revealed that the contractor was not on site and partitioning works had not been completed.

In addition, the second basement floor of the Project was overflowing with water from underground. The Management explained that the water was pumped out regularly to avoid overflows. However, Management did not explain the measures put in place to ensure the safety of the building in view of the current water leakage and moisture in the basement floor.

No plausible explanation was provided for not completing the project within the duration provided for under the contract.

In the Circumstance, the delays may result in cost overrun and delayed occupation of the building by the State Department for purposes of provision of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the contractor sought and obtained several contract completion period extensions from 17th March 2019 to 17 May 2019, then to 30th June 2019 and September 2019. The contractor was not on site at the time of audit inspection in the year under review.

The Accounting Officer also submitted that in the financial year 2018/2019, the project was allocated Kshs.102 Million. In the Financial year 2019/2020, then project was allocated Kshs.240 Million, however there was a challenge of delay on release of the exchequer thus affecting the completion of the project.

In the financial year 2020/2021 the project was not allocated any funds. In the financial year 2021/2022, the project was allocated Kshs.156.3 million, pending payments amounting to Kshs.35 Million were cleared but the contractor had abandoned the site.

Given the foregoing the State Department for Trade called for several meetings with the contractors and the Ministry of Public Works to review the project status and to chart a way forward, the contractor however did not attend these meetings. The Ministry of Public Works then advised the State Department to terminate the contract indicating that though the reasons for extensions were merited the contractor failed to utilize the extended period diligently and were served with warnings for termination due to non-performance and failure to maintain site operations and to allow for the works to be re-tendered for completion on the strength of Clause 33.1 of the contract which provides for termination if the contractor abandons site for a period exceeding 30 days without authorization by the project manager.

The Accounting Officer further submitted that upon receipt of the advice to terminate the contract, the Principal Secretary sought the advisory on the matter from the office of the Attorney General. The Attorney General in a letter Ref.AG/CONF/21/68 Vol. II dated 19th January, 2023 gave an advisory on the matter.

In addition, the Accounting Officer submitted that the second basement floor of the project was overflowing with water from underground at the time of audit. However, the overflow of water in the second basement has been controlled using waterproofing chemicals to circumvent water flowing into the basement. Furthermore, a submersible water pump was installed and has been programmed to flush out the water at source to avoid any flooding at the second basement.

Committee Observations and Findings
The Committee observed that value for money may not be realized.

Committee Recommendation

(i) **The Committee recommends that the Accounting Officer costs for and budgets for completion of remaining works and awards to another contractor, after ascertaining no funds have been advanced to the truant contractor more than works done.**

(ii) **The Accounting Officer to submit a status report to the Committee within three (3) months of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1456. There no material issues relating to effectiveness of internal controls, risk management and governance.

32. STATE DEPARTMENT FOR INDUSTRIALIZATION - VOTE 1175

REPORT ON THE FINANCIAL STATEMENTS

Dr. Juma Mukhwana, PhD, HSC, the Principal Secretary and Accounting Officer for the State Department for Industrialization appeared before the Committee on 13th April 2023, accompanied by the following officers: -

1.	Mr. Karanja Njora	–	Secretary, Administration
2.	Mr. Stephen Odua	–	Director of Industries
3.	Ms. Lydia Muwalo	–	Deputy Director, Supply Chain Management
4.	Mr. Paul Kinyanjui	–	Under Secretary
5.	Mr. Nelson Mose	–	Deputy Accountant General
6.	Ms. Ruth Wanyonyi	–	Deputy Head of Accounting Unit
7.	Mr. Philip Maitha	–	Project Coordinator
8.	Mr. Nehemiah Karanja	–	Finance Officer
9.	Mr. Nicholas Gakang'a	–	Internal Auditor
10.	Ms. Esther Ivai	–	Internal Auditor

and submitted as follows;

Basis for Qualified Opinion

1457. Motor Vehicles without Title Documents

Annex 4, the summary of fixed assets register reflects a total historical cumulative cost of assets of Kshs.390,303,201. However, the balance excludes 78 motor vehicles (36 motor vehicles at the Headquarters and 42 motor 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 motor vehicles, 75 motor 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 motor 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.

In the absence of the logbooks, it was not possible to confirm ownership of the motor vehicles.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry of Industrialization has over time undergone changes during Government reorganization. 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, Kenya leather Development Council and Export Processing Zones Authority. The 3 vehicles have since been surrendered to their rightful owners.

The State Department for Industrialization 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.
- 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. They are waiting for the Authority's response on the same.

Further, a letter dated 10th January, 2023 REF; MITED/SDI/TRA/8/1, by the State Department to NTSA requested for the issuance of duplicate copies of registration certificates for the 57 vehicles which had been confirmed to belong to the State Department for Industrialization. They have since received 56 duplicate registration Certificates.

Committee Observations and Findings

The Committee noted that the number of vehicles with unknown particulars had decreased from 78 vehicles to 13 vehicles.

Committee Reccommendation.

i) **Within three months upon adoption of this report, the Accounting Officer should liaise with National Transport and Safety Authority (NTSA) to investigate the ownership of the 13 vehicles and report to the National Assembly; and**

ii) **The Accounting Officer MUST ensure that vehicles that are unserviceable and no longer useful are disposed off to prevent their condition from further deteriorating.**

Other Matter

1458. Budgetary Control and Performance

The State Department received Exchequer receipts totalling Kshs.4,534,617,601 against an approved budget of Kshs.6,626,795,985 resulting to a shortfall of Kshs.2,092,178,384 or 32% of the approved budget. Similarly, actual expenditure amounted to Kshs.4,569,897,965 against the approved budget of Kshs.6,626,795,985 resulting to an under absorption of Kshs.2,056,898,020 or 31% which occurred mainly under transfers to other government units. The Management attributed the under absorption to delays in Exchequer releases by The National Treasury. The shortfall in budgeted receipts and under-absorption implies that the overall goals and objectives of the State Department were not achieved as planned.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance of ksh.2,056,898,020 was as a result of the budget of Ksh.1,698,649,144 under Transfer to other Government entities and ksh.356,160,881for world bank project Kenya Industry & Entrepreneurship Project(KIEP) and Ksh.2,087,995 relates to operation budget.

The transfer to other Government entities consist of (Recurrent Appropriation in Aid (AIA) Ksh.778, 400,000 for various State Corporations**.** The State Corporations collect revenue and spent at source as per the approved Budget, the same actual AIA collected should be declared at The State Department to be captured in the IFMIS System against their respective budget line. However in the year under audit, the State Corporations submitted confirmation letters of actual AIA collected after the financial statements had already been prepared and submitted to the Office of the Auditor General.

The balance of Ksh.916, 436,301 under Transfer to Sagas was the Loan A.I.A from Exim bank of India for Rivertex East Africa ltd Ksh.616, 436,301 and Ksh.300,000,000 for IDB bank. The agencies were supposed to bring merchants invoices to the State Department to be captured in the IFMIS system against their budget line before submitting them to the National Treasury to be paid by the Exim bank of India, unfortunately the invoices were not brought to be captured in the IFMIS system and Kshs.3,812,843, was due to lack of exchequer from the National Treasury.

The Accounting Officer further submitted that the Ksh.356, 160,881 under acquisition of Assets is the budget line for Donor funded project, Kenya Industry and Entrepreneurship project (KIEP). The budget was not utilized because of the delayed procurement of consultant's management firms due to COVID-19 challenges, which resulted in delayed procurement processes and signing of contracts for the consultants.

Whereas as the actual position is that the funds were utilized by the respective State Corporations during the financial year, the above information was not captured in the IFMIS system thus reflecting as under absorption in the financial statement.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1459. Pending Bills

As previously reported, Notes 17.1 and 17.3 to the financial statements reflects pending bills amounting to Kshs.120,698,294 comprised of Kshs.22,753,616 for the State Department, Kshs.77,487,181 for Kenya Industrial Training Institute (KITI) and Kshs.20,457,497 due to other entities respectively, that were not settled in the year under review but were carried forward to the 2021/2022 financial year. 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 to that year's budget provision.

Submission by the Accounting Officer

The Accounting Officer submitted that though it is reported that the State Department had pending bills amounting to ksh.120, 698,294, the actual position is that the bills amounted to

Ksh.100,240,797. The difference of Ksh.20,457,497 relates to Deposit Bank account balances and hence not pending bills.

The Accounting Officer also submitted that out of the indicated amount of Ksh.100,240,797, the State Department has since paid Ksh.53,424,303.65 leaving a balance of Ksh.46,816,493.35. The State Department was unable to settle the balance mainly due to inadequate budget allocation but the State Department will endeavor to treat the pending bills as a priority.

Committee Observations and Findings

The Committee noted that outstanding bills were as a result of inadequate budgetary allocation.

Committee Recommendation

The Committee recommends that the Accounting Officer prioritizes pending bills and treat them as first charge in accordance with Section 74 (4)(d) of the PFM Act, 2012 and Regulation 42 (1)(a) of the PFM (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1460. Exchequer Releases Received After Year End

As disclosed in Note 1 to the financial statements, the statement of receipts and payments reflects Exchequer releases amounting to Kshs.4,409,619,069. Included in the balance is an amount of Kshs.528,363,136 relating to Exchequer released by The National Treasury to the State Department from 2 July, to 7 July, 2021 as summarized below;

Date Funds Received in the Bank Account	Vote	Amount (Kshs.)
2 July,2021	Recurrent	23,013,783
7 July,2021	Recurrent	59,050,695
7 July,2021	Development	446,298,658
Total		**528,363,136**

The delayed Exchequer releases may have affected the State Department's ability to implement its planned programmes, thus negatively impacting on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department received the exchequers from The National Treasury from 2nd July to 7th July 2021 and the requisition was done on time. The activities were ongoing thus it never affected the service delivery.

Committee Observations and Findings

The Committee noted that the error was commited by National Treasury.

Committee Recommendation

The Committee recommends that the National Treasury adheres with financial year timelines and releases exchequer on time.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1461. Failure to Provide Internal Audit Reports

During the audit, 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 Regulation 160(1) of the Public Finance Management (National Government) Regulations, 2015.

Further, the Management did not provide the Audit Committee minutes for audit review, 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 Accounting Officer submitted that the Internal Audit function carried out two (2) Audit reviews at Kenya Industrial Training Institute (KITI) as per the 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.

The Accounting Officer also submitted that at the time of the Audit, the reports had not been finalized as they were waiting for responses from the management**.** The Ministerial Audit Committee did not meet during the period under review due to Covid-19 restrictions hence no minutes were recorded in the financial year 2020/2021.

Committee Observations and Findings

The Committee questioned how the audit review was conducted without internal audit committee having convened any meetings.

Committee Recommendation

The Committee reprimands the Accounting Officer.

DONOR FUNDED PROJECTS

KENYA INDUSTRY AND ENTREPRENEURSHIP PROJECT (CREDIT NO. IDA 6268-KE)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1462. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1463. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts of Kshs.122,157,715 against budgeted receipts of Kshs.514,436,061, resulting in a shortfall of Kshs.392,278,346 or 76% of total budget. The shortfall arose under the IDA Loan where actual receipts amounted to Kshs.102,500,265 against the budgeted receipts of Kshs.498,267,183, resulting in a shortfall of Kshs.395,766,918 or 79% of the total budgeted receipts. In addition, actual receipts under transfer from government entities were Kshs.19,657,450 against budgeted receipts of Kshs.16,168,878, resulting to excess receipts of Kshs.3,488,572 or 18% of the total budgeted receipts. These excess receipts, combined with the shortfall under the IDA Loan resulted to the combined shortfall in receipts of Kshs.392,278,351 or 76% of total budget.

Further, the statement of comparative budget and actual amounts reflects budgeted payments of Kshs.514,436,061 against actual payments of Kshs.158,310,681, resulting to under expenditure of Kshs.356,125,380 or 69% of total budget. The Management has attributed the under expenditure to slow procurement of consultants due to COVID-19 challenges, which resulted in delayed signing of contracts for the consultants and approval of inception reports.

In view of the above, the Project Management have not have implemented all the planned and approved programmes, resulting to delayed provision of services to the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that the project design envisaged the implementation of most of the project activities through Management Consultancy firms. The under-expenditure was due to delayed procurement of consultants due to COVID-19 challenges, which resulted in delayed procurement processes and signing of contracts for the consultants.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1464. Unsupported Payments – Hire of Conference Facilities

The statement of receipts and payments for the year ended 30 June, 2021 reflects Kshs.108, 960,681, in respect to purchase of goods and services as disclosed in Note 4 488 to the financial statements, which includes Kshs.2,584,410 for hospitality supplies and services which includes an amount of Kshs.2,292,500 and which was paid to various suppliers on account of hire of conference facility. However, the expenditure was not supported with relevant documents including evidence of letters of appointment of opening and evaluation committee members, their reports and the professional opinion of the head of procurement function and the Local Service Orders (LSOs). This is contrary to the requirements of Regulation 91(2) of 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 (a) an ad hoc opening committee in accordance with Section 78 of the Act; and (b) the ad hoc evaluation committee in accordance with Section 46 of the Act and regulation 39 of these Regulations. (3) The ad hoc evaluation committee shall carry out the evaluation in accordance with the Act and these Regulations.

Further Subsection (4) requires that before any decision to award a procurement under a request for quotation is made, the head of procurement function shall by way of professional opinion make a recommendation based on a market survey.

Consequently, the Management was in breach of the law

Submission by the Accounting Officer

The Accounting Officer submitted that the procurement process was done in accordance with the Public Procurement and Assets Disposal Regulations 2020. However, by the time they submitted the letters appointing the opening and evaluation committee members, evaluation reports and the professional opinion, the audit exercise had already been concluded.

Committee Observations and Findings

The Committee observed that the State Department did not furnish the Office of Auditor General with the necessary information and documentation in time, at the time of audit contrary to Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

Committee Recommendation

The Committee reprimands the Accounting officer for failing to furnish the Office of Auditor General with necessary documentation and information in accordance with Section 9 (1) (e) of the Public Audit Act, 2015.

1465. Irregular Allowances on Office Partitioning

Statements of receipts and payments for the year ended 30 June, 2021 reflects Kshs.108,960,681, in respect to purchase of goods and services as disclosed in Note 4 to the financial statements, which includes Kshs.1,005,000 under other operating payments, which amount of Kshs.960,000 was paid as allowances to officers who were involved in partitioning of Project offices. However, review of the expenditure revealed that although a contractor was engaged for the work, the

Management made payments for meal allowance to staff for partitioning of the Project offices. This is contrary to Section C.17(3) of H.R Policies & Procedures Manual for Public Service 2016 which states that, Meal allowance shall not be paid as a compensation for officers who are required to work beyond the official working hours.

In the circumstances, the propriety of the allowances of Kshs.960,000 for partitioning of offices as at 30 June, 2021 could not be confirmed the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the partitioning of the Project Offices was being done at a time when the Covid-19 pandemic restricted movement resulting to public transport closing early. To enable the process be done with minimal disruptions, the activities were mainly being done after office hours and the number of officers increased to assist in sorting out official documents, old furniture and equipment that were stored at the site prior to the commencement of partitioning. The project therefore made special transport payment arrangements to enable the officers reach their residences given the restrictions.

Committee Observations and Findings

The Committee observed that the Accounting Officer acted contrary to Section C.17(3) of H.R Policies & Procedures Manual for Public Service 2016.

Committee Recommendation

The Committee reprimands the Accounting Officer recommends that the beneficiaries be surcharged to recover the funds that were unlawfully granted as allowance, within three (3) months of adoption of this report.

1466. Irregular Award of Contract for Works and Consultancy Services

1466.1 Consultancy Services for Administration and Management of Industry Academia Platform

The statement of receipts and payments for the year ended 30 June, 2021 reflects Kshs.108,960,681 in respect of purchase of Goods and Services, as disclosed in Note 4 to the financial statements. This includes Kshs.79,148,797 for consultancy services out of which Kshs.8,429,679 was spent on consultancy for Administration and Management of an Industry Academia Platform. However, review of the procurement of the consultancy services revealed that the firm which worn the tender was in partnership with another firm 489 which submitted a proposal for expression of interest for the same contract. This is contrary to the requirements of the Bank under Section 3.20 of World Bank Procurement Regulations, 2018 which prohibit consultants from submitting multiple proposals on any one consultancy.

Consequently, the Project Management was in breach of the Bank Procurement Regulation.

Submission by the Accounting Officer

The Accounting Officer submitted that during the Request for Expression of Interest (REOI) there was a firm that provided its individual expression of interest (EOI) and also participated in partnership in another consortium at the stage of Request for Expression of Interest (REOI). However, the evaluating Committee, in a bid to ensure the largest number of shortlisted firms for competition purposes, reviewed the REOIs and dropped the individual REOI from the shortlist. Had both firms been shortlisted and participated in the Request for Proposals (RFPs) stage, they would both have been disqualified as detailed in the RFP, section 11.1 of the Instruction to Consultant (ITC) in the RFP document.

As this was a prior review procurement process, the World Bank provided guidance when the evaluation reports were first submitted. The evaluation committee then sat and re-evaluated to incorporate World Bank comments, which again were submitted for review. Chair, after the review world bank gave a No Objection for the various procurement stages as per section 7.1 of the New World Bank Procurement regulations for Investment Project Financing (IPF) Borrowers that states that 'For procurement that has been determined to be subject to prior review, the following documents shall be submitted by the Borrower for Bank's prior review and no objection: (e) the Borrower submits the Bid/Proposal evaluation report for each envelope/stage for the Bank's prior review and no-objection before proceeding to the next stage of the procurement process. Thus the award was based on professional advice from World Bank.

Committee Observations and Findings

The Committee observed that the State Department did not furnish the Office of Auditor General with the necessary information and documentation in time, at the time of audit contrary to Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to avail necessary documentation and information in accordance with Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

1466.2 Consultancy Services for International Acceleration Process

The statement of receipts and payments for the year ended 30 June, 2021 reflects Kshs.108,960,681 in respect to purchase of Goods and Services, as disclosed in Note 4 to the financial statements, which includes Kshs.79,148,797 for consultancy services out of which Kshs.26,687,554 was spent on consultancy for International Acceleration Process services.

However, review of the procurement documents for the above contract revealed existence of two (2) evaluation reports on the expression of interest for the above consultancy services. According to the first report dated 25 January, 2019 the above successful tender was not responsive based on the fact that, the firm did not demonstrate adequate experience in carrying out similar assignments and a strong understanding of the operating and business environment in Kenya. Further, the firm did not demonstrate ability to work collaboratively with government counterparts. The firm also lacked sufficient existing network and experience in working with start-ups and entrepreneurs who had been engaged in the then previous five years.

According to the second report dated 11 July, 2019, the winning firm and another firm which were unresponsive according to the first evaluation report, were reported to be responsive. Further, two firms which were evaluated as responsive as per the first report, were reported to be unresponsive as per the second evaluation report. It was not clear the circumstances under which the evaluation results in the two reports changed such that the winning firm was declared the successful bid, considering that there were no changes in the evaluation criteria or the composition of the evaluation committee.

Under the circumstances, it was not possible to confirm that the above consultancy services were procured in compliance with proper procurement procedures.

Submission by the Accounting Officer

The Accounting Officer submitted that in line with the prior review process, the Evaluation committee prepared the first draft shortlisting report and submitted to the world bank through procurement tracking tool. After review by the world bank an interim responses were sent back to evaluation Committee for further review which resulted into revised shortlisting report.

The Accounting Officer also submitted that whilst M/s Growth Africa was evaluated as non-responsive in the first draft of Request for Expression of Interest(REOI) report submitted to the World Bank for approval, the Evaluation committee reviewed the REOI after receiving Interim comments from the World Bank in February 2019 and noted that Growth Africa and ANDE had experience in incubation, global acceleration programs, and that they had proven record of accomplishment in startup support with connections to local and international ecosystem and deserved to be in the shortlist. It was on the basis of the revised shortlist report that the firm proceeded to the Request for Proposal (RFP) stage where the evaluation was mainly centered on the ability to deliver on the assignment and much weight was attached to the key staff as opposed to the firms' experience evaluated at the REOI stage. Thus procurement of the consultant was based on the 'no objection' from World Bank.

Committee Observations and Findings

The Committee observed that the State Department did not furnish the Office of Auditor General with the necessary information and documentation at the time of audit contrary to Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit; and

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to avail necessary documentation and information in accordance with Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

1466.3 Contract for Routine Maintenance - Office Partition

The statement of receipts and payments for the year ended 30 June, 2021 reflects Kshs.108,960,681 in respect to purchase of Goods and Services, as disclosed in Note 4 to the financial statements. Included in this figure is Kshs.2,529,084 which was paid for Routine Maintenance - Office partition. However, review of related procurement documents revealed that the tender was closed on 27 March, 2020 and the evaluation was completed on 26 May, 2020, which was beyond the prescribed evaluation period of 30 days.

Further, the notification of award of tender was issued on 16 June, 2020, after the tender validity period of 60 days had lapsed on 27 May, 2020. There was no approval for extension of the tender validity period.

In view of the above anomalies, it was not possible to confirm that the above partitioning works were procured in compliance with proper procurement procedures.

Submission by the Accounting Officer

The Accounting Officer submitted that due to Covid-19 directives at the time, the Accounting Officer extended the tender evaluation period by thirty days. The notice of extension of the tender validity period to various bidders was approved by the Accounting officer.

Committee Observations and Findings

The Committee observed that the State Department did not furnish the Office of Auditor General with the necessary information and documentation at the time of audit contrary to Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to avail necessary documentation and information in accordance with Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1467. There were no material issues relating to effectiveness of internal controls, risk management and governance.

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AGENCY UNDER THE STATE DEPARTMENT FOR INDUSTRIALIZATION

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT (IDA CREDIT NO.5812-KE) - MICRO AND SMALL ENTERPRISE AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1468. There were no material issues noted during the audit of the financial statements of the Project.

Emphasis of Matter

1469. Amount Withdrawn but Unclaimed

The statement of special (designated) account reconciliation for the project reflects USD 5,181,590 (Kshs.532,149,361) at the then exchange rate of 1 USD at Kshs.102.7 as withdrawn but unclaimed as at 30 June, 2021. This represents cumulative funds transferred to the local Project bank account but whose expenditure returns have not been submitted to The National Treasury by the close of the financial year.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount was in reference was occasioned by delays in release of exchequer, and documentation and expenditure returns could not be done.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General reviews the documentation and report in subsequent audit.

Other Matter

1470. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final expenditure budget of Kshs.1,007,000,000 against actual expenditure of Kshs.668,688,108 resulting to under expenditure of Kshs.338,311,892 representing 34% of the budget. 491 In view of the above, the Project Management has not implemented all the planned and approved programmes, resulting to delay in provision of services to the citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that the underperformance was due to late release of exchequer. 54% of total receipts was released towards the end of the financial year. The activities preceding disbursement had been completed by the end of the financial year with the cash disbursements rolling over to July and August 2021 since the project is on a cash basis. The variance of 34% was therefore attributable to grant disbursements to beneficiaries which took place in July and August 2021 for cycle 4 and 5.

Covid-19 also posed challenges.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General reviews the documentation and report in subsequent audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1471. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1472. Weak Controls Over Fuel Expenditure

The statement of receipts and payments for the year ended 30 June, 2021 reflects Kshs.245,096,020 with respect to purchase of goods and services as indicated at Note 6 to the financial statements which includes Kshs.1,466,350 for refined fuels and lubricants. The project vehicles were fueled using cash and fuel cards and the project engaged Vivo Oil for loading of fuel cards. However, it was observed that although the project has seven (7) vehicles, there were other twelve (12) vehicles which were also fueled and serviced using project funds. Further, it was observed that Management had not set fuel cards limits for each vehicle and in several cases the cards and vehicle numbers were not indicated hence enabling any vehicle to be fueled using any fuel card.

The above anomalies are contrary to Section 79(2) of Public Finance Management Act, 2012 which states that, without prejudice to provisions under subsection (1), a public officer employed in a national government state organ or public entity shall (b) ensure that the resources within the officer's area of responsibility are used in a way which, (i) is lawful and authorized; and (ii) is effective, efficient, economical and transparent.

No explanation was provided by Management for not putting in place effective internal controls for fuel management.

Submission by the Accounting Officer

The Accounting Officer submitted that management had put in place effective controls system including fuel cards with limits and that are electronically mapped to avoid abuse, car tracking system and a transport policy.

Committee Observation

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter is closed.

33. STATE DEPARTMENT FOR LABOUR– 1184

REPORT ON THE FINANCIAL STATEMENTS

Mr. Peter K. Tum, the Principal Secretary and Accounting Officer for State Department for Labour Accounting Officer for State Department for Labour (Vote 1184), appeared before the committee on 4th May 2022 to adduce evidence on the Audited Financial Statements for the State Department for Labour (Vote 1184)) for the Financial Year 2020/2021. He was accompanied by the following officers:

1.	Mr. James K. Maru	-	Deputy Director HRP/D
2.	Mr. Ambrose R. M	-	Senior Chief Finance Officer
3.	Mr. Kipkoech Arap Kigen	-	Senior Deputy Secretariat (MOL)

And submitted as follows:

Basis for Qualified Opinion

1473. Interest on Delayed Payment

The statements of receipts and payments reflects an expenditure of Kshs.97,773,623 under acquisition of assets which, as disclosed in Note 9 to the financial statements, includes an amount of Kshs.86,144,544 relating to construction of buildings. The latter balance includes an amount of Kshs.49,100,000 paid towards an office block construction. The project for the construction of the office block was awarded to a company on 15 May, 2015 at a contract sum of Kshs.442,723,947. The project commenced on 29 May, 2015 and had a revised completion date of 31 December. 2020 which has expired. Although a total of Kshs.313,000,000 had been paid since inception of the project, certificate No.9 of 11 June, 2020 reflected interest on delayed payment of Kshs.6,207,287 representing (1.402% of the contract sum).

The delay in project completion has resulted in increased project cost due to claims by contractors for time extension and claims of interest due to delayed payments.

Under the circumstances, the interest amount payable of Kshs.6,207,287 is nugatory and could have been avoided.

Submission by the Accounting Officer

The Accounting Officer submitted that the project has experienced considerable delays since inception. The delay is associated with lack of adequate budgetary provision over the years. The project implementation considerably slowed down due to partial payment of pending certificate carried forward during FY 2019/20. Some works progressed but ensuing certificates could not be settled due to budget austerity measures. The technical team from Public works at the time estimated the project completion at 58%.

This project has an allocation of Kshs.100 million in FY 2021/2022 of which Kshs.27,342,966 has been paid to the contractor in settlement of previous pending bills. The balance is available to continue additional works to complete part of the Office Block to occupancy level.

In respect of expiry of contract, an extension was processed to 31st December, 2020, which has since expired. The Contractor has applied for another extension and the State Department is in consultation with the State Department for Public Works on the same.

Arising from the challenges of funding and budget cut experienced on this project, the State Department requested for financial appraisal for implementation to make one section of the building usable. The State Department for Public Works responded but however recommended that adequate budgetary provisions should be considered for this project. This however, has not been the case. During FY 2019/2020, the budget allocated of Kshs.243 Million was slashed to Kshs.34.3 Million.

During the FY 2020/2021, the Project was allocated KShs.98.2 Million which was reduced by half to Kshs.49.1 Million which was partially used to pay pending bills on this project. The cumulative expenditure as at 19th April, 2022 was Ksh.244,023,001 which is 55% of the contract sum.

The current status is that the State Department for Public Works had advised the contractor to mobilize his team as well as sub-contractors to continue with the works as the State Department awaits the Public Works guidance on the contractor's request for period extension. In addition, the State Department confirms that pending bills have since been cleared hence the contractor has no reason to stay away. The State Department is in receipt of a letter from State Department for Public Works recommending termination of the contract on grounds of breach of contract. The State Department's Legal Officer has taken over the file and his advise to the Accounting Officer is being awaited.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1474. Acquisition of Assets and Fixed Assets Register

The statements of receipts and payments reflect an expenditure of Kshs.97,773,623 under acquisition of assets for the year ended 30th June, 2021. However, the fixed assets register at Annex 4 to the financial statements reflects fixed assets with historical cost of Kshs.225,511,252 and additions during the year of Kshs.99,225,709 which differ from the amount of Kshs.97,773,623 reflected in the statement of receipts and payments. Further, the fixed assets register did not indicate the historical value, current value, asset number and location of the assets. In addition, inspection and acceptance reports for the completed projects were not provided for audit verification.

Consequently, ownership, existence, valuation and accuracy of the closing fixed assets balance of Kshs.225,511,252 and acquisition during the year of Kshs.99,225,709 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Expenditure of Kshs.97,773,623 under acquisition of assets (Note 9 to the Financial Statements) for the year ended 30th June, 2021 is the correct value. Annex 4 to the Financial Statements with a casting error has been amended accordingly without affecting the Financial Statements.

The fixed assets register has record of the purchase price, which is the historical cost. It is true the register does not indicate the current value of the assets. This is because the assets have not been revalued to establish their current values. The State Department in conjunction with the State Department for Housing had planned to embark on the valuation of identified assets in the third quarter but this has not materialized as State Department had material budget cuts during the Supplementary Estimates No. 1for FY 2021/22 that was recently approved by the National Assembly. This has constrained the resources required for the exercise.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1475. Recurrent Bank Account

The statement of assets and liabilities reflects bank balances of Kshs.194,079,153 which, as disclosed in Note 9 to the financial statements, includes a recurrent bank balance of Kshs.23,452,990. However, the cash book reflected a closing balance of Kshs.23,546,722 as at 30 June, 2021 resulting in an understatement of Kshs.93,732.

Consequently, the accuracy of the recurrent bank account balance of Kshs.23,452,990 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance of ksh.93,732 between the statement of assets and liabilities in the Financial Statements and the Cash Book, relates to expensed but unpaid salary deductions for the months of December 2020, February 2021, March 2021 and May 2021. These deductions were not paid as firms in question had not provided their bank details by close of the FY year ending 30th June, 2021. It was therefore, prudent to retain the money not to be swept back to the Exchequer. Request to withhold the amount was made to the National Treasury and was granted. The firms have since been paid the amount owed.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed 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.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to act in accordance with the provisions of the law.

Others Matters

1476. Non-Payment of Pending Bills

As disclosed in Annex 1 to the financial statements, pending bills totaling to Kshs.81,872,393 were not settled during the year but were instead carried forward to financial year 2021/2022. 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.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills arose due insufficient budget resulting from budgets cuts during the year. However, a considerable amount of the pending bills worth

Kshs.70,856,846 or 87% have been settled leaving ksh.11,015,546 or 13%. These unsettled bills are now being processed following the upload of the third and fourth quarter budgets. The State Department commits to clear all the pending bills in the current financial year.

Committee Observations and Findings

The Committee observed that the pending bills amounting to Kshs.70,856,846 have since been settled and the balance is anticipated to be settled in the subsequent financial year.

Committee Recommendation

The Committee instructed the Accounting Officer to prioritize pending bills and treat them as first charge in accordance with Section 74 (4)(d) of the PFM Act, 2012 and Regulation 42 (1)(a) of the PFM (National Government) Regulations, 2015.

1477. Unresolved Prior Year Matters

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2018/19 and recommendations not implemented

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1478. One Third Staff Salary Deductions Rule

Review of the Human Resource data revealed instances where some employees were receiving net salaries which were less than a third of their basic salaries. This is contrary to Section 19(3) of the Employment Act, 2007, which states that the total amount of deduction of the wages of an employee should not exceed two thirds of such wages.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

According to the Accounting Officer, following factors affected salary deductions to below the one third (1/3) of basic salary: -

i. When an officer is transferred from area which attract higher house allowance to area with low house allowance, for example from Nairobi to Meru, with an already committed salary.

ii. When an officer is transferred from a hardship area to non-hardship area affecting the earnings with an already committed salary.

iii. When an officer acquires a loan from lending institution while earning special duty allowance and the same elapses.

iv. Introduction of compulsory superannuation pension scheme by the Government during the month of January 2021, for officers aged forty five (45) years and below. This required the deduction of 2% of officers' basic salary and this affected the 1/3 rule compliance for a number of officers.

From the information provided in the report, the numbers of those not compliant rose from three (3) in December, 2020 to forty three (43) in January, 2021. However by June 2021, the number had reduced to fourteen (14).

The Department is analyzing the individual cases as enumerated in the report to identify the affected officers and communicate to them with a view to re-adjust their salary commitments to ensure compliance.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Committee urges the Accounting Officer to ensure incremental compliance to the law.

1479. Mis-posting of staff

Review of the authorized establishment indicated that the authorized establishment had a total of 1,367 staff members while the existing number was 570 (42%) resulting in a deficit of 797(58%) as at 30th June, 2021. Further, 185 staff members were placed in positions where they were not authorized while 979 staff members were not in the authorized positions as detailed in table below.

Category	Authorized Establishment	Staff in-post	Variance (Number of Staff)	Observation/Explanation	Risk
Job Categories With no officers occupying the positions	365	0	365	This is the number of approved staff who have not yet been employed by the auditee and the offices designated do not have any staff members present Current in Post is 0 while Authorized Establishment is a positive number.	The risk of efficiency in service delivery and execution of the mandate.
Job Categories with excess officers that are in the same position	67	252	185	This is where the current in post are more than the authorized establishment. This means that the **794** officers were in excess in posts that had already been filled.	The risk of redundancy in carrying out operations leaving some officers idle and underutilized.
Job Category with fewer officers	1197	218	979	This is where the current in post are less than the authorized establishment. This means officers may be overwhelmed by work that is supposed to be shared.	The risk of overwhelming the officers hence leading to under-performance in service delivery to Kenyans.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(I) The difference between the Approved staff establishment of 1,367 and the in- post of 570.

This has been occasioned by the Government freeze on employment that has been in place for a number of years. This has however been relaxed and has brought on board two hundred and forty (240) officers at the entry level in various Technical Departments, who were recently recruited by the Public Service Commission, reducing the difference from 767 to 527. The Ministry has also declared sixty (60) vacant positions in critical areas to the Public Service Commission for possible filling.

(II) Staff members placed in positions where they were not authorized to be as per the Approved Establishment.

There are cases especially for the Support Services cadres where the Ministry receives officers on posting from various Administrators of Schemes of Service, leading to an over-establishment of some cadres. At times the officers are posted for learning purposes, and are then redistributed to Ministries and Departments that may be experiencing shortages.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1480. There were no material issues relating to effectiveness of internal controls, risk management and governance

DONOR FUNDED PROJECTS

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT CREDIT NO.58120-KE FOR THE YEAR ENDED 30 JUNE, 2021

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1481. Domestic Travel and Subsistence

The financial statements for the year under review reflect Kshs.62,068,655 in respect of purchase of goods and services which further includes domestic travel and subsistence totaling to Kshs.40,115,560 that excluded Kshs.2,356,000 paid in respect of domestic travel and subsistence allowance. No reason was provided to explain the understatement of domestic travel and subsistence by Kshs.2,356,000. Consequently, the accuracy and completeness of domestic travel and subsistence allowance could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the figure for use of goods and services of Kshs.62,068,655.75 reflected in the Financial Statements was adjusted by journal voucher (F.O 25) no.2865699 of 4th Feb, 2021 and thus it's inclusive of the Kshs.2,356,000.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1482. Wrong Charge of Accounts
The statement of receipts and payments reflect purchase of goods and services figure of Kshs.62,068,655, which includes wrong charge of training expenses totaling Kshs.112,000 instead of charge to fuel, oil and lubricants. Further, the Management wrongly posted expenditure totaling to Kshs.1,100,000 in respect of fuel, oil and lubricant to routine maintenance of other assets while Kshs.1,400,000 in respect of contracted professional services (training expenses) was charged to other operating expenses. Consequently, the fuel, oil and lubricants, other operating and training expenses are misstated and therefore the accuracy and completeness of the financial statements could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer
The Accounting Officer submitted that the posting error was corrected by journal vouchers (F.O 25) number 31550424 and 31550655 dated 30th. November, 2021 which was available for audit review.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

Emphasis of Matter
1483. Budgetary Control and Performance
The previous year's funding summary reflected total donor commitment of Kshs.1,350,000,000. However, at the close of the year ended 30June, 2021, the cumulative amount disbursed to the project totaled Kshs.525,281,035 resulting to undrawn balance of Kshs.824,718,965.
Although the Financing Agreement signed on 4th July, 2016 indicates that the project is expected to end on 31 December, 2021, the Project Management has not explained the reasons for the huge undrawn balance totaling Kshs.824,718,965. Consequently, the citizens may not have received the Project's expected services for the year ended 30 June, 2021.

Submission by the Accounting Officer
The Accounting Officer submitted that the expenditures in the project are activity based and require approvals/no objection of the World Bank to implement, even where the activity (ies) were captured in the Project Appraisal Document (PAD) and the Financing Agreement. When an

activity is not approved, the Ministry cannot implement the same thus resulting in underutilization of funds even when it is provided for in the budget.

In addition, due to the imposition of containment measures as a result of the Covid-19 Pandemic, the Ministry was not able to hold some of the planned retreats and workshops to utilize the funds provided for under purchase of goods and services. In addition, lack of a responsive bid for the planned procurement of a vehicle caused the under- utilization of funds under acquisition of non-financial assets.

These factors contributed to the huge undrawn balance pointed out.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion
1484. Acquisition of Assets
Note 3 to the financial statements reflects acquisition of ICT equipment totaling Kshs.1,155,500. However, although the initial budget was Ksh.10,000,000, it was reduced to Nil balance through Supplementary Budget. The State Department for Labour has not explained the source Kshs.1,155,500 used for the purchase of ICT Networking.
Consequently, the purchase of ICT equipment was not approved according to requirements of Public Finance Management Act, 2012 section 43(1)(d) which states that Accounting Officer may re-allocate funds from the authorized use but may not reallocate funds where the transfer of funds may result in contravention of fiscal responsibility principles and the management was therefore in breach of the law

Submission by the Accounting Officer
The Accounting Officer submitted that a correction of the resultant over-expenditure due to Supplementary Budget cuts was adjusted by journal voucher (F.O 25) number 317893351 of 30th December-2021 which was availed for audit review.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Acquisition of Assets is unsatisfactory.

Committee Recommendation
The Committee reprimands the Accounting Officer for violating Section 43(1)(d) Public Finance Management Act, 2012.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1485. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1486. As required by Financing Agreement between the International Development Association (IDA) and the Kenya Government, I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the project financial statements are in agreement with the accounting records and returns.

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AGENCY UNDER THE STATE DEPARTMENT FOR LABOUR

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT (KYEOP) IDA - 5812-KE - NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1487. Inaccuracies in the Financial Statements

1487.1 Statement of Cash Flows

The statement of financial assets reflects cash and cash equivalents of Kshs.176,741,559 as at 30 June, 2021 which differs with the year-end cash and cash equivalents of Kshs.177,214,091 reflected in the statement of cash flows.

Consequently, the accuracy and completeness of the statement of cash flow's, cash and cash equivalents balance of Kshs.177,214,091 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The difference between cash and cash equivalent was due to imprest of Kshs. 472,532 issued to a Mr. Festus Kitui for an activity that overlapped the financial year. It was accounted for as a accounts receivable as at 30th June 2021.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

1487.2 Cash and Cash Equivalents

The statement of financial assets reflects a cash and cash equivalent balance of Kshs.176,741,559 which does not include Kshs.3,619,473 held in suspense at Cooperative Bank of Kenya. Further, audit revealed that another suspense account with Nil balance was held at Equity Bank which was not disclosed in the financial statements. There were also no bank reconciliation statements and returns for the two (2) suspense accounts.
Consequently, the accuracy of the cash and cash equivalents balance of Kshs.176,741,559 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The project ran a main bank account at KCB with the other two at Cooperative and Equity Banks operating as suspense accounts as per service level agreement, to facilitate payment of stipends to beneficiary youth. The balance of Kshs. 3,619,473 at Cooperative Bank related to cumulative unpaid stipends that were refunded back to the main account.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer. However, it was not explained how those beneficiaries owed the Kshs. 3,619,473 were eventually paid.
Committee Recommendation
The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

1488. Renewal Contracts for Contractual Staff
Included in the compensation of employees' balance of Kshs.29,414,921 is Kshs.2,400,000 being unsupported monthly salary payments made to 10 contracted drivers for the month of January, 2021 to 30 June, 2021. Examination of records found in their personal files revealed that they had all requested for contract renewal through letters which were all approved on 14 December, 2020 but no signed contracts were in place to support the renewal. In the circumstance, the propriety and completeness of Kshs.29,414,921 for compensation of employees could not be confirmed for the year ended 30, June 2021.

Submission by the Accounting Officer
Kshs. 2,400,000 was monthly salary payments made to 10 drivers for the months of January- June 2021. Their contracts have been availed.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.
1489. Unsupported Fuel Expenditure
Note 3 to the financial statements reflects fuel costs of Kshs.2,958,982 which also includes Kshs.1,254,538. However, documents such as work tickets, cash books and fuel statements were not provided for audit verification. Further, the Project's fuel statement revealed that National

Industrial Training Authority (NITA) refunded an amount totaling to Kshs.1,306,818 being amount of fuel incurred by the Authority. However, supporting documents for the actual total amount incurred by the Authority were not provided. In the circumstance, the actual fuel consumed by NITA has not been provided for audit verification and the propriety of the fuel costs of Kshs.1,254,538 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The project vehicles were stationed in implementing counties and their work tickets were not remitted as at time of audit but are now available. Further, the refund of fuel by NITA was for the latters use of the project's vehicles to support its trade test activities.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

1490. Fixed Assets

Analysis of the summary of fixed assets as shown in the table below and at Annex 3 to the financial statement and the physical fixed assets register kept by the Project reveals significant differences of Kshs.9,323,039 relating to office furniture and general equipment; and a similar difference of Kshs.9,323,039 relating to vehicles and other transport equipment totalling to Kshs.18,646,078. No explanation has been provided regarding the total difference of Kshs.18,646,078.

Asset Class	**Cumulative Financial Statements Amounts (Kshs.)**	**Cumulative Fixed Assets Register Amount (Kshs.)**	**Difference (Kshs.)**
Office Furniture and General Equipment	34,146,327	43,469,366	9,323,039
Software	23,220,001	23,220,001	0
Vehicles and Other Transport Equipment	86,943,039	77,620,000	9,323,039
Total	**144,309,367**	**144,309,367**	**18,646,078**

Consequently, the accuracy of the summary of fixed assets register at Annex 3 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The office furniture and general equipment of Kshs. 9,323,039 was wrongly posted under vehicle and other transport equipment thus understating the former. The error was corrected.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

Other Matter
1491. Budgetary Control and Performance

The statement of comparison of budget and actuals amount as at 30 June, 2021 reflects a total payments final budget of Kshs.1,033,473,937 against actual expenditure amount of Kshs.580,680,647 giving a budget utilization of 56%. An in-depth review of the expenditures incurred showed there were budget under-absorption as shown in table below.

Component	Budgeted Amounts (Kshs.)	Actual Expenditure (Kshs.)	Under Absorption (Kshs.)	% Under Absorption
Compensation of Employees	41,587,000	29,414,921	12,172,079	29
Purchase of Goods and Services	991,886,937	551,265,726	440,621,211	44
Total	**1,033,473,937**	**580,680,647**	**452,793,290**	**44**

From the analysis above, it is evident that the Project under spent its budget by a total of Kshs.452,793,290 (44%). This may have a negative impact on implementation of planned activities and service delivery to stakeholders. There is need for proper planning to avoid instances of idle funds.
Submission by the Accounting Officer
The under-expenditure under purchase of goods and services was due to covid-19.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer was unsatisfactory.

Committee Recommendation
The Committee recommends that the Accounting Officer avails an analysis of the under absorption to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
1492. Compensation of Employees

Included in the compensation of employee's balance of Kshs.29,414,921 is Kshs.1,292,635 relating to statutory deductions whose documentary evidence such as payment and acknowledgement slips were not provided for audit review and therefore it is not clear whether they had been remitted to relevant entities as required by Section 94(1) of the Tax Procedure Act, 2015, Section 27(1) of the NSSF Act, 2013, and Section 18(2) of the NHIF Act Cap. 255.

Submission by Accounting Officer

The project and NITA share the same employer NSSF, NHIF and KRA numbers. The project thus transfers the deduction to NITA for onward transmission, which was done.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

1493. Imprest Management

Examination of imprests records totalling to Kshs.4,814,837 revealed that officers serving on the Project were issued with more than one (1) imprest contrary to Regulation 93(4)(b) of the Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer shall ensure that an imprest holder does not have an outstanding imprest before an earlier one is surrendered.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer did not make submissions under the same.

Committee Observations and Findings

The Committee finds that the Accounting Officer was in breach of the law.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of PFM Regulations on imprest management, and directs that he issues a status report on all surrenders for the period under review, within three (3) months of adoption of this report.

1494. Activities Without Prior Clearance from the World Bank

The audit reveals that a budget of Kshs.600,000 was approved by the World Bank for development of new occupational standards while the actual expenditure is recorded as Kshs.3,755,900. In addition, another expenditure totalling Kshs.1,034,600 was incurred in a workshop to prepare NITA's new role in KYEOP. However, a no objection certificate from the World Bank was not provided for audit review.

Submission by the Accounting Officer

Approvals were granted in the annual work plan and budget for the period July 2020- June 2021.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Committee recommends that the Auditor General confirms the evidence in the subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1495. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS
1496. As required by the Financing agreement between International Development Association and the Republic of Kenya, I report based on my audit, that I have obtained all the project's information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been and the Project's financial statements are in agreement with the accounting records and returns.

34. STATE DEPARTMENT FOR SOCIAL PROTECTION- VOTE 1185

REPORT ON THE FINANCIAL STATEMENTS

Mr. Nelson Sospeter Marwa, the Principal Secretary and Accounting Officer the State Department for Social Protection (Vote 1185), appeared before the Committee 25th May, 2022, to adduce evidence on the audited financial statement for the State Department for Social Protection (Vote 1185) for the Financial Year 2020/2021. He was accompanied by the following officers:

1. Mr. Kennedy Okeyo -Chief Finance Officer
2. Mr. Charles D. Oudogo - Director Children's Services
3. Mr. Sidney Paul Achia - Assistant Director for Children's Services
4. Mr. Patrick Njoroge - Deputy Director HRM/D
5. Mr. Urbanus Kioko M - Senior Supply Chain Management Officer
6. Mr. Willis O. Olwalo - Deputy Director Social.
7. Mr. Josphat M Kalinge - Assistant Director Children's Services

And Submitted as follows,

1497. Inaccuracies in the Financial Statements

1497.1 Misclassification of Expenses

The following amounts were charged to the wrong items of expenditure accounts as detailed below; -

Expenditure Account Wrongly Charged	**Account to be charged**	**Expenditure Amount Kshs.**
Routine Maintenance-Other Assets	Refurbishment Of Buildings	28,551,210
Vehicle Maintenance	Office General Expenses	300,000
Routine Maintenance	Office And General Supplies	995,50
Routine Maintenance -Other Assets	Routine Maintenance –Vehicles	147,366
Foreign Travel And Domestic Travel And Subsistence	Domestic Travel And Subsistence	4,857,321
Other Operating Expenses	Domestic Travel And Subsistence	55,389,530
Fixed Assets	Various Items	20,004,912
Training Expenses	Various	1,619,922
Other Operating Expenses	Domestic Travel And Subsistence	18,126,506

In the circumstances, the accuracy of the balances in the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer admitted that the amounts were charged to the wrong items of expenditure accounts as tabulated above. However this was due to the dire need of the expenditure that was necessitated by the Implementation of the Kenya Social and Economic Inclusion Programme (KSEIP). Highlighting this will help the State Department improve and avoid such occurrence of misclassification of expenses in future more so the State Department will be requesting for Re-allocation of expenditure in case of unforeseen events or where the allocation is not sufficient to avoid such occurrence in future.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Misclassification of Expenses was unsatisfactory.

Committee Recommendation
The Committee admonishes the Accounting Officer for failure to perform functions bestowed on the office.

1497.2 Variances between the Financial Statements and the Integrated Financial Management Information System (IFMIS) Trial Balance
The financial statements reveals inconsistencies with the figures in the IFMIS trial balance as reflected in the table:

Account Item	Financial Statements Kshs.	IFMIS Trial Balance Kshs.	Variance Kshs.
Inventory AP Accrual	-	173,424,431	(173,424,431)
Expense AP Accrual	-	1,950,552,567	(1,950,552,567)
AP Liabilities	-	2,415,583,731	(2,415,583,731)
Exchequer Releases/Provisioning	31,126,369,476	148,113,239,011	(116,986,869,536)
Consolidated Fund	-	115,965,329,894	(115,965,329,894)
General suspense A/C (Accounts Receivables)	593,620,698	593,622,524	(1,896)

The variances are not supported or explained.
Consequently, the completeness and accuracy of the financial statements could not be ascertained for the year ended 30 June, 2021.

Submission by the Accounting Officer.
The Accounting Officer submitted that IFMIS system is designed with standard chart of accounts. The accounts are Classified as expenditure accounts (voted accounts) and control accounts which are basically self-balancing (Below the line default accounts).and is meant to accomplish basic

principle of double entry in accounting. The accounts listed above are all control accounts whose balances are cumulative. For example in the exchequer account, the opening trial balance amount was Kshs.116,986,869,536 while the closing exchequer balance was 148,113,239,011. Since these balances are accumulative, the exchequer receipt for the year, being the difference of 31,126,369,476 which is shown in **note one** of the financial statement. The same principles applies to all below the line accounts which should be well understood in the IFMIS system reporting module configuration. Further, the audited financial statement is exact replica of the financial statements produced in IFMIS and therefore there should be no variation, difference in understanding and interpretations of the reports.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee admonishes the Accounting Officer for failure to perform functions bestowed on the office.

1498. Unsupported Balances.

The statement of receipts and payments reflects an expenditure of Kshs.28, 799,118,269 under transfers to other Government Units which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.34, 953,896 relating to Economic Stimulus which was not supported by necessary documentation such as acknowledgement of receipt and an agreement. Similarly, an amount of Kshs.593, 620,698 in respect of general suspense and a negative balance of Kshs.242, 421,047 relating to other payables were not supported by necessary documentation such as invoices and suppliers listing.

In the circumstance, the accuracy and validity of the balances for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that while it is true the state department received budget support on economic stimulus during the financial year, the budget was received under a single line item under Current transfers to Individuals and Households. The budget was to cover operational cost for support activities which does not necessarily involve actual transfers where it is budgeted for. The activities included monitoring the Covid situation in the country then. Never the less, the documents in support of the expenditures has been availed for audit review.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1499. Payment of Commission.

The statement of receipts and payments reflects Kshs.1, 104,035,346 under use of goods and services which, as disclosed in Note 5 to the financial statements, includes other Operating expenses of Kshs.382, 303,743 where commissions to service providers was Charged. Review of records revealed the following anomalies:

1499.1 Beneficiary Reconciliation reports.

Although records indicates that Kshs.300,868,450 was paid as commission to service providers during the year under review, reconciliation reports by the State Department required in accordance with Section 3.10.1 of the contract between the State Department And the service providers were not provided for audit review.

Consequently, the propriety and accuracy of Kshs.300, 868,450 could not be ascertained For the year ended 30 June, 2021.

Submission by the Accounting Officer:

While it is true Kshs.300, 868,450 was paid as commission to service providers during the year, The Accounting Officer stated that the reconciliations for the Kshs.300,868,450 has now been shared.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015;

Committee Recommendation

The Committee reprimands the Accounting Officer for negligence of duty and care.

1499.2 Irregular Payment of Commission

Examination of bank statements for the holding account at the Kenya Commercial Bank, Revealed that the bank was paid commissions amounting Kshs.296, 510,054 for payment Cycles starting July, 2019 - March, 2020 during the year under audit. However, the bank Levied a further charge of Kshs.12, 964,522 on beneficiaries' accounts whose balances were more than Kshs.16, 000. This is contrary to Section 1.3.6 of the contract with service providers which states that the State Department shall authorize payment to beneficiaries for eight months (8) or Kshs.16, 000 irrespective of proof of life.

In addition, the Management did not provide details of beneficiaries whose account balances were in excess of Kshs.16, 000, the basis upon which Kshs.12, 964,522 was paid as commission.

Consequently, the accuracy and propriety of Kshs.12, 964,522 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the Programme primary objective in the account based choice model of payment system focused on promoting a saving culture amongst beneficiaries for economic stability and improved livelihoods. This has led to the accumulation of account balances beyond the KShs.16,000 threshold. As per the contract, Payment Service Providers earns commissions when a beneficiary does actual withdrawal from the account. In the event a beneficiary saves and withdraws when the balances in the account has gone beyond Kshs.16,000 threshold, all the accumulated commissions are triggered as well. This led to payment of commissions of Kshs.12, 964,522 for beneficiary's accounts whose balances were more than Kshs.16,000.Since the beneficiaries were biometrically identified in order to access funds, this process itself is a proof of life and as to such, there was no loss of funds.
The list of beneficiaries whose account balances were in excess of Kshs.16, 000.00 and who were paid has been shared.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1500. Cash and Cash Equivalents
The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.523, 605,738. However, the following anomalies were noted:
(i) The bank reconciliation statements together with bank statements for the accounts held at the Central Bank of Kenya, Kenya Commercial Bank and Co- operative Bank for recurrent, development, deposit and Kenya Social and Economic Inclusion Program from the months of July, 2020 to May, 2021 were not submitted contrary to Regulation 90(1) and (3) of the Public Finance Management (National Government) Regulations, 2015.
(ii) As disclosed in Note 9 to the financial statements, included in the cash and cash equivalents balance is an amount of Kshs.235, 837,284 held at the Central Bank of Kenya in respect of the Kenya Social and Economic Inclusion Program (KSEIP). The same amount is reflected in the financial statements of KSEIP as an asset. This means that the cash and cash equivalents of the State Department is overstated by an equivalent amount of Kshs.235,837,284 and therefore, the Department's books did not balance since the amount is not reflected as a contra entry as at 30 June, 2021.

Under the circumstance, the accuracy of the cash and cash equivalents balance of Kshs.523, 605,738 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted as follows;
(i) The state department submitted year end bank reconciliation for review but not monthly bank reconciliation statements. The monthly bank reconciliation has now been submitted for review as required Section 90 (1) and (3) of Public Finance Management (National Government) Regulations, 2015.

(ii) While it is true the financial statements reflects Kenya Social and Economic Inclusion Program (KSEIP) bank account balance at Central Bank of Kenya of Kshs.235, 837,284 and the same is reported in the financial statement for the state Department, the position remains true to the extent that KSEIP is a project implemented within the Department and its financial transactions has to be consolidated with in the financial statement of the state department to ascertain the correct financial position of the department. KSEIP is not autonomous entity and is part of the state department project.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that during the audit, the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in breach of Section 68 (2) (b) of the PFM Act, 2012 and Section 9 (1) (e) of the Public Audit Act, 2015.

1501. Deceased Beneficiaries in the Inua Jamii Program Payroll

Audit tests of beneficiaries payroll undertaken in a sample of sixty-eight (68) out of a total of two hundred and ninety (290) Sub Counties (or 23%) during the month of November 2021 reveals that the payroll for payment of older persons' cash transfer (OP-CT), cash transfer to orphans and vulnerable children (CT-OVC) and persons with severe disability cash transfer (PWSD-CT) was erroneous as it contains seven thousand five hundred and seventy seven (7,577) deceased beneficiaries resulting in an unexplained payment of Kshs.254,702,000 for the period starting 2017 to 30 June, 2021.

Further, records indicates that service providers were equally paid Kshs.15,282,120 in respect of commissions on irregular payment to deceased beneficiaries whose basis has not been explained.

In the circumstances, the propriety, accuracy and completeness of Kshs.269, 984,120 utilized cash transfer for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that under the Inua Jamii programme it is standard procedure for the deceased to be exited upon provision of requisite supporting documents which include Death Certificate or Burial Permit as described in the CCTP Operations Manual (Section 3.5.5.1). This process primarily begins at the sub-county level where Sub-County Officer fills in an Update Management Form accompanied by relevant supporting documents for the dead beneficiaries to be exited. However in the absence of proper documentation, there is no justification for exit. As per our standard operating procedure a further due diligence is done by uploading the information into the CCTPMIS and validated at different levels (County and National) to confirm authenticity of the case before exit.

While it is true the auditor carried out Audit tests of beneficiary's payroll and sited out seven thousand five hundred and seventy seven (7,577) deceased beneficiaries our investigations reveals the following case categories.

1. **Beneficiaries reported dead and yet are alive-**

While the audit listed some beneficiary's as dead, they are actually alive, in some instances the auditor used wrong details of purported dead beneficiary on the beneficiaries who are alive.

Wrong Information(Auditor)			**Correct Information(as per CCTPMIS)**				
S/N	**Name**	**ID no**	**Name 2**	**Id No3**	**County**	**Contacts**	**Alive**
159	Jackshan Mwawongo Dissi	5405582	Peter Maganga Jackson	5405582	Taita Taveta	0715584674	Alive
6204	Yeltine Mwongeli Yumba	3116231	Karuga Gatungu Gatungu	3116231	Kiambu	0718466083	Alive
2489	Janet Nkatha Murithi	4500687	Njema Kathambi Kiaera	4500687	Meru	0713597000	Alive
349	Lukas Kamau Kibuku	6240275	Hanah Nyambura Kuria	6240275	Kiambu		Alive

2. **Dead caregivers as opposed to beneficiaries**

The Audit reveals that 204 Caregivers under CT-OVC and 19 Caregivers under PwSD-CT were dead and yet in the payroll in different payment cycles.

It is important to note that Death of caregiver does not result to exit of beneficiary household. This is Applicable to PwSD-CTand CT-OVC.The two programmes are household-based programme, which means that the beneficiaries who have severe disabilities require 24 hour care, thereby requiring caregivers to access funds on their behalf. Similarly, in CT-OVC programme, where children require caregivers who are their guardians to transact on their behalf. The death of a caregiver therefore **does not** result in the exit of the household from the programme, but necessitates a replacement of the deceased caregiver by the household nominating another suitable caregiver. Funds held in the deceased caregiver's programme account remain in that account until the process of case management to bring the new caregiver into the programme and account opening are complete. Thereafter, funds are transferred from the deceased caregivers account into the new caregiver's account. Therefore, for the 204 CT-OVC and 19 PW SD-CT cases highlighted in the audit report, there was no loss of funds.

3. **Dead Beneficiaries in the payroll(OPCT)**

In account based system, beneficiaries are identified biometrically and a regular proof of life process by the department.it therefore means that any dead person in the payroll cannot withdraw money from the account. In the event that money is sent to account of already dead person, such

moneys are clawed back to the PSPS holding account of the ministry. The claw back process is envisaged in the contracts with the PSPS. For more recent deaths, under OPCT programme no funds were lost since the money is still held in the deceased beneficiaries accounts and is due for claw back as evidenced by the bank reports available in soft copy. (Attach summery of bank reports)
As part of the administration structure of DSA, The department has put up a case manage Unit which handles such cases on a daily basis since reporting of deceased beneficiaries is done at different times by various stakeholders such as caregivers, chiefs and next of kin.

Committee Observations and Findings
The Committee took note of the explanation given by the Accounting Officer with regards to Deceased Beneficiaries in the Inua Jamii Program Payroll.

Committee Recommendation
The committee recommends that a head count should be done every two months and stringent controls be put be in place.

Other Matter
1502. Lack of Ownership Documents
Review of fixed assets register revealed that the State Department occupies 36 parcels of land spread across the country. However, 35 parcels of land did not have requisite ownership documents. The State Department has however, submitted documents to confirm that effort to acquire title deeds for the parcels of land is in progress. In the absence of these legal documents, the ownership of the parcels of land and the accuracy of the reported valuation could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that the management has made varied efforts to secure the 36 parcels of land spread across the country with some already having title deeds while others are at different stages as highlighted in the following tables. The Department is indeed committed to secure of all its land. Copies of the already gotten Tittles are as shown in the table below.

TABLE 1: LAND WITH TITLE DEEDS

NO.	NAME OF LAND PARCEL	SUB COUNTY	APPROXIMATE SIZE	TITLE DEED NUMBER
1	Nyandarua VRC	Nyandarua West Sub-County	19 Ha.	NYANDARUA/OLJORO OROK/SALIENT/324
2	Bura VRC	Mwatate-Sub County	15 Acres	Taita TAVETA/BURA/ILOLE/546
3	Kimilili VRC	Kimilili Sub-County	2.2 HA	KIMILILI/KIMILILI/342
4	Kimilili VRC	Kimilili Sub-County	1.4 HA	KIMILILI/KIMILILI/344

5	Kimilili VRC	Kimilili Sub-County	0.06 HA	KIMILILI/KIMILILI/3680
6	Ahero CCSP	Nyando Sub-County	1.10Ha	KISUMU/KAKOLA/1798
7	Agenga CCSP	Samia Sub-County	4.0HA	Title deed No. SAMI/BUDONGO/1652

TABLE 2: PARCELS OF LAND THAT HAVE BEEN FUNDED OR HAVE REQUESTED FOR FUNDING FOR TITLE PROCESSING FUNDING FOR TITLE PROCESSING

NO.	NAME OF LAND PARCEL	COUNTY/SUB COUNTY	APPROXIMATE SIZE	REMARK/STATUS
1.	Proposed Eldoret VRC	Kapseret Sub-County	1.75 Ha	-Paid for Letter of Allotment -Requested for Indent from Ministry of lands
2.	Embu VRC	Embu West Sub-County	3.8 Ha	-Requested for cadastral survey funding of Kshs. 133,750/= Vide memo dated 31st January, 2022
3.	Muriranjas VRC	Kahuro Sub-County	20.5 Acres	-Disbursed 213, 000/= for title deed processing in 3rd Quarter 2020/2021 FY
4.	Rwika CCSP	Mbeere South Sub-County	6 Acres	-Disbursed 150,000/= for title deed processing in 3rd Quarter 200/2021
5.	Kilifi CCS	Kilifi North Sub-County	2.5 Ha	Requested for 136,205/= cadastral survey as per memos dated 5th May, 2021; 28th September, 2021; and
6.	Kirinyaga CCSP	Mwea East Sub-County	4.08 Ha	Requested for Kshs. 277,200/= cadastral survey as per memos dated 5th May, 2021; 28th September, 2021; and
	Kapenguria CCSP	West Pokot Sub-County	10.92 Ha	Requested for 183,000/= cadastral survey as per memos dated 5th May, 2021; 28th September, 2021.

TABLE 3: PARCELS OF LAND THAT ARE AT DIFFERENT STAGES OF LAND DOCUMENTATION OR WITH CONFLICTS

NO	NAME OF LAND PARCEL	COUNTY/ SUB COUNTY	PARCEL NUMBER	APPROXIMATE SIZE	AVAILABLE DOUMENTS	REMARKS/ STATUS
1.	Kisii Vocational Rehabiltation Centre	Kisii Central Sub-County	LR No. KISII MUNICIPALITY/BLOCK 1/980	9.34048 Acres	None	-A letter was done to PS Lands Ref: MLS/SP/9/12/Vol.1 of 8/7/2020 requesting for issuance of certified PDP and allotment letter. A section of land has been grabbed a second

						time by a private developer and has now constructed. The VRC manager has written to the anti-corruption commission and NLC.
2.	Odiado Vocational Rehabilitation Centre	Funyula Sub-County	Samia Wakhungu/Odiado 419	2.6 Ha	None	-Title deed no. Samia/Wakhungu/419 is available and is in the custody of Odiando Primary School. It is a block title deed that caters for the VRC and the primary School. It is registered under the PS National Treasury -Mutation is supposed to be initiated by the County Coordinator for Social Development as soon as possibleThe VRC manager has written to the anti-corruption commission and NLC.
3.	Nyandarua Vocational Rehabilitation Centre (5)	Nyandarua West Sub-County - Oljoro Orok	-	9.35 Acres	None	-Block Title yet to be issued to KARLO. -Authority letter giving the actual size of the piece of land for documentation has been requested by the VRC manager
4.	Machakos Vocational Rehabilitation Centre	Machakos Sub County	Allotment Letter Fr/259/32	2.16 Ha	Allotment Letter Fr/259/32	Allotment letter issued. Paid for the letter on 14-10-2009
5.	Kakamega Vocational Rehabilitation Centre	Kakamega Central Sub-County	Parcel No. ISUKHA/SHIRERE/1202	The land has got various sizes quoted-18.25 (18.25 acres, 21Ha and 20HA)	Search certificate available	The CC Kakamega has written a complaint letter to the National Land Commission Kakamega to investigate the reducing size of the VRC land from 21Ha to 5.8 Ha on 23rd June, 2021

6.	Itando Vocational Rehabilitation Centre	Sabatia Sub-County	KAK/Bukhulunya/538	1.2 Ha	None	-The application to process the Title Deed was approved by county Land Management board of Vihiga County on 12th June, 2015.
7.	Kericho Vocational Rehabilitation Centre (6) Kericho Town	Ainamoi Sub-County	Ker Bl 5/190	2.0 acres	None	-There is conflict between the Directorate and the County Government of Kericho.
	(This is The Main VRC)		L.R. 631/36 (Rehab Centre)			-The VRC manager is waiting for intervention by the PS to the County Government (see letter dated 2nd February, 2022, from VRC manager
8.	Kericho Vocational Rehabilitation Centre (7) (Township) **(Parcel With Staff Quarters)**	Ainamoi Sub-County	L.R. 631/	1.2 acres	None	There is an on-going ownership court case between the VRC Manager and Private developers. The case was ruled in favour of the Manager, but an appeal was filed by the plaintiff.
9.	Kericho Vocational Rehabilitation Centre (8) (Kericho Town) **(Nyagacho)**	Ainamoi Sub-County	-	3.0 acres	None	The land was hived from meteorological Department.
10.	Industrial Rehabilitation Centre	Lang'ata Sub-County	LR 209/13986	9.67 Ha	Allot-ment letter Ref. No. LR 209/13986	Allotment letter
11.	Butula Community Capacity Support Centre	Butula Sub-County	Allotment letter Marachi /Elukhari /1440	2.2 Ha	Allotment letter Marachi /Elukhari /1440	-There is treat of the County Government possessing the parcel of land. -There is no clear ownership as search

						results indicate the land belongs to the County Government of Butula.
12.	Kirathimo Community Capacity Support Centre	Limuru Sub-County	LTC/FC/34/97	1.25 Acres	None	Land ownership conflict between the Directorate and Kenya Red Cross.
13.	Mbooni Community Capacity Support Centre	Mbooni West Sub-County	MBOONI/MUTITU/5302 Plot No 5194		PDP in place but not signed. Land adjudication list available.	-The land adjudicator is requesting for a certificate of Mbooni CCSP to assist in land documentation as per list dated 11th January, 2022.
14.	Kigumo Community Capacity Support Centre	Murang'a County Kigumo Sub-County	PDP ref. no. C21/KIGUMO/2018/1	5 Ha	None.	Awaiting for formalization of the centre by NLC as per the letter ref. NLC/MUR/CCSP/2/201 dated 6th May, 2021. It is an Economic Inclusion Resource Centre
15.	Marigat Community Capacity Support Centre	Baringo South Sub-County	-	7.2 Ha(28 Acres)	None	Cadastral survey works is ongoing, but has stalled due to Covid-19 as per letter
16.	Kwale Community Capacity Support Centre /Fltc	Matunga Sub-County	-	10 Acres	PDP available Ref. No. 140.KLW.1.1.2019	To write an objection letter to National Director Physical Planning on sub-division of a parcel of land by TSC and private developers.
17.	Marigat Social Development Office.	Baringo South Sub-County	-	1 acre	None	A cadastral survey works is ongoing.
18.	Wajir East DSDO Land	Wajir County|Wajir East Sub County	WJR/PDP/NO. 332/2019/06	0.3480 Ha	None	Awaiting for allotment letter from the NLC.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer with regards to Lack of Ownership Documents.

Committee Recommendation

The Committee recommends that the Accounting Officer fast-tracks the process and reports to the Committee within three (3) months of adoption of this report.

1503. Pending Bills

The financial statements for the year under review reflected pending bills balance of Kshs.42,300,409, comprising of bills verified and payable of Kshs.33,131,053, bills under verification of Kshs.3,785,397 and bills contested /court awards of Kshs.5,383,959 that were not settled in the year under review, but were carried forward to 2021/2022 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

While it is true the state department reported pending bills of Kshs.**42,300,409.50** due to lack of exchequer. So for all the pending bills have been paid.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory as the bills had been settled.

Committee Recommendation

The Committee recommends that the matter is resolved.

1504. Diversion of Funds

The statement of receipts and payments reflects an expenditure of Kshs.28, 799,118,269 under transfers to other Government units which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.865, 091,982 relating to current grants to government agencies and other levels of government. The latter balance includes an amount of Kshs.54, 091,632 diverted and used for payment to merchants and suppliers, the Kenya Revenue Authority and employees for the State Department without Authorization

Submission by the Accounting Officer

The Accounting Officer submitted that while it is true expenditure amounting to Kshs.54, 091,632 were charged under current grants to government agencies and other levels of government, the expenditures relates to Street Family Trust fund which is a semi -Autonomous -Government Agencies budgeted in a one line item 2630101 and therefore all payment related to the entity are charged to the same account including merchants, tax and claims.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1505. Balances in the Holding Accounts

Examination of Bank Statements for the four (4) Payment Service Providers submitted for audit revealed that the Holding Accounts held Kshs.461,622,844 as at 30 June, 2021 as indicated below:

Payment Service Provider	Account Name	Account Number	Balance as at 30 June, 2021 (Kshs.)
Kenya Commercial Bank	Agency for cash Transfer Programme	1168237459	167,852,778
Co-operative Bank	State Department of Social Protection	1141696731500	50,117,479
Kenya Post Office Savings Bank	Inua Jamii Project Account	744130013971	20,135,257
Equity Bank Limited	Agency for Cash Transfer Programme	180279733379	223,517,330
	Total		**461,622,844**

No explanation was provided as to why the amount of Kshs.461, 622,844 was not transferred to beneficiaries.

Consequently, it was not possible to confirm that value for money was obtained from Kshs.461, 622,844 transferred to the four Holding Bank Accounts.

Submission by the Accounting Officer

The balances in the holding account as at 30th June 2021 relates to onward payment to the beneficiaries of the last payment cycle of March April May June 2021 which was paid in June 2021 into July 2021.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1506. Presidential Secondary School Bursary

Included in grants and transfers to other Government Entities at Note 6 of the financial statements is Kshs.405, 520,849 incurred for Scholarships, Educational Benefits and Emergency Reliefs. Included in the balance was Kshs.399,999,400 for Presidential Bursary disbursed to secondary schools in 47 counties to 21,961 beneficiaries distributed at the constituency level.

However, during physical verification in 16 Sub-Counties the following anomalies were noted:

(i) No evidence of sensitization and creation of awareness by the Department of Children's Services through CSAC (Constituency Social Assistance Committee) on the Presidential Bursary Scheme application processes, eligibility and criteria including the process applied for identification of the needy students was not produced for audit verification. This was attributed to lack of facilitation as there was no allowance paid to those who are required to get involved in the process.

(ii) Presidential Bursary Applications registers showing applicants' names, identification details, admission or registration numbers and the schools to determine whether the beneficiaries had applied for the money was not provided.

(iii) The constituency bursary sub-committee minutes, attendance registers and reports on identification of the needy students, vetting and award of bursaries to the qualifying beneficiaries, to ascertain whether the award was merit-based as per the set guidelines and whether the bursary funds were for the beneficial use of the intended institutions and individuals were not produced for audit verification.

(iv) No evidence provided to show that the committee confirmed award of bursary from other sources to avoid double dipping.

(v) No documentation to confirm all forms were analysed and subjected to score ranking of the applicants. Sampled bursary application forms produced revealed that the forms were not filled by the bursary sub-committee for approval of the awarded amount for payment as required by law and therefore, the basis of approval of award and payment of Kshs. 399,999,400 was not established.

(vi) The responsibility of the beneficiary learning institutions is to acknowledge receipts of the funds inform of acknowledgement letters and/or receipts classified according to the fees structure which was not effectively done.\

In the circumstance, the Department failed to comply with the Presidential Secondary School Bursary (PSSB) Operations Guidelines 2018.

Submission by the Accounting Officers

The Accounting Officer submitted that presidential Secondary School Bursary (PSSB) Operations Guidelines 2018, provide for a multisector teams to manage the disbursement of the funds to the beneficiaries at Sub County. The teams included Representative of Member of Parliament, Education, DCC, Officers of the department. However, due to lack of budget provision for operation over the years, the operation of these committee has been jeopardised leading to overlap of roles as highlighted by the auditor. A request for more operational budget has been made to the budget committee for consideration.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Presidential Secondary School Bursary was unsatisfactory.

Committee Recommendation

The Committee reprimands tha Accounting Officer for failing to comply with the Presidential Secondary School Bursary (PSSB) Operations Guidelines 2018.

1507. Lack of Functioning Internal Audit

During the year under review, no internal audit report was prepared and there was no proof of internal controls to detect and prevent errors. Further, there was no assurance that appropriate institutional policies and procedures are followed and there was no evidence that the Management's decisions were backed by any evaluated adequate reliable information.

Submission by the Accounting Officer

The Accounting Officer submitted that while the audit might have identified the gaps in the internal Audit function, the gaps were brought by low staff level in the unit. However, the staff level has been enhanced with a substantive head of internal audit at the level of Director.

Committee Observations and Findings

The Committee observed that there was a lack of a functional internal audit.

Committee Recommendation

The Accounting Officer must at all times ensure that they have appropriate arrangements in place for conducting internal audit according to the guidelines of the Accounting Standards Board pursuant to the provisions of Section 73(1)(a) of the Public Finance Management Act, 2012.

1508. Ineffective Audit Committee.

Appointment letters for Audit Committee Members dated 16 December, 2019 provided showed that Audit Committee Members were interviewed on 20 October, 2019 and immediately appointed as members of the Ministerial Audit Committee and were instructed to report to the Cabinet Secretary for the Ministry of Finance not later than 13 January, 2020 for further instructions. However, no documentary evidence was availed to inform of minutes and reports of their deliberations from the time they were appointed to the time of this audit as a result of this failure to establish effective internal audit committee implies the following anomalies:

(i) The review of the entity's reporting functions and the integrity of the financial reports are not reviewed.
(ii) Monitoring of the effectiveness of the entity's performance management and information were not checked.
(iii) Monitoring of strong and effective oversight of the entity's internal audit function was not reviewed.
(iv) No effective liaison and facilitation communication between management and external audit.

Submission by the Accounting Officer

The Accounting Officer submitted that with the movement of the state Department to the new ministry of Public Service, Gender, Senior Citizen Affaires and Special Programmes. The Ministerial Audit Committee is in place. Trained and in operation.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1509. Weak Information Technology-Internal Controls

The State Department for Social Protection does not have in place approved procedures/guidelines on how changes and upgrades to package systems are to be handled. There were no formally documented and approved processes to manage upgrades made to all financial/performance information system and also when an upgrade is made to the system, there is no formal change request documentation completed indicating the change to be made and reasons for all changes to the financial system.

Further, there were no policies in place which cover physical access to IT environments. The entity also does not have an IT continuity plan and Disaster Recovery Plan in place. There are no backups stored in a secure off-site storage facility. In addition, the management Information System used by the State Department doesn't weed out duplication.

Consequently, the risk of wastage and loss of public resources was high for the year ended 30 June, 2021

Submission by the Accounting Officer

The Accounting Officer submitted that while the auditor might have noted the gaps in Information Technology-Internal Controls, the State Department has put up the following control mechanism to enhance the information technology systems.

1. Strategic Leadership Succession Plan (SLSP) for the MIS Department

There is a Strategic Leadership Succession Plan (SLSP) for the MIS Department that elaborates in details how system issues are to be handled.

2 Checksum Encryption

Procedures exists on secure file download and sharing that outlines on how this should be handled including how Checksum Encryption is applied to the transactions within the System.

3. Disaster Recovery Plan (DRP)

A Disaster Recovery Plan (DRP) exists that elaborates on actions to be undertaken in case a disaster occurs and how business continuity will be addressed including the procedures/steps on how the changes to the system can be addressee.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Weak Information Technology – Internal Controls was satisfactory.

Committee Recommendation

The Office of the Auditor General to review measures put in place by the department and advise the committee accordingly within one (1) month of adoption of this report.

DONOR FUNDED PROJECT.

KENYA SOCIAL AND ECONOMIC INCLUSION PROJECT CREDIT NO. 6348-KE

1510. Inaccuracies of the Financial Statements

The statement of receipts and payments reflects a comparative grant from external development partner - World Bank-DFID of Kshs.335, 569,200 while the audited report for the year ended 30 June, 2020 reflected Kshs. Nil grant from the World Bank-DFID.

Consequently, the financial statements are not prepared and presented as per the requirement of PSASB reporting template and therefore, the accuracy of the financial statements could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

While it is true the statement of receipts and payments reflects a comparative grant from external development partner World Bank-DFID of Kshs.335, 569,200 while the audited report for the year ended 30 June 2020 reflect Nil amount from World Bank-DFID.it clear from the Financial documents that the financial year ending 30 June 2020 was the first year of financial operations for KSEIP and could not have comparable for the previous year figures.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1511. Unmatched Contract Deliverables with Payment

The statement of receipts and payments reflects grant from external development partners of Kshs.299, 778,217 as at 30 June, 2021 paid to UNICEF for provision of technical assistance for implementing the Nutritional Improvements through Cash and Health Education (Niche). The payment of Kshs.299, 778,217 was made during the month of June, 2021 while the meeting held on 15 June, 2021 approved payment of a third tranche to UNICEF upon submission of the third invoice.

However, the County work plans and annual report submitted to the implementation committee were not submitted for audit review. Further, documents to support achievement of year 1 activities (deliverables) for payment of Kshs.299, 778,718 as stipulated in the contract with UNICEF were also not provided. In addition, an inception report with detailed annual work plan for year 1, and indicative budget of target Counties as per scope of work to support payment of 2nd tranche were also not provided for audit review.

Consequently, the accuracy and propriety of the amount transferred to UNICEF amounting to Kshs.299, 778,718 could not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that UNICEF was brought on board by World Bank to offer technical support in the implementation of NICHE under IPF Grant: SC190672. World Bank remits direct payments to UNICEF based on the conditions of Technical Assistance (TA) agreement. The conditions for payments are listed in annex IV. Payments of USD 2,780,874 (Ksh.299, 778,217) were done after UNICEF submitted an invoice with required attachments i.e. county work plans and annual report for November-21, 2019-November 20, 2020. The annual report listed all the deliverables that were achieved and not achieved as per the annex III in the TA agreement. However, UNICEF requested for 55% of the second year budget amounting to (USD 1,934,874) for achieved milestones for the first year and USD 846,000 for the first 12 months remaining balance. Documents were availed for audits. Documents on the same with highlighted milestones achieved were provided for the Committee.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter
1512. Budgetary Control and Performance
Statement of comparative budget and actual amounts reflects budgeted and actual expenditure of Kshs.16,278,599,018 and Kshs.14,584,952,396 resulting in under expenditure of Kshs.1,693,646,622 representing 90% absorption. Management has attributed the under absorption to Covid-19 pandemic, slow procurement process due to Covid-19 and data collection done on two Counties instead of three as initially planned. This is an indication that goals and objectives of the project may not have been achieved as disbursement linked indicators were not realized for the year ended 30 June, 2021.

Submission by the Accounting Officer
The Accounting Officer admitted that the goals and objectives of the project may not have been achieved and disbursement linked indicators were not realized for the year ended 30 June, 2021.this has been correctly stated as above.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1513. Project Implementation Status
Schedule 2E (1) (a) of financing agreement dated 31 January, 2019 requires that, without limitation on the provisions of Section II to Schedule 2 of the agreement, the recipient shall prior to each payment under the Project:(a) carry out in accordance with the verification protocol, an assessment to determine the extent to which the disbursement linked results ("DLRs") in respect of which payment is requested has been achieved; and (b) furnish an assessment to the Association for review. The table below outlines disbursement linked indicators not achieved in 2020/2021.

No.	Disbursement Linked Indicator (DLI)	Disbursement Linked Results (DLR)	Progress in DLI's

1	Scope, coverage, and functionality of single Registry Enhanced	(1b) (i)-re-registration exercise in the four original counties completed and beneficiary list updated accordingly- WB IDA- EUR 3.5 M-(US $ 4m) DFID-US $ 0.5 M-June 2020	Overdue
2	New Inua Jamii payment mechanism for three NSNP cash transfer programs is rolled out	(2b)- 100% of beneficiaries receiving payments through the new payment mechanism -IDA EUR 4.3m (US $ 9m) -June2021	Partially achieved
3	Integrated G & CM mechanism is strengthened and rolled out at decentralized level	(3a)- G &CM Mechanism is functional at all levels for four National Safety Net Programme(NSNP) programs in 47 counties -IDA EUR8.65 m (US $ 10M)-June 2020	Overdue
4	Increased access to social inclusion interventions	(4b)(i) tools designed and formal agreement between the SDSP, MOH and NHIF in place to operationalize systematic enrolment of NSNP beneficiaries into the NHIF- IDA EUR 3.4m (US$ 4m)-June 2020	Overdue

Management has attributed the delay to the slow project start. This is an indication that goals and objectives of the project may not be achieved as the disbursement linked indicators are not being realized.

Submission by the Accounting Officers.
The Accounting Officer submitted that the delay to the slow project start indeed slowed the achievements of the disbursement linked indicators as correctly captured as above.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1514. Wasteful Expenditure on Training

Note 5 to the financial statement reflects domestic travel amount of Kshs.43, 298,520 which also includes an amount of Kshs.1, 232,000 paid to officers for the purpose of conducting National Training on Nutritional Improvement through Cash and Health Education operations, management information system (MIS) modules and manuals to County teams.

However, documents attached revealed that officers from the Counties did not attend the training and no justification was given why the trainers proceeded to stay on for five (5) days. Consequently, the project objectives were not met while the public did not get value for money. The propriety of expenditure amounting to Kshs.1, 232,000 could therefore, not be confirmed for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the National TOT Training took place from 2nd-5th March, 2021 at Gelian Hotel in Machakos County. The National TOT exercise was intended to bring together the multi-agency implementing partners at National and County level to be trained as TOT in preparation for cascading the trainings to the county levels. However the county teams did not participate due to logistical challenges as explained in the memo to Chief Finance Officer.

The national team proceeded with the trainings that were facilitated by UNICEF, Development Pathways and CHASP. After the National TOT, the trainers proceeded to the five counties and trained the county and sub-county officers on operation manual and NICHE MIS from 9th-12th March, 2021 as shown in the memos and attendance list. This training was important for facilitation of the first registration of NICHE beneficiaries. Finally the trainings were conducted as planned and there was no wastage of funds.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1515. Slow Project Implementation

Review of documents for 2020/2021 revealed that activities in the annual work plan commenced in October, 2020 and payments for various activities were made from 2 December, 2020. Scrutiny of the work plan revealed that some of the activities were not undertaken in 2020/2021. Management attributed the slow start of the project due to delay in regularization of the Kenya Social and Economic Inclusion Project budget. This affected project budget allocation and implementation as the project lost 9 months for project implementation. There was also delay in exchequer releases for project implementation and closure and scale down of activities from March, 2020 as a result of the COVID-19 confinement measures. This indicates that the project objectives may not be achieved before its closure. Value for money may also not have been attained for the year ended 30 June 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true the project start time was delayed due to the aforementioned challenges. Despite the fact that the project delayed to start, no money was spent either and therefore no value for money was lost. Nevertheless, the department has put up measure to scale up the activities to meet the objectives of the project as earlier envisaged.

Committee Observations and Findings
The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1516. Payment of Contract without Provision of Bank Guarantee
The ten percent (10%) of the contract price was paid without a bank guarantee from the consultant against Clause 41.2 and 41.2.1 of the special conditions of the contract. Management explained that the advance payment was required to be paid within 30 days after the receipt of an advance bank guarantee but it was paid on 27 May, 2021, six (6) months after signing the contract, in contravention to provisions of the contract.

Submission by the Accounting Officer
The Accounting Officer submitted that the contract referred here in is between the State Department for Social Protection and M/s Global Development Incubator for provision of consultancy services of Technical Assistance to support implementation of Economic Inclusion Intervention under The Kenya Social Economic Inclusion Project.

The Accounting Officer admitted that 10% of the contract price was paid without a bank guarantee from the consultant. It's worth noting that instead of advance payment, the client required the firm to meet the following deliverables which warranted payment of the 10%: -
(i) Detailed implementation plan years 1-2
(ii) Conduct market analysis.
(iii) Refine project design based on context analysis and other assessments.

Based on the deliverables, the 10% was paid and therefore there was no need to ask for bank guarantee.

Further the advance payment was required to be paid within 30 after the receipt of an advance bank guarantee. In our case the payment was paid on 27th May 2021(6months later after signing the contract) and after the firm met the required deliverables. (Copy of final outputs, deliverables and payment schedule.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Payment of Contract without Provision of Bank Guarantee was unsatisfactory.
Committee Recommendation
The Committee reprimands the Accounting Officer for acting against against Clause 41.2 and 41.2.1 of the special conditions of the contract.

1517. Training without Approved Training Plan

Kenya Social and Economic Inclusion Project – State Department for Social Protection incurred a training expense of Kshs.29, 948,100 as shown at Note 5 to financial statements in 2020/2021 without an approved training plan. Management developed a training programme for Kenya Social and Economic Inclusion Project in lieu of training plan which was not given a "No Objection" by the World Bank due to lack of a training needs assessment. This may result in delay in Project Implementation and disbursement of funds by World Bank due to ineligible expenditures and training on areas not beneficial to delivery of project objectives. Consequently, Management was in breach of the Agreement.

Submission by the Accounting Officer

The Accounting Officer Submitted that the DPHR&D developed a training programme for the KSEIP (copy was provided) however, when the plan was submitted to the World Bank, a "No Objection" was not granted and the team was guided to first have a training needs assessment (TNA) undertaken which would then be used to guide the trainings under the KSEIP. With support from the World Bank, a TNA was undertaken and a development of a training plan is now is developed.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1518. Lack of Internal Audit Reports and Ineffective Internal Controls

Management of Kenya Social and Economic Inclusion Project in 2020/2021 failed to maintain and provide a copy of the internal audit reports, risk registers, and evidence that the report was submitted to the World Bank as per laid down terms of reference for verification as per section 132 and 133 of Kenya Social and Economic Inclusion Financial Management Policies & Procedure Manual (FMPPM) Policy Guidelines, Governance & Reporting. This implies that the Management failed to put in place internal controls to help in detection and prevention of errors that could possibly lead to loss of funds.

Submission by the Accounting Officer

The Accounting Officer submitted that while the audit might have identified the gaps in the internal Audit function, the gaps were brought by low staff level in the unit. However the staff level has been enhanced with a substantive head of internal audit at the level of Director.

Committee Observations and Findings

The Committee observed the lack of effective internal controls.

Committee Recommendation

The Committee reprimands the Accounting Officer and directs that he ensures the presence and facilitation of an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012.

1519. Audit Committee and Audit Charter

Audit Ministerial Committee was appointed vide letter Ref: ML&SP/SP/8/37/Vol.1. However, it was established that the Committee did not meet to review and approve; annual financial statements/annual audit reports, programs and projects, annual budget (organization's including projects) reviews, the reports of the internal auditor for taking necessary action among others as per section 23 of Kenya Social and Economic Inclusion Financial Management Policies & Procedure Manual (FMPPM) Policy Guidelines, Governance & Reporting. This increased the risk of error and fraud occurring.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministerial Audit Committee is in place, however they have not been inducted to enable them discharge its mandate effectively. This has been occasioned by budgetary constraints. Efforts towards the same have been made, awaiting approval and facilitation.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1520. Lack of Monthly Bank Reconciliations

Kenya Social and Economic Inclusion Project did not maintain monthly bank reconciliations for 2020/2021 as required by law and the Kenya Social and Economic Inclusion Project and the financial management policies and procedures manual.

Only bank reconciliation for June, 2021 was done. Consequently, the risk of misuse of project's resources was high.

Submission by the Accounting Officer

The Accounting Officer submitted that while it is true the KSEIP Financial Management Procedures manual which is a living document recommends from monthly bank reconciliations, the same manual recommend Financial Implementation for Kseip be done through Government Financial Information System (IFMIS).Periodic Bank reconciliation is automated in IFMIS and the reporting overwrite itself as the transactions continues in the system until the Final year end. Therefore, ifmis is unable to produce monthly bank reconciliation but instead produce, periodic reconciliation, "say year end reconciliation" which was provided for audit review.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Lack of Monthly Reconciliations was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1521. As required by Financing Agreement Credit No. 6348 KE between Government of Kenya and International Development Association, dated 31 January, 2019, I report based on my audit, that I have obtained all the information and explanations which to the best of my knowledge and believe were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the financial statements of the project are in agreement with the accounting records and returns

KENYA SOCIAL AND ECONOMIC INCLUSION PROJECT NO. P164654, IDA CREDIT NO. 63480 AND GRANT NO. TFA9527 - NATIONAL DROUGHT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Disclaimer of Opinion

1522. Change of Project Name and Opening Balances

1522.1 Change of Project Name and Assets Handover

The Other Important Disclosures note to the financial statements indicates that Hunger Safety Net Programme (HSNP II) came to an end on 16 October, 2019 and was succeeded by Kenya Social and Economic Inclusion Project (KSEIP or HSNP III). However, in the previous year's (2019/2020) audit report, the name used for the project is National Safety Net Programme (NSNP) under the State Department for Social Protection Cr. No. 5287, while in the year under review the project's name changed to KSEIP IDA Cr. No. 63480 and Grant No. TFA9527 or Project No. P164654 under National Drought Management Authority (NDMA). The frequent changes in project names has resulted to the following observations or anomalies:

(i) KSEIP consolidates all cash transfer programmes initially under NSNP and KSEIP is being implemented by NDMA as HSNP III.

(ii) The cash and cash equivalents of Kshs.1,618,376,310 reflected in the financial statements of NSNP as at 30 June, 2020 were not fully transferred to KSEIP as opening balance on 1 July, 2020. Instead, an amount of Kshs.486,296,128(30%) was reflected as KSEIP opening balance while the brought forward receivables of Kshs.15,354,719 is also fully omitted and is not explained in the financial statements of Kenya Social and Economic Inclusion Project (KSEIP) as at 30 June, 2021.

(iii) The transfer of fixed acquired assets totalling Kshs.75,749,883 and Kshs.18,943,601 acquired in years 2019/2020 and 2018/2019 respectively from the National Safety Net Programme to KSIEP-handover report or documentary evidence was never provided for audit review. Consequently, it was not possible to establish the details pertaining to the transfer of fixed assets and also the accuracy and ownership of the cash and cash equivalent could not be confirmed as at 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that safety net programme was funded jointly by GoK and the donors. The phase II was a transition period from the donor to fully GoK. HSNP III (KSEIP) was subsequently funded by World Bank among other cash transfer programmes. The handover process had 2-3 month overlaps from HSNP II and III and thus the confusion noted by auditors.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation
The Committee recommends that the Auditor General confirms the submission and reports in the next audit.

1522.2 Opening Balances
The Other Important Disclosures note to the financial statements indicates National Hunger Safety Net Programme (HSNP) amounts relating to the previous year were omitted from financial statements of KSEIP's comparative figures as at 30 June, 2021. However, it is not clear why the full opening audited balances were not reported in the 2020/2021 financial statements of KSEIP, therefore, resulting to differences as shown below.

Statement of Receipts and Payments	**Comparative Balances as at 30 June, 2021 of KSEIP Kshs.**	**Audited Balance as at 30 June, 2020 of NSNP Kshs.**	**Difference Kshs.**
Total Receipts Total Payments Surplus	4,208,502,293 3,722,206,166 486,296,128	42,236,583,532 41,922,581,651 314,001,881	(38,028,081,239) (38,200,375,485) 172,294,247
Statement of Financial Assets Bank Balances Fund Balance B/forward Receivables	 486,296,128 Nil Nil	 1,618,376,310 1,319,729,148 15,354,719	 (1,132,080,182) (1,319,729,148) (15,354,719)

Consequently, the comparative opening balances and the differences as shown in the table for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer reterated the submission above.

Committee Observations and Findings
The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms the submission and reports in the next audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1523. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1524. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

35. STATE DEPARTMENT FOR MINING

REPORTS ON THE FINANCIAL STATEMENTS

Mr. Elijah G. Mwangi, the Principal Secretary and Accounting Officer for the State Department for Mining appeared before the Committee on 14th March 2023 and 20th April 2023 accompanied by the following officers:

1.	Mr. Raymond Mutiso	–	Acting, Commissioner General
2.	Mr. David Onyancha	–	Director, Administration
3.	Mr. Evans K. Masachi	–	Deputy Director General, Surveys
4.	Ms. Nellie A. Magani	–	Deputy Director Human resource
5.	Mr. Kipyegon Siele	–	Head of Accounting Unit
6.	Mr. Stephen G. Wamae	–	Senior Deputy Director, Supply Chain
7.	Mr. Samuel Waithaka	–	Chief Finance Officer
8.	Mr. Paul Mirie	–	Head of Planning

and submitted as follows;

Basis for Qualified Opinion

1525. Unsupported Pending Bills

As disclosed in Note 16.1 to the financial statements, the State Department for Mining had pending bills amounting to Kshs. 65,784,775 as at 30 June, 2021. A review of the list of pending bills provided for audit revealed that bills totalling Kshs. 48,404,652 lacked supporting documents while an amount of Kshs.29,145,888 related to 2019/2020 financial year. Further, a Pending Bills Committee appointed by the Accounting Officer to review all pending bills of the State Department declared bills amounting to Kshs.2,652,490 as ineligible while bills totalling Kshs.3,362,896 which were included in the list, were not verified by the Committee and were therefore not valid for inclusion as pending bills.

Further, no explanation was provided by the Management for failure to give priority to settlement of prior years' pending bills as a first charge as required under Regulation 42 (a) of the Public Finance Management (National Government) Regulations, 2015 which requires debt service payments to be a; first charge on the Consolidated Fund and the Accounting Officer to ensure this is done to the extent possible that the government does not default on debt obligations and as directed by The National Treasury in circular No.10/2020 issued on 16 June, 2020.

Consequently, the authenticity of the pending bills of Kshs. 48,404,652 could not be confirmed and further, failure to settle the bills during the year to which they relate adversely affects the provisions of the subsequent year to which they have to be charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department in the financial statements for the year ended 30th June, 2021 included a disclosure of pending bills amounting to Kshs. 65,784,774.95, of which a review showed Kshs. 48,404,568 was not properly supported. It observed that there was discrepancy in the figures provided as pending bills. The report categorised Kshs. 2,652,490 as ineligible for payment and Kshs. 3,362,896 did not qualify as pending bills since they were unverified, and Kshs. 48,404,652 lacked requisite support documents. The management has reclassified the bills as contingent liabilities pending verification by the pending bills committee which The Accounting Officer has formed.

The pending bills and contingent liabilities figures will be restated in subsequent financial statements.

Committee Observations and Findings
The Committee observed that pending bills in the state department were not verified.

Committee Recommendations;
The Committee recommends that the Accounting Officer submits to it a report on the review of the pending bills within three (3) months of adoption of this report.

1526. Misallocation of Expenditure

The statement of receipts and payments reflects an expenditure of Kshs. 205,619,568 on use of goods and services. However, supporting schedules and analysis of the sub-items under use of goods and services revealed an expenditure amounting to Kshs. 133,821,167 charged to wrong accounts without requisite approvals contrary to Section 43(2)(b) of the Public Finance Management Act, 2012 which provides for reallocation of funds between programs, or sub-votes to be done by the Accounting Officer upon approval of a request made to The National Treasury explaining the reasons for the reallocation.

Consequently, the regularity of the expenditure of Kshs. 133,821,167 in respect of use of goods and services could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that the State Department had instances where some activities were charged to unrelated budgets line items amounting to Kshs.133,821,167 as tabulated by the Auditor. This was occasioned by the reduction of the budget in the line with austerity measures issued by the National Treasury during COVID-19 pandemic. The budget cuts were implemented when commitment to some budget line items had already taken place in IFMIS creating artificial over Expenditures (negative balances). To correct the anomaly, reallocation against various items with positive balances was undertaken as per Section 43(3) Public Finance Management Act, 2012 and PFM Regulations 48; and as guided by the National Treasury vide Treasury circular 6/2021.

Committee Observations and Findings

- **(i) The Committee observed that there was no internal approval by the Accounting officer nor documentation for reallocation of funds; and**
- **(ii) The Committee further observed that the Accounting Officer did not fill the required form for reallocation as required by the law.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to seek approval for reallocation of expenditure contrary to Section 43(2)(b) of the PFM Act 2012.

1527. Unsupported Fixed Assets

Annex 3 to the financial statements on summary of fixed asset register for the year ended 30 June, 2021 reflects historical cost of assets amounting to Kshs. 540,270,530. However, the assets were not supported with a detailed fixed asset register. Further, the supporting schedules provided for audit in respect of the additions during the year of Kshs. 25,142,988 indicated an amount of Kshs.12,025,564 charged to acquisition of assets and which related to subsistence allowances, facilitation allowances and training expenses.

In the circumstances, the accuracy and existence of additions during the year of Kshs. 12,025,564 as reflected in the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that since assuming office, an asset register has been prepared which will be updated from time to time.

The expenditure of Kshs. 12,025,564 on subsistence allowance was processed through acquisition of assets budget line items due to budget reduction occasioned by supplementary budget 1. Therefore, the figure of additional asset disclosed in annex 3 to the financial of Kshs. 25,142,988 was overstated by Ksh. 12,025,564. This overstatement will be corrected by restating the assts figures in the subsequent financial statements.

Committee Observations and Findings

(i) The Committee observed that the state department did not have a supported fixed assets register;
(ii) The Accounting Officer charged a sum of Kshs. 12,025,564 to the wrong vote.

Committee Recommendations

(i) The Committee reprimands the Accounting Officer for failure to maintain an updated fixed assets register, and charging Kshs. 12,025,564 in the wrong vote head.
(ii) The Committee directs the Accounting Officer to give an updated and comprehensive report of the fixed assets register within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1528. Compensation of Employees

As disclosed in Note 3 to the financial statements, the statement of receipts and payments reflects expenditure on compensation of employees amounting to Kshs. 380,916,686. Review of the expenditure revealed the following anomalies:

1528.1. Irregular Payment of Motivation Allowances

The expenditure on compensation of employees includes an amount of Kshs. 3,670,000 paid to three hundred and sixty-five (365) officers of the State Department for Mining as motivation allowances in the month of December, 2020 contrary to the Human Resource Policies and

Procedures Manual for the Public Service. The staff comprising permanent employees, interns and casuals were all paid a uniform rate of Kshs. 10,000 whose basis was not ascertained. Although Management indicated that the Authorized Officer, on the recommendation of the Ministerial Performance Management Committee approved the bonus payment to staff as a reward for exemplary performance over the financial year, no minutes of the Committee were provided for audit review.

Submission by the Accounting Officer

The Accounting Officer submitted that through a memo dated 21/12/2020 he was requested to consider a bonus of payment appreciation to the staff for their exemplary performance. The request was approved by the Accounting Officer.

Committee Observations and Findings

(i) The Committee observed that the motivation allowances were not provided for under the Salaries and Remuneration Commission framework;

(ii) The Committee also observed that giving of motivation allowance was an unlawful expenditure that should be paid back to the government.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends a surcharge from the beneficiaries, and provide a report to the Committee within three (3) months after adoption of this report.

1528.2. Un-Procedural Engagement of Casual Employees

As disclosed in Note 3 to the financial statements, the statement of receipts and payments reflects an amount of Kshs. 8,616,561 in respect basic wages of temporary employees incurred in payment of casual employees working at the Ministry Headquarters, Madini House, Regional Offices and Fluorspar Region. However, no documentary evidence was provided for audit to indicate how the recruitment was undertaken. In addition, the State Department engaged a total of 75 casual employees contrary to a Public Service Commission letter Ref: No PSC/21/2/5 dated 12 August, 2020 which authorized the State Department to engage a maximum of 45 casual employees for financial year under review.

Submission by the Accounting Officer

The Accounting Officer submitted that due to acute shortage of technical and support staff the State department engaged the National Treasury and the Public Service Commission for approval to recruit and compensate casuals. The approvals were granted by the two entities.

Upon getting the above requisite approvals, casuals were selected from a pool of applicants maintained at headquarter office. The Accounting Officer also submitted that casuals are engaged on contract basis for a period of three months. The 75 casuals mentioned is a cumulative figure of the individual casuals engaged over the accounting period and was within the budgetary provision for the financial year.

The Accounting Officer further submitted that the State Department has requested for approvals to recruit casuals from the Public Service Commission which were granted on 24th February, 2023.

Committee Observations and Findings

The Committee noted that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1529. Irregular Payment of Allowances

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects an expenditure of Kshs. 205,619,658 in respect of use of goods and services which includes an amount of Kshs. 52,245,375 for other operating expenses. The latter includes an amount of Kshs. 13,007,700 paid to various officers for undertaking their normal duties and in respect of undefined facilitators as shown.

Expenditure Item	Payment Details	Amount (Kshs.)
Training	• Preparation for audit • Undefined facilitators	660,000 440,000
Specialized Material and Services	• Preparation for audit and clearance of audit queries • Budget preparation • Bank Reconciliation Preparation • Staff Mapping	5,798,000 4,069,700 1,060,000 980,000
	Total	**13,007,700**

Management did not provide explanation to justify payment of these allowances. In the circumstances, the regularity of the Kshs. 13,007,700 could not be verified.

Submission by the Accounting Officer
The Accounting Officer submitted that review of Audit, complication, consideration and preparation of responses to issue raised required a multi-disciplinary team comprising of officers drawn from the various departments that the audit report touches on. The exercise has strict timelines, within which to file responses to office of the Auditor General. The needed to be fast tracked to meet the set deadlines. Because of that, the teams responding to the issues related to work outside office premises and worked beyond normal working hours in order to complete and adhere to the timelines provided.

Budget preparation is guided by PFM act, 2012, the National Treasury guidelines and the Parliamentary calendar which are usually on a short notice and strict timelines. The budget report requires requisite information on vote, expenditure, approved staff establishment and data on in posts which may require other reports prepared prior to the commencement of process.

A comprehensive budget document requires such a team form the finance and central planning units, Administration, SAGAs together with field services officers. The work Demands a lot of concentration, close coordination and minimum interruptions which necessitated the officers to work out of office and beyond normal working hours ensuring a continuous flow of the normal office duties.

Committee Observations and Findings

(i) **The Committee observed that allowances amounting to Kshs. 13,007,700 was not a proper charge of public funds;**

(ii) The Committee also observed that the Accounting Officer could not justify expenditure and payment of allowances.

Committee Recommendations;

(i) The Committee reprimands the Accounting Officer for irregular payment of allowances.

(ii) The Committee recommends that the beneficiaries be surcharged to recover the said amounts. Further, the Accounting Officer to report to the National Assembly within six (6) months after adoption of this report on the progress.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1530. There were no material issues relating to effectiveness of internal controls, risk management and governance

REVENUE STATEMENTS OF THE STATE DEPARTMENT FOR MINING

REPORT ON THE REVENUE STATEMENTS

Basis for Qualified Opinion

1531. Unsupported Non-Tax Receipts

The statement of receipts and disbursements reflects an amount Kshs. 1,843,684,919 as total non-tax receipts. The receipts comprise of revenue collected from cement levy, mining royalties and licence and permits fees from various licensees. Section 191 of the Mining Act, 2016 provides for establishment and maintenance of an up-to-date computerized mining cadastre and registry system, including a register of mineral rights. Review of records at the State Department revealed that the cadastre system was maintained. However, there was no register of mineral rights or records of licences issued for each category. Due to the unavailability of these records, the reported receipts in respect of mining and exploration licences, export permits and mining royalties from various licensees could not be verified against any supporting records.

Under the circumstances, the accuracy, validity, and completeness of the total non-tax receipts amounting to Kshs. 1,843,684,919 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there is no cadaster register for outstanding royalty payments. The records of royalty payments are managed through physical files of mineral rights holders where tracking payments is done. The ministry has been desirous of installing a digital royalty management system that is done. The ministry has been desirous of installing a digital royalty management system that would serve as a royalty's cadastral register once adequate budgetary allocation is provided.

Committee Observations and Findings

(i) The Committee observed that the State Department was using manual systems to record the account for royalty;

(ii) The Committee also observed that in absence of updated records, the extent of unrealized revenue could not be confirmed.

Committee Recommendation

(i) The Committee directs the Accounting Officer to adhere to Section 191 of the Mining Act, 2016 which provides for the establishment and maintenance of up-to-date computerized mining cadaster and registry system, including a register of mineral rights; and

(ii) The Committee directs the Accounting Officer to ensure that the computerized system is operational within six (6) months of adoption of this report.

1532. Unreported and Unauthorized Use of Prospecting Fees

The Cabinet Secretary, the National Treasury designated the Principal Secretary of the State Department for Mining as a Receiver of revenue through a letter REF:AG.1/021 Vol.111/91 dated 24 July, 2020. The letter classified classes of revenue for collection and to be accounted for by the Receiver of revenue, which included prospecting fees among others.

The revenue statements for the year ended 30 June, 2021 did not include prospecting fees revenue or arrears in the class of revenue. A review of accounting records at the State Department revealed prospecting fees amounting to Kshs. 25,048,358 was collected and deposited into the Department's recurrent bank account where it was utilized as Appropriations-In-Aid (AIA) without approval of the Cabinet Secretary for National Treasury. This was contrary to Regulation 64(4) of the Public Finance Management (National Government) Regulations, 2015 which provides that moneys received by the Receiver of revenue shall be paid into the designated bank accounts of the National Government and is not to be used by any public officer.

Consequently, the accuracy of the nil balance on prospecting fees in the revenue statements for the year under review could not be confirmed. In addition, the Management is in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that 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 are categorized as Appropriation-in-Aid; these are; Ground Rent, Laboratory fee, Library fee, mining permit a Mining License Application and Renewal Fee and Dealers License Application and Renewal fee.

There have been earlier instance of contestation and misrepresentation of prospecting fee as an A-I-A item and Ground Rent as prospecting fees. During the year, Ground rent of Kshs. 25,048,358 was erroneously receipted/ recorded as prospecting fees; but going forward, ground rent will be receipted as miscellaneous receipt and accounted accordingly. It has been noted that two items are distinct fees items and they should be recognized independently in the financial books. The prospecting fee should be accounted as Revenue item as directed by the National Treasury while ground rent should be treated as an A-I-A item. To minimize misclassification, a senior officer has to be posted to be in charge of revenue and A-I-A section.

Committee Observations and Findings

The Committee observed that the State Department had been recording ground rent as prospecting fees which should be recorded as an A-I-A.

Committee Recommendation

The Accounting Officer is directed by the Committee to separate revenue streams in the next financial year reports.

1533. Unreported Cement Levy Arrears by East Africa Portland Cement Company

The statement of arrears of revenue reflects cement levy arrears totalling Kshs.2, 115, 612,977 owed by various companies. Included in the balance, is Kshs.404, 759,572 owed by East Africa Portland Cement Company (EAPCC) 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 2020/2021 financial years.

Management did not provide any explanation on why levies that were due and chargeable to the Company were not assessed in the relevant periods and reported in the financial statements.

Under the circumstances, the recoverability and accuracy of the Kshs.404, 759,572 as at 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the East African Portland Cement Company (EAPCC) has arrears that accrued in the financial years 2014/2015 to 2020/2022 amounting to Ksh. 404,759,572. The management has due to capacity and budgetary challenges not been successful in assessing the cement levy.

In addition, there has been little cooperation from the company while conducting the exercise and the management depends on self-declaration assessment. A demand letter for the payment of the outstanding amounts of Ksh. 404,759,572 to East African Portland Cement Company was done on 18th January 2023.

The Accounting Officer also submitted that the State Department now has funding to assess cement companies and further, they have established a committee with mandate of visiting cement making factories. The Accounting Officer further submitted that the State Department is in liaison with the Kenya Revenue Authority for partnership on revenue collection.

Committee Observations and Findings

The Committee noted that there was clear loss of Revenue which is significant despite the fact that the assessment was done by EAPC. The last payment by EAPC was done in 2016.

Committee Recommendations;

i. **The Accounting Officer to provide for documentary proof on follow up for payments from EAPC and also the engagements with KRA within three (3) months after adoption of this report.**
ii. **The Receiver of Revenue should within three (3) months after adoption of this report provide information to the National Assembly on measures taken to recover the outstanding arrears including instituting legal action to recover any outstanding amounts.**
iii. **The Committee recommends the Cabinet Secretary to consider revision of the Mining regulations to include interest and penalties for delays in remittance of respective revenues.**

1534. Long Outstanding Arrears from Savanna Cement Company

Included in the arrears of revenue of Kshs. 2,115,612,977 is Kshs. 370,862,635 due from Savanna Cement Company in respect of cement minerals levy as at 30 June, 2021. Although a payment plan agreement was signed in August, 2017 between the State Department 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 State Department 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. Although Management indicated that a consent has been recorded in Court for settlement of the matter, the same was not provided for audit review.

Further, the Company has not filed any self-declaration assessment since 2018/2019 financial year to the time of the audit in February, 2022 and has, therefore, not been assessed for cement levy. In addition, the Company remitted Kshs. 5,000,000 during the year, but the remittance was not supported by production and sales reports.

Under the circumstances, the recoverability of the Kshs. 370,862,635 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the consent has been recorded in court for settlement of the matter. The State Department has noted that Ksh. 370,862,635 is irrecoverable and that it be declared bad debts since there is a court order issued to forego the arrears.

The Accounting Officer also submitted that the State Department will initiate the process of writing off the bad debt through a letter to the National Treasury.

Committee Observations and Findings

(i) The Committee observed that Savanna is a private company and that the consent order did not get accompanying approval from the Treasury;

(ii) The Committee also noted that the Cement industry has been under declaring for a long time since it is basically self-assessment.

Committee Recommendation

(i) The Committee recommends that the DCI immediately commences investigations on how the company was able to operate without a valid license and how the consent was reached;
(ii) The Accounting Officer ensures recovery of all amounts due in full, and submits a status report to the Commtitee within three (3) months of adoption of this report.

1535. Long Outstanding Dues from Tata Chemicals Magadi Limited

The statement of arrears of revenue as at 30 June, 2021 reflects royalty arrears totaling Kshs.675, 023,295 owed by Tata Chemicals Magadi Limited which has accrued since the financial year 2015/2016.

Although the Company undertook to settle the arrears with the State Department, no significant progress was made during the year. Further, review of correspondences between the Company and the State Department revealed that the Company had cited serious operational and financial challenges as the reason for inability to pay the royalties at the gazette rates.

The Company Management proposed to pay negotiated rate of 3% and to be applied retrospectively from 01 July, 2017. However, the Ministry of Petroleum and Mining asserts on application of the gazette rates of 4% of gross sales value from 1 July, 2017 and 5% of gross sales value from 01 July, 2019. The Company has not proposed any payment plan to settle the accrued royalties.

Consequently, the recoverability of the arrears of revenue of Kshs.675, 023,295 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that a demand letter for the payment of the outstanding amounts of Ksh. 963,703,546 from Tata Chemicals Magadi Limited was done on 24th February 2023.

Committee Observations and Findings

(i) The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory;
(ii) The Committee also noted that in the previous FY 2019/20 report, the receiver of revenue had been directed to recover the outstanding arrears including instituting legal measures to recover any outstanding amounts.

Committee Recommendation

The Committee recommends that the Accounting Officer and the Receiver of Revenue provides a status report on collection of dues within three (3) months of adoption of this report.

1536. Unreported and Long Outstanding Dues from Carbacid (CO2) Limited

The statement of arrears of revenue reflects arrears of revenue of Kshs.78, 490,587 due from Carbacid (CO_2) Limited.

The arrears relate to the financial years 2017/2018 to 2020/2021. 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. Consequently, the recoverability of the arrears of revenue of Kshs. 78,490,587 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Carbacid Limited has outstanding Royalty payments. The company has attributed the inability to pay the royalties on time to poor business environment where their competitors who extract carbon monoxide from industrial sources are not subjected to payment of royalties thus under cutting prices to Carbacids disadvantage.

The Accounting Officer also submitted that Carbacid has petitioned the Ministry to reduce royalty rate for carbon dioxide gas to even the playing field. Royalty rates review is work in progress having under gone public participation.

The Accounting Officer further submitted that the State Department has powers to review the royalty rates in place. In regard to revenue sharing particularly to County and the Community, the Accounting Officer submitted that the challenge was because there is no legal framework to guide and effect the same.

Committee Observations and Findings

(i) The Committee observed that the matter was discussed in its report of 2018/2019 and recommendations made therein;

(ii) The Committee observed that the money owed by Carbacid Ltd was still outstanding.

Committee Recommendation

The Committee recommends that the Accounting Officer and the Receiver of Revenue provides a status report on collection of dues within three (3) months of adoption of this report.

1537. Unremitted Mining Royalties

The statement of arrears in revenue for the year under review includes outstanding mining royalties totalling Kshs. 47,717,596. The royalty arrears comprise of Kshs. 30,196,739 and Kshs. 17,520,857 accruing from Kilimapesa Gold Pty Limited and Africa Diatomite Industries Limited respectively. Management did not provide evidence of any efforts made to recover the arrears of revenue. Further, a review of records maintained by the State Department revealed that, declared and assessed sales records in respect of Kilimapesa Gold Pty Limited were not up to date and thus the royalty arrears could not be accurately estimated.

In addition, a review of Cadastre records revealed that Chauhshan International Mining Company was granted a license to mine diatomite in 2016. However, no documents were provided for audit review to confirm the validity and the status of the mining license since 2016. Further, it was not clear whether the company pays ground rent for the rights held. In the circumstances, the accuracy and recoverability of the royalty arrears of Kshs. 47,717,596 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

Kilimapesa Gold Pty limited has since cleared the arrears as evidenced by official receipt B6068580 dated 28th October, 2021 of KShs. 31,428,381.65

Committee Observations and Findings

- **(i) Of the two companies, African Diatomite was yet to settle its dues.**
- **(ii) The Committee observed that the matter was discussed in its report of 2019/2020 and recommendations made therein;**

Committee Recommendations;

The Committee recommends that the Receiver of Revenue institutes measures to recover Kshs. 17,520,857 from African Diatomite, and provides a status report within three (3) months of adoption of this report.

1538. Irregular Underpayment of Cement Levy by National Cement Company Limited

The statement of receipts and disbursements for the year under review reflects cement levy receipts amounting to Kshs.882,501,151. The receipts include Kshs.289,263,087 received from National Cement Company Limited as shown in Note 1 to the revenue statement. However, analysis of production reports from the Company revealed a variance of Kshs.51,181,322 between cement levy remitted to Ministry of Petroleum and Mining and the levy due on production as shown below:

Period	Production in Tons Kshs.	Rate Used Kshs.	Royalty as per Reports Kshs.	Royalty Payable at 140/Ton Kshs.	Variances Kshs.
July, 2020 - March, 2021	2,041,514	127.54827	260,391,587	285,811,960	25,420,373
April, 2021 - June, 2021	644,024.11	100	64,402,411	90,163,360	25,760,949
				Total	51,181,322

Further, review of records at the State Department in respect of the cement Company revealed that on 4 March, 2021, the Cabinet Secretary through a letter Ref: No. MOPM/(S)6/1 granted consent to the Company to pay a reduced cement levy at a rate Kshs.100 per tonne instead of Kshs.140 per tonne. However, Section 188(2) of the Mining Act, 2016 requires the Cabinet Secretary to make regulations to provide for the conditions and criteria for determining application for reduction or suspension of payment of royalties which had not been done at the time of granting the reduction and have also not been done by the time of the audit in February, 2022.

In addition, there was no evidence of gazettement of the revised cement levy rate as provided for in the Section 183(2) of the Mining Act, 2016. In addition, it was not clear why the reduced levy rate of Kshs.100 applied only to one Company while the sector had several players manufacturing the same product.

In the circumstance, the accuracy of the Kshs. 289,263,087 on levy receipts for the year under review could not be confirmed. In addition, the Management is in breach of the law.

Submission by the Accounting Officer

It is true that the National Cement Company Limited has been paying the cement levy at the rate of KShs.100 per tonne of cement sold against the Legal Notice No. 222 of 2013 that prescribes a rate of Kshs.140 per tonne.

The Company was allowed to pay the reduced rate after their application for the same to the Cabinet Secretary was considered favorably in accordance with Section 188(1) of the Mining Act, 2016**.**

Committee Observations and Findings

(i) The Cabinet Secretary granted consent to the Company to pay a reduced cement levy at a rate of Kshs. 100 per tonne instead of Kshs.140 per tonne. However, Section 188(2) of the Mining Act, 2016 requires the Cabinet Secretary to make regulations to provide for the conditions and criteria for determining application for reduction or suspension of payment of royalties which had not been done at the time of granting the reduction and have also not been done by the time of the audit in February, 2022.

(ii) The Committee noted that this creates unfair competition and a window for corruption. The State Department was in the process of making regulations for such waiver which would undergo public participation before being submitted to Parliament. The then reduction of rates by the Cabinet Secretary was irregular.

Committee Recommendations;

i. All companies must pay uniform levies in accordance to the Mining Act, 2016;

ii. The Cabinet Secretary for Mining should make regulations pursuant to Section 188 (2) of the Mining Act within six (6) months after adoption of this report.

iii. The Committee reprimands the then Cabinet Secretary for acting contrary to Section 188(2) of the Mining Act, 2016.

iv. The Accounting Officer ensures the company makes good the difference within one (1) year of adoption of this report.

1539. Failure to Collect Annual Ground Rents

The Mining (Amendment of Third Schedule) Order, 2014 provides for payment of annual ground rents for an exclusive prospective licence or special licence, and annual ground rent for a lease area per hectare. Review of mining cadastral records maintained by the State Department revealed that the Receiver of revenue failed to identify and collect annual ground rents payable by holders of exclusive prospecting licence, mining permit, prospecting permit and mining licence amounting to Kshs. 133,335,448 contrary to Section 182(1) of the Mining Act, 2016 which provides that an applicant or a holder of a mineral right, a mineral dealer's licence or a diamond dealer's licence, shall pay such fees or charges and at such time as may be prescribed, by notice in the gazette.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that some mineral right holders are not up to date in payment of annual ground rent. The Accounting Officer further submitted that Ministry has since moved to revoke such non performing rights and in a Gazette Notice No. 5720 of June 2021, revoked 182 rights. The Ministry has received 122 appeals against revocation and they are being reviewed. However, the Ministry is still sending demand notices to defaulters for payment, most of which are ignored as the capacity to carry our compliance enforcement is severely limited by lack of funds for field activities.

Committee Observations and Findings

i. **The Committee noted that there was a huge capacity lapse by the State Department leading to great loss of possible revenue; and**
ii. **The Committee observed that the State Department was closing illegal mines that do not have licenses and building its capacity to enhance efficiency.**

Committee Recommendations;

i. **The Receiver of Revenue to institute a mechanism to enhance capacity in collecting ground rents; and**
ii. **The Committee recommends that the Cabinet Secretary includes in the Mining regulations, interest and penalties for delays in remittance of respective revenues.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES
Basis for Conclusion

1540. Dealing in Minerals Without Valid Licenses

Review of the mining cadastral records maintained by the State Department for Mining revealed that East Africa Portland Cement Company (EAPCC) and Savanna Cement Company had not been issued with mineral dealer's licences or mineral dealer's permit. However, the Companies continued to undertake mining activities and deal in minerals without valid licenses or permits contrary to Section 159 of the Mining Act, 2016.

Management explained that Savannah Cement Company do not undertake mining activities but instead imports the clinker, the main ingredient for cement manufacturing. However, cement manufacturing involves mixing clinker with other minerals such as Gypsum and Pozzolona among others. The additive minerals are sourced locally, and a request to the Company to disclose the suppliers of the other minerals was not responded to. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that East Africa Portland Cement Company (EAPCC) is yet to formalize limestone quarrying, however, efforts to pursue the Company to apply for a mining license have been put on hold following an issuance of a Moratorium Against Licensing in December, 2019.

Following the High Court Consent Order of Petition No. E224 OF 2020, which instructed that Savannah Cement Limited applies for a mineral dealing license. The Ministry has written to the Company to comply with the Consent Order but they are yet to respond.

Committee Observations and Findings

i. **The Committee observed that the matter was discussed in its report of 2019/2020 and recommendations made therein;**
ii. **The State Department argued that there was a moratorium in place since 2018 against issuing such licenses; and**
iii. **The Committee was concerned that the system to map mineral resources was foreign based (South Africa) instead of a local one. The GoK was currently developing its own cadastre system, which was 80% complete at *Konza* City.**

Committee Recommendation

(i) Within sixty (60) days of adoption of this report, the Accounting Officer and Receiver of Revenue should take legal measures to ensure East African Portland Cement Company Limited complies with Section 159 of the Mining Act, 2016.
(ii) The Accounting Officer to avail the cadaster report within three (3) of adoption of this report.

1541. Failure to Share Royalties and Lack of Mechanism for Sharing Royalties
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 Government and ten percent (10%) to the Community where the mining operations occur. During five financial years following enactment of the Act, of 2016, a total of Kshs. 7,503,885,961 in royalties was collected from various mineral right holders translating to Kshs. 750,388,596 that the National Treasury should have paid to the communities and Kshs. 1,500,777,192 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
Total	**7,503,885,961**	**5,252,720,172**	**1,500,777,192**	**750,388,596**

However, all revenue collected was transferred to the Exchequer Account at The National Treasury and was not shared with County Governments or communities. The Ministry of Petroleum and Mining attributed the situation to lack of a framework for remission of royalties share to the communities and County Governments. Further, the Ministry of Petroleum and Mining and The National Treasury are yet to put in place a mechanism to ensure that the share of the County Governments and the communities are safeguarded until such a time when structures are in place for sharing collected royalties.

In addition, if the share for the County Governments and communities amounting to Kshs. 2,251,165,788 is 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. Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that It is true that the royalty sharing mechanism as prescribed by the Mining Act, 2016 has never been operationalized. This is due to the lack of a regulatory framework to support the sharing of funds meant for the consolidated fund. However, the National Treasury is spearheading a committee to come up with means of sharing the royalties.

It has been proposed that the share to the counties be included in the county's share of revenue allocation from the Exchequer. The share to communities is still work in progress. Subsequently, a task force has been formed to develop a framework/regulation for the transfer of the ten percent (10%) share of the royalties to the communities.

Royalty sharing framework has been prepared by a joint committee between the Ministry andthe National Treasury. Disbursement of the county governments share has been agreed upon to be paid into the county governments accounting structures. The means by which the community share will be disbursed is yet to settled.

Committee Observations and Findings

Despite the fact that the State Department stated that there was no framework for the distribution of resources to communities, the Committee observed that this was not a proper justification for the delayed implementation of Section 183(5) of the Mining Act, 2016.

Committee Recommendations;

The State Department should come up with Regulations for revenue sharing within six (6) months following the adoption of this report by the National Assembly.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1542. Failure to Establish Artisanal Mining Committees

Section 94 of the Mining Act, 2016 requires establishment of Artisanal Mining Committee in every County. However, only six Artisanal Mining Committees have been established in the counties of Kakamega, Vihiga, Siaya/Kisumu, Migori, Kitui and Taita Taveta. The Committees are expected to advise the representative of the Director of Mines in the granting, renewal, or revocation of artisanal mining permits. Some of the counties without established Committees have large groups of unregulated artisanal miners that continue to operate without permits and hence denying the country revenues from mining activities.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that during the period under review, only six artisanal mining committee had been gazetted, however to date nine have been gazetted out of the 19 established regional offices. Creating artisanal mining committees is based on need basis and funding. Funding challenges have constrained creation of the committees in all regional mining offices.

However, the State Department has had engagements with The National Treasury and Parliamentary committee on Budget on allocation of funds to fully operationalize the committees.

Committee Observations and Findings

i. **The Committee noted that the Auditor General conducted a performance audit on the Artisanal Mining operations in November 2022 which also captured the issues raised in the query;**
ii. **The Committee was informed that Ksh. 30 million had been set aside for this activity and that progress had been made.**

Committee Recommendation

(i) The Committee recommends the Accounting Officer to provide a response on the queries raised in the Performance Audit and further a status report on the establishment of the Artisanal Mining Committees within three (3) months after adoption of this report.
(ii) The National Treasury should fund the establishment of the Artisanal Mining Committees.

1543. Lack of Artisanal Miners Register

Regional mining officers did not maintain register of artisanal miners in their respective regions as required under Section 93(3) of the Mining Act, 2016. A check at sampled regional mining offices established that the regional offices did not maintain a register of artisanal miners in their areas. Although the Management attributed this to lack of Artisanal Mining Committees, it was established that even in Counties where there are Artisanal Mining Committees, the Ministry has not issued artisanal mining permits hence no artisanal mining register. This hinder effort to supervise and monitor the operation and activities of artisanal miners and denies the Country revenues.

Submission by the Accounting Officer

The Accounting Officer submitted that the Moratorium against licensing issued by the Government in December, 2019, has curtailed operations of existing artisanal mining committees since they cannot issue the artisanal mining permits.

Committee Observations and Findings

i. **The Committee noted that regional mining officers did not maintain register of artisanal miners in their respective regions as required under Section 93(3) of the Mining Act, 2016; and**
ii. **The Committee noted that this hindered smooth operations and activities therefore denying the Country revenue.**

Committee Recommendation

The Committee recommends that the Accounting Officer acts in accordance with Section 93(3) of the Mining Act 2016. The Accounting Officer to ensure that artisanal miners register is in place within three (3) months following the adoption of this report by the House.

1544. Lack of Monitoring of Mining Operations

During the year under review, the Ministry did not conduct inspections and audit of the mineral right holders as required under Section 20(1)(i) of the Mining Act, 2016. From the records and reports available at the Ministry, the last inspections were conducted in 2017. The Ministry therefore relies on data, and self-declarations by the mining companies to assess revenue payable, which may not be accurate and could lead to loss of revenue due to under declaration or non-declaration of production and sales figures. Further, failure to undertake inspections and monitoring of operations has brought about laxity by the companies in implementing the licensing conditions leading to accumulation of revenue arrears to Kshs.2,115,612,977 excluding those yet to be assessed and declared.

In view of the forgoing, the accuracy and validity of companies self-assessed sales and production reports used as basis for payments of royalties/levies of Kshs.1,843,684,919 as disclosed in the statement of receipts and disbursements was not confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Directorate of Mines budget has been suffering budgetary and mobility constraints over the years despite the coming into force of the Mining Act, 2016, that has imposed extra responsibilities on the Directorate in terms of compliance and enforcement of exploration mining operations. Despite this the State Department has endeavored to conduct the inspections of the operations using the regional mining offices causing the officers struggle with the few resources available.

Committee Observations and Findings

i. **The Committee noted that the Ministry relies on data, and self-declarations by the mining companies to assess revenue payable, which may not be accurate and could lead to loss of revenue due to under declaration or non-declaration of production and sales figures.**
ii. **Further there had been laxity by the companies to implement licensing conditions leading to accumulation of revenue arrears of Kshs. 2,115,612,977 excluding those yet to be assessed and declared.**
iii. **The Committee was informed that the agency was coming up with a royalty's management system but the committee asked the agency to seek funds from the National Treasury to enhance monitoring of mining operations.**

Committee Recommendation

The Committee recommends that the State Department collaborates with County Governments in monitoring mining operations in localities, and provide a status report on the same within three (3) months of adoption of this report.

36. STATE DEPARTMENT FOR PETROLEUM - VOTE 1193

REPORT ON THE FINANCIAL STATEMENTS

Dr. Mohamed Liban, the Principal Secretary and Accounting Officer for the State Department for Petroleum appeared before the Committee on 16th March, 27th April and 24th May, 2023 accompanied by the following officers:

1. Mr. Rashid Khator – Deputy Director
2. Mr. Victor Mudachi – Acting Petroleum Commissioner
3. Eng. Duncan Endeki – Chief Superintending Engineer
4. Mr. Charles Kamunya – Senior State Counsel
5. Mr. Apollo Muchilwa – Assistant Director ICT
6. Mr. Eliud Mwaruah – Deputy Director Human Resource Management
7. Mr. Evans Nyakundi – Assistant Director, Supply Chain Management
8. Mr. Kevin Macharia – Finance Officer
9. Dr. Jennifer Owino – Deputy Head of Accounting Unit
10. Ms. Veronica Kamau – Head of Accounting Unit

and submitted as follows;

Basis for Qualified Opinion

1545. Inaccuracies in the Financial Statements

The financial statements for the year ended 30 June, 2021 reflect the following anomalies.

- The statement of assets and liabilities reflects an unreferenced fund balance brought forward of Kshs. 35,655,140, while Note 14 reflects fund balance brought forward of Kshs. 79,412,648. The variance of Kshs. 43,757,508 has not been reconciled.

- Disclosed in Note 15 and reflected in the statement of cashflows for the year ended 30 June, 2021 is a negative prior year adjustments balance of Kshs. 67,848,980 and a comparative negative balance of Kshs. 124,804,908. However, these balances have not been adjusted in the statement of assets and liabilities as required by paragraph 1.5.1 of International Public Sector Accounting Standards (Cash Basis). Further, the prior year adjustments balance of Kshs.67,848,980 includes refund to The National Treasury, adjustments on payables and adjustments of receivables of Kshs.(35,655,140), Kshs.(32,739,990) and Kshs.186,150 respectively whose supporting documents were not provided for audit review.

In the circumstances, the accuracy of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there was a variance of Kshs.43,757,508 between fund balance brought forward of Kshs.35,655,140 and note 14 to the financial statements of Kshs.79,412,648.

He stated that the fund balance brought forward of Kshs.79, 412,648. disclosed in note 14 includes accounts payable amount of Kshs.43,757,508 which is the variance between the financial position amount reported of Kshs.35,655,140 and note 14 to the financial statements. The error occurred as result of an omission of a bracket in the figure of Kshs.43, 757,508 which ought to have been included to make it a negative figure so as to arrive at the Kshs.35, 655,140 reported as balance brought down.

That disclosed in Note 15 and reflected in the statement of cash flows for the year ended 30 June, 2021 is a negative prior year adjustments balance of Kshs.67, 848,980 and a comparative negative balance of Kshs. 124,804,908 which have not been adjusted in the statement of assets and liabilities.

The analysis of the prior year adjustment are as shown in the table below.

DETAILS	2020/21	2019/20	Changes
Accounts Payable	11,502,990	43,757,488	(32,405,767.80)
Accounts Receivable	92,400	304,438	212,030
Refund to National Treasury			(35,655,160)
			(67,848,889.70)

The State Department was guided by the RIDER in the reporting template on the treatment of prior year adjustments which states that 'the prior year adjustments are not to be carried down on the face of financial statement'.

Committee Observations and Findings

(i) The Committee observed lack of explanation and details on the comparative balances and non-submission of schedules and ledgers in support of the adjustments impairs assessment of the validity and accuracy of reported figures;

(ii) The Committee also observed that the Accounting Officer did not furnish the Office of Auditor General with the necessary financial documents at the time of Audit.

Committee Recommendation

(i)The Committee reprimands the Accounting Officer for failure to submit fully reconciled financial statements to the Auditor General pursuant to Section 68 (2) (k) of the PFM Act, 2012;

(ii)The Accouting Officer to confirm refund of Kshs. 35,655,160 to Treasury within three (3) months of adoption of this report.

1546. Variance Between Financial Statements and General Ledger

The financial statements reflect balances for various items which differ with balances in the Integrated Financial Management Information System (IFMIS) general ledger as shown in the table below. The variances have not been explained or reconciled.

Item	Note	Financial Statement Balance (Kshs.)	General Ledger Balance (Kshs.)	Variance (Kshs.)
Routine Maintenance - Other Assets	7	3,012,052	1,780,400	1,231,652
Research, Studies, Project Preparation, Design & Supervision	10	1,503,511,895	1,503,372,769	139,126
Outstanding Imprest	12	92,490	18,754,500	18,662,010

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that after the query on variance between the financial statements and the Integrated Financial Management Information System (IFMIS) general ledger was raised, the State Department extracted those particular ledgers that relate to the items that were queried. From the analysis, it has been established that there were no variances between the general ledger figures and the figures in the financial Statement.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer failed to prepare accounts that are verifiable, accurate and reliable in contravention of Section 68 (2) (b) of the PFM Act, 2012; and

(ii) The Committee also observed that the Accounting Officer reconciled variances in the financial statements late, after the Auditor General had closed the audits.

Committee Recommendation
The Committee reprimands the Accounting Officer for failure to reconcile accounts on time.

1547. Unsupported Payments to Staff and Suppliers

The statement of financial assets reflects cash and cash equivalents balance totalling Kshs. 15,970,560 as at 30 June, 2021. The bank reconciliation statements for the month of June, 2021 for the development and recurrent accounts reflect payments in the cash book not in the bank statements totalling Kshs. 337,613,517 and Kshs. 11,204,324, respectively. These payments include amounts totalling Kshs. 100,088,805 and Kshs. 443,850 paid to staff on 30 June, 2021 from development and recurrent accounts, respectively. The payments were expensed directly and not processed as imprest as required by financial regulations. Further, the supporting documents for the payments were not provided for audit review.

In the circumstances, the purpose, nature, and authenticity of the payments could not be established and the non-recognition of payments to staff as imprest has overstated the expenditure and understated the receivables in the financial statements.

Submission by the Accounting Officer

The Accounting Officer Submitted that the statement of financial assets reflects cash and cash equivalents balances totaling Kshs.15,970,560 as at 30 June, 2021 and that the bank reconciliation statements for the month of June, 2021 for the development and recurrent accounts reflect payments in the cash book not in the bank statements totaling Kshs.337, 613,517 and Kshs.11,204,324, respectively.

The Accounting Officer clarified the following;

I. That although the payments were made in June, some of claims relate to the month of February, March, April and May when the activities took place.
II. The direct claims arose as a result of activities that had long taken place but the officers could not be facilitated at the time of undertaking the activities due to closure of the IFMIS system from the end of January 2021 to beginning of April 2021.The activities had been scheduled to take place after ascertaining that there was sufficient budget as well as funds to cater for the activities and hence they could not be postponed.
III. That the financial statements were correctly stated since all the payments were expensed during the year.

Committee Observations and Findings

(i) The Committee observed that the additional information was not countersigned hence lacking authenticity; and

(ii) The Committee further observed that the Accounting Officer did not avail supportive documents, including a signed list of attendance, approved work tickets and payment vouchers.

Committee Recommendations

i. **The Committee reprimands the Accounting Officer for failure to submit documentation for audit on time.**

ii. **The Accounting Officer should always 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 and that complete financial and accounting records are presented to the Auditor General pursuant to the provisions of Article 229 of the Constitution of Kenya 2010 and Section 68 (2) (k) of the PFM Act 2012.**

1548. Misclassification of Expenditure

The statement of receipts and payments reflects Kshs. 727,541,479 and Kshs.1,783,578,881 in respect to use of goods and services and acquisition of assets, respectively. Review of the expenditure disclosed in Notes 7 and 9 to the financial statements revealed expenses totalling Kshs.20,878,246 were charged to incorrect expenditure items without approval of The National Treasury contrary to Section 43(2b) of the Public Finance Management Act, 2012 as shown below:

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Item	Note	Vote-Head Total (Kshs.)	Amount Wrongly Charged (Kshs.)	Correct Vote-Heads for the Expenditure

Hospital Supplies and Supplies	7	92,827,869	9,516,608	Domestic Travel and Subsistence
Communication Supplies and Services	7	2,729,348	299,698	Domestic Travel and Subsistence
Domestic Travel and Subsistence Allowance	7	3,367,330	2,136,810	Foreign Travel and Subsistence
Research Studies, Project Preparation, Design and Supervision	10	1,503,511,895	2,000,000	Fuel, Oil & Lubricants
Research Studies, Project Preparation, Design and Supervision	10	1,503,511,895	6,925,130	Office and General Supplies
Total			**20,878,246 525**	

In the circumstance, the accuracy of balances reported against the expenditure items could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payments reflects Ksh.727, 541,479 and Kshs.1, 783,578,881 in respect to use of goods and services and acquisition of assets.

The Accounting Officer clarified the following;

Item	Explanation
Hospitality Supplies	The voted amount of Kshs. 92,827,869 for hospitality supplies was budgeted under the project of oil exploration and monitoring which involves field activities. The budget line item of hospitality supplies was utilized for domestic travels and subsistence since the officers were going for monitoring activities in the field.
Communication Supplies and Services	Officers were undertaking oil exploration field activities and the voted money for Communication Supplies and Services were utilized for Domestic Travel and Subsistence.
Domestic Travel and Subsistence Allowance	During the revision of the budget, line items of foreign travel was reduced thereby affecting the expenditure on foreign travels that had already been planned and approved thus necessitating the use of domestic travel to fund foreign travel expenses.
Research Studies, Project Preparation, Design and Supervision	State Department's activities are field based in nature and the budget line item of Research Studies, Project Preparation, Design and Supervision is normally utilized to support all operations and

Research Studies, Project Preparation, Design and Supervision	activities when officers are conducting oil exploration activities. Since the allocation for Fuel, Oil & Lubricants and Office and General Supplies were inadequate, Research Studies, Project Preparation, Design and Supervision budget line item were utilized.

Committee Observations and Findings

(i) The Committee observed that the explanation and documents submitted by the Accounting Officer was not satisfactory; and

(ii) The Committee noticed a lack of diligence in budgeting in the state department, which failed to appropriately allocate expenditures to the correct budget lines.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to adhere to the approved budget as provided under Section 43(2b) of the Public Finance Management Act, 2012.

1549. Unsupported Fuel Expense

Note 7 to the financial statements reflects an expenditure of Kshs.727,541,479 under use of goods and services which includes Kshs.6,675,000 in respect to fuel, oil, and lubricants. Examination of the related expenditure records revealed that payments totalling Kshs. 5,425,000 were made to the National Oil Corporation of Kenya for purchase of bulk fuel during the year. However, no documentary evidence to indicate how the fuel was drawn by the State Department's motor vehicles during the year were provided for audit review.

In the circumstances, it was not possible to ascertain the propriety of fuel expenses of Kshs. 5,425,000.

Submission by the Accounting Officer

The Accounting Officer submitted that payments totaling to Kshs.5, 425,000 was made to National Oil Corporation of Kenya (NOCK) for purchase of bulk fuel during the year. the Accounting Officer provided extracts of the relevant fuel statements from National Oil Corporation of Kenya and copies of the respective work tickets of the motor vehicles indicating how the fuel was drawn.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer did not furnish the Office of the Auditor General with the necessary financial documents at the time of Audit;

(ii) The Committee noted that the state department was losing money through unaccounted fuel expenses on car fuel cards; and

Committee Recommendation

i. The Committee reprimands the Accounting Officer for failing to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012; and

ii. The Accounting Officer should ensure proper records are availed within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

Other Matter

1550. Pending Bills

Note 19.1 to the financial statements reflects a pending bills balance of Kshs.115,724,246 as at 30 June, 2021. The bills were incurred during the year under review and remained unsettled. Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year to which they will form a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statements reflect a pending bills balance of Kshs. 115,724,246 as at 30 June, 2021 which were incurred during the year under review and remained unsettled.

The Accounting Officer also submitted that out of the pending bills of Kshs. 115,724,246 an amount of Kshs. 105,466,766 relates to expenditure incurred under Kenya petroleum technical assistance project (KEPTAP) which could not be settled due to failure of the contract to submit the supporting documents in time thus delaying the process of payment. The remaining amount of Kshs. 10,257,480 relating to State Department for Petroleum and arose due to lack of exchequer funding. However, the total pending bills have since been settled. A schedule indicating when the pending bills were settled is now availed.

Committee Observations and Findings.

The Committee noted that all the pending bills were settled.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1551. Unaccounted for Transfers to Other Government Entities

The statement of receipts and payments reflects an expenditure amounting to Kshs. 1,783,578,881 under acquisition of assets. The amount includes Kshs.280,000,000 transferred to the National Oil Corporation of Kenya (NOCK) from the Petroleum Development Levy (PDL) Fund and Petroleum Training Levy for development of Block 14T, an oil exploration block allocated to the Corporation, and training of Corporation staff on petroleum matters. However, no approved budget, work plan of activities to be carried in the block or details of employees trained was provided for audit verification. Further, no cost statements or evidence of expenditure of the funds transferred was provided for audit review.

Consequently, it was not possible to ascertain whether the transferred amount of Kshs. 280,000,000 was incurred for the intended purpose.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payments reflects an expenditure amounting to Kshs.1,783,578,881 under acquisition of assets. The amount includes Kshs. 280,000,000 transferred to the National Oil Corporation of Kenya (NOCK) from the

Petroleum Development Levy (PDL) fund and Petroleum Training Levy for development of Block 14T, an oil exploration block allocated to the Corporation, and training of Corporation staff on Petroleum matters.

The National Oil Corporation of Kenya (NOCK) provided a detailed work-plan for the justification of funds meant for exploration activities in block 14T which led to the funds being captured as transfers in the budget.

National Oil Corporation of Kenya through letter ref NOCK/FIN/034 dated 8th December 2021 forwarded the Financial Year 2020/2021 Expenditure Report and 2021/2022 Work Program and budget for block 14T.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer did not provide supporting documents in contrary to Section 9 (1) (e) of the Public Audit Act, 2015 which requires the Accounting Officer to provide accurate records and other supporting documents during audit;**

(ii) **The Accounting Officer did not provide details on how the grant was utilized despite the programme being in existence for number of years; and**

(iii) **The Committee also observed that the State Department was spending an estimated Kshs. 280,000,000 annually on payment to the National Oil Corporation.**

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer for failing to furnish the Auditor General with detailed information on payments made to the National Oil Corporation contrary to Section 9 (1) (e) of the Public Audit Act, 2015;**

(ii) **The Accounting Officer to submit requisite information and supporting documents to the Committee within three (3) months of adoption of this report.**

1552. Purchase of Defective LPG Gas Cylinders

During the year under review, the State Department contracted an inspection company for Kshs. 10,122,371 to conduct an independent inspection of the 6kg LPG gas cylinders purchased under the Mwananchi gas project. As previously reported in 2017/2018, the State Department for Petroleum had started the implementation of Liquefied Petroleum Gas (LPG) project that was intended to promote the use of modern cooking fuels among low-income households. The project entailed supply and distribution of LPG cylinders, grills and burners and National Oil Corporation of Kenya was engaged to distribute the gas cylinders to the households. However, majority of the supplied cylinders were found to have technical defects and were recalled hence prompting the Ministry to engage services of an independent inspector.

Tests done by the independent inspector engaged during the year concluded that a total of 79,057 gas cylinders comprising 15,056 and 11,132 being 100% of cylinders supplied by two firms and 52,869 being 66% of another firm's delivery, did not meet the tender specifications. This was consistent with the inspection and acceptance committee's finding at the time of supply.

In view of the above, the payments totalling Kshs. 125,091,769 made to the three suppliers in respect of the supply gas cylinders that did not meet tender specification in 2017/2018 and 2018/2019 financial years constitute a loss of public funds.

Submission by the Accounting Officer
The Accounting Officer submitted that the Mwananchi Gas Project was conceptualized and conceived in FY 2016/17 whose main objective was to enhance LPG usage penetration to the underserved population. The Ministry procured LPG cylinders, grills and burners and piloted them in Machakos and Kajiado Counties with initial roll out to 28,035 households.

The procurement process for four firms namely Ms. Allied East Africa, M/s Surge Energy Ltd, M/s Accurate Power Systems Ltd and M/s Metal Mate Co. Ltd was as follows:

SUMMARY OF 6KG LPG CYLINDERS PROCUREMENT PROCESS

S/NO	PARTICULARS	DATE/REMARKS
1	Procurement Plan Approval	24/8/2016
2	Requisition for 6kg LPG gas cylinders	24/8/2016
3	Invitation to Tender	19/12/2016
4	Tender Opening	19/01/2017
5	Tender Evaluation	06/02/2017
6	Contract Signing M/s Allied East Africa Ltd (Qty Awarded 148,898)……………………………………….. M/s Surge Energy ltd (Qty Awarded 104,229)……………………………………… M/s Accurate Power System (Qty Awarded 44,669)………………………………………… M/s Metal Mate Co. Ltd (Qty Awarded 59,559).. Total Qtys Awarded ……………… 357,355	 26/05/2017 29/05/2017 26/05/2017 05/06/2017
7	SUPPLY & DELIVERY OF 6KG LPG CYLINDERS	
a	Quantities of LPG Cylinders Supplied M/s Allied East Africa Ltd ….…………………… M/s Surge Energy ltd…………………………… M/s Accurate Power System…………………. M/s Metal Mate Co. Ltd……………………….. Total Supplied…………………………………….	 23,873 104,229 19,966 5,680 153,748
b	Quantities of LPG Cylinders Supplied & Paid M/s Allied East Africa Ltd ….…………………… M/s Surge Energy ltd…………………………… M/s Accurate Power System…………………. M/s Metal Mate Co. Ltd……………………….. Total Supplied and Paid ………………………	 23,873 21,924 10,729 5,680 62,206 (Valued at Ksh. 136,588,089)

S/NO	PARTICULARS	DATE/REMARKS
c	Quantities of Cylinders Supplied but not Paid M/s Allied East Africa Ltd ….…………………… M/s Surge Energy ltd…………………………… M/s Accurate Power System…………………. M/s Metal Mate Co. Ltd……………………….. Total Supplied & not Paid …………………….	 0 82,305 9,237 0 91,542
8	Inspection & Acceptance M/s Allied East Africa Ltd ….…………………… M/s Surge Energy ltd…………………………… M/s Accurate Power System…………………. M/s Metal Mate Co. Ltd…………………………	 Inspection & Acceptance carried out on diverse dates in 2017 & 2018

The project was halted due to a case lodged in the High Court by COFEK where interim orders were issued on 29th October 2018, and thus could not continue. On 8th July 2020 the matter was marked as settled. This was after the parties agreed that the Ministry procures the services of a third party inspector to inspect the LPG cylinders.

Following the inspection by the independent third party inspector (Ms. Bureau Veritas Ltd), 79,057 cylinders were found to be defective and thus did not meet the set tender specifications.

The Ministry engaged the suppliers to start the process of collecting and remedying the defective LPG cylinders Tabulated below is a status brief of remedying the defective LPG cylinders.

STATUS OF REMEDYING DEFECTIVE LPG CYLINDERS

S/NO	SUPPLIER	DEFECTIVE CYLINDERS (NO.)	RECTIFIED & RETURNED	NOT RECTIFIED BUT WITH SUPPLIER	LOCATION	REMARKS
1	M/s Allied East Africa Ltd	11,132	None	None	KNTC Warehouse No. 5,6 & 7	The company is under receivership and the Ministry has engaged the Attorney-General's office to take necessary action

2	M/s Surge Energy ltd	52,869	32,896	19,973	KNTC Warehouse No.5 & 6	The supplier is remedying the 19,973 cylinders at their premises expected to be completed and delivered in the first week of June 2023
3	M/s Accurate power system	15,056	None	None	KNTC Warehouse No.9 & 10	9,237 LPG cylinders are yet to be paid for
	TOTAL	**79,057**				

Out of the 79,057 cylinders that were found to be defective by Ms. Bureau Veritas Ltd as shown above, M/s Surge Energy Ltd had 52,869 gas cylinders out of which 32,896 were picked, rectified and returned The balance of 19,973 were picked and are in the process of being remedied at their premises expected to be completed and delivered in the first week of June 2023.

Further tabulated here below is the breakdown of the payments made to the three firms.

ANALYSIS OF THE PAYMENTS MADE

S/NO	SUPPLIER	QTY (NO.) DELIVERED BUT NOT PAID	QTY DELIVERED (NO.) AND PAID	PAYMENT DATES	AMOUNT (KSHS)
1	M/s Allied East Africa Ltd	None	23,873	19/10/2017; 30/11/2017;	52,496,727
2	M/s Surge Energy ltd	79,998	21,924	17/11/2017; 30/11/2017;	50,600,592
3	M/s Accurate power system	9,237	10,729	12/06/2018	21,994,450
	TOTAL				**125,091,769**

From the foregoing, the amount totaling Ksh. 125,091,769 was paid for LPG cylinders delivered by the three firms as indicated above. In view of the above analysis not all the cylinders were found to be defective. Administrative and legal action continues to be taken to remedy the defective cylinders.

Committee Observations and Findings

i. **The Committee noted that neither the state department nor KEBS had capacity to verify whether the cylinders supplied by the contracted company met safety and quality specifications, after the company's initial blanket certification;**

ii. **There was thus the obvious potential of supply of faulty cylinders, as was the case, as compliance was left to the sole discretion of the supplier;**

iii. **The Committee noticed that despite the gas cylinders being faulty, they had received certification from the Kenya Bureau of Standards (KEBS) and displayed the KEBS mark of quality;**

iv. **The Accountiung Officer submitted that the faulty cylinders were being retrieved and being remedied by the supplier.**

Committee Recommendation

i. **The Committee reprimands the Accounting Officer and KEBS for lack of diligence in conducting pre-shipment inspection and market surveillance;**

ii. **Within three (3) months after adoption of this report, the Accounting Officer should report to the Committee the progress made on remedying the faulty gas cylinders;**

iii. **The Kenya Bureau of Standards (KEBS) should review and address the gaps surrounding the preshipment verification of conformity procedures and report back to the National Assembly within three (3) months after adoption of this report;**

1553. Irregular Procurement of Equipment

15.3.1. Two Burner Low Pressure Tabletop Cookers

Note 9 to the financial statements reflects expenditure of Kshs. 279,686,486 on purchase of specialized plant, equipment, and machinery under acquisition of assets. The amount includes Kshs. 77,700,000 incurred on purchase and delivery of 20,000 units of 2-Burner Low Pressure Tabletop Cooker. Examination of related procurement records revealed that the State Department awarded and signed the above contract of Kshs. 77,700,000 inclusive of Kshs. 5,200,000 for inland transportation on 30 June, 2021, with a delivery period of nine (9) weeks from the date of the contract signing. However, payment records provided for audit review revealed that the invoice, delivery note, goods received note, inspection and acceptance certificate for the goods were all dated 30 June, 2021 and the payment of the Kshs.77,700,000 was made to the supplier on the same date yet the goods had not been delivered. This is 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 of a procuring entity or an officer authorized by him or her in writing.

Further, the notification of intention to enter into a contract was dated 17 June 2021, while the contract was signed on 30 June, 2021, which was less than the mandatory fourteen (14) days prior to contract signing required by clause 45(1)(f) of the contract agreement. Similarly, the standstill period in the notice of intention to award was reduced from fourteen (14) to ten (10) days contrary to clause 42 (1)(f) of the contract agreement.

In the circumstances, the procurement of the contract was irregular and validity of the expenditures incurred on purchase and delivery of new two-burner low pressure tabletop cookers at a cost of Kshs. 77,700,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry paid Kshs.77, 700,000 for the supply and delivery of 20,000 of 2 burner Low Pressure Table top cookers. The procurement process is as summarized in the table below.

SUMMARY OF TABLE TOP COOKERS PROCUREMENT PROCESS

S/NO	PARTICULARS	DATE
1	Procurement Plan Approval	24/08/2020
2	Requisition for Table Top Cookers	18/09/2020
3	Invitation to Tender	11/05/2021
4	Tender Opening	02/06/2021
5	Tender Evaluation	14/06/2021
6	Contract Signing	30/06/2021
7	Supply & Delivery of the Table Top Cookers	30/06/2021
8	Inspection & Acceptance	30/06/2021

The preparation and review of the tender specifications was an extensive exercise in order to come up with requisite specifications. In this regard, the supplier (Far East Connection) provided an advance payment guarantee equivalent to the amount of the purchase order (Kshs. 77,700,000). The process was safeguarded through bank guarantee. The supplier delivered all the twenty thousand (20,000) No. 2 Burner Low Pressure Table top Cookers, Inspection and acceptance was conducted and the goods were accepted having met the tender specification after which the payment was released to the supplier on 14th July 2021.

Committee Observations and Findings

(i) The Committee noted that the State Department contravened Section 146 and 147 of the PPAD Act, 2015 by payment in advance of 100%;

(ii) The Committee noted the absence of justification for the State Department's engagement in a contract fourteen (14) days before the contract signing as stipulated by clause 45(1)(f) of the contract agreement;

(iii) The Committee questioned the capacity of the Inspection Acceptance Committee to inspect twenty thousand (20,000) units in a timeframe of less than a day.

Committee Recommendation

The Committee reprimands the Accounting Officer for entering into an irregular procurement contract contrary to Section 146 and 147 of the Procurement and Asset Disposal Act, 2015.

1553.2. Supply, Delivery, Testing and Commissioning of Magnetometer

The State Department for Petroleum awarded and signed the contract for the supply, delivery, testing and commissioning of a magnetometer with a local company on 30 June, 2021, at cost of Kshs. 22,500,000 for a delivery period of three weeks. A review of the payment records for the contract revealed that the invoicing was done on 29 June, 2021 while payment was made on 30 June, 2021 yet no delivery had been made. This is 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 of a procuring entity or an officer authorized by him or her in writing. In the circumstances, the procurement of the magnetometer was irregular and the validity of the expenditures for the supply, delivery, testing and commissioning of a magnetometer at cost of Kshs. 22,500,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the ministry paid Kshs. 22,500,000 for the supply, delivery, testing and commissioning of two (2No.) magnetometers. Being a specialized item, the preparation and review of the tender specifications was an extensive exercise in order to come up with requisite specifications.

The procurement process is as summarized in the table below:

SUMMARY OF MAGNETOMETER PROCUREMENT PROCESS

S/NO	PARTICULARS	DATE
1	Procurement plan Approval	24/08/2020
2	Requisition for Magnetometers	18/09/2020
3	Invitation to tender	11/05/2021
4	Tender Opening	25/05/2021
5	Tender Evaluation	07/06/2021
6	Contract Signing	29/06/2021
7	Supply & Delivery of the Magnetometers	30/06/2021
8	Inspection & Acceptance	30/06/2021

In this regard, the supplier (Ms. Geocyntex) provided an advance payment guarantee equivalent to the amount of the purchase order (Kshs.22, 500,000). The supplier delivered two (2No) magnetometers, inspection and acceptance was conducted and the goods were accepted having met the tender specification after which the payment was released to the supplier on 09th July 2021.

Further, the Ministry entered the two Magnetometers into the Ministry's Asset register.

Committee Observations and Findings

The Committee noted that the State Department contravened Section 146 and 147 of the PPAD Act, 2015 by payment in advance of 100%.

Committee Recommendation

The Committee reprimands the Accounting Officer for making advance payments contrary to Section 146 and 147 of the Procurement and Asset Disposal Act, 2015.

1554. Irregular Payments of Allowances to Staff

Review of expenditure records revealed payments totalling Kshs. 42,979,358 being allowances to staff working beyond normal working hours. However, these payments were made to staff undertaking their normal duties and at their regular workstations. In addition, the payments were not approved by Salaries and Remuneration Commission or backed by any circulars as shown below.

Account Name	Date	Expense Descprition	Amount (Kshs.)
Hospitality	24 June, 2021	Payment of allowances to 39 staff involved in LAN cabling restructuring	2,212,540
Domestic Travel	24 June, 2021	Payment to staff preparing bank reconciliations	318,000
Research Studies	6 January, 2021	Payment to 63 staff for preparing financial statements for year 2018/2019	6,400,000
Research Studies	26 January, 2021	Payments to 31 staff for preparation of tender documents	3,500,000
Research Studies	30 June, 2021	Payment to 41 officers to undertake payroll audit and data cleaning for 2019/2020	6,850,000
Research Studies	30 June, 2021	Payment to 160 staff for participating in closure of financial year 2020/2021	16,724,000
Research Studies	28 June, 2021	Payment to 21 staff for participating in disposal of obsolete stores & equipment	2,100,000
Research Studies	28 June, 2021	Payment to 61 staff for participating in preparation of second revision of revenue and expenditure estimates	5,192,500
		Total	**42,979,358**

In the circumstances, the allowance are irregular and the validity of the expenditures reported under domestic travel, hospitality and research studies for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer Submitted that;

(i) The payment of allowances to 39 staff involved in LAN cabling restructuring - This was a refund of transport expenses made to officers who worked in the evening and weekend beyond the normal working hours in order not to interfere with the normal operations. The officers were from various sections where the cabling restructuring was taking place.

(ii) The payment made for the preparation of bank reconciliation was not made to the staff of the ministry but to officers who were sourced from the national treasury to help with the auto reconciliation in the IFMIS system.

(iii) Payment to 63 staff was for officers who had participated in the preparation of the Financial Statements, compilation of documents and analysis for responses to the Audit Management Letter and Draft Audit Report for the year under review. In order to respond to the queries satisfactorily as well as adequately support our response, there is need for concerted effort of officers from all departments. Additionally, the activity had to be carried out outside the normal working hours so as to avoid disruption of normal operations.

(iv) Payment to 21 staff for participating in disposal of obsolete stores and equipment - The disposal of obsolete stores was a transport refund to officers who were involved in the exercise beyond the official working hours.

(v) Payment to 160 officers for participating in the closure of the financial year 2020/2021 – In order to enable the state department to process the payments without hitches, the input from officers in other departments was required. The exigency of duty called for the officers to work beyond normal working hours and on weekends, thus requiring the use of taxis.

(vi) The payment was actually a taxi refund for the officers who took part in various exercises to facilitate the smooth closure of the financial year.

The year under review was a difficult year due to the COVID 19 pandemic which impacted negatively on movement. There was limited public transport and there was a nationwide curfew which forced the officers to use taxis in order to navigate the situation as the nature of work called for the physical presence of the people involved. Thus the payments were for the segregated activities as explained above but not a one-off payment.

Committee Observations and Findings

The Committee observed that despite the explanation by the Accounting Officer that the tasks performed were extraneous, the allowances were not approved by the SRC hence not a proper charge of public funds;

Committee Recommendations;

The Committee recommends that the Accounting Officer regularizes the said allowances with the SRC failure to which the said amounts be recovered from the beneficiaries, within one (1) year of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1555. Weaknesses in Implementation of Mwananchi LPG Enhancement Project

Mwananchi Liquefied Petroleum Gas (LPG) Project which was initiated by the then Ministry of Energy and Petroleum in 2016 intended to promote use of modern cooking fuel among the low-income households. The project entails supply and distribution of Liquefied Petroleum Gas (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 a role to ensure the components are distributed to the households. The project was to be implemented in two modules whereby Module 1 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 6Kg cylinders with a smart metering device, a horse pipe and two (2) low burner tabletop cookers. Review of implementation status of the project revealed implementation lapses and uncertainties relating to the project as follows:

i) An approved project implementation plan and strategy detailing how project was incepted, how it was to be actualized, and its overall sustainability plan was not provided for audit review;

ii) At the initial stages of roll out of the project, a total of 79,057 LPG cylinders or 74% of the 106,186 cylinders supplied for module 1 were defective which significantly affected implementation and attainment of the project objective;

iii) A beneficiary identification mechanism for the procured LPG cylinders and 20,000 low burner tabletop cookers was yet to be developed, raising doubts on readiness for implementation; 529

iv) There was no smart metering service and technical support in place at the source point for dispensing LPG to consumers and;

v) There was no policy for recognition and accounting for revenue from the sale of LPG cylinders and LPG from the smart metering dispensing.

In view of the above, it was not possible to confirm whether the project objective would be achieved and whether the project is sustainable.

Submission by the Accounting Officer

The Accounting Officer submitted that the Mwananchi Gas Project was conceptualized and conceived in FY 2016/17 whose main objective was to enhance LPG usage penetration to the underserved population. It was to be implemented in two models namely Model I (Cylinder, Grill and Burner) and Model II (Cylinder, Cook Stove, Hosepipe and Smart Meter). Model I was piloted in Machakos and Kajiado counties and another round of distribution to 60,000 households is to be carried out in Nairobi County. Model II will be piloted in Nairobi County after successful signing of the Cylinder Smart Metering (CSM) contract.

(i) The concept paper developed by the Ministry details the strategy and implementation plan from inception, distribution, and risk matrix of the project. As a clean cooking energy solution, the sustainability of the project will be determined by savings realized from;

(ii) Reduced demand for firewood and charcoal that supports the Government's tree planting campaign by slowing down the pace of tree cutting in effect increasing the country's tree coverage;

(iii) Lowering carbon emissions to ease the pressure on the country's health care system by reducing respiratory health diseases and also help combat climate change;

(iv) The Ministry took the initiative of remedying the defective cylinders by directing the respective firms under the supervision of an independent inspector;

(v) The identification and registration of beneficiaries was piloted in selected locations in Machakos and Kajiado Counties spearheaded by NGAO after training by the Ministry. This was done in readiness for the full roll out of the project;

(vi) The tender document for the provision of cylinder smart metering (CSM) service and technical support was refined, floated in FY 2021/2022, evaluated and recommendation for award done. The contract was signed in November 2022. The contract contains details on revenue from sale of LPG under the price schedule; and

The Service Level Agreement (SLA) document (Showing the relationship and roles of the bulk gas supplier (National Oil Corporation of Kenya), CSM service provider and the Ministry) has been developed. The SLA is supplemental to the CSM contract

The Ministry has issued an Authority to Incur Expenditure (AIE) to NOCK to enable them fill the cylinders with gas for the planned roll out of 60,000 cylinders under Model I starting in the month of June 2023 in Nairobi County. NOCK has already undertaken the process of filling 60,000 cylinders for distribution.

Committee Observations and Findings

(i) The Committee observed that there was no proper implementation of the Mwananchi LPG Enhancement Project; and

(ii) The Committee noted that the State Department now has a policy of recognizing and accounting for revenue.

Committee Recommendation

The Committee recommends the Accounting Officer submits to the the National Assembly the monitoring and evaluation report and the Concept establishment of the Mwananchi LPG Enhancement Project and policy within three (3) months of tabling and adoption of this report.

1556. Delays in Handover of Functions to Energy and Petroleum Regulatory Authority

The statement of receipts and payments reflects an amount of Kshs. 1,783,578,881 relating to acquisition of assets out of which Kshs. 704,787,543 was incurred on acquisition of data, supervision of upstream activities, and local content enforcement. The payments were made under research, studies, project preparation, design, and supervision. However, according to Section 45 and Section 51(1) of the Petroleum Act, 2019, these functions fall under the mandate of Energy and Petroleum Regulatory Authority (EPRA). In the circumstances, it was not possible to ascertain whether the activities were complimenting EPRA functions or a duplication of mandate.

Submission by the Accounting Officer

The Accounting Officer submitted that the activities mentioned above (acquisition of data, supervision of upstream activities, research, studies, project preparation, design, and supervision) are functions of the Ministry in accordance with Executive Orders (Executive Order No. 1 of 2023) and Section 15(2) of the Petroleum Act, 2019. These activities/mandate are not duplicated.

However, it is true that the upstream petroleum regulatory mandate, including local content enforcement, was transferred to EPRA under the Energy Act, 2019 and Petroleum Act, 2019.

Further, there was a moratorium issued by the Head of Public Service freezing recruitment of staff by state corporations when the Acts were enacted. In addition, there was a lack of budgetary allocations for hiring qualified staff. EPRA was therefore not able to establish the required capacity to perform the upstream regulatory function.

EPRA and the Ministry continue regulating upstream petroleum consultatively. EPRA has since commenced the process of recruiting qualified staff following the lifting of the moratorium in 2022. The Ministry has in this regard engaged the Standing Parliamentary Committee on Energy and Petroleum to review the existing Laws and regulations to settle the probable aspect of conflicting roles and responsibilities.

Committee Observations and Findings

- **(i) The Committee noticed a potential for conflicting roles or responsibilities;**
- **(ii) The Committee observed the necessity for the State Department to second their staff to EPRA, allowing EPRA to fulfill its mandate without relinquishing it to the ministry.**

Committee Recommendation

The Committee recommends the Accounting Officer to facilitate EPRA to transfer the function as envisaged in the Energy Act, 2019 in the FY 2024/25.

DONOR FUNDED PROJECT

KENYA PETROLEUM TECHNICAL ASSISTANCE PROJECT (IDA CREDIT NO.5526-KE AND GRANT NO. TFOA 3418)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1557. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1558. 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.1,327,510,000 and Kshs.1,216,664,638 respectively, resulting in an under-expenditure of Kshs.110,845,362 or 8% indicating that some of the planned activities were not undertaken and therefore the Project may not have achieved some of the desired objectives.

Submission by the Accounting Officer

The Accounting Officer submitted that the underutilization of Kshs.110, 845,362 was as a result of non-payment of direct payments by the National Treasury. However, all these payments were paid in the subsequent financial year.

The project was on course to achieve all its desired objectives.

Committee Observations and Findings

The Committee observed that the submission and explanation provided by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1559. Project Implementation and Performance

The project information and funding summary statement indicates that the donor had made a funding commitment of US$ 51,000,000 (Kshs. 5,1000,000,000) comprising Kshs. 600,000,000 and Kshs.4,500,000,000 in IDA Grant and IDA Loan respectively. However, as at 30 June, 2021, the Project had utilized a total of Kshs. 4,111,428,526 or 81% with only two months to Project closure in August, 2021 after a 6 month extension was granted on the initial closure date of February, 2021. In the circumstance, the Project may not be able to fully utilize the remaining amount of Kshs. 988,571,474 in the remaining project implementation period which will negatively impact on service delivery to citizens.

Submission by the Accounting Officer

The Accounting Officer submitted that all activities that were planned and budgeted for in the project's life cycle were implemented. The project was restructured in 2019 and some of the activities that were planned for were revised. All the remaining milestones were implemented by August 2021 deadline as per the project implementation status document dated 2nd August, 2021. It is thus noteworthy that this project was successfully completed and closed.

Committee Observations and Findings

The Committee observed that the Accounting Officer failed to provide supporting documents to substantiate the provided answer.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to ensure that proper information is provided within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1560. I**rregular Procurement and Payment of Conference Services**

Purchase of goods and services in the statement of receipts and payments for the year ended 30 June, 2021 amounted to Kshs. 1,199,138,598. As disclosed in Note 5 to the financial statements, this item includes hospitality, supplies, and services of Kshs. 8,380,676 out of which Kshs. 2,357,000 was paid to a hotel in Naivasha for provision of conference facilities and services for

three (3) workshops in respect of services rendered in February, March and May, 2019 as per the workshop attendance register and local service orders. The procurement requisitions and authorization for the services were, however, dated 21 October, 2020 which was more than a year since the services were rendered. Regulation 22 (1) of The Public Procurement and Asset Disposal Regulations 2006 (revised 2020) provides that "every procurement shall be initiated using a purchase requisition which shall include all necessary information pertaining to the procurement" and therefore there was non-compliance with the law as well as creating doubt on the occurrence of the event.
In the circumstance, it is not possible to confirm whether the Project received the services, value for money or that the services were procured in compliance with the Public Procurement and Asset Disposal Act, 2015 and Public Procurement and Asset Disposal Regulations, 2020.

Submission by the Accounting Officer

The Accounting Officer submitted that the Kenya Petroleum and Technical Assistance Project was restructured in June 2019. The three (3) Project Implementation Teams namely Project Implementation Team (PIT) "B" and PIT "C" were collapsed into PIT "A". This resulted in the closure of project accounts at the National Treasury which was (PIT "B") and at the Ministry of Industry, Trade and Cooperatives which was (PIT "C"). All payments were henceforth transferred to the Ministry of Petroleum and Mining which was PIT "A".

Kshs. 2,357,000 was in respect to provision of conference facilities which had been incurred by PIT "B" before the restructuring and were yet to be settled as per copies of the respective Local Purchase Orders and letter ref KEPTAT/MOE/VOL.1(5) dated 9th October 2020.

This activity was procured from PIT "B" before the restructuring. They were unable to process the payment due to closure of its account. The conference payment documents were pending bills handed over to PIT "A" by the National Treasury.

In order for the invoice to be paid using funds under PIT "A", a requisition had to be raised for signing by the Procurement, AIE holder and CFO of PIT "A". Please note that this apparently belated action was inevitable as a procedural matter notwithstanding the fact that PIT "B" had already processed a requisition and corresponding Purchase Order. The handover letters and copies of LSO from the National Treasury are now provided.

Committee Observations and Findings

(i) The Committee observed that the procurement was initiated at Treasury, and handed over to the State Department;

(ii) The Committee observed that the Accounting Officer failed to avail requisite documentation to the Auditor General on time.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to avail documentation to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

1561. Breach of Contract Terms

1561.1. Consultancy Services for Development of a National Petroleum Master Plan

The statement of receipts and payments for the year ended 30 June, 2021 reflects payments totalling Kshs. 1,199,138,598 in respect of purchase of goods and services. Included in the amount is Kshs. 1,099,784,078 incurred on consultancy services as disclosed in Note 5 to the financial statements. The consultancy services expenditure includes Kshs. 17,278,395 paid to a consultancy firm being the third instalment of 15% on production of a draft final report on National Petroleum Master Plan.

According to the contract, the consultant was to be paid upon submission of reports reviewed by a technical committee drawn from Ministry of Petroleum and Mining, National Oil Corporation, The National Treasury, Kenya Revenue Authority, Ministry of Industry, Trade and Cooperative, Office of the Attorney General, Presidential Delivery Unit, Kenya Pipeline Company, Kenya Electricity Generating Company and Energy Regulation Commission.

However, the technical committee formed to review and approve consultancy deliverables as well as ensure quality delivery by the consultant was constituted only from three (3) organizations including Kenya Pipeline Company, National Oil Corporation and representatives from State Department of Petroleum as opposed to ten (10) organizations indicated in the contract's terms of reference. Consequently, the technical committee that approved the contractual outputs by the Consultant was not properly constituted in line with the contract and, the approvals therefrom, were not binding to the Project Management thereby making the payment irregular.

Submission by the Accounting Officer

The Accounting Officer submitted that the spirit behind forming a technical committee with a large representation of knowledgeable institutions is to increase chances of achieving optimal value in reviewing delivered milestones. For this reason, the 'owner' of this activity i.e Ministry of Petroleum and Mining requested respective agencies to nominate personnel who would be called upon to participate in the technical committee as necessary. While the responsibility for ensuring effective implementation of KEPTAP-supported activities lies with respective activity owners as spelt out in Project Appraisal Document (PAD), crafting of Terms of References (TORs) employ 'abundance of caution' in the endeavor to extract wide-ranging expertise to review milestones. A more pragmatic approach would involve only the key agencies that have front-line mandate and expertise for particular work streams. It needs to be noted that the work in question was executed during the covid-19 period, with the associated restriction on travel and gatherings. For this reason, limited physical meetings were held and it was challenging having all members reached on a web platform due to varied technological challenges.

Due to short turnaround time for review of milestones as provided in the contract and to facilitate the consultant to continue with work, the Ministry ensured that all the reviewers had a chance to review the work within a particular time frame and recommend any amendments or approval prior to moving to the next state. Additionally, the ministry (as the owner of the work stream) took every measure to ensure that technical committee members were duly invited for each and every review meeting.

Committee Observations and Findings

The Committee noted that the State Department did not present to the Auditor General evidence of involvement of representatives of all ten (10) agencies. The documents were belatedly availed to the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to avail documentation to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

1561.2. Consultancy Services for Formulation of Upstream Petroleum Regulations

Further, the payment for consultancy services of Kshs. 1,099,784,078 includes Kshs.31,011,521 paid to a consultancy firm in respect of an inception report on formulation of Upstream Petroleum Regulations. According to contract terms of reference, deliverables and reports of the consultant's work were to be reviewed and approved by a technical committee drawn from Ministry of Petroleum and Mining, Office of the Attorney General, National Oil Corporation, Energy Regulation Commission, The National Treasury, National Environmental Management Authority and Kenya Revenue Authority.

However, review of the payments made to the consultant indicated that deliverables were reviewed and approved by a committee drawn from three (3) organizations against the seven (7) envisaged in the contract. Consequently, the technical committee that approved the contractual outputs by the Consultant was not properly constituted in line with the contract and the approvals therefrom were not binding to the Project Management thereby making the payment irregular. Further, there was no evidence in form of letters for the appointment of members to the technical committee from the other entities. Under the circumstances, the payments made in respect of the above consultancy contracts were therefore irregular as the works may not have been evaluated objectively as envisaged in the contract agreement.

Submission by the Accounting Officer

The Accounting Officer submitted that the time of conducting the audit, some letters of appointment of officers from the 7 organizations to the technical committee were inadvertently not availed. However, it's on record that appointments were done to the committee vide letter ref. No. CONF/MOE&P/3/2/68B(VOL.IV).

Further, the review/approval of the contract deliverables were conducted diligently and objectively for the following reasons;

(i) Officers from 6 additional organizations (Attorney-General's Office, NEMA, EPRA, Kenya Petroleum Refineries Limited, Kenya Pipeline and National Land Commission) took part in the review of the contract deliverables. Invitation, appointment and nomination letters were presented; and

(ii) These organizations possess the relevant statutory mandate and capacity to review the contract deliverables based on their constituting instruments namely, Executive Orders, Office of the Attorney-General Act, 2012, Environmental Management and Coordination Act, 1999, Energy Act, 2019 and Petroleum Act, 2019, National Land Commission Act, 2012.

Committee Observations and Findings

The Committee noted that the State Department did not present to the Auditor General evidence of involvement of representatives of seven (7) agencies. The documents were belatedly availed to the Committee.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to avail documentation to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1562. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1563. As required by International Development Association (IDA), I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been and the Project's financial statements are in agreement with the accounting records and returns.

37. STATE DEPARTMENT FOR TOURISM- VOTE 1202

REPORT ON THE FINANCIAL STATEMENTS

Ms. Zainabu Hussein, the Principal Secretary and the Accounting Officer for State Department of Tourism (Vote 1202) appeared before the Committee on 7th June 2022 to adduce evidence on the Audited Financial Statements for the State Department of Tourism (Vote 1202) for the Financial Year 2020/2021. She was accompanied by the following officers:

1. Ms. Betty Radier - CEO, KTB
2. Ms. Mary Maina. - Director Admin and Finance- KTB
3. Mr. M. N Ole Tialal - Secretary Administration
4. Mr. Joseph M. Gikonyo - Principal Finance Officer
5. Ms. Aloyce D. Obama - Principal Accountant

And submitted as follows:

1564. Inaccuracies of the Financial Statements

Comparison of balances reflected in the financial statement for the year ended 30th June, 2021 and reports generated by IFMIS annexed to the financial statements revealed the following unreconciled differences as detailed below:

i. Statement of Receipts and Payments

Item	Amount as per financial statements (Kshs.)	Amount as per IFMIS report (Kshs.)	Variance (Kshs.)
Payments			
Use of Goods and Services	272,705,455	271,396,408	1,309,047

ii. Statement of Assets and Liabilities

Item	**Note**	**Amount as per Audited Financial Statements (Kshs.)**	**Amount as per IFMIS Report (Kshs.)**	**Variance (Kshs)**
Fund balance b/fwd	13	319,831	6,790,591	(6,470,760)
Prior year adjustments	14	(103,939)	-	(103,939)
Surplus/deficit for the Year		2,243,587	7,474,982	(5,231.395)
Net Financial Position		2,459,479	7,474,982	(5,015,503)

iii Summary Statement of Appropriation – Recurrent and Development Combined

Item	Amount as per Audited Financial Statements (Kshs.)	Amount as per IFMIS Report (Kshs.)	Variance (Kshs)
Revenue/expense item	Final approved budget	Final approved budget	
Receipts			
Exchequer releases	5,973,111,495	3,582,215,382	2,390,896,113
Total Receipts	5,973,111,495	3,582,215,382	2,390,896,113
Payments			
Transfer to Other Government Units	5,198,007,389	8,780,222,771	3,582,215,382
Total payments	5,973,111,495	9,55,326,877	(3,582,215,382)
Revenue/expenses Item	**Actual amount**	**Actual amount**	**variance**
Exchequer Releases	5,921,792,580	5,921,792,484	96
Total Receipts	5,921,792,580	5,921,792,484	96
Payments			
Use of goods and services	272,705,455	271,396,408	1,309,049
Total payments	5,919,548,897	5,918,239,849	1,309,047
Surplus/deficit	2,243,587	3,552,634	

iv Variances Between Financial Statements And Trial Balance

Account No. and Description	Financial Statements (Kshs)	Trial balance (Kshs)	Variance (Kshs.)
2210300 Domestic Travel and Subsistence, and other Transportation Costs	30,784,060	30,928,260	(144,200)
2210400 Foreign Travel and Subsistence, and Other Transportation Costs	28,104,355	28,105,995	(1,640)
2210500 Printing, Advertising and Information Supplies and Services	2,591,143	2,625,975	(34,832)
2210800 Hospitality supplies and services	17,986,266	18,050,066	(63,800)
2211300 Other Operating Expenses	105,019,314	103,836,194	1,183,120
2220100 Routine Maintenance – Vehicles	5,162,160	5,143,561	18,599
3110400 Construction of Roads	94,949,999	90,670,850	4,279,149
9910100 General Provisions	-	21,736,660	(21,736,660)
9910200 exchequer Provisions	-	(9,926,838,443)	9,926,838,443
9990000 opening balance reserves	319,831	3,988,329,802	3,988,649,633

Total	**319,277,466**	**(5,637,411,079**	

In the circumstances, the accuracy and completeness of the financial statements for the year ended 30th June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(i) Statement of Receipts and Payments

The statement of Receipts and payments under the use of goods and services item reflected an amount of Kshs. 272,705,455.00 in the financial statements which varies with the amount reflected in the IFMIS report of Kshs. 271,396,408.00 resulting to a variance of Kshs. 1,309,047.00.

The amount of Ksh. 1,309,047 represents the expenditure arising from Imprest surrenders which had been recognized in the financial statements at the time of reporting and before the posting process in the system was completed. The posting was later completed and the amounts reconciled.

ii) Statement of Assets and Liabilities

Fund Balance b/fwd of Kshs.6, 470,760

The Accounting Officer admitted that the amounts under Fund balance brought forward in the statement of financial position differed with the amounts in the IFMIS report resulting in a variance of Kshs. 6,470,760. The variance was due to the system error in the cash management module that resulted in un reconciled balances in the system, mismatch between bank statements and transactions in IFMIS. The error has since been corrected and amounts reconciled

Prior Year adjustments of Kshs. 103,939.00

The amount of prior year adjust represents the closing bank balance for the financial year 2019/ 2020. The balance was recovered by the National Treasury before the release of the first Exchequer for the financial year 2020/2021. The account combination in IFMIS had not been set up to allow for the posting of the transaction in IFMIS. The issue has been addressed and reconciled.

iii) Summary Statement of Appropriation (Recurrent and Development Combined)

Exchequer Releases Kshs. 2,390,896,113

The summary statement of appropriation combined under the exchequer releases reflected an amount of Kshs. 5,973,111,495.00 while the IFMIS report reflected an amount of Kshs. 3,582,215,382 resulting in a difference of Kshs.2, 390,896,113.

The amount of Kshs.5, 973,111,495 represents the Final budget for the State Department while Kshs. 3,582,215,382 is the AIA for the period. The AIA of Kshs. 3,582,215,382 does not form of the exchequer releases from the National Treasury.

Transfers to other Government Units

The variance of Kshs. 3,582,215,382 between the financial statement and ifmis report represents an amount of AIA, which is not part of transfers to government units instead AIA is collected by the respective government units

User of Goods and Services

The amount of Ksh. 1,309,047 represents the expenditure arising from Imprest surrenders that had been recognized in the financial statements at the time of reporting and before the posting process in the system was completed. The posting was later completed and the amounts reconciled**.**

iv.Variances Between Financial Statements and Trial Balance

The Trial Balance under Domestic and foreign travel, Printing, advertising and Information Supplies and Services and hospitality supplies items exchequer releases, transfer to other Government units items reflected an amount of Kshs. 30,784,060, Kshs. 28,104,355, Kshs. 2,591,143, and Kshs. 17,986,266 respectively which varies with the amount reported in the financial statements.

The variance was as a result of imprest surrenders that were applied in the subsequent period in error hence overstating the amounts reported. The error was later corrected and the amounts reconciled

The variance of Ksh. 4,279,149 was because of payment in respect of the contractor, which was canceled in the system by error. The expenditure was later reinstated and the amounts are now in agreement

The variance between the Trial Balance and Financial Statements under General Provisions of Kshs. 21,736,660

The variance was due to the system error in the cash management module that resulted in unreconciled balances in the system, a mismatch between bank statements and transactions in IFMIS. The error has since been corrected and amounts reconciled

Exchequer Provisioning of Kshs. 9,926,838,443

The Amount of Kshs. 9,926,838,443 as reported in the Trial Balance represents the Cumulative Exchequer issues received by the State department for Tourism Vote 1202 from the Financial year 2018/2019 to 30th June ,2021,

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed 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;

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in contravention of Section 68 (2) (b) and 81(4)(a) of the PFM Act, 2012.

1565. Inaccuracies in Cash and Cash Equivalents

The statement of assets and liabilities reflects Kshs. 138,581,930 as cash and cash equivalents as at 30th June, 2021. The balances in the financial statements did not agree with the reconciled cash book balances as shown below; -

Account Number	Reconciliation Statement Balance (Kshs)	Financial Statement Balance (Kshs)	Variance (Kshs)
CBK-Recurrent	273,710,578	1,585,520	272,125,058
CBK-Development	(195,431)	95	(195,526)
CBK-Deposits	147,065,903	136,996,315	10,069,588
Totals	**420,581,050**	**138,581,930**	

Consequently, the accuracy of cash and cash equivalents balance of Kshs. 138,581,930 as at 30th June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the variance in the Recurrent, Development and Deposit Account Balance of Kshs. 172,125,058, Kshs.195,526 and Kshs. 10,069,588 respectively between The Financial Statements and Reconciliation Statement was as a result of incomplete Auto Bank reconciliation process as at the time of preparation of financial statements. The process was completed and all un reconciled items updated.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed 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.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in contravention of Section 68 (2) (b) and 81(4)(a) of the PFM Act, 2012.

Other Matter

1566. Unresolved Prior Year Matter

The audit report of the previous year, several issues were raised under the report on Financial Statements, Report on Lawfulness and Effectiveness in the 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 and the National Treasury's Circular Ref. AG.4/16/2 VOL. 3 (72) dated 30th June, 2021 on revised Annual Financial Reporting Template.

Submission by the Accounting Officer

The Accounting Officer submitted that the report of the Auditor General on the previous audit report has since been discussed as Parliamentary Account Committee meetings.

Committee Observations and Findings

The Committee observed that the issues was discussed during the examination of the State Department account for financial year 2019/20 and recommendations not implemented.

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.

REPORT ON LAW ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1567. Procurement, Design and Printing Government Calendars

Note 5 to the financial statement for the year under review reflects use of goods and? O services balance of Kshs.272,705,455 which includes payments of Kshs.30558,945 in respect of specialized materials which in turn includes payments totaling to Kshs.14,238,106 for design and printing of calendars.

The State Department on 5 October, 2020 requested Kenya Tourism Board (KTB) to undertake the design and printing of Government calendars for the year 2021. Authority to Incur Expenditure amounting Kshs. 14,000,000 was issued to KTB IN November, 2020.

However, the following anomalies were noted: -

i. The procurement plan for State Department for the year 2020-2021 reflects planned procurement of wall calendars and desk calendars items to be done using open tender method. The quantities to be procured were 50,000 units of wall calendars at estimated unit cost of Kshs,320 (total Kshs.16,000,000) and 25,000 units of desk calendars at estimated unit cost of Kshs.7,500,000).

ii. The Management through Kenya Tourism Board (KTB) engaged a procuring agent at an agency commission cost of Kshs.2,045,705 to design and print 90,250 and 42,200 units of desk calendars at a total cost of Kshs.12,192,402.

iii. No justification was provided for the use of a procuring agent instead of open tender method contrary to Section 51 of the Public Procurement and asset Disposal Act, 2015

iv. Procurement documents such as notice of advertisement, evaluation minutes, letter of award and contract agreement between the procuring agent and KTB were not availed for audit review.

Consequently, the Management was in breach of the law and the validity of the expenditure of Ksh.14, 238,106 for the year ended could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that the State Department for Tourism (SDT) used procuring agent (Kenya Tourism Board) instead of using the method as provided in the procurement plan. It is the Government directive that printing of calendars should be carried by the State Department for Tourism. Within the State Department, the Agency with the mandate of branding and marketing is Kenya Tourism Board (KTB), because calendars are for promotional purpose, KTB was requested to proceed and print the calendars on behalf of the State Department.

The contract agreement between Scanad Kenya Limited and KTB which were not availed during the audit are now availed. Kenya Tourism Board had a contract framework with Scanad Kenya Limited for 3 years with effect from the 27th Day of May 2019.

The store records; goods received notes (S 13), Store ledger cards S3 and Store issue note (S11) were availed for perusal by the Committee

It is however worth noting that a register instead of S11 was used to issue the calendars.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Procurement, Design and Printing of Government Calendars was satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1568. Repair and rehabilitation of Farm-Murera Gate Road (Contract NO: MOT/02/2016-2017)

As previously reported, the contract for the repair and rehabilitation of approximately 26 kilometers long, Farm-Murera Gate Road, was awarded to a local contractor at a contract sum of Kshs. 198,799,982. The contract agreement was signed on 27th April, 2017. The contract commencement date was on 21 May, 2017 for a contract period of twelve (12) Months with completion date of 31 May, 2018.

The Kenya Rural Roads Authority wrote to the State Department for Tourism Ref:KeRRa/05/mot/02/2016-2017/Vol.1 (2519) on the project cost appraisal No.1 dated 14 February, 2018 that the variation of the scope of works from 26 kilometers to 11.5 kilometers was recommended by the Chief Engineer (Materials) as per MTRD report No1347 Re.M.499/35/M/340 dated 11th October, 2017 that proposed an enhanced pavement structure and hence change of scope of work. The letter further states, that the contract sums would be sufficient to undertake 11.5 kilometers of the road namely repair of the first 8.0 kilometers and rehabilitation of 3.5 kilometers beyond 8 kilometers as per revised bill of quantities and the evaluation report.

An addendum letter on variation order No. was signed on 11 July, 2018 by the State Department for Tourism and the contractor varying the scope of work from 26 kilometers to 11.5 kilometers as detailed in the summary of appraised bill of quantities, the contract sum was revised to Kshs. 198,795,353 and the works were to be executed within the approved contract period.

Construction commenced on 31 May, 2017 for a contract period of 12 months with a completion date of 31 May, 2018. The contractor was awarded the first extension of 146 days which revised the project completion date from 31 May, 2018 to 24 October, 2018.

The contractor was granted a second extension of 207 days on 3 February, 2020 which revised the project completion date from 24 October, 2018 to 19 May, 2019.

Audit review of the project revealed the following anomalies;

i. No evidence was provided to show that feasibility study and design reports were done by engineers to guide in the process of preparation of bill of quantities.

ii. The revised scope of work was not executed within the contract period as per requirement of the addendum letter on variation order No.1 signed on 11 July, 2018 by the State Department and the contractor varying the scope of work from 26 kilometers to 11.5 kilometers.

iii. According to minutes for substantial completion inspection meeting held on 11 February, 2021, the inspection committee irregularly agreed to back-date the date for substantial completion to 18 August, 2021 instead of the actual date of carrying out the inspection of 11 February, 2021

iv. The defects liability period was backdated to 11 August, 2021 whereas the defects liability period was expected to commence from the date of substantial completion inspection of 11 February, 2021 for a period of six (6) months to 11 August, 2021. In addition, the final inspection on end of defect liability period was done on 25 May, 2021 before the expiry of expected date of defect liability period of 11 August, 2021 as per the site minutes dated 25 May, 2021 on final inspection on end of defects liability period.

v. As at 30 June, 2021 the contractor had been paid a total of Kshs. 197,234,736 as tabulated below;-

Interim payment certificate (IPC)	**Date of Certificate**	**Amount Certified (Kshs.)**	**Date of Payments**	**Amount paid (Kshs.)**
IPC No.1,2,3 and 4	Various Dates	109,239,069	27 December, 2019	102,284,737
IPC No.5	8 June, 2020	51,779,148	15 January, 2021	47,500,000
			30 June, 2021	4,279,148
IPC No. 6	9 May,2021	36,892,815	30 June, 2021	43,170,850
				197,234,735

Review of payments vouchers and supporting documents for interim payment certificate No. 4 reflects work certified of Kshs. 40,184,567.26 out of which a deduction of Kshs. 6,000,000 was made relating to liquidated damages charged to the contractor for delay in completing the project. However, the contractor was paid the full amounts of the contract sum of Kshs. 197,234,76 without deduction of liquidated damages of Kshs. 6,000,000. There is a possibility of loss of public funds since damages have not been deduced/recovered from the invoiced amount or performance security in contravention of Section 140 of the Public Procurement and Asset Disposal Act, 2015 on interest on overdue amounts and liquidated damages.

vi Physical verification carried on the project between 18 to 23 November, 2021 revealed the; Section2-Km8+500: pot hole patching had already deteriorated, with no road markings and the road surface damaged with pot holes less than six (6) months since the final inspection.

vii Item No. in the Bill of Quantities relates to preliminaries and general items that the contractor was to provide and maintain. Laboratory equipment for use by engineers' representatives, engineer's office furniture and survey equipment, all worth Kshs. 13,800,000 which were to revert to the employer (State Department at the close of the contract as detailed below;-

Item	Description	Amount (Kshs.)
1.05	Provide and maintain laboratory equipment, reagents and other items as priced in appendix A in the BQs for use by Engineer's representative for the duration of the contract. Ownership to revert to the employer at the end of the contract.	7,800,000
1.06	Provide and maintain furniture, tools and other items for the engineer's office as priced in Appendix B for the duration of the contract ownership to revert to the employer at the end of the contract	4,000,000
1.07	Provide and maintain survey equipment as priced in Appendix C for the duration of the contract, ownership to revert to the employer at the end of the contract.	2,000,000
	Total	**13,800,000**

No evidence was provided to indicate that the preliminary and general items worth Ksh.13,800,000 were transferred to the State Department for Tourism.

Under the circumstances, it was not possible to confirm that resources of the State Department were used in an effective, efficient and economical and transparent manner as required under Section 68(1) of the Public Finance Management Act, 2012.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(i)There is no evidence that feasibility study and design reports was initiated for the project by engineers to guide in the process of preparation of BQs and engineers estimates before tendering for the road project.

Response

The works were maintenance in nature and therefore did not require feasibility study and drawing of designs. It's the extent of deterioration that determines the scope of works in the BOQs.

Evidence for audit review:

Reports informing the scope of works in the BOQs.

ii) The revised scope of work was not executed within the contract period as per requirement of the addendum letter on variation order No.1 signed 0n 11th July, 2018 by the State Department and the contractor varying the scope of work from 26km to 11.5km

Response

The delay in execution of works in the revised scope was due to delay in appraisals and delayed payments for the already raised interim payment certificates due to lack of funds.

The scope of works from 26km to 11.5km was revised against approved appraisals and an addendum to the contract.

Evidence for Audit review:

(1) Appraisal report

(2) An addendum

iii) According to Minutes for substantial Completion inspection meeting held on 11th February, 2021, the inspection committee irregularly agreed to back-date the date for substantial completion to 18th August, 2020 instead of the actual date of carrying out inspection of 11 February,2021.

Response

The Project was substantially completed on 18th August, 2020. Due to the Covid-19 pandemic out-break, the inspection team could not meet by the due to the protocols which were in place. That's why the substantial completion date was back dated to 18th August, 2020 as opposed to 11 February, 2021 when the inspection meeting actually took place.

Evidence for audit review:

1. The letter from the contractor to the project manager notifying that the works were substantially complete;
2. Minutes for substantial completion;
3. Minutes for practical completion.

iv) Defect liability period was back dated to 18 August, 2020 whereas the defect liability period was expected to commence from the date of substantial completion inspection of 11 February, 2021 for a period of six (6) months to 11 August, 2021. In addition, the Final inspection on the end of defect liability period was done on 25 May, 2021 before the expiry of the expected date of defect liability period of 11 August, 2021 as per the site minutes dated 25 May, 2021 on the final inspection on end of defects liability period.

Response

The defect liability period was back dated due to Covid-19 outbreak since the inspection team could not meet at this particular time. The project was substantially complete on 18th August 2020. That's why the defect liability period was back dated to commence from 18th August, 2020 as opposed to 11 February, 2021 when the team actually met.

Evidence for audit review:

1. Letter from the contractor notifying the project manager of substantial completion
2. Minutes for substantial completion a
3. Minutes for practical completion

v) Review of payment vouchers and supporting documents for the interim payment certificate No. 4 reflects work certified of Kshs. 40, 184, 567.26, out of which a deduction of Kshs. 6,000,000 was made relating to the liquidated damages charged to the contractor for delay in completing the project. However, the contractor was paid the full amounts of the contract sum of Kshs. 197,234,736 without deduction of liquidated damages of Kshs. 6,000,000.

Response.

Liquidated damages amounting to Kshs. 6,000,000 was included in the interim payment certificate No. 4; to be recovered in the final closure of the project.

vi) Project Assets and Equipment

Response

The project assets and equipment are still in the laboratory in Maua in the custody of KeRRA. Upon closure of the project, the Accounting officers from the State Department of Public Works and State Department for tourism will decide where the assets will be taken.

Evidence for Audit Review:

Letter from KeRRA showing custody of the Assets and Equipment.

Committee Observations and Findings

The Committee observed that the State Department should have advertised the works afresh given the magnitude of the change in the revised scope of work.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to ensure compliance with Public Procurement and Asset Disposal Act, 2015 and its regulations in all procurement processes.

1569. Proposed Regeneration of Mama Ngina Drive Water Front and Cultural District in Mombasa – Contract No. MOT/01/2018-2019

The contract was awarded to a local contractor on 14 December, 2018 and agreement was signed on 2 January, 2019 at a contract sum of Kshs. 433,929,098 the contract period was 150 days and completion date set on 1 June, 2019.

The main works involved, Kilindini culture centre, amphitheater, gateways (2 No.), ablution block (2 No), enabling works for kiosk (100 No), pigeon towers (3 No), waterfront walkway, parking and driveways, squares and court yards, footpaths, restoration of existing tarmac road, external works, day works prime costs and provisional sums.

Review of project records and physical inspection carried out on 10 November, 2021 revealed the following anomalies; -

i itemized works in the Bill of Quantities for the amphitheater Bill No.3 amounted to Kshs. 7,945,710 while final account reflects Kshs. 3,955,565. However, the works had not been executed by the contractor in November, 2021 as tabulated below;-

Element	**Particulars**	**Page No**	**BQ amount (Kshs.)**	**Final Account Amount (Kshs)**
B	Frame	3/5	854,000	2,049,100
D	Roof Finishing and Rainwater Disposal	3/8	1,195,100	638,700
E	Windows	3/10	248,350	174.965
F	Doors	3/13	1,116,00	387,500
J	Ceiling Finishes	3/17	426,700	616,800
L	Joinery fitting	3/20	4,105,560	88,500
	Total		**7,45,710**	**3,955,565**

No explanation has been provided for the payment of works not done

ii Bill No.6 reflects outstanding enabling works for kiosks amounting to Kshs. 802,272 while final account reflects Kshs. 1,359,276. The works were not executed although payments had been made as tabulated below;-

	Works tendered (Kshs.)	**Works Verified (Kshs.)**	**Outstanding Works (Kshs.)**
Item	100 (No.) Food Kiosks along the walkway	76 (No) Food Kiosks along the walkway	24 (No) Food Kiosks along the walkway
Enabling kiosks-Bill No. 6	3,342,800	2,540,528	802,272
Final Account	5,663,650	4,304,374	1,359,276

iii Bill No.7 reflects outstanding pigeon towers works amounting to Kshs. 2,757,200 while final account reflects Ksh.1,710,050 were not executed, although payments had been made as tabulated below;

	Works tendered (Kshs.)	**Works Verified (Kshs.)**	**Outstanding Works (Kshs.)**

Item	3 (No.) Pigeon towers	2 (No.) Pigeon towers	1 (No.) pigeon towers
Pigeon Towers- Bill No. 7	8,271,600	5,514,400	2,757,200
Final Account	8,458,662	6,748,612	1,710,050

No explanation was provided for payment of works not executed which contravenes Section 150 (1) (3) and Section 154 (b) of the Public Procurement and asset Disposal Act, 2015 on contract administration and contract close respectively.

Submission by the Accounting Officer

The Accounting Officer submitted that;

1.The tendered works were done on the basis of approximate quantities.

The final account which comprises the re-measured works is the correct depiction of the status of the project.

All the items mentioned have been executed and they are in place at the site and their measurement is in the final Bill of Quantities.

2. As per Bill No.6 the original bill of quantities had provided for 100 no. kiosks, However, the details of the size and designs of the kiosks were not provided in the original bill of quantities. It is also noted that the area could only accommodate 76 kiosks.

3.Bill No. 7 comprises works amounting to Ksh. 2,757,200.00 for construction of the Third Pegion Tower. This was executed up to 60%, it was located in front of the presidential area and because of the Mashujaa day celebrations, it was directed that it be demolished to accommodate parade

The construction of the Third Pegion tower and the demolition of the same are provided for in the re-measurement.

In the Bill of Quantities Pegion Tower no. 1 had a tendered sum of ksh 2,752,200

(1) Copy of final account

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Proposed Regeneration of Mama Ngina Drive Water Front and Cultural District in Mombasa – Contract No. MOT/01/2018-2019 was unsatisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to ensure compliance with Public Procurement and Asset Disposal Act, 2015 and its regulations in all procurement processes.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1570. Overpayment of Foreign Travel Allowance

Note 5 to the financial statements reflects Kshs. 28,104,355 as payments for foreign travel and subsistence and other transport costs. Audit review of payment voucher No.2900 dated 30 June, 2021 of Kshs. 745,498 incurred for foreign travel subsistence allowance revealed that one officer was paid per diem for thirteen (13) days while other officer travelling on the same trip were paid

per diem for eight (8) days. No explanation has been provided for the extra five (5) days paid to one officer that occasioned an overpayment of Kshs. 286,730.
Consequently, the effectiveness of internal controls on the management of imprests could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true one officer who travelled to attend the 112th session of the executive council of the UNWTO from 14th to 18th September, 2020 in Tbilisi, Georgia, was paid per diem for 13 days instead of 8 days. The SDT vide memo dated 8th December, 2021, tasked the Human Resource Department to initiate the recovery of the amount that was overpaid from the officers' monthly salary. The recovery of the overpaid amount has since been done. The State Department has also strengthened the effectiveness of the internal control system to ensure such errors do not happen again.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Overpayment of Foreign Travel Allowance was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

38. STATE DEPARTMENT FOR WILDLIFE - VOTE 1203

REPORT ON THE FINANCIAL STATEMENTS

Ms. Silvia Museiya, the Principal Secretary and Accounting Officer for the State Department for Wildlife appeared before the Committee on 19th April 2023 accompanied by the following officers;

1.	Mr. Ernest L. Ambala	-	Head, Accounting Unit
2.	Mr. John O. Olima	-	Chief Finance Officer
3.	Mr. Kosgei Yego	-	Principal Accountant
4.	Mr. Titus Chomkisoi	-	Principal Accountant
5.	CPA Muturi Njoka	-	Finance Officer, IWT-Kenya Project

and submitted as follows;

Basis for Qualified Opinion

1571. Unsupported Purchase of Certified Seed

Note 7 to the financial statements for the year ended 30 June, 2021 reflects acquisition of assets totaling Kshs.11, 224,275. Out of these, an amount totaling Kshs.10, 000,000 was in respect to purchase of certified seeds. These funds were transferred to Kenya Wildlife Services for purchase of certified seeds; however, Kenya Wildlife Services did not provide returns showing how the funds were utilized.

Consequently, the validity and completeness of the expenditure of Kshs.10, 000,000 for purchase of tree seedlings for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer enclosed a copy of tree planting AIE expenditure returns provided by Kenya wildlife service. The total expenditure incurred by KWS in tree planting in the financial year 2020/2021 was Kshs.10,000,000.00

The Accounting Officer submitted that tree planting is an annual exercise in Baringo East, Tsavo and the Aberdares and that they ensure all the trees survive. The criteria for choosing the area to plant the trees is based on advice from the Kenya Wildlife Service.

Committee Observations and Findings

(i) The Committee noted that it was not possible to determine with certainty where the trees are planted and their current status in regard to their survival rate.

(ii) The Committee observed that the exercise is continuous and urged the Accounting Officer to put in place better internal control mechanism.

Committee Recommendation

The Committee recommends that the KWS avails returns i.e. procurement of the seedlings and exact location of their planting, within three (3) months of adoption of this report.

Other Matter

1572. Unverifiable Assets

As previously reported, Annex 1 to the financial statements reflects a fixed assets balance of Kshs.35,583,579 with an amount of overhaul of vehicles and other transport equipment of Kshs.1, 514,005.

However, the balance of motor vehicles differs with the amount of Kshs.107, 904,964 reflected in the fixed assets register schedule. In addition, the schedule of fixed assets includes a list of seventeen (17) motor vehicles inherited from the defunct Ministry of Regional Development and Ministry of Environment and Natural Resources.

However, the State Department did not have logbooks for twelve (12) vehicles, while logbooks for the other five (5) vehicles are in the names of other entities and had not been transferred to the State Department's name.

As a result, it was not possible to confirm the value of assets owned by the State Department.

Submission by the Accounting Officer

The Accounting Officer submitted that the fixed asset register schedule has been updated to reflect the amount of overhaul of motor vehicles. The log books for 14 have been transferred to the State Department for Wildlife. For the remaining three vehicles, the State Department is making a follow up with NTSA**.**

The Accounting Officer also submitted that the valuation done in October 2022 showed that most of the vehicles are grounded and have depreciated in value. The Department had established a disposal committee to sell off the grounded vehicles.

Committee Observations and Findings

The Committee noted that the State Department was started in the year 2018. Initially it was under the Ministry of Environment and was in the process of transferring the assets and are working closely with NTSA to have this done.

Committee Recommendation

The Accounting Officer to provide a status report one month following the adoption of this report.

1573. Budgetary Control and Performance

The summary statement of appropriation – recurrent and development reflects final receipts budget and actual on comparable basis of Kshs.9,755,015,954 and Kshs.9,511,090,079 respectively resulting to an under-funding of Kshs.243,925,875 or 3% of the budget.

Similarly, the State Department spent Kshs.9, 509,718,105 against an approved budget of Kshs.9, 755,015,954 resulting to an under-expenditure of Kshs.245, 297,848 or 3% of the budget.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the under expenditure of Kshs.245,297,848 against an approved budget of Kshs.9, 755,015,954 was mostly as a result of non-remittance of Grant AIA and Grant Revenue from the Donors in the Projects listed below;

i. Kenya Wildlife Conservation Project Kshs.147,000,000;

ii. Conservation of Biodiversity in Northern Kenya – FRANCE Kshs.8,582,670; and

iii. Combating Poaching & Illegal Wildlife Trafficking Int. Approach (IWT) Kshs.27,320,000.

The Accounting Officer also submitted that during the year under review the budgeted AIA collection for KWS was Kshs.1,050,000,000 while the collection was Kshs.1,0007,693,886 resulting in short fall of Kshs.42,306,114. This was mainly due to impact of Covid 19 on park fees.

The Accounting Officer further submitted that the non-remittance of the A.I.A was caused by budget cuts and revision of counterpart funding downwards. This was due to hitches in absorption of the funds.

Committee Observation

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1574. Non-Adherence to a Third Rule of Basic Pay

As disclosed in Note 4 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2021 reflects compensation of employee balance of Kshs.115, 220,952.

Included in this amount, is basic salaries to permanent employees of amounting to Kshs.73, 609,568. However, a sample review of the payroll for the year ended 30 June, 2021 revealed that net pay for eleven (11) employees was less than a third of their corresponding basic pay.

This is contrary to Section 19(3) of the Employment Act, 2007. Consequently, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the non-adherence to the third rule of basic pay was occasioned by the implementation of the contributory pension scheme, public service superannuation scheme (PSSS) which was introduced in January 2021, at the time of implementation of the compulsory contribution most officers had committed their salaries to various lending institutions.

Committee Observations and Findings

The Committee observed that the explanation provided by the Accounting Officer were satisfactory

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1575. Lack of ICT Policy and Risk Management Policy.

Further, 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 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.

Failure to develop a risk policy means that the State Department did not have a framework for management of risk and hence it was not possible to identify, assess and control risk.

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.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department was in the process of developing ICT and Risk Management policy. The necessary committees have been appointed to ensure the exercise is completed within the financial year 2022/2023.

The Accounting Officer also submitted that an ICT policy has been developed and currently undergoing validation. Training for Risk Management committee has been conducted and risk register developed. The Accounting Officer informed the Committee that the document was still in draft form and committed to have the policy in place by June, 2023.

Committee Observation

The Committee observed that the State Department has prepared a draft ICT policy which will be finalized by end of the current financial year.

Committee Recommendation

The Committee recommends that the matter is resolved.

DONOR FUNDED PROJECT

COMBATING POACHING AND ILLEGAL WILDLIFE TRAFFICKING IN KENYA THROUGH INTEGRATED APPROACH (IWT-KENYA) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1576. Acquisition of Assets

1576.1 Unsupported Office Furniture and General Equipment

Note 5 to the financial statements reflects acquisition of non-financial assets of Kshs.44,253,506 which includes purchase of office furniture and general equipment amounting to Kshs.3,292,404.

However, the supporting documents which include list of registered suppliers, the quotation opening and evaluation minutes, professional opinion, the inspection and acceptance certificate and the goods received note and the issue note were not provided for audit.

In the circumstances, the validity and completeness of the office furniture and general equipment expenditure amounting to Kshs.3, 292,404 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department requested for supporting documents from United Nations Development Programme (UNDP) Kenya through a letter dated 17th January, 2023 ref: IWT/UNDP/SDW/1/3/3 (319).

The Accounting Officer submitted that UNDP Kenya availed the Ministry's requests, purchase orders, quotations, Payment vouchers, invoices and fixed asset register which support the expenditure of Kshs 3,292,404 on acquisition of assets.

The Accounting Officer also submitted that its operation was greatly impacted negatively by the COVID-19 health crisis and that there was no substantive Accounting Officer at the time.

Committee Observations and Findings

The Committee noted that the programme is implemented through a Memorandum of Understanding and a financing mechanism. Some items are procured by UNDP, others by partners while others by the Agency.

Committee Recommendation

The Committee recommends that the Accounting Officer to follow up the matter with UNDP and report progress within three (3) months following the adoption of this report.

1576.2 Undelivered Vehicles and Other Transport Equipment

Note 5 to the financial statements reflects acquisition of non-financial assets of Kshs.44, 253,506 which includes purchase of vehicles and other transport equipment amounting to Kshs.40, 961,102, out of which an amount of Kshs.29, 924,704 is in respect to five (5) vehicles not delivered as at 30 June, 2021.

Further, there was no agreement presented for audit detailing the conditions for payment and the period within which the vehicles were to be delivered. The supplier was paid in full before delivering the goods, contrary to Section 146 of the Public Procurement and 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 of a procuring entity or an officer authorized by him or her in writing except where so specified in the tender documents and contract agreement. Such an advance payment shall not be paid before the contract is signed.

Consequently, the regularity and completeness of the purchase of vehicles and other transport equipment amounting to Kshs.40, 961,102 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that all the motor vehicles have since been delivered and received by the State Department for Wildlife and provided copies of the logbooks. The motor vehicles were being assembled and the motor dealer had to be paid to issue the chassis numbers and for the Ministry to own up the motor vehicles.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1577. Unsupported Purchase of Goods and Services

The statement of receipts and payments for the year ended 30th June, 2021 reflects
Purchase of goods and services totaling to Kshs.8, 698,396 as disclosed in Note 4 to the financial statements. However, included in this figure is an amount of Kshs.5, 096,736 which was not supported with the relevant supporting documentation as summarized below:

No.	ITEM	Amount (Ksh.)	Supporting Documents Not Availed
1.	Domestic Travel & Subsistence	Ksh. 3,045,018	Approval letters, Imprest warrants, work tickets, and payment vouchers

2.	Audit Fees	Ksh.524,463	Contract agreement with hired Auditor, Invoice, and payment vouchers.
3.	Training Expenses	Ksh.1,527,255	Invitation letters, reports on training, payment vouchers, invoices and local purchase orders.
5.	**Total**	**5,096,736**	

Consequently, the validity and completeness of purchase of goods and services totaling to Kshs.8, 698,396 for the year ended 30th June 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department requested for supporting documents from IWT Kenya Project through a letter dated 17th January, 2023 ref: IWT/UNDP/SDW/1/3/3 (319). UNDP Kenya availed the documents as follows.

i. Domestic Travel & Subsistence of Ksh.3,045,018, approval letters, request for service forms, travel authorization and payment vouchers.
ii. An amount of Kshs.524,463.50 paid for quality assurance and spot checks activities to Delloitte and Touch.
iii. Training Expenses of Ksh.1,527,255.

Committee Observations and Findings

The Committee advised that certified copies are acceptable such that comparative documents are used for audit. Further, another auditor's audit could also be used.

Committee Recommendation

The Committee recommends that the matter is resolved.

1578. Unsupported Proceeds from Domestic and Foreign Grants

The statement of receipts and payments for the year ended 30 June, 2021 reflects proceeds from domestic and foreign grants amounting to Kshs.56,373,538 as disclosed in Note 2 to the financial statements.

However, the bank statements and other documents where these receipts are reflected were not provided for audit review.
In the circumstances, the accuracy and completeness of proceeds from domestic and foreign grants amounting to Kshs.56, 373,538 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department requested for supporting documents from United Nations Development Programme (UNDP) Kenya through a letter dated 17th January, 2023 ref: IWT/UNDP/SDW/1/3/3 (319). UNDP Kenya availed the approved Combined Delivery (CDR) Report by Project. Once CDR is approved by UNDP and the Ministry of Tourism, Wildlife and Heritage, it forms an official payment modality.

The Accounting Officer also submitted that the total amount of CDR should tally with that of the 2020/2021 ledger in dollars. In this case USD 521,890.68**.** During the 2020/2021 audit period, UNDP directly paid Kshs.56,373,538 for IWT Kenya project. The amount paid is therefore assumed as the receipts for the financial year 2020/2021.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were not satisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to avail complete financial and accounting records are presented to the Auditor General pursuant to the provisions of Article 229 of the Constitution of Kenya 2010 and Section 68 (2) (k) of the PFM Act 2012.

Other Matter

1579. Budgetary Control and Performance

The summary statement of comparative budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs.139, 024,300 and Kshs.56, 553,538 respectively resulting to an under-funding of Kshs.82, 470,762 or 59% of the budget.

Similarly, the Project spent Kshs.56, 553,538 against an approved budget of Kshs.139, 024,300 resulting to an under-expenditure of Kshs.82, 470,762 or 59% of the budget.

The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery of the Project during the first year of implementation to the stakeholders.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department for Wildlife delayed in employing project management team until April 2021 leading to low implementation of the budget and performance.

The Accounting Officer also submitted that COVID-19 pandemic and lack of substantive accounting officer at the time affected the budgetary performance. However, there is now a Project Management Unit in place.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1580. Ambiguity in the Financing Agreement

The Financing Agreement states in section 'IX Financial Planning and Management Funds Flow: "Both GoK and UN financial and procurement procedures will be utilized and adhered to as appropriate. The project will adhere to the Public Financial Management Act (2012)". However, this clause may be in conflict with the Act as the UN financial and procurement procedures are not in tandem with the Public Finance Management Act, 2012 and the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, continued application of the Financing Agreement with the above clause may result to non-adherence to the Public Finance Management Act, 2012.

Submission by the Accounting Officer

The Accounting Officer submitted that the concerns of the Auditor General in section IX financial planning and management funds flow. However, IWT Kenya Project has been strictly adhering to Public Finance Management Act, 2012 and the Public Procurement and Asset Disposal Act, 2015 and will continue doing so throughout the period of the project. The Accounting Officer also submitted that the completion date of the project is July 2024 and in case the project is renewed the clause will be amended to remove the ambiguity in the financial agreement.

The Accounting Officer further submitted that the amendment cannot be done midway during project implementation as it is a global environmental facility involving mechanism for global funds. The regulations are prepared by both the donor and the implementing agency at project conception. The Treasury was involved in project negotiation and also in ensuring that the accountability of the funds are in line with the Public Finance Management Act.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1581. There were no material issues relating to effectiveness of internal controls, risk management and governance.

39. STATE DEPARTMENT FOR GENDER - VOTE 1212

REPORT ON THE FINANCIAL STATEMENTS

Ms. Veronica M. Nduva, the Principal Secretary and Accounting Officer for the State Department for Gender and Affirmative Action appeared before the Committee on 23rd March 2023 accompanied by the following officers: -

1. Mr. Paul Muraya - Secretary Administration
2. Mr. Henry N. Omasa - Director, Human Resource Management
3. Ms. Florence Kiromba - Deputy Accountant General
4. Mr. Sephone Ombachi - Chief Finance officer
5. Mr. Job M. Ondieki - Senior Internal Auditor
6. Mr. Isaac N. Ngige - Parliamentary Liaison officer

and submitted as follows;

Basis for Qualified Opinion

1582. Variances Between the Financial Statements and IFMIS Ledger Balance

Review of balances reflected in the financial statements for the year under review revealed variances with those reflected in the supporting ledgers extracted from the Integrated Financial Management Information System (IFMIS). The variances were not reconciled or explained as detailed below:

Account Item	Reference	Financial Statements Amount (Kshs.)	IFMIS Ledger Amount (Kshs.)	Variance (Kshs.)
Current Grant-Transfer to other Government entities	Note 5	492,770,000	357,770,000	135,000,000
Capital Grants to Government Agencies	Note 5	25,000,000	0	25,000,000
Other Capital Grants and Transfers	Note 5	2,171,000,000	0	2,171,000,000
Use of Goods and Services	Note 4	260,468,993	259,820,596	648,397
Bank Balance	Note 8	411,902	2,246,741,374	(2,246,329,472)
Cash Balance	-	0	2,730,048,741	(2,730,048,741)
Accounts Receivables	Note 9	2,462,503	3,175,969	(713,466)
Accounts Payable	Note 10	397,099	487,600,609	(487,203,510)
Fund Balance brought Forward	Note 11	6,041,851	2,640,250	3,401,601
Prior Year Adjustments	Note 12	(641,374)	0	(641,374)

Surplus/(Deficit) for the Year	Note 25	(2,923,171)	(2,274,774)	(648,397)

In the circumstances, the accuracy and completeness of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the variances between Financial Statements and IFMIS Balance were due to incomplete Auto-reconciliations. The reconciliations have now been completed and there are no further variances as illustrated in the Table below.

Account Item	**Reference**	**Financial Statements Amount (Kshs.)**	**IFMIS Ledger Amount (Kshs.)**	**Variance (Kshs.)**
Current Grant-Transfer to other Government entities	Note 5	492,770,000	492,770,000	0
Capital Grants to Government Agencies	Note 5	25,000,000	25,000,000	0
Other Capital Grants and Transfers	Note 5	2,171,000,000	2,171,000,000	0
Use of Goods and Services	Note 4	260,468,993	260,468,993	0
Bank Balance	Note 8	411,902	411,902	0
Cash Balance	-	0	0	0
Accounts Receivables	Note 9	2,462,503	2,462,503	0
Accounts Payable	Note 10	397,099	397,099	0
Fund Balance brought Forward	Note 11	6,041,851	6,041,851	0
Prior Year Adjustments	Note 12	(641,374)	(641,374)	0
Surplus/(Deficit) for the Year	Note 25	(2,923,171)	(2,923,171)	0

The Accounting Officer lamented that they are not properly resourced in terms of human resource particularly internal audit which has only one staff.

The Committee queried how the information was incomplete yet they used the IFMIS system. The Accounting Officer clarified that the State Department used both manual and IFMIS.

Committee Observation and Findings

The Committee observed that the bank reconciliations were done in the IFMIS as per trial balance and the variances have now been reconciled.

Committee Recommendation

The Committee recommends that the matter is resolved.

1583. Unsupported Accounts Receivables Balance

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects Kshs.2,462,503 in respect of accounts receivables - outstanding imprest and clearance accounts. However, supporting documents and detailed schedules for the amount were not provided for audit review.

Consequently, the accuracy and completeness of accounts receivables - outstanding imprest and clearance accounts amounting to Kshs.2,462,503 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer confirmed that the statement of assets and liabilities reflects Kshs. 2,462,503 in respect of accounts receivables – outstanding imprest and clearance accounts. However, supporting documents and detailed schedules for the amount have been availed for audit review.

Committee Observation and Findings

The Office of the Auditor General confirmed that the necessary supporting documents have been availed including surrender vouchers and detailed schedules for the amount have been verified.

Committee Recommendation

The Committee recommends that the matter is resolved.

1584. Misclassification of Expenditure Under Foreign Travel and Subsistence

The statement of receipts and payments reflects an expenditure amounting to Kshs.260,468,993 in respect of use of goods and services which, as disclosed in Note 4 to the financial statements, includes an amount of Kshs.2, 220,486 in respect of foreign travel and subsistence. However, examination of payment vouchers supporting the expenditure on foreign travel and subsistence revealed unrelated amounts totaling Kshs.361,200 which was incurred on domestic travel and subsistence. However, no adjustments were made to correct the misclassification.

As a result, the accuracy of the affected balances and the regularity of the misclassified expenditure could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer confirmed the State Department entered expenditure of Kshs.361,200 on foreign travel instead of domestic travel. This was occasioned by lack of sufficient budget in the domestic travel item. She regretted the anomaly and clarified that currently the State Department follows the guidelines provided for reallocation in such instances.

The Accounting Officer reiterated that she has written to Treasury seeking re-allocation and that she was working with the Chief Finance Officer to ensure that there is always availability of funds before any expenditure is committed.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer did not seek for the requisite authority from Treasury on time, for such expenditure to be utilized;**
(ii) **The Committee also observed that the Accounting Officer did not avail reallocation warrants to the Office of the Auditor General for verification.**

Committee Recommendation
The Committee reprimands the Accounting Officer.

1585. Unresolved Prior Year Matters

As disclosed in Part 16, follow-up on auditor's recommendations on prior year audit issues, various audit issues raised in the prior year remained unresolved as at 30 June, 2021.

Management has not provided reasons for the delay in resolving the prior year audit issues.

Submission by the Accounting Officer

The Accounting Officer appeared before the Committee and made submissions on the prior unresolved issues. The recommendations and implementation status were provided including copies of revised financial statements and updated asset register for Financial Year 2019/2020. The representative of Treasury informed the Committee that the fixed assets are prepared on cash basis, dispensed and disclosed in form of notes, and the Accounting Officer was to allocate values to such items properly.

Committee Observation
The Committee noted the submission of the Accounting Officer.

Committee Recommendations

i. **Within three months of tabling and adoption of this report, the Accounting officer should submit the fixed asset register to the Committee.**
ii. **The Accounting Officer must at all times ensure that he/she provides accurate records and other supporting documents pursuant to Section 9 (1) (e) of the Public Audit Act, 2015.**

1586. Pending Bills

Note 16.1 to the financial statements reflects pending bills amounting to Kshs.18,936,066 as at 30 June, 2021 which were not settled in the year under review, but carried forward to 2021/2022 financial year.

Failure to settle bills in the year for which they relate will adversely affect the budgetary provisions for the subsequent year as they form a first charge to that year's budget provision.

Submission by the Accounting Officer

The Accounting Officer confirmed that at the time of closing the 2020/2021 financial year, there were pending bills amounting to Kshs.18, 936,066 and which were carried over to the 2021/2022 financial year to be paid as the first charge. These bills were caused by lack of exchequer but they were cleared in the subsequent financial year.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1587. Failure to Comply with the One-Third of Basic Salary Rule

During the year under review seventeen (17) 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, 2016. The Management did not give plausible explanations for failure to comply with the policy.

In the circumstances, the State Department contravened Section C.1(3) of the Public Service Commission (PSC) Human Resource Policies, 2016 as this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer

The Accounting Officer confirmed that the State Department had officers in the payroll who had committed their salaries beyond the $^1/_3$ of their basic salary contrary to the service regulations. This was occasioned by the introduction of tax relief to cushion Kenyans from the adverse impact of covid-19 by reducing Pay-As-You-Earn (PAYE) monthly rate for senior officers from 30% to 25% and giving a 100% tax relief for low-income earners; and the introduction of Public Service Superannuation Scheme (PSSS) contribution for officers aged forty-five (45) years and below which was being recovered at the rate of 2% of their basic salaries as per the Circular Letter No. OP/CAB.1/8A dated 20th November, 2020.

When the tax relief was withdrawn in January, 2021, some officers had already over-committed their salaries beyond the required limits. This situation was worsened by the introduction of the 2% recovery of officers’ basic salary towards PSSS. The officers who violated the 1/3 Rule were cautioned and advised to adjust their salaries so as to be within the 1/3 Rule.

As at November, 2022, all the affected officers had duly adjusted their salary deductions and fully complied with the 1/3 Rule. Since that time, no officer in the State Department for Gender and Affirmative Action has violated the 1/3 Rule.

Committee Observations and Findings

The Committee noted that the breach of the one-third rule was as a result of extraneous factors.

Committee Recommendation

The Committee recommends that the Accounting Officer incrementally ensures that all staff adhere with the law.

1588. Internal Control Weaknesses on Payments Processing

Examination of sampled payment vouchers totaling Kshs.5,908,490 revealed process weaknesses which included failure to examine and authenticate imprest surrender documents. Additionally, some payment vouchers were not signed by relevant authorizing officers as required by Regulation 104(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that all receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.
Further, Regulation 23 of the Public Finance Management (National Government) Regulations, 2015 requires the Accounting Officer to maintain effective systems of internal control and the measures taken to ensure that they are effective and ensure records are accurate, reliable and complete.

Submission by the Accounting Officer
The Accounting Officer confirmed that as at the time of the audit, there were payment vouchers that had not been fully examined and authorized. The surrender payment vouchers have since been examined, authorised and availed for audit verification.

Committee Observations and Findings
The Committee noted that some authorizations were done in the system without the physical copies.

Committee Recommendations;

The Accounting Officer is reprimanded for violating Regulation 23 of the Public Finance Management (National Government) Regulations, 2015 requires the Accounting Officer to maintain effective systems of internal control.

REPORT ON EFFECTIVENESS OF INTERNNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1589. Weaknesses in Overall Governance

1589.1 Internal Audit Function
Review of the State Department's internal audit department revealed that it lacked capacity to review and appraise internal controls, risk management and governance practices since it had only one auditor. Further, during the year under review, the department did not have an approved internal audit charter, an annual work plan and a budget line contrary to Section 1.5 of the Kenya Gazette Notice Number 2690 Vol. CXVIII - No.40.

In the circumstances, the effectiveness of the internal audit function in enhancing operational efficiency, governance and compliance as provided for under Section 73(4) and (5) of the Public Finance Management Act, 2012 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer confirmed that the State Department for Gender was understaffed at the time of the audit. The National Treasury has so far posted four Internal Auditors to the State Department. Further, the State Department did not have an approved internal audit charter and annual work plan, these have since been approved by the Audit committee and availed for audit verification.

The Accounting Officer also confirmed that the internal audit did not have a budget line during the year under review. It has always been the custom in all the Ministries and state departments that the activities of the internal audit unit are fully funded from the administration funds of the respective Ministry/State department.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer posted four (4) internal auditors to the State Department and an Internal audit charter and annual work plan verified by the Office of the Auditor General;

(ii) The Committee also observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1589.2 Audit Committee

Review of the Audit Committee of the State Department revealed several weaknesses in performance of its mandate as detailed below:

i. Despite the State Department of Gender having constituted an Audit Committee, the Committee did not convene any meeting during the year contrary to Regulation 179(1) of the Public Finance Management (National Government) Regulations, 2015 which requires that an Audit Committee should meet at least once in every three (3) months.

ii. The Committee did not have a duly elected chairperson contrary to Regulation 174(5) of the Public Finance Management (National Government) Regulations, 2015 that requires that the chairperson of an Audit Committee shall be independent of the national government entities.

iii. No Committee member had been trained on governance contrary to paragraph2.6.1 of the Kenya Gazette Notice Number 2690 Vol. CXVIII on Capacity Building Framework, which requires serving audit committee members to training on emerging trends about audit committees, internal audit, external audit, governance, risk and internal controls funded by the Department.

iv. The Management did not disclose in the financial statements the fiduciary oversight committees such as Internal Audit and Audit Committee as required by PSASB reporting template for the year 2021.

Failure of the Audit Committee to perform its duties and convene regular meetings may render the internal audit function ineffective and its independence may be compromised.

Submission by the Accounting Officer

The Accounting Officer confirmed that the audit committee did not hold quarterly meetings as planned due to Covid 19 restrictions and travel bans that affected the activities of the department.

The Accounting Officer also confirmed that at the time of the audit, the Committee did not have a duly elected chairperson. However, the recruitment process was carried out and the Committee has now a duly elected chairperson.

The Accounting Officer further confirmed that the training of the audit committee members did not take place as planned due to Covid 19 restrictions coupled with budget constraints during the financial year under review. However, the training was undertaken in the subsequent financial year.

In addition, the Accounting Officer confirmed that the management did not disclose in the financial statements the fiduciary oversight committees such as Internal Audit and Audit Committee as required by PSASB reporting template for the year 2021. This is regrettable and the same has been disclosed in the financial statements for the subsequent year.

Committee Observation

The Committee observed that the expalanation by the Accounting Officer was unsatisfactory as meetings could be held virtually.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to comply with Section 174(1) of the Public Finance Management Regulations, 2015 and Treasury Circular No. NT/IAG/GEN/055(163) of 26 April, 2016.

1589.3 Lack of Risk Management Policy

During the year under review, the State Department did not have an approved Risk Management Policy and a Risk Register to document risks emanating from the users and the mitigation factors in place to minimize the risks.

This is contrary to Regulation 165(1) 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 a system of risk management and internal control that builds robust business operations.

In view of the above weaknesses, it was not confirmed whether the internal controls in place at the State Department were adequate and effective during the year under review.

Submission by the Accounting Officer

The Accounting Officer confirmed that the State Department during the year under review did not have an approved Risk Management Policy and a Risk Register to document risks emanating from the users and the mitigation factors in place to minimize the risks.

The State Department plans to come up with the policy in the financial year 2023/2024.

Committee Observation

The Committee observed that the state department did not have risk management policy.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to comply with Regulation 165(1) of the Public Finance Management Regulations, 2015.

40. STATE DEPARTEMENT FOR PUBLIC SERVICE- VOTE 1213

REPORT ON THE FINANCIAL STATEMENTS

Ms. Mary Kimonye, the Principal Secretary and Accounting Officer, State Department for Public Service (Vote 1213), appeared before the Committee 31st May, 2022 to adduce evidence on the audited financial statement for the State Department of Public Service for the Financial Year 2020/2021. She was accompanied by the following officers:

1.	Mr. Francis Muteti	-	Chief Finance Officer
2.	Mr. Kennedy Nyamao	-	Senior Principal Finance Officer
3.	Mr. Stanley Ikiao	-	Assistant Account General
4.	Mr. Isaac Ngugi	-	Parliament Liaison Officer
5.	Mr. James Buyanke	-	Chief Executive Officer Huduma
6.	Ms. Margret Wamoto	-	Director Administration
7.	Mr. Nelson M. Osioro	-	Assistant Account General
8.	Ms. Beryl Odiembo	-	Finance – HUDUMA
9.	Ms. Florence Nyagah	-	Personal Assistant to PS

And submitted as follows

Basis for Qualified Opinion

1590. Unsupported Adjustments

The statement of receipts and payments reflects payments totalling to Kshs.15,510,303,215. However, a review of the general ledgers for the expenditure revealed several adjustments and corrections totalling to Kshs.45,634,075 in respect to twelve (12) expenditure items. However, management did not provide supporting documentation and journal vouchers.

In the circumstances, the accuracy and completeness of the reported expenditure balance of Kshs.15,510,303,215 for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that in the Financial Year 2020/21, the State Department for Public Service was allocated Kshs.15,510,303,215 for various expenditures in which was spent against the printed estimates. However, during the Financial Year, The National Treasury effected various austerity measures which resulted into negative balances in some expenditure items.

At the closure of the FY 2020/21, the State Department made journal adjustments amounting to Kshs.45,634,075 to correct the negative balances. The documents including the journal vouchers have since been availed to the Auditors for verification.

Committee Observations and Findings

(i) 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;

(ii) The Committee further observed that the Accounting Officer failed 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;

(iii) The Committee similarly observed that the Accounting Officer failed to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015;

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide accurate records and other supporting documents in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

1591. Use of Goods and Services

The statement of receipts and payments reflects an expenditure of Kshs.1,123,199,815 under use of goods and services which, as disclosed in Note 5 to the financial statements, includes other operating expenses amounting to Kshs.372,146,786. The following unsatisfactory matters were noted:

1591.1 Unsupported Supply of Milk

Included in other operating expenses is an amount of Kshs.1,658,475 made to a supplier for supply and delivery of milk to various Huduma Centres across the country. However, the counter receipt voucher dated 30 October, 2020 showed that the milk was taken on charge approximately twenty-five days (25) after delivery was done. Further, the Management did not provide a certificate by the Inspection and Acceptance Committee to authenticate receipt of the milk. This is contrary to Section 48 of the Public Procurement and Asset Disposal Act, 2015 which requires immediate inspection of goods after the delivery.

Consequently, the accuracy and validity of the expenditure of Kshs.1,658,475 spent on purchase of milk could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department for Public Service, entered into a three (3) year Framework Contract with M/s Jalam Supplies for the supply and delivery of milk to the 52 Huduma Centres in the 47 Counties and the Head Office in Nairobi during the Financial Year 2017/2018. The contract expired on 20th October, 2020, in the Financial Year 2020/21. Under this contract, the procurement of the milk was centralized at the Huduma Kenya Secretariat Head Office in Nairobi.

The delivery of the Milk to the Huduma Centres was evidenced by Delivery Notes signed by the respective Huduma Centre Managers acknowledging receipt. The delivery notes were then sent to the Secretariat for payment. It was on the strength of the signed Delivery Notes by the Centre Managers that the payments were made.

The State Department takes cognizance of the matter raised and has since implemented corrective measures through decentralization of the procurement process by the issuance of Authority to Incur Expenditure (AIEs) to the fifty-two (52) Huduma Centre Managers in the Financial Year 2021/22 and established the Procurement Committee as per the PFM Act. Inspection and verification is now done at the respective Centres for the last one (1) year.

All goods and supplies including the milk item are now being subjected to the inspection and acceptance process upon delivery by the 52 Inspection and Acceptance Committees that are in place in all the 52 Huduma Centres. Monitoring and Evaluation of the usage of the AIEs is done on a quarterly basis.

The process has empowered the local suppliers at the 47 Counties and improved efficiency and availability of milk supplies at the Huduma Centres.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Supply of Milk is satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1591.2 Unsupported Payments on Cleaning Service
The other operating expenses also includes an amount of Kshs.14,088,300 that was paid to a firm for cleaning services in seven (7) Huduma Centres in Nairobi and Mombasa during the year under review. Review of records revealed that the rate payable for the floor area was Kshs.39.50 and Kshs.15 per square foot for Huduma Centres in Nairobi and Mombasa respectively. However, the floor area measurements estimated total of 49,181 and 7,534 square feet in Nairobi and Mombasa respectively, were not supported with inspection and valuation reports from the State Department of Lands, Housing and Urban Development.
Further, a proposed lease report dated 30 July, 2020, by private valuer contracted by the premises owner, the Postal Corporation of Kenya to the State Department for leasing of premises at General Post Office, Mombasa revealed that the Huduma centre occupies a floor area measuring about seven thousand two hundred and fifteen (7,215) square feet, which differed with the initial information contained in framework agreement between the State Department and the service provider which estimated the floor area to be seven thousand five hundred and thirty four (7,534) square feet. This therefore indicates an exaggerated floor area by three hundred and nineteen (319) square feet.
Consequently, the accuracy and validity for the expenditure of Kshs.14,088,300 on cleaning services in Huduma centres could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted as follows;

a. Inspection and Valuation Reports from the State Department of Lands, Housing and Urban Development.
The Ministry of Devolution and Planning entered into a Memorandum of Understanding (MOU) with the Postal Corporation of Kenya on 17th October, 2013 to establish Huduma Centres within Postal Corporation of Kenya premises countrywide. As part of the agreement in the MOU, the Ministry would not pay rent for Centres within the Postal Corporation of Kenya premises. However, all other services among them cleaning services for the centres within Postal Corporation of Kenya premises were a responsibility of Huduma Kenya Secretariat. With the understanding that Huduma was not going to pay rent for the premises and the cleaning services were in-house, the assessment of the space for the Centres for purposes of cleaning, was not subjected to an inspection and evaluation process by the State Department for Housing. However, Huduma Kenya Secretariat has since engaged the State Department for Housing and Urban Development to conduct inspection and valuation of the spaces for the 52 Huduma Centres among them Nairobi and Mombasa.

It is also worth noting that following the handover of the premises by Postal Corporation of Kenya in August 2020, Huduma Kenya Secretariat was granted more floor space to cater for the growing number of the customers seeking public services. The space availed by Postal Corporation of Kenya has since been subjected to the inspection and valuation process. The State Department for Housing and Urban Development, vide letter Ref. HKS/MSA/102 dated 15th December 2021, estimated the floor size including all common areas for Mombasa Huduma Centre to be 9,535 square feet. This confirms that the actual floor and cleaning spaces for Mombasa Huduma centre is now 9,535 square feet and not 7,534 square feet. The valuation reports have been availed to the Auditors for verification.

b. Payment for Cleaning Services for Mombasa GPO Huduma Centre

In August, 2020, Postal Corporation of Kenya handed over the Huduma premises at GPO Mombasa to the State Department for Public Service. The State Department was then required to pay rent for the premises. The rent payments were based on a lease report dated 30th July, 2020 from the private valuer (M/s Kiragu and Mwangi Limited) engaged by Postal Corporation of Kenya which approximated the floor area measurements to 7,215 square feet.

Further, the State Department was also required to engage Service Providers to undertake cleaning services which included the common areas, walls, windows, and external spaces like pavements and corridors measuring 319 square feet.

Therefore, the difference of three hundred and nineteen (319) square feet is for the common areas which were not included when making rent payments measuring 7215 square feet. The total surface area for purposes of cleaning was 7534 square feet while 7215 square feet was only for rent**.**

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unsupported Payments on Cleaning Service is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matters

1592. Pending Bills

As disclosed under Annex 2 to the financial statements, the State Department for Public Service had pending bills totalling to Kshs.231,416,395 as at 30 June, 2021. However, Management has not provided reasons for non-payment of the bills.

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 State Department regrettably note that the pending bills issue not only affects the State Department but the whole Government. The State Department for Public Service had pending bills totalling Kshs.231,416,394.82 as at 30th June 2021. This amount forms part of historical pending bills which stood at Kshs.552 million in Financial Year 2019/20. The State Department has continued to pay off the pending bills as funds are availed and by the end of 30th March 2022, an amount of Kshs.57.6 million had been settled and additional vouchers of about Kshs.45.0 million which are under process and will be settled by 30th June, 2022. The uncleared bills are mainly due to inadequate budget allocation but as in line with the PFM Act, the Department will endeavour to treat the pending bills as a priority.

Committee Observations and Findings
The Committee observed that the pending bills amounting to Kshs.57.6 Million have since been settled and the balance is anticipated to be settled in the subsequent financial year; and

Committee Recommendation
The Committee recommends that the Accounting Officer must pay bills during the year to which they relate. Otherwise they should be paid as first charge in the subsequent year in accordance withSection 74(4)(d) of the PFM Act 2012 and Regulation 42(1)(a) of the PFM (National Government) Regulations 2015.

1593. Unresolved Prior Year Audit Issues

In the audit report of the previous year, several issues were raised. However, the Management has not resolved the issues or given satisfactory explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning Circular for the year ended 30th June, 2021.

Submission by the Accounting Officer
The Accounting Officer submitted that following my appearance before theCommittee for the Financial Year 2018/2019 and the subsequent report from the Committee, they had noted the Committee's recommendations therein and have taken administrative steps to implement the recommendations including but not limited to strengthening the Accounts Department, segregation of roles and responsibilities and regular reviews of our books by the State Department's Budget Implementation Committee.

Committee Observations and Findings
The Committee observed that the matter was discussed in 2019/2020 report and recommendations were made therein.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to implement the recommendations issued in the 2019/2020 audit report. The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

1594. Delay in Exchequer Releases

Review of records in relation to Exchequer releases revealed that the State Department received Kshs.3,693,709,571 Exchequer releases from The National Treasury in the months of June and July 2021 as detailed below:

Date Funds Released by The National Treasury	Vote	Amount Received (Kshs)
3 June, 2021	Recurrent	72,328,735
4 June, 2021	Recurrent	1,000,000,000

Date Funds Released by The National Treasury	Vote	Amount Received (Kshs)
25 June, 2021	Recurrent	65,983,761
29 June, 2021	Recurrent	150,469,967
1 July, 2021	Recurrent	1,129,864,077
2 July, 2021	Recurrent	158,000,000
6 July, 2021	Recurrent	199,508,631
2 July, 2021	Development	917,000,000
6 July, 2021	Development	554,400
Total		**3,693,709,571**

Delay in release of Exchequer may have negatively affected timely implementation of the programmes of the State Department and provision of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

As observed by the Auditors, delays in the release of Exchequer does not only affect timely implementation of programmes but also distorts the budget execution processes, especially when they resort in pending bills.

Despite the delays, the Department was still able to implement the planned activities.

Committee Observations and Findings

The Committee observed that the Accounting Officer has no control over the matter and that the National Treasury should release funds in good time.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

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

Basis for Conclusion

1595. Irregular Advance Payment for Supply and Delivery of Uniform

The Management made an advance payment amounting to Kshs.11,330,000 to a cloth manufacturing firm being fifty percent (50%) of the contract sum for the supply and delivery of branded shirts and blouses. This was contrary to Section 147 of the Public Procurement and Asset Disposal Act, 2015 which states that under exceptional circumstances, advance payment may be granted and shall not exceed twenty per cent (20%) of the price of the tender.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that State Department, on 14th June, 2021, entered into a contract with Rivatex East Africa Limited for the provision of Huduma Kenya branded staff uniforms. This was a Government to Government engagement in support of the local industry "Buy Kenya, Build Kenya".

The fifty-percent (50%) advance payment was a negotiated agreement duly approved to ensure Rivatex delivered the goods on time in cognizance of the Government's commitment to revive State Owned Enterprises.

The advance payment was supported by the performance security guarantee of the equivalent amount (Kshs.11,330,000) provided by M/s Rivatex East Africa Limited.

The Management confirms that M/s Rivatex has fully delivered the whole consignment which has been received, inspected and established to be of the right quality and quantity as per the specifications of the contract.

Committee Observations and Findings

The Committee observed that the submission by the Accounting officer was satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1596. There were no material issues relating to effectiveness of internal controls, risk management and governance.

41. STATE DEPARTMENT FOR YOUTH AFFAIRS - VOTE 1214

REPORTS ON THE FINANCIAL STATEMENT

Mr. Ismail Maalim Madey, the Principal Secretary and Accounting Officer for the State Department of Youth Affairs appeared before the Committee on 21st March 2023, 13th April 2023 and 23rd May 2023 companied by the following officers;

1. Mr. Raymond Ochieng - Secretary, Youth Affairs
2. Mr. Cornelius N. Ombagi - Director, Youth Development
3. Mr. Joseph Katani - Deputy Director, Youth Development
4. Mr. Charles Mureithi Mwaniki - Deputy Director, Youth Development
5. Ms. Olivia Ouko - Deputy Director, Youth Development
6. Mr. Charles Juma Mwaniki - Assistant Director, Youth Development
7. Mr. James N. Kariuki - Assistant Director, Supply Chain Management Services
8. Ms. Grace W. Kariuki - Assistant Director, Supply Chain Management
9. Mr. Augustine Mayasi - National Project Coordinator
10. Mr. Peter W. Muthini - Deputy National Project Coordinator
11. Mr. Henry Mayabi - Deputy Accountant General
12. CPA Robert Asumani Samuel - Head of Accounting Unit
13. Mr. Nixon Oborah - Principal Finance Officer
14. Mr. Maxwell M. Mutuku - Principal Accountant
15. Mr. Patrick Andera - Personal Assistant to Secretary Youth Development

and submitted as follows;

Unmodified Opinion

1597. There were no material issues noted during the audit of the financial statements of the State Department.

Other Matter

1598. Late Exchequer Releases

The statement of receipts and payments reflects transfers from The National Treasury totalling Kshs.3,140,772,010. However, Exchequer issues totaling Kshs.86, 845,787 comprised of recurrent and development expenditure of Kshs.70, 402,559 and Kshs.16, 443,228, respectively were received by the State Department during the month of June, 2021 as follows:

Date	Vote	Amount Received (Kshs.)
21June, 2021	Recurrent	55,368,277
28 June, 2021	Recurrent	15,034,282
01 June, 2021	Development	3,263,200
30 June, 2021	Development	13,180,028

	Total	**86,845,787**

The late Exchequer releases may have hindered timely implementation of the State Department's programmes.

Submission by the Accounting Officer

The Accounting Officer submitted that timely release of the exchequer is the responsibility of the National Treasury. Exchequer amounting to Kshs.86, 845,787 was received in the month of June 2021 although the State Department had requested the exchequer earlier. This hindered timely implementation of the State Department's programmes.

The Accounting Officer also submitted that late exchequer releases mainly affected the recurrent expenditure for payments of salaries and staff imprest.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1599. Pending Bills

Annex 1 to the financial statements reflects a nil balance in respect of comparative year pending accounts payables while the audited financial statements for 2019/2020 financial year reflected a balance of Kshs.16, 921,561.

The resultant difference was not explained or reconciled. Further, the State Department had pending bills balance of Kshs.21,737,242 that were not settled in the year under review but were carried forward to 2021/2022 financial year.

Failure to settle bills in the year for which they relate adversely affect the implementation of the subsequent year's budgeted programs as the pending bills form a first charge to that year's budget provision.

Submission by the Accounting Officer

The Accounting Officer submitted that Annex 1 to the financial statements reflects a nil balance in respect of comparative year pending accounts payable. The amount was erroneously omitted in the comparative figures, however the pending bills of Kshs.16,921,561 formed the first charge in the financial year 2020/2021 and was all cleared.

The State Department had pending bills of Kshs.21,731,242 in the financial year 2020/2021. This occurred due to inadequate exchequer received from the National Treasury. However, these bills were settled in the financial year 2021/2022.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1600. Unresolved Prior Year Matters

As disclosed under follow up on auditor's recommendations on prior year audit issues, various prior year audit issues remained unresolved as at 30 June, 2021. 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 Public Accounts Committee in its report of financial year 2019/2020 recommended that the State Department appears before the Committee to respond to the report of the Auditor General on its financial statements for the years ended 30th June 2020 and 30th June 2021 at the same time. Therefore, the State Department prepared responses for the two (2) years.

Committee Observations and Findings

The Committee observed that the state department did not appear before the Committee as it did not exist at the time.

Committee Recommendation

The Accounting Officer to address the cited matters and submit a report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1601. Other Operating Expenses

The statement of receipts and payments reflects an expenditure of Kshs.2,012,999,158 under use of goods and services which, as disclosed in Note 4 to the financial statements, includes amounts of Kshs.732,699,000, Kshs.14,478,657, and Kshs.10,432,414 in respect of other operating expenses, routine maintenance - vehicles and other transport equipment, and fuel, oil and lubricants, respectively.

The following observations were made:

1601.1 Delay in Inspection of Very Important Person (VIP) Robin Chairs

The expenditure of Kshs.732,699,000 in respect of other operating expenses includes an amount of Kshs.1, 360,800 paid to a firm for supply and delivery of VIP robin chairs for the boardroom.

However, review of documents provided including payment vouchers, invoices, and quotations revealed that the invoice, delivery note and request for quotations were all issued on 28 June, 2019. The items were received in the stores on 30 June, 2019 but the inspection certificate was issued on 8 December, 2020 (approximately one and half years after delivery).

Although the Management attributed the delay to missing documents, the delay in inspecting the furniture is contrary to Section 48 of the Public Procurement and Asset Disposal Act, 2015 which requires immediate inspection of goods after the delivery.

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

Submission by the Accounting Officer

The Accounting Officer submitted that inspection of VIP Robin Chairs for the Boardroom was done by inspection and acceptance committee on 30th June, 2019. However, the said inspection and acceptance certificate was missing from the payment voucher which was occasioned by mix up of documents during relocation of procurement unit from Teleposta to Kencom House.

Since time had lapsed from the period of delivery of the items, there was need for re–inspecting of the items to ascertain their existence before the payment.

The 2nd Inspection and acceptance certificate issued on 8th December, 2020 was just to affirm if the earlier received goods were in existence before effecting any payment. The missing inspection and acceptance certificate has since been traced and availed.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1601.2 Air Ticket to Spain for a Trainee Footballer

The expenditure of Kshs.732, 699,000 in respect of other operating expenses also includes an amount of Kshs.569, 445 for a return air ticket to Spain for non-civil servant to train as a professional footballer. The request for the air ticket was made on 22 July, 2019. However, no evidence was provided indicating proof of travel by the footballer. This is contrary to Regulation 104 of the Public Finance Management (National Government) Regulations, 2015 which stipulates that all expenditures should be supported by the appropriate authority.

In addition, the air ticket was issued on 1 September, 2019 whereas the Local Service Order were both dated 19 December, 2020, thus an indication that air ticket was issued before an order was placed.

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

Submission by the Accounting Officer

i) Proof of travel

By the time of Audit, the supporting documents to proof that the said footballer actually travelled to Spain and returned back to the country were not available, however the documents have been obtained from the footballer and have been availed for review.

ii) Air ticket vs Service order dates

The Procurement requisition was approved by Accounting Officer on 22nd July, 2019 vide letter reference number. OP/PA 1/5/2A. Once the lowest evaluated airline agent was identified, it was not possible to raise a local service order immediately, hence a commitment letter was issued to the service provider to supply the Air ticket as the Department finalized on the remaining procurement process.

The air ticket was issued on Thursday 29th August, 2019 (two days to the travel day). It was until 19th October, 2019, when authority to process LSO was granted, as it was internal procedure by then.

The requisition mentioned in Audit report was not a procurement requisition, but an internally generated form titled "Requisition of Authority to issue LPO/LSO" that was used to track the procurement processes until the dispatch of Service/purchase order to the service provider.

The Local service order was finally raised on 19th October, 2020 to facilitate payment of the said expenditure.

Members' Concerns

On the issue of the footballer, the Committee demanded to know how the footballer was identified and picked in a competitive process. Further, if there was value for tax payers' money in taking the footballer to Spain. The agency said that the boy is now playing for a small club in Germany.

The State Department agreed that the young man was not competitively chosen because he was referred from the Ministry of Interior. The Committee said that this was sad case where public money was used through favoritism.

Committee Observations and Findings

(i) The Committee observed that the State Department for Youth Affairs has a policy framework to develop, identify and nurture talent and a national marshal plan for talent development in sports and music;

(ii) The Committee also observed that the State Department gets referrals from various Government Ministries, Departments and Agencies (MDAs) but those identified through talent development at grassroot level are given priority and supported, subject to availability of funds.

Committee Recommendation

The Committee requested the Accounting Officer to provide policy framework for identification of talents and details of people identified during the year under review to the Committee within one (1) month of adoption of this report.

1602. Irregular Procurement of Motor Vehicle Service and Repairs

The expenditure of Kshs.14,478,657 in respect of routine maintenance - vehicles and other transport equipment includes an amount of Kshs.3,178,866 paid to three (3) garages for repair of motor vehicles.

However, records provided for audit indicates that the garages were not registered and prequalified by the State Department. This is contrary to Section 71 of the Public Procurement and Asset Disposal Act, 2015 which requires that the Head of Procurement function to maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs.

Further, Regulation 174(1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020 stipulates that a procuring entity shall utilize its own workshop or garage to repair and maintain motor vehicles, plant or equipment and where the procuring entity lacks the capacity to carry out the repairs or maintenance, an Accounting Officer shall competitively procure such services from a pre-qualified list of service providers licensed to undertake such services.

Consequently, it was not possible to confirm whether the State Department obtained value for money for the expenditure on repair of motor vehicles.

Submission by the Accounting Officer

The Accounting Officer submitted that an amount of Kshs.3,178,866 was paid to the following three firms:

	Bidders Name	**Amount**	**Remarks**
	M/s Bonivic Logistics of P.O. Box 1299 – 00100 Nairobi	1,803,000.00	Categorised under General office supplies The firm is among shortlisted bidder under supply of goods in FY 2020/2021
	M/s Primarosa Investments of P.O. Box 24014 – 00200 Nairobi.	1,072,500.00	Categorised under General office supplies The firm is among shortlisted bidders under Supply of goods in FY 2020/2021
	M/s Pastormech Auto Works of P.O. Box 7881 – 00300 Nairobi.	303,365.80	The firm was among the authorized garage by Chief Mechanical and Transport Engineer (Ministry of Transport, Infrastructure, Housing and Urban Development.

			During the period the garage had a private garage inspection certificate ref No. M0TIHUD/MTD/O1/23A VOL.VII/097 valid from 1st July, 2020 to 30th June, 2021.
	Total (Kshs)	**3,178,865.80**	

The Accounting Officer reiterated that only expenditure of Kshs. 303,365.80 out of Kshs. 3,178,866.80 related to repairs of motor vehicles. The balance was paid to the other two firms shortlisted for General Office Supplies in the State Department.
The Accounting Officer also submitted that the firm for repair and maintenance of motor vehicles was not prequalified under the Agency but the State Department competitively procured services from a pre-qualified list of service providers from Public Works.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1603. Failure to Provide Motor Vehicle Work Tickets
As disclosed in Note 4 to the financial statements, the State Department incurred an expenditure of Kshs.10, 432,414 on fuel, oil and lubricants on a fleet of forty (40) motor vehicles.

However, work tickets for nineteen (19) 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 movement and condition of assets can be tracked.

No explanation was provided for the anomaly.

Submission by the Accounting Officer

The Accounting Officer submitted that during the period under review, the State Department for Youth Affairs was domiciled in the Ministry of Public Service, Youth and Gender, and later moved to the Ministry of ICT, Innovation and Youth Affairs and this necessitated the movement of office equipment and documents. In the event, some work tickets were retained by the former Ministry.

In addition to the above, some of the vehicles had been grounded. The State Department has managed to trace all the work tickets for the nineteen (19) vehicles and submitted them for review and verification.
Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1604. Management of Imprest

The statement of assets and liabilities reflects an accounts receivables-outstanding imprests and clearance accounts balance of Kshs.1,242,895 which, as disclosed in Note 8 to the financial statements, includes a balance of Kshs.78,000 in respect of government imprest.

However, various officers were issued with multiple imprest before surrendering the previous imprests contrary to Regulation 93(4) of the Public Finance Management (National Government) Regulations, 2015 which prohibit issue of new imprests to officers with outstanding imprests.
No explanation was provided by the Management for the anomaly.

Submission by the Accounting Officer

The Accounting Officer submitted that the 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 Accounting Officer regretted the anomaly but confirmed that the State Department has enhanced the processes and all surrender vouchers are captured immediately they are prepared and hence cleared from the system imprest register.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1605. Construction of Empowerment Centres in Emurua Dikkir and Nyatike

The statement of receipts and payments reflects an expenditure of Kshs.66,448,446 under acquisition of assets which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.10, 418,630 in respect to construction of buildings.

However, the balance of Kshs.10,418,630 in respect to construction of buildings differed with an amount of Kshs.13,681,879 reflected in the schedule of expenditure spent on construction of two (2) Youth Empowerment Centres resulting to unexplained and unreconciled variance of Kshs.3,263,249.

Further, review of records revealed the following anomalies:

(i) Physical verification carried out in November, 2021 at Emurua Dikkir Youth Empowerment Centre revealed that the walls had visible cracks, while the roof was leaking and the doors were unlockable. This was an indication of poor workmanship while the certificate of practical completion had been issued. Further, the Centre had no equipment, electricity and water connection. No budgetary allocation was made during the financial year 2021/2022 to ensure operationalization of the centre. In the absence of budgetary allocation, the Centre is likely to remain unutilized.

(ii) Physical verification at Nyatike Youth Empowerment Centre revealed that the Centre was completed and handed over on 4 November, 2021. However, the Centre is in a remote part of the county without equipment, electricity, water connection, perimeter wall and a guard house. Further, despite the challenges, no budgetary allocation was made during the year 2021/2022 to ensure operationalization of the Centre to serve the intended purpose.

In the circumstances, the value for money realized on the expenditure for the Youth Empowerment Centres in the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

Unexplained and unreconciled variance of Kshs. 3,263,249

The Accounting Officer submitted that the State Department for Youth Affairs in the Financial Year 2020/2021 issued Authority to Incur Expenditure (AIEs) for the Construction/equipping of Youth Empowerment Centres (YECs) in Emurua Dikirr at an amount of Kshs.7,000,001 through AIE No. B103078 and Nyatike at an amount of Kshs.7,000,000 through an AIE No. B 103080.

The Accounting Officer also submitted that the AIEs were issued to be spent on various budget line items i.e, Minor Alterations to Buildings and Civil Works; Non-Residential Buildings; and Refurbishment of Non-Residential Buildings. The three budget line items all fall under the acquisition of fixed capital assets.

The Accounting Officer further submitted that the amount of Kshs.10,418,630 was incurred under item 3110202 (Non-Residential Buildings) and the balance of Kshs.3,263,249 was incurred on minor alterations to buildings and civil works –Item 220209 and Refurbishment of non-residential buildings –Item 3110302 as per the allocation in the AIEs above.

(i) Emurua Dikirr Youth Empowerment Centre (YEC)

Poor workmanship

The Accounting Officer submitted that after the inspection conducted by Public Works and issuance of completion certificate, the final inspection was conducted by the State Department of Youth Affairs and the observations raised by the auditors were observed and communicated to the contractor to repair the cracks in the walls, leaking roof and unlockable doors during the six (6) months defect liability period before 10% retention money was released by the State Department to the contractor.

Budgetary Allocation

The Accounting Officer submitted that during the Financial Year 2021/2022, the Youth Empowerment Centre (YEC) was allocated three million, five hundred and seventy three, seven hundred and sixty eight and sixty cents (KSh.3,573,768.60) for operationalization of the centre.

In addition, the State Department procured furniture and equipment for the YEC that were delivered on Thursday 27th, October, 2022.
Further, during the said financial year of 2021/2022, the State Department installed Closed Circuit Televion (CCTV) and Local Area Network (LAN) to the YEC so as to improve its security and internet connectivity respectively. In that regard, the State Department managed to fully operationalise the Centre and it is now serving the youth of Transmara East.

(ii) Nyatike Youth Empowerment Centre (Migori County)
Budget Allocation
The Accounting Officer submitted that during the Financial Year 2020/2021, the Youth Empowerment Centres (YECs) was proposed for completion through provision of budgetary allocation for the execution of civil and electrical works. However, the Development Budget for the YECs got a KSh.100 million budget cut during the third (3rd) quarter of the Financial Year 2021/2022.

This budget cut affected all the projects that had been earmarked for construction and renovation during the said financial year including the completion of Nyatike Youth Empowerment Centre (YEC). In that regard, the Youth Empowerment Centre was not operationalized. The completion and operationalization will be undertaken during the Financial Year 2023/2024.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1606. Unsupported Acquisition of Assets/Summary of Fixed Assets Register
Review of the fixed assets register provided for audit revealed that information such as date of acquisition, 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 preventative mechanisms were in place to eliminate theft, security threats, losses, wastage and misuse of assets as required by Regulation 139(1) and (2) of the Public Finance Management (National Government) Regulations, 2015.

Submission by the Accounting Officer

The Accounting Officer submitted that the since 2007, the Department has moved severally from one Directorate to another before eventually becoming a State Department which also moved from one ministry to another as indicated below:

- 2007 – Directorate under Ministry of Youth Affairs and Sports (13th floor and 16thUchumi house).

- 2013 - Department under Ministry of Devolution and Planning (Staff in Kencom and PS in Treasury)
- 2018 - State Department under Ministry of Public service, Youth and Gender affairs (PS-9th Floor Harambee house, Procurement & HR – Teleposta and Directorate of Youth – Kencom House).
- 2020 - State Department under Ministry of ICT, Innovation and Youth Affairs
- 2022 – State Department under Ministry of Youth Affairs, The Arts and Sports

Due to this movement, it was challenging for the State Department to have a comprehensive permanent asset register of its own especially where:

i. Officers were sharing common asset such as furniture, Office Equipment and ICT equipment; and
ii. Officers had to move from one location to another and thereby moving with all the assets or leaving them behind.

By the time of Audit, the State Department had already prepared a Fixed Asset Register though it was not comprehensive due to lack of some details such as date of acquisition, serial numbers of electronic equipment and value of each assets.

The Accounting Officer further submitted that a committee has been constituted to come up with a more comprehensive and up-to-date Assets Register.

Once the detailed fixed asset register is ready and valuation done, the State Department will embark on tagging all its fixed assets for ease of identification and movement.

Committee Observations and Findings

The Committee took note of the explanation and documents submitted by the Accounting Officer.

Committee Recommendation

The Committee directs the Accounting Officer to fast-track completion of an Assets Register and report progress to the National Assembly in a month's time following the adoption of this report by the house.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1607. Lack of a Risk Management Policy

During the year under review, the State Department did not have in place an approved Risk Management Policy. Further, no evidence was provided that the Department has documented, identified and assessed risks and developed controls to respond to risks identified as required by Regulation 165 of the Public Finance Management (National Government) Regulations, 2015. The regulation stipulates that the Accounting Officer should ensure that the national government entity develops risk management strategies, which include fraud prevention mechanism and system of risk management and internal control that builds robust business operations.

Under the circumstances, the adequacy and effectiveness of the risk management strategies and controls put in place could not be established.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department for Youth Affairs does not have an adequate Risk Management Policy framework in place. However, the Accounting Officer appointed the Risk Management Committee to spearhead the formulation of the Policy.

The Committee was in the process of developing a risk management policy which will go a long way in developing risk management strategies including fraud prevention mechanism and internal controls that will ensure efficient service delivery.

Committee Observation
The Committee observed that the state department did not have a risk management policy.

Committee Recommendation
The Committee reprimands the Accounting Officer for failing to develop a risk management policy in accordance Regulation 165 of the Public Finance Management (National Government) Regulations, 2015.

DONOR FUNDED PROJECT

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT (IDA CREDIT NO. 5812-KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1608. Consultancy Services on Life Skills Training
The Management entered into a contract MPYG/KYEOP/FBS/01/2017-2018 with a consultant on 30 October, 2018 for delivery of life skills training. The training targeted seventy thousand (70,000) trainees in seventeen (17) counties within four (4) contract packages. The consultant was paid an amount of Kshs.70,351,900 on 3 February, 2021 being eighty percent (80%) of contract sum for provision of life skills training during Cycle V of the project. However, the following anomalies were noted:

i. Although the payment voucher was supported with a Local Purchase Order (LPO), no assessment report was provided contrary to the provisions of the framework agreement. In addition, no evidence was provided to show that the consultant provided insurance cover and general facility safety standards to the youth as provided for in the framework agreement.

ii. Review of Cycle V Training final report showed that all training in the seventeen (17) counties covered were carried out in hired training venues. However, no agreement as provided for in the framework was provided for audit verification.

iii. The training report further showed that nine thousand one hundred and twenty-six (9,126) trainees successfully attended and completed the training, which is less than nine thousand one hundred and seventy-two (9,172) indicated in invoices number 576 and 577 both dated 2 December, 2020 resulting in an unexplained overpayment estimated at Kshs.460,000.

In the circumstances, the validity, occurrence and propriety of the expenditure could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that;

(i) Monitoring and Evaluation was conducted by the Project Coordination Unit and Field Officers during the Life Skills Training and the report thereof generated.
(ii) These agreements are entered between service providers and venue owners and the client only comes in to verify suitability as prescribed in the agreement.
(iii) Payment is based on verified attendance register of the beneficiary youth. The figure of 9,126 in the report is therefore erroneous. The correct figure is 9,172 as captured in the attendance register and invoice.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1609. Pending Bills

Note 12 to financial statements reflects pending bills of Kshs.14,803,297 as at 30 June, 2021. Management has not provided reasons for non-payment of the bills even though the Project is at risk of incurring significant interest costs and penalties with the continued delay in making payments. Further, failure to settle bills during the year to which 558 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 there was late submission of invoices by the service providers. However, all pending bills have been cleared.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1610. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2020 reflects budgeted receipts and actual on comparable basis amounting to Kshs.2,037,000,000 and Kshs.1,778,621,106 respectively resulting to a shortfall of Kshs.258,378,894 or 13% of the budget. Similarly, the Project's approved expenditure budget was Kshs.2,037,000,000 while the actual expenditure was Kshs.1,814,319,536 resulting to under-expenditure of Kshs.222,680,464 or 11% of the budget.

This under absorption indicates delay in implementation of the project activities as anticipated and thus it is unlikely that the Project will meet its intended objectives.

Submission by the Accounting Officer

The Accounting Officer submitted that Project activities were mostly physical and as such the prevalence of COVID-19 pandemic led to eight months suspension of face-to-face project activities. However most of the pending project activities were fast-tracked and project milestones met within stipulated time.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1611. Unresolved Prior Year Audit Issues

Various prior year audit issues remained unresolved as at 30 June, 2021. The included misclassification of expenditure, unconfirmed delivery of goods, Invalid contracts, unsupported expenditure, failure to comply with the procurement laws and regulations among others, 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 responses for the report of the Auditor General on prior audit issues were tabled.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1612. Non- Compliance with Project Implementation Work Plan

During the year under review, the Project had an approved work plan which indicated that an amount of Kshs.1,050,000,000 was to be disbursed in two (2) tranches of Kshs.375,000,000 and

Kshs.675,000,000 to one thousand five hundred (1,500) youths through awardees programme described as ‘’Mbelenabiz” Business Plan Competition. The programme, which was launched on 10 July, 2019, is an initiative of the Government of Kenya under the Kenya Employment and Opportunities Project implemented by the Micro and Small Enterprises Authority (MSEA) and the Ministry of ICT, Innovation and Youth Affairs with support from the World Bank.

The programme aim at creating new and expanding existing Youth-led Enterprises by providing them with grants and Business training and award the winners as per the mandate of Ministry of ICT, Innovation and Youth Affairs. However, examination of accounting records maintained by the Project Management shows that during the year only Kshs.343,065,350 was disbursed to the initiative leaving a balance of Kshs.706,934,650. This is an indication that the activity was not implemented as per the approved budget and which may have negatively impacted on service delivery to the public. No reason was provided for the failure to adhere to the annual work plan and approved budget.

Submission by the Accounting Officer

The Accounting Officer submitted that the design of the component required beneficiaries of Business Plan Competition (BPC) to provide clearance from Kenya Revenue Authority, Higher Education Loans Board, Directorate of Criminal Investigation and Credit Reference Bureau. Further, the awardees were to upload their bank details on the BPC portal. These requirements took the awardees a long time to fulfil. Later the protocol was reviewed and some conditions waived. This enabled the department to fast track the payments to Kshs1,326,250,000 by 30th June 2022.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1613. Unconfirmed Delivery of Core Business Skills Training

The Management signed a contract MPYG/KYEOP/FBS/02/2017-2018 on 31 October, 2018 with consultants in a joint venture for delivery of core business skills training. Examination of sampled payments in respect to the contract revealed the following anomalies:

1613.1 Payment for Core Business Skills

The Management paid Kshs.65,631,300 to the consultant on 9 March, 2021 for delivering an eleven-days Cycle V core business skills training to eighty thousand, six hundred and thirty-two (8,632) trainees drawn from ten (10) Counties that took place from 19 October, 2020 to 30 October, 2020.The following was anomalies were observed in respect of this payment:

i. The training report from the consultant submitted on 18 December, 2020 indicated that the training targeted a total of nine thousand and sixty (9,060) trainees but only eight thousand five hundred and thirty-two (8,532) trainees attended the training. However, an invoice raised for payment indicated eight thousand six hundred and thirty two (8,632) youths were trained resulting to an overpayment of Kshs.1,000,000 in respect of the additional 100 trainees.

ii. The final report from the consultant was submitted on 18 December, 2020 indicated that the training covered twelve (12) counties while the invoice submitted alongside the report reflected

8632 trainees participated from only ten (10) counties. No reason was provided for contradictory information. In the circumstance, it was not possible to confirm whether the Project received value for money on the expenditure of Kshs.65,631,300 incurred on the training.

Submission by the Accounting Officer

The accounting office submitted that:

i. Payment is based on verified attendance registers of the youth. Physical verification of the registers indicated 8,632 which was the basis for payment. Communication was made to the Service Provider on the error in the report

ii. Training in the project is implemented in a phased manner with counties exiting once the allocated numbers are attained. While the Consultant was contracted to train in 12 counties; in this particular cycle the consultant trained in 10 counties namely Wajir, Nyandarua, Nairobi, Kiambu, Mombasa, Nakuru, Kitui, Machakos, Kilifi and Mandera.

Committee Observations and Findings

The Committee observed that the state department did not avail documents for verification at the time of audit.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to comply with provisions of Section 68 (2) of the PFM Act 2012 and that complete financial and accounting records are presented to the Auditor General pursuant to the provisions of Article 229 of the Constitution of Kenya 2010 and Section 68 (2) (k) of the PFM Act 2012.

1613.2 Payment for Life Skills Training

Examination of payment voucher number 278 dated 2 February, 2021, revealed that the Project Management paid a consultant Kshs.40,826,600 for provision of an eleven (11) days Cycle 5 life skills training to five thousand three hundred and sixty-nine (5,369) trainees drawn from ten (10) counties which took place from 05 October, 2020 to 16 October, 2020. Scrutiny of the documentation in support of the payment voucher revealed the following inconsistencies:

i. The final training report from the consultant dated 18 December, 2020 indicated that the cycle V life skills training had targeted a total of six thousand six hundred and eighty eight (6,688) trainees. However, only five thousand five hundred and twelve (5,512) youths were trained which again differed from five thousand three hundred and sixty nine (5,369) trainees shown in the invoice attached to the payment voucher. The resultant variance of one hundred and forty three (143) trainees and an amount of Kshs.1,430,000 in respect of the training has not been explained. 560

ii. Records also showed that the training ended on 16 October, 2020 but the training report was submitted more than sixty (60) days in December, 2020 contrary to the terms of reference which require final report to be submitted within fourteen (14) days after the end of the training of each cycle. No explanation was provided for the delay.

In the circumstance, it was not possible to confirm whether the Project received value for money on the expenditure of Kshs.40,826,600 incurred on the training.

Submission by the Accounting Officer

The Accounting Officer submitted that the Consultant submitted the first report on 28th October 2020, which was within the stipulated 14 days after the end of training of cycle 5. Procedurally, once the report is received by the Project Management, it is reviewed to ensure compliance with contract requirements. Due to the bulky nature of the report, reviewing takes some time. This led to the final report being submitted in December 2020.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1614. Non-Payment of Trainee Stipends
Field inspection carried out in the Month of October 2021, in Kwale, Mombasa, Kilifi, Kitui, Machakos, Migori, Kisumu, Kisii, Kakamega and Bungoma counties revealed that some youths who underwent the Project training during cycle I to cycle II between early 2019 and July, 2021, did not receive the full amount of stipends of Kshs.36,000 which had been included in the programme. However, interviews conducted during field verification noted that the trainees received stipends allowances ranging from Kshs.3,000 to Kshs.21,000. This has led to massive drop out midway through the training due to inability to pay transport and other upkeep costs.

Management did not provide explanation for the failure to pay trainees the agreed stipends.

Submission by the Accounting Officer
The Accounting Officer submitted that during Cycle I and Cycle II MIIYA was only handling Life Skills Training (LST) and Core Business Skills Training (CBST) payments whereas National Industrial Training Authority (NITA) was handling Job Specific Skills Training (JSST). During the period, MIIYA did not have any pending payments. The payment of JSST stipends in Cycle I and II was executed by National Industrial Training Authority which is one of the KYEOP implementation agencies.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1615. Non-Payment to Master Craftsmen Fee
Similarly, interviews conducted with the youths trained in Cycle V and VI in the ten counties visited, revealed instances where master craftsmen discontinued training youths undergoing job specific skills training before completion due to nonpayment of craftsmen fee. As a result, of non-payment, Project activities and objectives may not be realized. Further, no records were provided to determine the amount owed to the trainees.

Submission by the Accounting Officer

The Accounting Officer submitted that these are youth who dropped out as a result of delayed payments to Master Craftsmen MCs). They were readmitted and placed to other trainers. Ksh 62,793,375(Sixty two million, seven hundred ninety three thousand three hundred seventy five) was paid to MCs in April, 2021 while Ksh 11,339,725(Eleven million, three hundred thirty nine thousand, seven hundred and twenty five) was also paid to MCs in September 2021

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1616. There were no material issues relating to effectiveness of internal controls, risk management and governance.

42. STATE DEPARTMENT FOR EAST AFRICAN COMMUNITY - VOTE 1221

REPORT ON THE FINANCIAL STATEMENTS

Mr. Abdi Dubat, the Principal Secretary and Accounting Officer for the State Department for East African Community Affairs appeared before the Committee on 17th April 2023 accompanied by the following officers:

1.	Ms. Lucy Kamau	–	Head of Accounting Unit
2.	Mr. Joseph Maina	–	Chief Finance Officer
3.	Mr. Sebastian Mokua	–	Head of Supply Chain Management Unit
4.	Ms. Charity Bokindo	–	Secretary of Administration
5.	Ms. Ruth Kibue	–	Senior Deputy Secretary
6.	Ms. Juliah Kigomo	–	Principal Accountant
7.	Mr. Gichuhi Geoffrey Njoroge	–	Internal Auditor
8.	Mr. Albert Gauo	–	Supply Chain Management Officer I

and submitted as follows;

Unmodified Opinion

1618. There were no material issues noted during the audit of the financial statements of the State Department.

Other Matter

1619. Pending Bills

Note 15 to the financial statements reflects pending bills totalling Kshs.13,002,057, which include pending accounts payables and other pending payables of Kshs.124,767, Kshs.4,453,133 as balance brought forward, and additions during the year of Kshs.8,424,157 respectively. Management has not provided an explanation for non-payment of the pending bills. Failure to settle bills during the year in which they relate to adversely affects the provisions of the subsequent year to which they are charged.

Submission by the Accounting Officer

The Accounting Officer submitted that pending bill totaling to Ksh.13,002,057. The amounts of Kshs.124,767 included in the pending bills relate to salary deductions to third parties. These deductions did not conclude the process of payment due to insufficient details (IFMIS No and Bank Account) of the payees to enable processing and transmission of the said amounts. However, the payees have since provided the full details and the amounts have been settled.

The Accounting Officer also submitted that the amount of Kshs.4,453,133. Relates to the pending bills brought forward from previous years. A pending bills committee was appointed by the Accounting Officer to verify the bills. An amount of Kshs.1,413,720. was found to be payable and the same was paid. An amount of Kshs.255,510 was found to have already been cleared. The balance of Kshs.2,783,903 as shown below remains unsettled since sufficient documentation is not available.

S/N	Name of Firm	Amount claimed	Amount verified as paid	Amount supported and paid	Balance not adequately supported
1.	Attic Tours and Travel Ltd	2,568,700	22,795	123,005	2,422,900
2.	Seguro Tours and Travel	529,135	22,335	435,135	71,665
3.	Pago Airways	1,335,298	210,380	855,580	289,338
	TOTAL	**4,453,133**	**255,510**	**1,413,720**	**2,783,903**

The amounts of Kshs.8,424,157 which relates to the pending bills for the year have been cleared as follows. Of the remaining four payments, three require budgetary provision to be processed for payment. No 9. (Alindi Auto Limited) requires further documentation to allow processing.

S/No	Supplier	Amount Paid (Ksh.)	Balance (Ksh.)	Remarks
1.	Co-operative Bank of Kenya	3,508,856.70	-	Paid
2.	Dorotel Consultants Limited	237,120.00	-	Paid
3.	Silver Africa Tours & Safaris Ltd	538,780.00	-	Paid
4.	MFI Document Solutions Ltd.	305,312.00	-	Paid
5.	Tymstar Motors Limited	465,200.00	-	Paid
6.	Travigent Agencies	933,090.00	-	Paid
7.	M/S Lumber Solutions	298,000.00	495,000.00	Inadequately supported
8.	Copy Cat Ltd	400,000.00	327,325.00	Payment in process

9.	Alindi Auto Limited	-	589,655.00	Payment in process
10.	Alindi Auto Limited	-	325,817.00	Payment in process
	TOTAL	**6,686,358.70**	**1,737,798.40**	

Committee Observations and Findings

(i) The Committee observed laxity in the Finance Department for failure to verify pending bills that were incurred more than two years ago;

(ii) The Committee further observed that the State Department was at risk of incurring penalties due to delays in settling pending bills.

Committee Recommendation

i) The Committee recommends that the Accounting Officer to prioritize payment of pending bills as provided for in Section 74 (4) of the PFM Act. Failure to adhere to the provision, the Accounting Officer commits an offence as he/she will be charged as per Section 199 of the PFM Act.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1620. Late Exchequer Releases

The statement of receipts and payments reflects exchequer releases of Kshs.502,981,964 as disclosed in Note 1 to the financial statements. Included in the figure is Kshs.92,956,173 and Kshs.28,644,650 totalling to Kshs.121,600,823 which was received in the State Department on 24 June, 2021 and 8 July, 2021 respectively. The late release of the exchequer by The National Treasury to the State Department caused delays in the use of the resources. Further, exchequer received on 8 July, 2021 was backdated in the records of the Department as received on 30 June, 2021 which is contrary to the basis of IPSAS cash reporting framework. This is 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.

Submission by the Accounting Officer

The Accounting Officer submitted that they received two exchequer issues totaling Kshs.121,600,823.00 released by the National Treasury on 24th June, 2021 and 8th July, 2021.

The Accounting Officer also submitted that the State Department submitted exchequer request for processed payments to the National Treasury on a timely basis. It is worth noting that the exchequer request that was funded on 8th July 2021 was requested on 25th June, 2021 and received on the same day by the Exchequer Department but the same was funded on 8th July, 2021. State Department has no control on the timing of exchequer issues.

Though the funding was received on 8th July, the budget that was utilized was for the Financial Year ending 30th June, 2021. The supplementary budget was approved on 3rd June, 2021 which necessitated the processing of payments beyond the last day of the financial year.

However, the Management committed to engage and follow up with the National Treasury to ensure funding of the budget was released without delays.

Committee Observations and Findings

The Committee further observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1621. There were no material issues relating to effectiveness of internal controls, risk management and governance.

43. STATE DEPARTMENT FOR REGIONAL AND NORTHERN CORRIDOR DEVELOPMENT - VOTE 1222

REPORT ON THE FINANCIAL STATEMENTS

Mr. Idris Salim Dokota, the Principal Secretary and Accounting Officer for State Department for Arid and Semi-Arid Lands and Regional Development appeared before the Committee on 25th May 2023 accompanied by the following officers:

1.	Mr. Paul Masinde	-	Chief Finance Officer
2.	Mr. William Ogola	-	Deputy Director, Regional Development
3.	Mr. Daniel Mwangi	-	Head of Accounts
4.	Mr. Kigen Kieti	-	Head of Supply Chain
5.	Dr. Alfred Mungai	-	Director Administration
6.	Mr. Wilson Omulo	-	Project Manager
7.	Mr. Wilfred Omari	-	Project Manager
8.	Ms. Clara Mbau	-	Finance Officer
9.	Ms. Sarah Mauta	-	Project Accountant

and submitted as follows;

Unmodified Opinion

1622. There were no issues noted during the audit of the financial statements of the State Department.

Other Matter

1623. Budgetary Control and Performance

The State Department received Exchequer receipts totalling Kshs.2,985,759,457 against an approved budget of Kshs.3,614,699,195 resulting to a shortfall of Kshs.628,939,738 or 17% of the approved budget. Similarly, actual expenditure amounted to Kshs.2,982,339,485 against the approved budget of Kshs.3,614,699,195 resulting to an under absorption of Kshs.632,359,710 or 17.5% which occurred mainly under transfers to other government Units. The shortfall in budgeted receipts and under-absorption implies that the overall goals and objectives of the State Department were not achieved as planned.

Submission by the Accounting Officer

The Accounting Officer Submitted that the State Department received exchequer receipts totaling to Kshs.2,985,759,457 against an approved budget of Kshs.3,614,699,195 resulting in a shortfall of Kshs.628,939,738 or 17%. However, the shortfall of Kshs.628,939,738 does not represent an under expenditure but other sources of financing. Of the above amount, Kshs.431,000,000 represents Appropriation in Aid (A.I.A) budgeted under the respective Regional Developments Authorities normally collected and utilized at the source. Kshs.60,000,000 represents proceeds from domestic and foreign grants, Kshs.17,500,000 represents proceeds from sale of assets budgeted under the respective Regional Developments Authorities. The balance of Kshs.126,000,000 represents proceeds from foreign borrowing meant for the Sigor Wei Wei phase II project implemented by Kerio Valley Development Authority.

Committee Observations and Findings

The Committee considered the response given by the Accounting Officer to be satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1624. Pending Bills

As previously reported, Annex 1 to the financial statements reflects pending bills amounting to Kshs.2,448,920,483 chargeable to both the recurrent and development votes that were not settled during the year under review but were instead carried forward to the 2021/2022 financial year. The pending bills balance includes an amount of Kshs.2,439,340,189 which relates to 2019/2020 and earlier financial years. No explanation was provided for failure to pay the 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 requires Accounting Officers to ensure that debt service payment is a first charge on the consolidated fund. 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 Accounting Officer submitted that the above pending bills are historical in nature having been incurred in the financial years 2010/2011 and 2011/2012 when the State Department was in the then Ministry of Regional Development.

Following the establishment of the State Department for Regional and Northern Corridor Development via the Executive Order No 1 of June 2018, the pending bills were handed over to the State Department in the FY 2018/2019. The supporting documents for the above bills have been availed to the audit team for verification.

Pending bills as reflected in the financial report amounted to Kshs 2,446,331,092 and comprised of three items as follows:

(i) Pending bills pertaining to Kimira Oluch smallholder Improvement Project amounts to Kshs 867,449,206.00. These bills have been forwarded to the Attorney General for direction.

(ii) Pending bills pertaining to consultancy services on the 5 multipurpose dams amounts to Kshs 1,571,890,983.00. These bills were verified by the Ministerial verification committee and the Treasury's Multi Agency team and found eligible for payment. The State Department has requested The National Treasury for budgetary support to clear the pending bills.

(iii) Pending bills for headquarters of Kshs.9,201,182.00. Out of these, bills amounting to Ksh.5,106,910.90 were paid during the financial year 2021/2022.

Committee Observations and Findings

(i) The Committee observed that the State Department confirmed the eligibility of the pending bills for payment but failed to prioritize them, and continued making payments to other suppliers;
(ii) The Committee noted insufficient follow-up on the Kimira Oluch Smallholder Improvement Project matter that was referred to the Attorney General.

Committee Recommendation

(i) **Within sixty (60) days of adoption of this report, the Accounting Officer to avail status report on efforts to settle the pending bills.**
(ii) **The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity.**

1625. Unresolved Prior Year Matters

1625.1 Irregular Advance Payment for Kimwarer Multipurpose Dam Development Project

As previously reported, the statement of receipts and payments for the year ended 30 June, 2019 reflected proceeds from foreign borrowing of Kshs.3,666,495,236 out of which Kshs.3,485,500,628 was paid to an International Joint Venture firm on 564 27 September 2018. The payment, which was effected in the books of the State Department on 02 November, 2018 through journal entries was an advance payment for designing, building and transfer of the proposed Kimwarer Multipurpose Dam Development Project. Available information indicates that this matter is unresolved and under investigation by the relevant authorities.

Submission by the Accounting Officer

The Accounting Officer submitted that this matter was under investigations by the relevant authorities is currently before court and relevant documents have been forwarded to the investigative authorities.

Committee Observations and Findings

The Committee observed that the matter was undergoing litigation.

Committee Recommendation

The Committee recommends that the outcome of the court process be awaited, and the Accounting Officer to avail a status report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1626. Compensation of Employees

1626.1 Staff Under-Establishment

Examination of payroll records revealed that the State Department had an approved staff establishment of eighty-one (81) staff, comprising of Forty-nine (49) posts for technical services cadres and thirty-two (32) posts for support services cadres. However, the Department had a total of fifty-nine (59) staff in post comprising of five (5) technical staff and fifty-four (54) support services staff resulting in an overall under establishment of twenty-two (22). Failure to recruit or

retain the required number of staff may result in poor service delivery and may negatively impact on the realization of the Department's goals. This is contrary to Public Service Commission Approval letter Ref. No.PSC/EMCS/13/2/(3) dated 29 September, 2020 which authorized the State Department to have an establishment of eighty one (81).
Consequently, the Management was in breach of Public Service Commission circular.

Submission by the Accounting Officer
The Accounting Officer submitted that the State Department for Regional and Northern Corridor was understaffed in the year under review. However, approval was granted by the Public Service Commission for the recruitment of Forty-Two (42) Technical Officers as per the Authorized Establishment. Interviews were conducted in July, 2022 and the Public Service Commission has since granted their approval for the Appointment of the officers.

Committee Observations and Findings

(i) The Committee noted that there was chronic understaffing of technical staff while support staff were overstaffed;

(ii) The Committee noticed a delay in implementing the approval granted by the Public Service Commission. The approval was given in September 2020, but the interviews were conducted in July 2022, causing the delay;

(iii) Committee observed that the Accounting Officer attributed delay of implementation of the approval by Public Service Commission to lack of qualified candidates. This explanation was deemed unsatisfactory.

Committee Recommendation
The Committee directs the Accounting Officer to comply with the Public Service Commission Approval letter Ref. No.PSC/EMCS/13/2/(3) dated 29 September, 2020 which authorized the State Department to have an establishment of eighty one (81), within six months following the adoption of this report by the house.

1626.2 Non-Compliance with Affirmative Action on Gender Ethnicity and Regional Distribution
Examination of Human Resource records for the State Department for Regional and Northern Corridor Development revealed that during the year under review, the Department had a total of fifty-nine (59) employees out of whom twenty-four (24) or 40.68% of the workforce were from one ethnic group. Although Management has explained that they do not have control of the staff ethnic composition as they get their staff from Central Placement Committee of the Public Service Commission, the ethnic diversity was not achieved in the Department's staff composition. This is contrary to the provisions of Section 7(1) and (2) of the National Cohesion and Integration Act, 2008. Consequently, the Management was in breach of law.

Submission by the Accounting Officer

The Accounting Officer submitted that 40.68% of the State Department's workforce during the year under review were from one ethnic group. However subsequent postings and deployments have improved this situation though on a lower magnitude. The State Department has deliberately taken this into consideration during the interviews for the technical officers.

Committee Observations and Findings
The Committee noted that the State Department was in breach of the Constitution.

Committee Recommendation
The Accounting Officer and the Public Service Commission to rationalize staff ethnicity in the State Department within six (6) months of adoption of this report by the House.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1627. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECT

KIMIRA OLUCH SMALLHOLDER FARM IMPROVEMENT PROJECT (ADF LOAN NO.2100150012296)

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1628. There were no material issues noted during the audit of the financial statements of the Project.

Other Matter

1629. Pending Bills
Disclosed in Annex 2A to the financial statements are pending bills totalling to Kshs.700,656,527 as at 30 June, 2021 and which had been brought forward from 2019 / 2020 financial year. No satisfactory explanation was given by the Management for failure to settle the bills during the year in which they were incurred.

Submission by the Accounting Officer
The Accounting Officer submitted that the observation and wish to explain that the pending bills in question are historical in nature and could not be settled in the years they were incurred due to budget cuts in the said periods. Further to that, during the financial year under review, the National Treasury reduced development budget allocations to Ministries due to the negative effects of Covid-19 on government revenue. As a result, the Project suffered a development budget cut of 84.3%, from approved budget of Kshs.398,408,500 to actual received of Kshs.62,594,000 as seen in the Financial Report on the Statement of Receipts and Payments for the year ended 30th June 2021 and Inter Entity Transfers Confirmation Letter. The budget cut left the project with 15.7% of

the approved budged for the year which was only able to support operation expenditure during the year.

Committee Observations and Findings

(i) **The Committee acknowledged that the Accounting Officer attributed the cause of the unpaid bills accumulation to budget cuts;**

(ii) **The Committee observed that the funding structure for the project involved the Government of Kenya (GOK) providing 14%, the African Development Bank (ADB) providing 85%, and the remaining 1% being funded by the farmers;**

(iii) **The Committee acknowledged that the Project was 80% completed.**

Committee Recommendation

The Accounting Officer to submit status report on the completion of the project within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1630. Irregular Payment of Meal Allowances

Disclosed in Note 9.5 to the financial statements under compensation of employees are payments totalling Kshs.25,028,750, being personal allowances paid as part of salary. Included in these payments is an amount of Kshs.937,500 paid to various members of staff as meal allowances while working during lunch hours and late in the night as indicated in the memo dated 17 September, 2020. However, no documentary evidence was provided for audit review in support of the rates used in payment of the meal allowances. As a result, the validity and regularity of the meals allowances totalling Kshs.937,500 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there was a delay in providing the documentary evidence in support of the rates used in payment of the meal allowances for audit review.

Committee Observations and Findings

The Committee recognized that compensating for meals in the form of an allowance was inappropriate.

Committee Recommendation

The Committee recommends that the Accounting Officer recovers the Kshs. 937,500 from the beenficiaries, within three months of tabling and adoption of this report.

1631. Project Vehicles Not Handed Over by the Consultant

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 after the completion of 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.

Submission by the Accounting Officer

The Accounting Officer submitted that the consultant was in breach of the contract after having failed to hand over project vehicles Reg.no. KBS 681Z Toyota and Reg.no. KBS 682Z Toyota Hilux Double Cabin Pick-ups at the end of his contract despite several requests to do so as evidenced by our correspondences provided. As a way forward the Project Management is pursuing the matter with a view of offsetting the liability of vehicles with the debt owed to the consultant of Kshs 6,900,000.

Committee Observations and Findings

(i) **The Committee noted that the consultant has requested payment from the State Department, which was yet to be done;**
(ii) **Furthermore, the Committee observed that one of the vehicles was involved in an accident and is now considered a write off;**
(iii) **The State Department had not assessed the value of the vehicles.**

Committee Recommendation

The Accounting Officer to resolve the matter with the consultant and offset value of the vehicles from his dues, and provide a status report to the Committee within three (3) months of adoption of this report.

1632. Outstanding Imprests

Imprests amounting to Kshs.781,450 had not been surrendered at the closure of the year under review contrary to Regulation 93 (5) of the Public Finance Management (National Government) Regulations, 2015 that requires a holder of a temporary imprest to account for or surrender the imprest within seven (7) working days after returning to duty station.

Submission by the Accounting Officer

The Accounting Officer submitted that there existed unupdated imprests in the imprest register, amounting to Ksh.781, 450.00. There was a delay in updating the imprest register thus showing some imprests as outstanding. This is evident by the non-existence of Imprest balances or Accounts receivables in the statement of Assets and Liabilities. No imprests remained outstanding at the end of the financial year. The imprest register was updated to reflect the correct position and presented to the auditors for examination.

Committee Observations and Findings

The Committee observed that the amount of Kshs.781, 450 was surrendered but the imprest register was not updated.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting contrary to Regulation 93 (5) of the Public Finance Management (National Government) Regulations, 2015 that requires a holder of a temporary imprest to account for or surrender the imprest within seven (7) working days after returning to duty station.

1633. Ethnic Composition of Staff

During the year under review, the project had thirty-four (34) employees out of whom twenty-four representing 75% of the workforce were from the dominant ethnic community in the region. This is contrary to Section 7(1) and (2) of the National Cohesion and Integration Act, 2008 which requires all public entities to represent the diversity of the people of Kenya in employment of staff and not to have more than one third of staff from one ethnic community.

Submission by the Accounting Officer

The Accounting Officer submitted that majority of the project staff were from one predominant community in the region as at the time of audit. This was influenced by the project location, probability of retention and the need for ease in communication in local dialect to promote adequate participation of the local communities in the project implementation activities. As a way forward, the state department will strive as a project to diversify the human resource representation.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer was satisfactory.

Committee Observations and Findings

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1634. Lack of Audit Committee

The Project had also not established an Audit Committee to assist the Management with responsibilities for issues of risk, internal controls, governance and associated assurance, and follow-up on the implementation of the recommendations of internal and external auditors.

Submission by the Accounting Officer

The Accounting Officer submitted that the Project did not have an Audit Committee in place. 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.

As a way forward, the Project Management will undertake to make the internal audit more accountable to the Parent Ministry's Ministerial Audit Committee for independence.

Committee Observations and Findings

i. **The Committee noted the absence of an Internal Audit Committee for this project;**
ii. **The Committee deemed the response provided by the Accounting Officer unsatisfactory, as it failed to address the audit query;**
iii. **The Committee observed there has been no Internal Audit Committee for this project;**
iv. **The Committee found the response by the Accounting Officer unsatisfactory as it did not address the audit query.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to put in place an independent Audit Committee as required by Section 73 (5) of the Public Finance Management Act 2012.

1635. Lack of Staff Establishment

During the year under review, the Project did not have an approved staff establishment and human resource plan to support achievement of goals and objectives in the strategic plan.

Submission by the Accounting Officer

The Accounting Officer submitted that they regret the non-provision of the approved staff establishment to the audit team. However, the project obtains approvals for the required staff as and when needed depending on the level of the project activity cycle. The approved establishment in use is has been availed to the Audit team.

Committee Observations and Findings

The Committee noted that no staff establishment was availed as at the time of audit but the same was now available.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1636. As required by the African Development Fund, I report based on the audit, that the Project funds and the counterpart funds have been used in accordance with the conditions of Loan Agreement with due attention to economy, efficiency and effectiveness for the purposes for which they were provided. Further, goods and services financed have been procured in accordance with the Loan Agreement and the Fund`s rules and procedures and necessary supporting documents, records and accounts have been kept in respect of all Project activities. In addition, adequate internal control to monitor expenditure and other financial transactions and ensure safe custody of assets exist and ledgers and fixed assets register for the Project's assets are maintained as required.

44. STATE LAW OFFICE AND DEPARTMENT OF JUSTICE - VOTE 1252

REPORT ON THE FINANCIAL STATEMENTS

Hon. Shadrack Mose, the Solicitor General and Accounting Officer for the State Law Office and Department of Justice, appeared before the Committee on 18th April 2023, 3rd May 2023 and 24th May 2023 accompanied by the following officers to consider the examination of the report of the Auditor-General for the year ended 30 June, 2021: -

1.	Mr. Kenneth Gathuma	-	Director General
2.	Ms. Flora Bidali	-	Acting Director, National Legal Aid Service
3.	Ms. Lucy Mugo	-	Chief State Counsel, Public Trustee
4.	Mr. Erastus Mbalu	-	Deputy Director, Finance and Accounts
5.	Ms. Irene M. Mbogo	-	Deputy Accountant General
6.	Mr. Benard Sabwami	-	Deputy Accountant General
7.	Ms. Gorette Nyariki	-	Deputy Chief State Counsel
8.	Mr. Hillary N. Kyengo	-	Senior Deputy Secretary, Administration
9.	Mr. Christopher Keter	-	Head Procurement
10.	Mr. Robert Osamo	-	Chief Finance Officer
11.	Mr. Alfred Mukuril	-	Principal Finance Officer

and submitted as follows;

Basis for Qualified Opinion

1637. Unreconciled Variance Between the Financial Statements and Payroll Records

As disclosed in Note 3 to the financial statements, the statement of receipts and payments reflects expenditure on compensation of employees of Kshs.1,268,188,315 against the payroll records balance of Kshs.1,266,275,599 resulting in unreconciled variance Kshs.1,912,716. Consequently, the accuracy and completeness of the expenditure on compensation of employees of Kshs.1,268,188,315 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the financial statements, the statement of receipts and payments reflect unreconciled variance of Ksh.1,912,717. The variance arose as a result of compensation of employees made outside the IPPD system for various reasons such as partial salaries made after retirement, leave commutation of the Attorney General whose salary is drawn from the Consolidated Fund Service and the 13th salary paid to officers for exceptional performance.

Other details are indicated in the table below;

No.	Particular /Item	Amount (KShs.)	Remarks
1	Abdille Hussein Adow- Being payment of one (1) month's salary advance w.e.f 1.11.2020	28,850.00	Same was recovered in 12 equal monthly installments w.e.f 1.11.2020
2	Yohana Kibet Kogo-Being payment of baggage allowance upon attaining the mandatory retirement age of 60 years w.e.f 01.07.2020	28,000.00	Paid after retirement
3	Richard Ilabo- Being payment of baggage allowance upon attaining the mandatory retirement age of 60 years w.e.f 20.02.2020	33,750	Paid after retirement
4	Leonard Gatheca Kanyiri-Being payment of salary and allowances for 4 days from 1.8.2020 to 4.8.2020 following his demise on 4.8.2020	6,744.50	Paid post-humously
5	Nathan Muchocho Juma-Being salary underpayment arrears for 4 days while proceeding on retirement (he was paid up to and including 11.12.2020 instead of 15.12.2020).	5,589.68	Paid after retirement
6	Elizabeth Achieng-Being payment of a 13th Salary awarded for excellent performance for the FY 2019/20	108,120.00	The payment was due after retirement. However, the performance period was when in service
7	Hon. Justice (Rtd) Paul Kihara- Being payment of 30 days Leave Commutation for cash	630,037.00	The Hon. Attorney General Payroll data was with Consolidated Fund Service (CFS)
8	Mary Njoki Njuya-Being payment of a 13th Salary awarded for excellent performance for the FY 2019/20	582,930.00	The payment was due after retirement. However, the performance period was when in service
9	Edith N. Mungania-Promotion arrears prior to retirement w.e.f 2.05.2021	71,851.00	Paid after retirement
10	Ms. Reson Sheila -Salary arrears on 1st appointment- State Counsel II	337,959.00	Payroll number delayed

No.	Particular /Item	Amount (KShs.)	Remarks
11	Allan N. Sikuku -Salary Arrears upon promotion from grade of Senior Clerical Officer to Chief Clerical Officer w.e.f 9.06.2021 prior to his retirement on 1.07.2021	3,402.00	Paid after retirement
12	Salary Arrears paid to Agnes M. Nzomo upon promotion prior to her retirement w.e.f 1.07.2021	13,904.00	Paid after retirement
13	Mr. David K. Koech -Payment of salary arrears for upon promotion w.e.f 9th June 2021 prior to retirement w.e.f 1.07.2021	858.00	Paid after retirement
14	Mr. Nyangweso Lumumba Wicky - Payment of promotion arrears for w.e.f 9th June 2021 prior to his retirement on 23.01.2021	6,499.35	Paid after retirement
15	Mr. Francis Mwanzia Maweu- Payment of 6 days salary for upon retirement under the 50-year rule w.e.f 7-2-2022	12,329.95	Paid after retirement
16	Ms. Ireri Lucy Nyambura Payment of salary arrears for P/No 1980107604	39,411.00	Paid after retirement
	Total	**1,912,716.00**	

The Accounting Officer also submitted that the Human Resource Manual 2015 provides guidelines on salary advance. The agency clarified that the matter in question was a stand-alone case that was done on application and merit. The Agency added that the system is now configured in such a way that it does not capture non monthly payments.

Committee Observation and Findings

The Committee noted that reconciliations were not done.

Committee Recommendation

The Committee reprimands the Accounting Officer, and directs that he ensures 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.

1638. Discrepancies Between Balances in the Financial Statements and the Integrated Financial Management Information System (IFMIS)

Comparison of the financial statements balances and IFMIS balances revealed various variances as shown below:

Description of Account Item	Balances in the Financial Statements (Kshs.)	IFMIS (Kshs.)	Variances (Kshs.)
Acquisition of Assets	25,898,894	63,988,512	(38,089,618)
Funds Balance Brought Forward	626,231	4,979,594,344	(4,978,968,113)
Net Cash Flow from Operating Activities	(323,273,245)	458,163,924	(781,437,169)
Net Increase in Cash and Cash Equivalents	(349,172,139)	(4,843,062,818)	4,493,890,679
Adjustment during the year	626,231	484,062,818	(483,436,587)
Cash in Hand	-	2,977,880,892	(2,977,880,892)
Account Payable - Deposits	452,910,021	1,548,803,431	(1,095,893,410)

The variances were not reconciled or explained. As a result, the accuracy and completeness of the balances and amounts reflected against the account items in the financial statements for the year ended 30 June, 2021 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that there were unexplained variances between the figures in Financial Statements and figures in the (IFMIS). The figures in the Financial Statements are actual amounts for the year ended 30 June, 2021. The IFMIS figures are erroneously accumulated historical balances from FY2013/2014 up to FY2017/2018.

Following PAC's recommendations, the Office wrote to the National Treasury on this matter and consequently the National Treasury cleared all the erroneous historical balances in IFMIS.

The Accounting Officer indicated that the financial reports, the receipts and payments were old balances from previous years. The information was therefore generated as annexes.

The Accounting Officer further explained that IFMIS is basically accurate and that it takes what its fed with. IFMIS can have errors if what it is fed with has errors or the users of the system have challenges in using the system.

Committee Observation and Findings
The Committee noted that reconciliations were not done.

Committee Recommendation
The Committee reprimands the Accounting Officer, and directs that he ensures 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.

Other Matter

1639. Pending Bills

As disclosed in Note 16.1 to the financial statements, the State Law Office and Department of Justice reported pending bills of Kshs.106,678,629 as at 30 June, 2021, which were not settled during the year but were instead carried forward to the 2021/2022 financial year. Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year to which they have to be charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the Office reported pending bills of Kshs.106, 678, 629 as at 30 June 2021, which were not settled during the year but were instead carried forward to 2021/2022 financial year. The bills were occasioned by inadequate exchequer releases. These bills have been settled as shown in the table below:

Original Amount	Amount Paid	Outstanding Amount
Kshs.106,769,230.65	Kshs.89,519,684.94	Kshs.17,249,545.71

Pending bills totaling Kshs.17, 249,545.71 are undergoing verification with the intention of settling them when funds are available.

The Accounting Officer assured the Committee that all the pending bills will be paid by the end of the current financial year (2022/2023).

Committee Observations and Findings
The Committee observed that the Accounting Officer was taking inordinately long to verify pending bills.

Committee Recommendation
The Committee recommends that the Accounting Officer prioritises pending bills and treat them as first charge in accordance with Section 74(4)(d) of the PFM Act 2012and Regulation 42(1)(a) of the PFM National Government Regulations 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1640. Programme for Legal Empowerment and Aid Delivery

The State Law Office and Department of Justice received an amount of Kshs.45,082,742 from European Delegation, GIZ under Programme for Legal Empowerment and Aid Delivery (PLEAD) during the year under review. However, the Accounting Officer did not prepare and submit the financial statements of the donor funded project for the year ended 30 June, 2021 to the Auditor-General for audit as required by Section 84 of the Public Finance Management Act, 2012. Management was therefore in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that State Law Office and Department of Justice received Kshs.45,082,742 from European Union Delegation (EUD) under PLEAD whose financial statements were not submitted for audit.

The Accounting Officer also submitted that the delay in the preparation and submission of the financial statements was occasioned by the fact that the project was in its initial phase and had not taken off in its entirety. The financial statements have now been prepared, submitted, audited and certified.

Committee Observation and Findings

(i) The Committee observed that the Accounting Officer did not provide the requisite documents to auditors and failed to account for monies received within the required time frame;

(ii) The Committee also observed that the explanation and documents submitted by the Accounting Officer were not satisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for violating the provisions of Section 84 of the Public Finance Management Act, 2012.

1641. Compensation of Employees

1641.1 Unsupported 3% Commission on Payroll Deductions

During the year under review, the State Law Office and Department of Justice deducted from the payrolls an amount of Kshs.3,934,100 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 is contrary to Regulation 81(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Receiver of Revenue shall promptly deposit into the National Exchequer Account all receipts due to the Consolidated Fund.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount of Kshs.3,934,100 is not recorded in State Law Office and Department of Justice books of accounts as revenue.

The Accounting Officer also submitted that the commission is automatically deducted in the IPPD system and automatically remitted by IFMIS to the Principal Secretary, National Treasury.

Committee Observation and Finding

The Committee observed that the 3% deduction is sent directly to the consolidated fund without a trail or Treasury acknowledgement.

Committee Recommendation

The Committee recommends that the Accouting Officer recognizes the movement of the funds in the financial statements and obtains Treasury acknowledgement going forward.

1641.2 Non-Compliance with the One Third of Basic Salary Rule

During the year ended 30 June, 2021, twenty-eight (28) employees earned a net salary of 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 Management did not provide satisfactory explanation for failure to comply with the law and prevailing policies.

Management was therefore in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year ended 30 June, 2021, twenty-eight (28) employees earned a net salary of less than a third (1/3) of their basic salary. The occurrences were occasioned by introduction of mandatory statutory deductions such as the Public Service Superannuation Scheme, shift to a new graduated tax bracket and NHIF contribution after annual increment or promotion.

The Accounting Officer also submitted that the occurrence is not IPPD-system controlled. The affected officers were communicated to and they have readjusted their commitments accordingly.

Committee Observations and Findings

The Committee noted that the non-compliance was due to a change of PSC superannuation programme and a shift to new tax brackets.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures incremental adherence to the provisions of the law.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1642. Weak Asset Management

Disclosed in Annex 3 to the financial statements is a summary of fixed assets register with historical balances totalling Kshs.184,571,413 as at 30 June, 2021. However, the 569 assets

register was not updated with pertinent details including clear description, date of acquisition, cost, location and unique identification numbers of the assets. In addition, the assets were not tagged with unique identification numbers.
In the circumstances, there existed weak internal control over the assets during the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the fixed assets register balances were Kshs.184, 571,413. The balances are from a summary prepared for financial reporting purposes.

The Accounting Officer also submitted that the State Law Office has been updating the fixed assets register with details including description, date of acquisition, cost, location and unique identification numbers. Lotting and disposal of obsolete fixed assets is ongoing. A Complete register of Motor Vehicle is available.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer and documents availed showing the regular updates of the fixed assets register.

Committee Recommendation

The Committee directes the Accounting Officer to ensure that an efficient and reliable Asset Management system is in place and avails a status report within three (3) months of adoption of this report.

1643. Lack of an Approved Enterprise Risk Management Process and IT 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, the Office and Department of Justice did not have an IT Strategic Committee or IT Strategic Plan that supports business requirements. In addition, formally approved IT Security Policy was lacking to ensure data confidentiality, integrity and availability; documented and tested emergency procedures; and IT continuity and disaster recovery plan

Submission by the Accounting Officer

The Accounting Officer submitted that the State Law Office and Department of Justice did not have an approved and well-documented Enterprise-wide Risk Management Process in place. The Office did not also have an IT Strategic Committee and IT Strategic Plan that supports business requirements for the year 2020/20.

The Accounting Officer also submitted that the State Law Office established ICT Strategic Committee and has developed ICT Policy (revised December 2021). Currently, the office has established Enterprise Risk Management Committee which is formulating the Enterprise Risk Management Policy. Institutional-wide risk register has also been developed.

The Accounting Officer further submitted that sensitization of Heads of Departments on Enterprise Risk Management has been undertaken and nomination of Risk Champions is on-going.

Committee Observation 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.

REVENUE STATEMENTS OF THE STATE LAW OFFICE AND DEPARTMENT OF JUSTICE

REPORT ON THE REVENUE STATEMENTS

Unmodified Opinion

1644. There were no material issues noted during the audit of the revenue statements.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1645. 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.168,847,855 which includes an amount of Kshs.168,776,500 collected through Huduma Centres and relating to prior years which was not transferred to the Receiver of Revenue for subsequent remittance to the Exchequer. This is contrary to Regulation 64(1)(a) of the Public Finance Management (National Government) Regulations, 2015, that requires Accounting Officers and Receivers of revenue to personally be 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.
Under the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that there is a balance due for disbursement of Ksh.168,776,500 held by huduma centres relating to prior years collections, which have not been transferred to the Central Bank of Kenya.

The amount was collected by the Postal Co-corporation of Kenya (PCK) through Huduma centers on behalf of the State Law Office.

The matter was discussed in the PAC reports of 2016/2017 and 2017/2018 and the matter was marked as resolved in the sitting of 27th November, 2019.

The National Treasury committed itself to handle the matter directly with the PCK vide letter Ref. No. AG/CONF/7/01/VI/TY of 21st January, 2018.

The Accounting Officer further submitted that the State Law Office has written to the National Treasury vide letter Ref. No. AG/ACCTS/41 Vol. III/9 dated 13th March, 2023 requesting for an update to enable them settle the matter from their books.

Committee Observations and Findings

The Committee observed that the Huduma Centres are run by the Postal Corporation of Kenya and that there was no contract with Safaricom.

Committee Recommendation

The Committee recommends that the National Treasury avails a status report on the matter, as had been previously resolved, within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1646. Weakness in Revenue Collection Management

Review of the revenue accounting system at the registration of societies revealed that duties of revenue collection, preparation, checking reconciliations and reporting of revenue received were being handled by one person instead of segregating among other officers. Further, the revenue collected during the year was receipted and not recorded in the revenue books of account. Management did not maintain a collection control sheet (CCS) Form (G.P.163) detailing the collector's name, period, series of receipts, number of receipts, amount, date and signature. Under the circumstances, the existence of effective internal controls to safeguard against revenue loss and key processes of internal controls capable to provide an audit trail could not be established.

Submission by the Accounting Officer

The Accounting Officer submitted that the Registrar of Societies section, duties of revenue collection, preparation, checking reconciliations and reporting of revenue were being handled by one person due to shortage of staff.

The Accounting Officer also submitted that additional staff have now been deployed and duties shared among various officers.

Committee Observations and Findings

The Committee noted that money collected was not adequately recorded and there was no division of labour, pointing to weak internal controls.

Committee Recommendations;

Within three (3) months of adoption of this report, the Accounting Officer should put in place proper internal control mechanisms to ensure that there is no loss of revenue and report to the Committee.

BUSINESS REGISTRATION SERVICE

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1647. Inaccuracies in the Financial Statements

The following errors and omissions were noted in the financial statements and the accompanying explanatory notes for the year ended 30 June, 2021.

i. The statement of cashflows reflects nil increase/(decrease) in prior year balances on working capital adjustments. However, the statement of financial position reflects balances of Kshs.13,051,625 and Kshs.2,448,006 in respect of inventories and trade and other payables which have not been accounted for. Further, purchase of intangible assets amounting to Kshs.1,588,400 has been omitted under cash flow from investing activities. In addition, net cash flow from operating activities has a casting error amounting to Kshs.10,603,619.

ii. The statement of financial position reflects property, plant and equipment balance of Kshs.29,108,571 while the corresponding Note 18 to the financial statements reflects a balance of Kshs.30,532,980, resulting in unexplained variance amounting to Kshs.1,424,409.

iii. As disclosed in Note 19 to the financial statements, the statement of financial position reflects intangible assets balance of Kshs.1,424,409. However, Note 19 omitted the dates, months and years against the description of balances at the beginning, and end of the years reported for the intangible assets.

iv. The statement of financial position reflects long outstanding trade and other payables balance of Kshs.2,448,006. No explanation was provided why the outstanding payables have not been settled.

In the circumstances, the completeness and accuracy of the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there were some omissions on the printed financial statements for the Financial Year 2020/2021 which were noted by the auditor on 9th March, 2022 and they advised Business Registration Service management to correct the omissions and the same was corrected under the revised financial statement dated 9th March, 2022.

However, by the time the management secured all the signatures to the revised financial statements, the Office of the Auditor General had already concluded the Audit process and the certificate dated 11th March, 2022 issued with the same errors.

The responses to the issues raised by the auditor of the casting error and unexplained variance were corrected in the revised financial statements.

The Accounting Officer also submitted that a figure of Kshs.2,448,006 related to the gratuity which was payable in the FY 20219/2020 and by the close of the FY 2020/2021 the same had not been transferred to a separate account. However, Business Registration Service got an approval from the National Treasury on 15th March 2022 and was able to open the account in Kenya Commercial Bank Account no. 1300691360 and the funds were transferred to the account.

The Accounting Officer further submitted that the Business Registration Services (B.R.S) had acute shortage of staff and that they were using a manual system.

Committee Observations and Findings
The Committee noted that errors of casting are basic errors that should not have occurred.

Committee Recommendation

Accounting Officer should ensure that the entity keeps complete and reconciled financial and accounting records that comply with provisions of Section 68(2) of the PFM Act 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis of Conclusion

1648. Staff Ethnic Composition
The Business Registration Service had a total of one hundred and thirty (130) staff members as at 30 June, 2021. However, as previously reported, a review of the ethnic composition of the Service revealed that out of the one hundred and thirty (130) staff members, forty-six (46) were from the same ethnic community representing 35% of the total number of staff. This is contrary to Section 7(2) of the National Cohesion and 572 Integration Act, 2008 which states that no public establishment shall have more than one third of its staff from same ethnic community. The Management was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer submitted that Business Registration Service as at 30th June 2021 had an establishment of 104 staff members. However as stated by the auditor there is no ethnicity balancing of the staff which was majorly attributed by the number of staff inherited by BRS from the Office of the Attorney General.

The problem has since been addressed following the replacement of staff by the Service which stands at 109 currently.

Committee Observation and Findings
The Committee noted the submission by the Accounting Officer.

Committee Observation and Findings
The Committee recommends that the matter is resolved.

1649. Unauthorized Gratuity Payment
As disclosed in Note 9 to the financial statements, the statement of financial performance reflects employee costs amounting to Kshs.216,287,446. Included in the expenditure is an amount of Kshs.17,266,503 paid in respect of staff gratuity through unauthorized and unnumbered voucher and cheque number 003761 of 30 June, 2021. In addition, the payment was being held as unpresented cheque. No explanation was provided by Management for the irregularity.
Consequently, the regularity of the gratuity payment amounting to Kshs.17,266,503 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that Business Registration Service (BRS) had not paid any gratuity to any staff as at June 30th 2021. The amount stated by the auditor of Kshs.17,266,503 was a provision of the gratuity payable for the period which was already provided in the books awaiting to be banked.

The Accounting Officer also submitted that BRS managed to open a Gratuity and retention account no.1300691360 with KCB Bank and the same amount has already been transferred to the account.

Committee Observations and Findings

The Committee noted that the agency now had a gratuity retention account for those staff on contract.

Committee Recommendation

The Committee that National Treasury should develop policy guidelines on the matter and report to the Committee within six (6) months of adoption of the report.

1650. Lack of a Fixed Assets Register

The statement of financial position reflects property, plant and equipment balance of Kshs.29,108,571 (2020 – Kshs.30,672,318). However, the Management did not maintain an assets register contrary to Regulation 143 of the Public Finance Management (National Government) Regulations, 2015. Further, the assets were not tagged for ease of traceability and accountability. Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the finding is noted and is indeed true. The asset register has been duly updated.

On the issue of tagging of assets for the ease of traceability and accountability of BRS, the Accounting Officer submitted that the exercise was not carried in the FY under review due to resource constraints.

However, the same has been noted and it is being implemented in the current financial year 2022/2023.

Committee Observation and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommnedation

The Committee recommends that the matter is resolved.

1651. Irregular Procurement of Cloud Hosting Services

The Business Registration Services (BRS) procured cloud hosting services from a firm for design, supply delivery, installation, configuration, commissioning and maintenance of cloud hosting services at a contract sum of Kshs.7,340,024. However, review of tender documents revealed that the firm awarded the contract was not among the ten (10) prequalified suppliers for restricted tendering, identified by the Ministry of Information Communication and Technology for maintenance of cloud services under tender number MOICT/SDICT/055/2018-2019.

Further, the contract document between BRS and the firm provided for audit was not dated, signed and stamped. Records provided indicates that BRS had paid an amount of Kshs.6,606,022 or 90% of the contract sum to the firm. However, BRS is not benefiting from the project due to unaddressed cyber security concerns on handling of the government data on private servers.

Consequently, value for money was not realized on the expenditure of Kshs.6,606,022 due to unaddressed cyber security.

Submission by the Accounting Officer
The Accounting Officer submitted BRS procured cloud-hosting services at a contact sum of kshs.7,340,024 from MFI, which was not amongst the prequalified suppliers for restricted tendering by the Ministry of Information, Communication and Technology for maintenance of cloud services.

As at the time of Audit, the signed contract between the MFI and BRS was misplaced in the offices. The signed contact has since been traced.

The Accounting Officer confirmed that BRS incurred an expenditure of Kshs.6,606,022. The project was completed by MFI /Angani and when the Service wanted to migrate the data from the E-citizen platform to the newly acquitted alternative hosting, the Service contacted the National Treasury Government Digital Payment Department that is responsible for maintenance of the E-citizen Ecosystem requesting for approval to commence the migration of the data.

The National Treasury advised the Service to consult and seek approval and technical support from the Ministry of ICT and the Ministry of Interior and Coordination of National Government. The Ministry of ICT proceeded to have an approval to BRS however, the Ministry of Interior and Coordination of National Government rejected the Service's request citing that personal Identifiable information cannot be hosted on a private cloud since it is a contravention with the National ICT Policy.

BRS was advised to set up a locally hosted data center. This decision led to a halt on the alternative hosting project and had an impact on the activities that the Service was planning to implement.

Committee Observations and Findings
The Committee noted that there was possible loss of funds for undelivered services, since 90% of the total amount was irregularly paid contrary to the provisions in the contract.

Committee Resolution
The Committee recommends that EACC investigates the matter and the Accounting Officer be surcharged to recover amounts lost.

1652. Payment for Goods and Services from Unregistered Supplier
Business Registration Service procured and paid for goods and services amounting to Kshs.76,273,491 in the year under review from various suppliers who were not registered 573 as required under Sections 56 and 57 of the Public Procurement and Asset Disposal Act, 2015. Consequently, it was not possible to confirm value for money in the award of the contracts and whether the contracts were sourced competitively in accordance with the Public Procurement and Asset Disposal Act, 2015.

Submission by the Accounting Officer
The Accounting Officer submitted that Business Registration Service was not having a list of prequalified suppliers during the year under review since it was in the process of delinking from the Office of the Attorney General hence it relied on the Ministries registered list of suppliers.

Currently, the Service has its own prequalification list since it has fully delinked.

Committee Observations and Findings

(i) **The Office of the Auditor General confirmed that the Agency has now complied with the requirements of the law;**

(ii) **The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.**

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1653. Lack of a Disaster Recovery and Continuity Plan

As previously reported, Business Registration Service did not have an approved Disaster Recovery Plan and IT Business Continuity Plan in the year under review. This posed a significant threat to resumption of operations quickly and effectively in case of an emergency or a disaster. Lack of Business Continuity and Data Recovery Plan may affect the operations of the entity.

Submission by the Accounting Officer

The Accounting Officer submitted that BRS had no Disaster recovery plan in the year under review. However, the Service relied on the hard disks which were stored in fire poof cabinets with limited access of two personnel's and it used to back up on monthly basis since it was in the process of developing its own disaster recovery and continuity plan after delinking. The same has since been developed.

Committee Observations and Findings

The Committee observed that the BRS has now developed a Disaster recovery plan;

Committee Recommendation

The Committee recommends that the matter is resolved.

1654. Use of Unauthorized Accounting System for Handling Government Data

Business Registration Service (BRS) accounting information is being processed through quick books without authority from The National Treasury. Further, there is no contract between the BRS and the supplier or developer of the system setting the terms for the use and upgrading of the system. In the circumstances, management may have compromised the integrity of the BRS accounting data.

Submission by the Accounting Officer

The Accounting Officer submitted that BRS was using QuickBooks to maintain its records which was a replica of the manual records. The quick book was a stop gap measure as the service awaited operationalization of ERP which has since been acquired.

After the operationalization of ERP system, all the accounting data which was in the quick book was transferred to the new system. The QuickBooks used by BRS was customized and tailored to BRS needs.

Committee Observations and Findings
The Committee noted that the agency was not able to explain why they were not using the Government's IFMIS system and were using Quickbooks instead.

Committee Recommendation
The Committee directs the Accounting Officer migrates to IFMIS and submit a report to the Committee within three (3) months of adoption of this report.

REVENUE STATEMENTS - BUSINESS REGISTRATION SERVICE

REPORT ON THE REVENUE STATEMENTS

Unmodified Opinion
1655. There were no material issues noted during the audit of the revenue statements of the Service.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1656. 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 574 extension Safaricom and the 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, it was not possible to ascertain the basis of the revenue collected in the absence of supporting contracts.

Submission by the Accounting Officer
The Accounting Officer submitted that as reported by the auditor, in the previous year's BRS has been collecting revenue through E-Citizen, Safaricom and the Kenya Commercial Bank.

BRS does not have a contract with the E citizen which is a wholly domain of the government and also serves as the government payment gateway which ensures that individuals and businesses are enabled to make payments into Government electronically through all available channels.

Business Registration Services collects through the E-citizen platform as per the authorities provided below;

i)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.

(ii)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.

(iii)At its 6th meeting held on the 25th of 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.

On Safaricom, BRS used to have a pay bill account no. 655650 which was opened by use of National Treasury authority letter and domained at KCB Bank. The pay bill account has since been closed after BRS on boarded all their manual services to the E-citizen Platform.

Business Registration Service has got its revenue collection account with KCB Bank account no. 1252536569, which was opened and operated.

Committee Observations and Findings

The Committee noted that any Government operation with other parties must be done on contract.

Committee Recommendation

The Committee recommends that OAG conducts a special audit on the E-citizen platform and submits a report to the National Assembly within six (6) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1657. Lack of a Disaster Recovery and IT Business Continuity Plan

As reported in the previous year, the Business Registration Services did not have an approved Disaster Recovery Plan and IT Business Continuity Plan in the year under review. This posed a significant threat to the core function of the Business Registration Services especially due to the fact that it handles sensitive information about registration of Companies.

Submission by the Accounting Officer

The Accounting Officer submitted that BRS had no Disaster recovery plan in the year under review. However, the Service relied on the hard disks which were stored in fire poof cabinets with limited access of two personnel's and it used to back up on monthly basis since it was in the process of developing its own disaster recovery and continuity plan after delinking. The same has since been developed.

Committee Observations and Findings

The Committee noted that the agency had put up a disaster recovery and IT back up plan that was in sync with other Ministries.

Committee Recommendation

The Committee recommends that the matter is resolved.

1658. Lack of Medium-Term Strategic Plan
As reported in the previous year, the Business Registration Service did not have a Strategic Plan for medium term fiscal framework and the fiscal policy objectives during the year under review. Under the circumstances, it was not possible to evaluate the performance of the Board of Directors and Management of the Business Registration Service as regards the revenue targets, actual collection, accounting and systems.

Submission by the Accounting Officer
The Accounting Officer submitted that by the time the audit was being carried out for the FY 2020/2021, BRS was in the process of developing its Strategic plan hence it relied on the approved work plan for the financial year 2020/2021.

The strategic plan has already been developed and approved by the board in the FY 2021/2022 and is being implemented which is at 24.93% as at January 2023.

Committee Observations and Findings
The Committee noted that the agency had developed a five-year Strategic plan and that was already Quarter way in implementation. The Agency confirmed that the medium term framework was making progress.

Committee Recommendation
The Committee recommends that the matter is resolved.

BUSINESS REGISTRATION SERVICE - OFFICIAL RECEIVER

REPORT ON THE FINANCIAL STATEMENTS

Unmodified Opinion

1659. There were no material issues noted during the audit of the financial statements of the Business Registration Service - Official Receiver.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis of Conclusion

1660. Non-Compliance with Reporting Templates and Guidelines
The summary statements of appropriation – recurrent, development and combined together with the budget execution statement by programmes and sub-programmes were not prepared and submitted as part of the financial statements for the year ended 30 June, 2021. This is contrary to the guidelines and template issued by the Public Sector Accounting Standards Board (PSASB).

Submission by the Accounting Officer
The Accounting Officer submitted that official receiver uses a cash basis of reporting template and guidelines. However, the processes are court driven making it difficult for them to come up with forecast programmes and sub programmes for any financial year. The same omission noted by the auditor were incorporated in the revised financial statement.

Committee Observations and Findings
The Committee noted the submission of the Accoutning Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer and directs that the agency follows the Public Sector Accounting Standards Board (PSASB).

1661. Lack of a Fixed Assets Register

As disclosed in Note 6 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2021 reflects an expenditure on acquisition of assets amounting to Kshs.603,600 (2020 – Kshs.3,751,000). However, it was observed that Official Receiver`s assets were not tagged which could lead to loss of assets. Under the circumstances, existences and security of assets as at 30 June, 2020 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that official Receiver is a department under the Business Registration Service and the assets of both OR and BRS are being tagged in the current financial year as per the contract.

Committee Observations and Findings

The Agency confirmed to the Committee that there is continuous tagging being done and that by the end of the current financial year, the Assets Register will be ready.

Committee Recommendation

The Accounting Officer to submit a complete fixed assets register for review to the National Assembly within three (3) months of adoption of this report.

1662. Payment for Goods and Services from Unregistered Suppliers

Business Registration Service-Official Receiver procured and paid for goods and services amounting to Kshs.41,335,674 from various suppliers who were not registered as required under Sections 56 and 57 of the Public Procurement and Asset Disposal Act, 2015. It was, therefore, not possible to confirm whether the contracts were sourced competitively.

Submission by the Accounting Officer

The Accounting Officer submitted that the official Receiver is a department under the Business Registration Service. Business Registration Service was not having a list of prequalified suppliers during the year under review since it was in the process of delinking from the Office of the Attorney General hence it relied on the Ministries registered list of suppliers as per the now availed request letter.

Currently, the Service has its own prequalification list since it has fully delinked.

Committee Observations and Findings

The Committee noted that the Agency did not have a pre-qualified list of suppliers but currently had one.

Committee Recommendation

The matter was marked as resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1663. There were no material issues relating to effectiveness of internal controls, risk management and governance.

PUBLIC TRUSTEE OF KENYA

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1664. Cash and Cash Equivalents

As disclosed in Note 11 to the financial statements, the statement of financial position as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs.4,035,072,000. However, a review of bank reconciliation statements for the Public Trustee Administration bank accounts held at the Headquarters and various stations across the country revealed payments in cash book not in bank statement (unpresented cheques) amounting to Kshs.14,973,831. Further, various bank reconciliation statements reflected receipts in bank statements not recorded in cash book totalling Kshs.25,431,528 and payments in bank statements not in cash book totalling Kshs.38,146 whose clearance status as at the time of audit was not provided.

Under the circumstances, the accuracy and validity of cash and cash equivalents balance of Kshs.4,035,072,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there were outstanding reconciling items as at the time of audit. All the outstanding payments in the cashbook not in the bank statements (unpresented cheques) amounting to Kshs.14,973,831 have been cleared and accounted for.

Out of the outstanding receipts in bank statement not in cashbook with a total value of Kshs.25,431,528, the State Department have managed to get the particulars of the deceased persons and the beneficiaries for amount totaling to Kshs.25,370,815 and updated our cash book accordingly.

The Office has engaged the institutions that remitted the outstanding amount requesting for particulars of the deceased persons and the beneficiaries to facilitate the receipting and recording of the balance of Kshs.60, 713,000 in the cash book.

Payments in the bank statement not in the cashbook totaling to Kshs.38, 146,000 have been cleared.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to reconcile statements on time.

1665. 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 7 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 by the time of the audit. Consequently, recoverability of the balance of Kshs.67,927,268 held at Imperial Bank Limited remains doubtful.
Under the circumstances, the accuracy and existence of deposits balance of Kshs.109,400,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the amount of Kshs.4, 072,732 had not been remitted to the Public Trustee of Kenya from Kenya Commercial Bank as of 30 June, 2022. The Office engaged the receiver manager (KDIC) who had remitted Kshs.4, 072,732 to KCB, to follow up on the outstanding payments.

The Accounting Officer also submitted that KCB remitted to Public Trustee Kshs.1,018,183 leaving a balance of Kshs.3,054,549, which the office is following up with KCB to remitted to our account.

Committee Observations and Findings
The Committee noted that the submission from the Accounting Officer was unsatisfactory.

Committee Recommnedation
The Committee recommends that KCB settles the outstanding Kshs. 3,054,549 and the Accoutning Offcier submits a status report on the Kshs. 67 million held by Imperial Bank, within three (3) months of adoption of this report.

1666. Investments
As reported in the previous year, the statement of financial position reflects a balance of Kshs.232,160,000 under investments which, as disclosed in Note 15 to the financial statement, includes an amount of Kshs.144,098,000 described as deposits in financial institutions under the management of the Kenya Deposit Insurance Corporation (KDIC) and the Official Receiver. However, no explanation was provided for failure to seek refund of the dormant deposits. Further, the dormant deposits of Kshs.144,098,000 includes investments totalling Kshs.29,694,000 held in two (2) financial institutions as detailed below:

Institution	**Investment Balance (Kshs.)**	**Managing Institution**
Central Finance Limited	22,750,000	Kenya Deposit Insurance Corporation (KDIC)

Allied Credit Limited	6,944,000	Kenya Deposit Insurance Corporation (KDIC)
Total	**29,694,000**	

The two financial institutions were placed in liquidation on 19 May, 1993 and 19 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 8 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.
Under the circumstances, the accuracy and existence of the balance of Kshs.232,160,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that investments reflect an amount of Kshs.231, 159,644 out of which there is Kshs.144, 097,597 described as dormant deposits; an amount which includes Kshs.29, 693,938 held in two (2) wound up institutions.

The Office has analyzed documents available dating back from 1980's and 1990's including analyzing the cashbook for interest income received from these two institutions before winding up and prepared a brief on the two institutions.

The office is in consultation with the National Treasury to grant authority to write off this unrecoverable deposit and facilitate adjustment of our financial statements.

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

Within three (3) months of adoption of this report, the Accounting Officer should liase with the National Treasury to get approval to write off this unrecoverable deposit and facilitate adjustment of our financial statements, and reports back to the Committee.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1667. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1668. Failure to Automate Beneficiaries Financial Records

A review of financial records revealed that the Public Trustee of Kenya maintained its records in a manual form and had over 50,000 ledgers for beneficiaries in thirteen (13) 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

The Accounting Officer submitted that the services offered by the Public Trustee are not fully automated.

The Office is in the process of undertaking a comprehensive digitization and automation to enhance efficiency in service delivery. The ICT Strategy Implementation Committee is spearheading the process.

Automation was prioritized in the Strategic Plan 2018-2023, however, it was not undertaken due to lack of budgetary provision. Request for budgetary provision for automation has been done severally up to and including our submission in 2023 Budget Policy Statement.

Committee Observations and Findings

The Committee observed that the reasons adduced were not satisfactory.

Committee Observations and Findings

The Committee recommends that the Accounting Officer automates, and submit a report to the Committee within three months of adoption of this report.

1669. Understaffing of Key Staff Positions

A review of staffing in thirteen (13) Regional Offices revealed that six (6) Regional Offices which include Malindi, Kakamega, Kisumu, Kisii, Meru and Embu did not have accountants in service. Further, four posts of records management staff were vacant. This compromised maintenance of effective internal control measures and posed the risk of errors and misstatements in the accounting records.

Submission by the Accounting Officer

The Accounting Officer submitted that the Public Trustee was understaffed. This was occasioned by transfers, retirements, re-designation and deaths, all without replacements.

The office has been making request to various scheme administrators for posting of staffs who will be posted in due course. The Office has received Estate Management Officer and an Assistant Building Surveyor who are currently undertaking property management function.

The office is committed to deploy officers to the Public Trustee Regional offices as and when the officers are posted from relevant scheme administrators.

The Accounting Officer also submitted that there is re-structuring of the entire State Law office but currently most staff are seconded from other Ministries.

Committee Observations and Findings

The Committee observed that the explanation and documents provided by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

45. THE JUDICIARY - VOTE 1261

REPORT ON THE FINANCIAL STATEMENTS

Ms. Anne A. Amadi, CBS, the Chief Registrar of Judiciary and Accounting Officer appeared before the Committee on 28th March 2023 and 20th April 2023 accompanied by the following officers;

1. Mr. Paul N. Maina - Deputy Chief Registrar Judiciary
2. Ms. Rebecca J. Kiplagat - Director, Finance and Administration
3. Mr. Ronald W. Wanyama - Director, Audit
4. Mr. Maxwell Suero - Deputy Director, Building Services
5. Mr. Dominic Maina - Assistant Director, Accounts
6. Ms. Esther Nyaiyaki - Registrar, Office of the Chief Registrar Judiciary
7. Mr. Ken Ogutu - Legal Advisor
8. Mr. Wycliffe Wanga - Accounts Controller

and submitted as follows -

Basis for Qualified Opinion

1670. Bank Balances

1670.1 Long Outstanding Items

As disclosed in Note 7 to the financial statements, the statement of assets and liabilities as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs. 7,118,597,106. The balance includes general deposits held in the Central Bank of Kenya and various commercial banks of Kshs. 580,994,217 and Kshs. 6,268,178,077, respectively totalling to Kshs. 6,849,172,294. In addition, the bank reconciliation statements for the general deposits reflects long outstanding items which include payments in the bank statements not yet recorded in cash book totalling Kshs. 87,051,557 and receipts in the cash books not yet reflected in bank statements totalling Kshs. 303,074,682.

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 Accounting Officer submitted that the amount of Kshs. 87,051,557.08 reflected as payments in bank statements that had not been posted in the cashbook includes Kshs. 34,074,235.50 that relate to a fraud committed at Molo Law Courts. The matter was reported to DCI and the staff involved were dismissed. The matter was also forwarded to the Attorney General and its pending recovery. The balance of payments in bank statements not posted in cashbook totaling Kshs. 52,977,321.58 were inter-bank transfers not updated at the time of audit and unfunded bank charges; these have since been updated.

The Accounting Officer also submitted that the Kshs. 303,074,682 is part of the deposit funds not transferred from the Sub-County Treasuries after the Judiciary delinked from District Treasuries.

The reconciliations have since been carried out and Kshs. 352,938,472.50 found not to have been transferred upon de-linking. After delinking, the courts have continued to update cashbooks and reconciliations to clear long outstanding balances.

The Accounting Officer said that the Ksh.6 billion unspent were deposits not belonging to the Judiciary but for people who come to the Judiciary for services. The amount is treated as revenue and remitted to the consolidated fund.

The Accounting Officer reiterated that the Judiciary recruited additional accountants to reduce workload and has put in place an automation system to address such cases, which improved its services significantly.

The Accounting Officer agreed that their system has been weak and the money was lost through cybercrime. However, the Judiciary has now strengthened its system and changed it from manual and now they are fully automated.

Kshs. 47 million was stolen in the 2012/2013 financial year but the cases took too long to be completed and were concluded in December 2020; Three (3) people were found guilty and sentenced.

Committee Observation and Findings

The Committee observed that no recoveries have been made hence the unreconcilable balance still exists.

Committee Recommendation

(i) The Accounting Officer should provide a status report to the National Assembly on its engagement with the Assets Recovery Agency within three (3) months after adoption of this report;

(ii) The Accounting Officer should liaise with the National Treasury on writing off these amounts if they prove they are irrecoverable;

1670.2 Loss of Cash Deposits

The bank reconciliation statements for the month of June, 2021 for the bank accounts for Embu, Nakuru and Malindi Court Stations reflects losses amounting to Kshs.2,682,152, Kshs.84,588,258 and Kshs.1,455,800, respectively which occurred in the previous years. However, the nature of the loss, recovery strategies and court proceedings on the matter were not disclosed.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 7,118,597,106 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer affirmed that the bank reconciliations statements for the month of June 2021 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. These were part of the amounts not transferred from the Sub County Treasuries upon de-linking. Following a reconciliation exercise conducted between the Judiciary and the National Treasury, an amount of Ksh. 352,938,472.50 was found not to have been transferred to the Judiciary upon de-linking.

The Accounting Officer also submitted that the National Treasury advised the Judiciary to make budgetary provisions in the budget for the amounts not transferred. As advised by the National Treasury, the Judiciary has made budget provision for the deficit in deposit accounts to pay the amount and will continue to do so in installments for the subsequent financial years until payment in full.

The Accounting Officer clarified that the deficits arose out of reconcilable items. There was also a court case regarding the accounts for Embu. For Nakuru, the Kshs. 84,588,258 was revised to Kshs.52 million after reconciliation and was not a loss but an amount expected from the National Treasury for deposits. For Malindi, the case is still in court though somebody was charged.

Committee Observation and Findings

(i) The Committee observed that the deficits arose out of reconcilable items and no recoveries have been made;

(ii) The losses of Kshs.2,682,152 in Embu and Kshs.1,455,800 in Malindi were matters still active in court.

Committee Recommendation

The Committee recommends that National Treasury reconciles the figures and submits a status report within three (3) months of adoption of this report.

1671. Account Receivables

1671.1 Un-Analyzed Long Outstanding District Suspense and Clearance Accounts

The statement of assets and liabilities reflects an accounts receivables balance of Kshs. 41,694,742 which, as disclosed in Note 8 to the financial statements, includes an amount of Kshs. 26,306,566 relating to long outstanding district suspense and clearance accounts. Detailed analyses in respect of the long outstanding district suspense and clearance accounts' balances and explanation for failure to clear them were not provided.

In the circumstances, the accuracy, completeness and validity of the balance of Kshs. 26,306,566 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that as at the close of Financial Year 2020/2021, Kshs. 26,306,566 was reported as part of receivables comprising of Judicial Performance Improvement Project (JPIP) AIEs totaling Kshs. 5,538,000 issued to stations whose expenditure returns were received after the end of the financial year.

The Accounting Officer also submitted that the balance of Kshs. 20,768,566 related to GoK AIEs whose cash balances had also not been received from the court stations at the close of the financial year. The cash was subsequently received from the court stations. The District suspense and clearance accounts of Kshs. 26,306,566 were cleared in the Financial Year 2021/2022.

Committee Observation and Findings

The Committee observed that the figures were still outstanding.

Committee Recommendation

The Accouting Officer should reconcile the figures and provide a status report to the Committee within three (3) months of adoption of this report.

1671.2 Recoverability of Impests Issued to Non-Employees

Included in the accounts receivables balance of Kshs. 41,694,742 are outstanding government imprests totalling to Kshs. 14,481,010. The government imprest includes imprests amounting to Kshs. 3,108,300 which were 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 to date. In the circumstances, the recoverability of the long outstanding imprests of Kshs. 3,108,300 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the imprest balance of Kshs. 3,108,300 as at 30 June 2021 has since been accounted for/surrendered leaving a balance of Kshs. 1,403,400. This relates to imprest that was issued to police drivers/bodyguards attached to judges and ministerial staff working in tribunals who have since been redeployed back to the Police service and Ministries, respectively. The Judiciary has requested the Inspector General and the other concerned Accounting Officers to recover the amounts from the officers.

Committee Observations and Findings

The Committee observed that Kshs. 1,704,900 has been recovered leaving a balance of Kshs. 1,403,400 unrecovered. The imprest was thus not fully recovered.

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with parent Ministries and claim refund of imprests from the officers, and submit an update within three (3) months of tabling and adoption of this report.

1672. Unconfirmed Accounts Payables

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects an accounts payables balance of Kshs. 6,849,172,293. The balance includes general deposits for various Court stations amounting to Kshs. 6,268,178,076 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 to confirm the liability, The National Treasury has not acknowledged the same to date. In the circumstances, the accuracy and validity of the general deposits-stations balance of Kshs.6, 268,178,076 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that by a letter Ref. AG.3/10 Vol. 11(10) dated 14th November 2022 acknowledging the liability for the anomaly, the National Treasury advised that the Judiciary makes budget provision for the amount and requests for exchequer.

Committee Observations and Findings

(i) **The Committee observed that these are the monies that District Treasuries owe the National Treasury. It was further noted that the the deposits paid to district treasury was not remitted to Judiciary;**

(ii) **The Committee noted that letter Ref. AG.3/10 Vol. 11(10) dated 14th November 2022 stated that these balances were funds recalled between the year 1997 and 2003. However, a review of the support schedules for the balance show some of the Sub-county treasuries mentioned were not established by the year 2003. For instance, Voi sub-county with a deficit of Kshs. 142,372.60 was established in 2009.**

Committee Recommendation

The EACC to initiate investigations to establish the validity of amounts said to have been transferred from the subcounty treasuries to the National Treasury.

1673. Domestic Travel Charged to Foreign Travel and Subsistence

As disclosed in Note 4 to the financial statements, the expenditure of Kshs. 4,256,695,803 on use of goods and services includes amounts of Kshs. 819,227,252 and Kshs. 15,976,877 relating to domestic travel and subsistence and foreign travel and subsistence, respectively. The foreign travel and subsistence amount includes an expenditure of Kshs. 3,093,755 relating to domestic travel and subsistence allowance which was wrongly charged to foreign travel and subsistence item without approval. This is contrary to Regulation 54(1) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, the accuracy and fair presentation of the domestic travel and subsistence expenditure of Kshs. 819,227,252 and foreign travel and subsistence expenditure of Kshs. 15,976,877 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that for purposes of Section 43(2) of the Public Finance Management Act, the Chief Registrar obtained approval from the National Treasury for the reallocation of funds vide a letter dated 25th May 2021 and approved F.O3 form. However, there was delay in updating the Votes as this happened towards the end of the Financial Year. The Judiciary has ensured enhanced budget controls to comply with PFM requirements.

Committee Observation and Findings

(i) **The Committee observed that the Accounting Officer had reallocated funds appropriately and the issue had not recurred;**

(ii) **The Office of the Auditor General was satisfied that the anomaly has been rectified.**

(iii) **The Committee also observed that the explanation and documents submitted by the Accounting Officer were satisfactory.**

Committee Recommendation

The Committee recommends that the matter is resolved.

1674. Unsupported Contingent Liabilities

As disclosed in Note 14.3 to the financial statements under contingent liabilities, an amount of Kshs. 1,138,713,450 was awarded in arbitration to the contractors. However, records provided for audit supported awards totaling Kshs.1,024,122,367, leaving an amount of Kshs.114,591,083 unsupported. In the circumstances, the accuracy of the contingent liabilities balance of Kshs. 1,138,713,450 as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the contingent liabilities amounting to Kshs. 114,591,083 related to court awards due to Riley Security Services, a staff on reinstatement to service and Lavington Security Limited as detailed below:

Supplier	Amount (KShs.)
Riley Security Services as at 30 June 2021	53,816,911.70
Reinstatement of staff	30,229,966.00
Lavington Security Limited	33,073,612.65
	115,856,985.6

The Accounting Officer also submitted that the payments due to the reinstated staff and Lavington Security Limited have since been settled.

The Accounting Officer informed the Committee that an amount of Kshs.47,691,652.45 has been paid to Riley Security Services and reiterated that the balance will be settled during the current Financial Year. The Accounting Officer also submitted that the Judiciary reviewed the process that the contract was awarded to Riley Securities and cancelled the contract due to irregularities. The matter is still active in court awaiting verdict.

Committee Observation and Findings

(i) The Committee observed that the explanation and documents given by the Accounting Officer with regard to contingent liabilities was satisfactory; and

(ii) The Committee however further observed that the Riley Securities have not been paid in full.

Committee Recommendation

The Accounting Officer should ensure court awards are settled promptly.

Other Matter

1675. Pending Bills

Note 14 to the financial statements on other important matters reflects pending accounts payable/bills totaling Kshs.1,678,137,276 which were not settled during the financial year 2020/2021 but were instead carried forward to 2021/2022 financial year. Further, the pending bills of Kshs.1,678,137,276 includes an amount of Kshs.49,551,197 which relates to 2019/2020 and earlier years. 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 Accounting Officer submitted that the unpaid bills comprised an amount of Kshs. 47,955,022.10 being a court award to Riley Services Limited as at June 2020 including accrued interest which had no budget provision during the Financial Year 2020/2021. Kshs. 47,691,652.45 has been paid to Riley Security Services and the balance will be settled during the current Financial Year.

The balance of Kshs. 1,596,179.90 related to several outstanding merchants/suppliers that could not be settled due to insufficient exchequer. They were cleared as a first charge in the subsequent Financial Year 2021/2022.

Committee Observations and Findings

The Committee observed that the payment of the pending bills has not been fully cleared.

Committee Recommendation

The Accounting Officer must at all times ensure that pending bills are settled as first charge in subsequent financial year when preparing estimates of expenditure and revenues of the entity pursuant to the provisions of section 68(2) (h) of the Public Finance Management Act, 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1676. Judiciary Mortgage Scheme Fund

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects an expenditure of Kshs. 350,000,000 under other expenses which relates to housing loans to the staff. However, The Judiciary did not prepare and submit for audit the financial statements for the Housing Fund to the Auditor- General. This is contrary to Regulation 18(1) of the Judicial Service (Judiciary Mortgage Scheme Fund) Regulations, 2012 which requires the statement of accounts relating to the Fund to be prepared, signed and transmitted to the Auditor-General in respect of the financial year.

The Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Judiciary Mortgage scheme is managed by the Kenya Commercial bank under a Memorandum of Understanding executed between the bank and the Judiciary. The regulations cited by the Auditor General were draft regulations intended for internal management of the scheme, which were overtaken by events and are therefore not applicable. Nonetheless, the Judiciary has since prepared and submitted for audit the financial statements for the Special Housing Scheme to the Auditor General.

Committee Observations and Findings

The Office of the Auditor-General confirmed to have received financial statement covering a period of 11 years and are currently in the process of conducting an audit.

Committee Recommendation
The Auditor General to audit and report to the National Assembly in accordance with the Public Audit Act, 2015.

1677. Delayed Completion of Construction of Thirty (30) Courts
As disclosed in Annex 2 to the financial statements and as previously reported, the historical cost of assets of Kshs.29,722,377,272 includes costs incurred on construction works of thirty-nine (39) Law Courts spread across the Country. Construction works for thirty (30) of the law courts were awarded in the financial year 2013/2014 but have taken long to complete due to among other reasons budget constraints, resulting in delays in payment to the contractors and litigations. Consequently, the value for money on the delayed construction works may not be realized.

Submission by the Accounting Officer
The Accounting Officer affirmed that there have been delays in the completion of projects. This has been due to the persisted budget cuts on the development vote of the Judiciary over the years. It is also attributable to delayed exchequer releases which has led to low absorption. Due to delays in completion of the projects, the construction costs have escalated leading to the unwillingness by some contractors to continue with the works at a loss. The Judiciary has initiated mutual termination for some of the contracts and retendered for completion of the projects. To date, 13 out of the 30 projects have been completed. The remaining 17 projects are also expected to be completed within the new contract periods.

Committee Observations and Findings

(i) The Committee noted that the Judiciary had embarked on constructing numerous courts.

(ii) The Committee noted the six projects were scheduled for termination due to contractors' unwillingness to proceed with the work. The contractors faced delayed payment and were unable to implement the projects with old price rates.

Committee Recommendation

i. **The Accounting Officer to liaise with the National Treasury and ensure completion of the seventeen (17) courts.**
ii. **The Accounting Officer should rationalize projects based on budget availability.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1678. There were no material issues relating to effectiveness of internal controls, risk management and governance.

REVENUE STATEMENTS OF THE JUDICIARY REPORT ON THE REVENUE STATEMENTS

Unmodified Opinion

1679. There were no material issues noted during the audit of the revenue statements of the Judiciary.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1680. Failure to Pay Revenue Collected Promptly into the Consolidated Fund

As disclosed in Note 6 to the revenue statements, the statement of financial assets and liabilities reflects a balance due for disbursement to the Exchequer of Kshs. 476,031,828. The unremitted revenue as at 30 June, 2021 relates to collections for the months of May and June, 2021. Failure to disburse the revenue collected promptly to the Exchequer contravenes Regulation 81(2) of the Public Finance Management (National Government) Regulations, 2015 which states that, "the Receiver of Revenue shall promptly pay the revenue received into the Consolidated Fund as soon as possible and in any case not later than five (5) days after receipt thereof." Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Chief Registrar of the Judiciary is the designated Receiver of Revenue (ROR) who appoints Heads of Stations as Revenue Collectors. Revenue Collectors are supposed to submit the revenue collected to the ROR having carried out necessary reconciliations on a monthly basis. The headquarters then carries out a verification and reconciliation exercise for all court stations to prepare a consolidated revenue report and acknowledgement receipts are issued. Consequently, funds transfer instructions can only be issued once the HQs has received revenue collection returns from all the stations.

The delays in revenue transfer arose due to shortage of staff in the accounting function to undertake these processes. However, more than 100 accountants were recruited in the last financial year to enhance capacity. Further, the Judiciary has automated revenue management which will help to address the issue. Kshs.476,031,828 was transferred within 5 days of receipting the last submission of the month by court station as indicated below:

	Amount (Kshs)	**Date Receipted For last issued court station**	**Date of transfer instruction To exchequer**	**Days after Receipt**
May 2021 Collections	221,522,585	*29 June 2021*	*30 June 2021*	*2*
June 2021 Collections	254,509,243	*02 August 2021*	*04 August 2021*	*2*
TOTAL	**476,031,828**			

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer acted in contravention of Regulation 81(2) of the PFM (National Government) Regulations, 2015 which states that the Receiver of Revenue shall promptly pay the revenue received into** the Consolidated Fund as soon as possible and in any case not later than five (5) days after receipt thereof;**

ii. The Office of Auditor General confirmed that the Judiciary had not yet fully complied.

Committee Recommendation

The Committee directs the Accounting Officer to establish an automated system that would facilitate the prompt transfer of collected funds to the Consolidated Fund, and submits a status report to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1681. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECT

JUDICIAL PERFORMANCE IMPROVEMENT PROJECT (IDA CREDIT NO.5181-KE) - THE JUDICIARY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1682. Loans from External Development Partners

The statement of receipts and payments for the year ended 30 June, 2021 reflects loans from external development partners under receipts and payments controlled by the entity of Kshs.1,003,521,344. However, the corresponding Note 8.3 to the financial statements reflects the amount in loan currency of US dollars 7,356,383 which, in fact relate to the total amount deposited in the special account by IDA instead of the amount withdrawn from the special account of US dollars 7,184,053 in the financial year 2020/2021 and transferred to the Project`s bank account as disclosed in the special deposit account movement schedule under Not 8.7A to the financial statements. In the circumstances, the accuracy of loans from external development partners' receipts of Kshs.1,003,521,344 deposited into the Project`s bank account as shown in the statement of receipts and payments for the year ended 30 June, 2021, could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted that the Financial Statements were prepared and presented as per the Public Sector Accounting Standards Board (PSASB) prescribed format which requires the disclosure of funding received from donors as per note 8.3 and the withdrawals in the Special Deposit Account movement schedule under note 8.7A.

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures preparation of accurate and complete financial statements that conform to the basic structure of government accounts as provided under Section 68 (2) (b) of the PFM Act, 2021.

1683. Failure to Reflect Original Budget Figures in the Statement of Comparative Budget and Actual Amounts

The statement of comparative budget and actual amounts for the year ended 30 June, 2021, reflects nil original budget amounts and final budget figures in respect of purchase of goods and services of Kshs.180,334,348 and acquisition of non-financial assets of Kshs.1,023,406,708. No satisfactory explanation was given for failure to reflect the original budget figures in the statement of comparative budget and actual amounts. In the circumstances, the accuracy and completeness of the statement of comparative budget and actual amounts for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that this was an inadvertent omission by the project management Team which has since been disbanded as the project came to a close in October 2021.The statement of comparative budget and actual amounts did not disclose the original budget figure. The original budget for purchase of goods and services was Kshs.135,787,717 while the budget for acquisition for non-financial assets was Kshs.770,602,283. This will be strictly observed going forward.

Committee Observations and Findings

The Committee noted that the Accounting Officer did not avail comparative figures as per the law.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform functions bestowed upon the office.

Other Matter

1684. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021, reflects actual receipts totalling Kshs.1,159,516,540 against budgeted amount of Kshs.2,265,982,000, resulting in a shortfall of Kshs.1,106,465,460 or 49% of the budgeted receipts.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the budget absorption was 51% as noted by the auditor. This was attributed to the effects of Covid-19 when most construction projects slowed down due to scaled down operations by contractors.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1685. Pending Bills
Note 8.11 and 8.12 to the financial statements indicates that the Judicial Performance Improvement Project had pending bills totalling Kshs.16,773,401 comprising pending account payables of Kshs.14,334,001 and pending staff payables of Kshs.2,439,400 as at 30 June, 2021, which were not settled in 2020/2021 but were instead carried forward to the 2021/2022 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 have to be charged to.

Submission by the Accounting Officer
The Accounting Officer submitted that the pending bills totaling Kshs. 14,334,001 were received towards the closure of the financial year and therefore could not be processed and paid before 30th June, 2021. Pending staff payables of Kshs. 2,439,000 were allowances due to staff engaged as consultants normally paid as reimbursement upon completion of assignments. The claims were presented immediately after the closure of the financial year and settled as a first charge in the subsequent financial year.

Committee Observations and Findings
The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1686. Irregular Payment of Retention Monies
A review of contract documents revealed that two contractors awarded the contracts to construct Mukurweni and Ol-Kalou law courts were irregularly refunded full retention monies amounting to Kshs. 7,067,889 and Kshs. 13,506,711, respectively before completing the construction works. Although the management explained that these payments were related to the final sum and release of monies held after the contracts were terminated, sufficient documentary evidence and contractors' payment certificates reconciliations were not provided to support the explanation.

Submission by the Accounting Officer
The Accounting Officer submitted that the retention was released to the two contractors together with their final certified amounts. This was in accordance with the General Conditions of Contracts (GCC) clause 58.1 which provides for payments to the contractor upon termination of a contract. This clause allows payment to a contractor of all amounts due under the contract after recoveries of liquidated damages against uncompleted works as recommended in the Provisional Conditions of Contract (PCC). The liquidated damages recovered from the contractors in Olkalou and Mukurweini were Kshs 36,618,336.72 and Kshs. 9,445,572.76 respectively.

Committee Observations and Findings

(i) **The Committee observed that the Accounting Officer has recovered monies from the two contractors, with Kshs. 36,618,000 being recovered from Olkalou and Kshs.9,448,000 from Mukurweini;**

(ii) **The Committee also observed that during audit, the Accounting Officer did not provide the sufficient documentary specifically payment certificates reconciliations for the contractors, as required by Section 62 of the Public Audit Act, 2015.**

Committee Recommendation

The Committee recommends that the Accounting Officer to always ensure that all necessary documents are availed for audit verification as provided for under Section 62 of the Public Audit Act, 2015.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1687. Lack of Fixed Asset Register

No fixed assets register was maintained for the Judicial Performance Improvement Project (JPIP) during the financial year under review. Further, the financial statements presented for audit did not include a summary of the fixed assets register as required under financial reporting template prescribed by the Public Sector Accounting Standards Board. This is therefore an indication of lack of effective control over acquisition, recording and use of fixed assets.

Further, in the absence of the fixed asset register, it was not possible to confirm the accuracy and completeness of cumulative amount of Kshs.6,580,144,502 reflected against acquisition of non-financial assets in the statement of receipts and payments for the year ended 30 June, 2021.

Submission by the Accounting Officer

The Accounting Officer submitted that the JPIP financial statements did not include a summary of the fixed assets register. However, the assets procured under the project were included in the Judiciary asset register.

Procurement of assets was done by the project on behalf of the Judiciary. Therefore, all the assets procured for the Judiciary under the Project were updated in the Judiciary’s asset register.

Committee Observations and Findings

The Committee observed that a separate fixed asset register was not maintained.

Committee Recommendation

The Committee instructs the Accounting Officer to maintain a separate fixed asset register for Judicial Performance Improvement Project (JPIP).

46. ETHICS AND ANTI-CORRUPTION COMMISSION - VOTE 1271

REPORT ON THE FINANCIAL STATEMENTS

Mr. Twalib Mbarak, the Commission Secretary/Chief Executive Officer and Accounting Officer for EACC appeared before the Committee on 24th July 2023 accompanied by the following officers:

1.	Dr. David Oginde	-	Chairman
2.	Mr. Joel Mukumu	-	Director
3.	Ms. Faith Ng'ethe	-	Assistant Director
4.	Mr. David Too	-	Legal Services
5.	Mr. Elltooy Bundi	-	Deputy Director, HR
6.	Mr. Stephen Karuga	-	Senior Legal Officer
7.	Mr. Gerald Mumo	-	Senior Accountant
8.	Mr. Edwin Mugo	-	Finance Officer

and submitted as follows;

Unmodified Opinion

1688. There were no material issues noted during the audit of the financial statements of the Commission.

Emphasis of Matter

1689. Financial Performance

During the year under review, the Commission reported a deficit of Kshs.64,475,692 (2019/2020 - a deficit of Kshs.116,545,541). The Management has disclosed in Note 27 to the financial statements that the deficit arose mainly due to depreciation and accrued expenses resulting from unfunded Exchequer. Although the Commission is dependent on Exchequer releases from the national government, persistent under-funding is likely to lead to financial difficulties in future.

My opinion is not modified in respect of this matter.

Submission by the Accounting Officer

- The Commission's going concern status is based on its Annual Approved Budget and exchequer receipts from the National Treasury.

- Presently, there is no indication that the National Treasury will not honor its obligation in the near future in a way that would significantly affect the operations of the Commission.

- The Commission's deficit is mainly caused by non- cash flow items i.e., depreciation and amortization of assets. The Commission prepares its financial statement on accrual basis as guided by International Public Sector Accounting Standards. For the FY 2020/2021 depreciation and amortization expense amounted to **Kshs 98,808,760**, which was not part of the approved budget.

- The Commission, as a matter of best practice, recognizes revenues mainly in form of funding from The National Treasury when funds are actually received, whereas costs are recognized when there is a possibility of claim to pay such costs.

- As a practice, The National Treasury requires exchequer requests be supported by the processed payment claims/vouchers. In the FY 2020/2021, The National Treasury did not honor all funding requests in full. Some claims/vouchers were recognized but the corresponding funding was not actually received. This resulted to having higher expenditure than the received exchequer funding but not exceeding the approved budget.

- As a way forward, The National Treasury requires entities to pay such claims as first charge in the following Financial Year. The Commission prepares its financial statements on accrual basis of accounting and therefore accrues such expenses.

Committee Findings;

The Commission had since rectified the anomaly to the satisfaction of the Auditor General. Auditors indeed confirmed this.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion
1690. Staff on Acting Capacity
Examination of payroll and personnel records revealed that an officer was appointed as Acting Deputy Chief Executive Officer on 05 December, 2019 and was still acting in that capacity as at 30 June, 2021. In addition, another officer was appointed as Acting Assistant Director Supply Chain Management on 01 June, 2020 and was still acting in that capacity as at 30 June, 2021.
Information available indicates that the Commission had placed an internal advertisement for these vacancies among others, which closed on 07 July, 2020. According to the Management, a petition No. E040 of 2020 was filed at the Employment and Labour Relations Court, Nairobi in August, 2020 which is stalling the recruitment process.

Submission by the Accounting Officer
- The Commission policy provides for officers to be appointed on acting capacity for a duration of six (6) months and not exceeding twelve (12) months. However, in special circumstances, as approved by the Commission, the period of acting may extend beyond twelve (12) months. The Ag. Deputy CEO and Ag. Assistant Director, Supply Chain Management were thus appointed on acting capacity in compliance with the policy.

- The two positions were internally advertised but a petition was filed at the Labour Court, which slowed down the recruitment process.
- The Commission later advertised the above positions after the case was set aside vide court ruling and they are currently substantively filled.

Committee Findings;

i. **The committee noted that the Commission's Human Resource Manual allowed for internal advertisement for the position of Deputy CEO, despite the ened for competitive recruitment externally.**

ii. **The Committee was informed that the position of Deputy CEO had now been substantively filled.**

Committee Recommendation

The Commission to amend the Human Resources manual and provide for competititve recruitment of all senior positions, and provide a report to the Committee on this within three (3) months of adoption of this report.

1691. Valuation of Property, Plant and Equipment

As reported in the previous year, the Commission remitted Kshs.1,518,000,000 to the National Land Commission (NLC) for compulsory acquisition of the Integrity Centre Building which houses the Commission's offices. However, according to a letter reference B35/NB/9720B/VOL.2/67 dated 04 March, 2020 from the State Department for Public Works, copies of the development plans (architectural, structural, electrical, mechanical 585 and civil works drawings) submitted to the Commission by the NLC in respect of the property were not acceptable on the basis that:

(i) The drawings were copies of structural details and without calculations;

(ii) Architectural drawings were not provided;

(iii) Services drawings were not provided; and

(iv) The structural drawings provided were not the approved ones as required by the Nairobi City County Government.

According to the Management, this has hampered effective planning for the maintenance of essential electro-mechanical services and possible refurbishment and redevelopment of the Integrity Centre Building. Consequently, it has not been possible to ascertain whether the Commission obtained value for money in the acquisition process of its Headquarters, the Integrity Centre Building.

Submission by the Accounting Officer

- On 26th April, 2022 vide NLC letter Ref. NLC/1/26/46, the Commission received the requested documents from NLC. The same were forwarded to the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development - State Department of Public Works through a letter **Ref: EACC.1/1/1 (131)** dated **9th May, 2022** for authentication.

- On 7th June 2022, vide letter Ref SD/ADM/200/101/108**,** the Ministry responded to the Commission's letter Ref EACC.1/1/1 (131) dated 9th May, 2022 confirming receipt of the Structural Drawings. The Ministry further confirmed establishing that the building was adequately designed and supervised by a competent Structural Engineer and thus advised the Commission settle the outstanding balance.

- The Commission has therefore initiated the process of sourcing funds from the National Treasury of the outstanding balance of **Kshs 25,382,916** (Kenya Shillings Twenty-Five Million, Three Hundred Eighty-Two Thousand, and Nine Hundred and Sixteen only) in order to settle the pending payment**.**

Committee Observations and Findings
The Committee observed that the matter had been dispensed with in the report of the Committee for the financial year 2019/20.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1692. There were no material issues relating to effectiveness of internal controls, risk management and governance.

47. OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS - VOTE 1291

REPORT ON THE FINANCIAL STATEMENTS

Mr. Noordin Haji, the Director and the Accounting Officer for the Office of the Director of Public Prosecutions appeared before the Committee on 9th March 2023 accompanied by the following officers:

1.	Ms. Dorcas Oduor, SC, EBS, OGW	-	Secretary, Public Prosecutions
2.	Mr. Rashid Khator	–	Deputy Director
3.	Ms. Zuwena Zainabu	–	Senior Principal Accountant
4.	Mr. Edin Haji Adan	–	Principal Accountant
5.	Mr. Irish Scheel Honga	–	Prosecution Counsel

and submitted as follows;

Unmodified Opinion

1693. There were no material issues noted during the audit of the financial statements of the Directorate.

Other Matter

1697. Pending Bills

As disclosed under Note 16.1 to the financial statements, the Office had pending bills totaling to Kshs.1,495,850 in respect of supply of goods and services as at 30 June, 2021 that were not settled during the year but were instead carried forward to 2021/2022 financial year. Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year to which they have to be first charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills were not settled during the year under review due to late exchequer releases and submission of invoices for payment.

The Accounting Officer however confirmed that all the pending bills which were not paid at the close of the 2020/2021 financial year were settled in the subsequent year as required by law.

Committee Observations and Findings

The Committee observed that the pending bills totaling to Kshs.1,495,850 were settled in the Financial Year 2021/2022;

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1698. Staff Car Loan and Mortgage Scheme Fund

The Office of Director of Public Prosecutions created Staff Car Loan and Mortgage Scheme Fund in the financial year 2017/18 and the Fund had received a total of Kshs.572,000,000 as of 30 June, 2021 as analyzed below:

Financial Year	Amount (Kshs.)
2017/2018	175,000,000
2018/2019	75,000,000
2019/2020	130,000,000
2020/2021	192,000,000
Total	572,000,000

However, the Administrator of the Fund had not prepared, signed and submitted financial statements of the Fund in respect of each financial year to the Auditor-General contrary to Section 84 of the Public Finance Management Act, 2012.

Submission by the Accounting Officer

The Accounting Officer Submitted that the office of the Director of Public Prosecutions had prepared financial statements for the year 2017/2018, 2018/2019, 2019/2020 and 2020/2021 which had been audited by the office of the Auditor-General.

Committee Observations and Findings

(i) The Committee observed that the Accounting Officer submitted financial statement for financial years 2017/2018, 2018/2019, 2019/2020 and 2020/2021 to the Auditor General in the year 2022, which were audited in arrears;

(ii) The Committee also observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1699. Lack of a Disaster Recovery and IT Business Continuity Plan

As reported in the previous year, the Office of Director of Public Prosecutions did not have a disaster recovery plan. Further, it was noted that the IT Steering Committee did not hold any meeting during the financial year 2020/2021.

In the absence of a disaster recovery plan and an active IT Steering Committee, the adequacy of the IT governance and the ability of the Office to resume operations effectively after an emergency or disaster could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the ODPP has an onsite state-of-the-art data centre that has the Disaster Recovery Equipment and fulfils the requirement of the IT business continuity plan.

In addition to the onsite data centre, the ODPP is in the process of establishing another offsite data centre at the Prosecution Training Institute (PTI), which will include the Disaster Recovery Equipment. The same will be set up at the PTI once the renovations are complete. This will ensure that the ODPP critical information is safeguarded and easily recovered in the event of a disaster to ensure business continuity.

IT Steering Committee

The Director of Public Prosecutions constituted an IT steering committee that will be able to identify risks and develop strategies and policies to minimize the impact of risks.

Committee Observations and Findings

(i) The Committee observed that the Office of the Director of Public Prosecutions intended to complete the offsite data center at the Prosecution Training Institute by 30th June, 2023;

(ii) The Committee also observed that the Office of the Director of Public Prosecutions IT steering Committee had developed a draft disaster recovery plan policy which they intended to finalize by 30th June, 2023;

(iii) The Committee questioned the viability of each Agency having its own Training Centre instead of various governing agencies sharing to ensure prudent management of resources;

Committee Recommendation

The Committee recommends that the Accoutning Officer avails a status report on measures put in place regarding the offsite data centre at the Prosecution Training Institute and provide a copy of the draft Disaster Management plan to the Committee within three (3) months of adoption of this report.

48. WITNESS PROTECTION AGENCY - VOTE 1321

REPORT ON THE FINANCIAL STATEMENTS

Ms. Jedida Waruhiu, the Commission Secretary/Chief Executive Officer and Accounting Officer for Witness Protection Agency appeared before the Committee on 24th July 2023 accompanied by the following officers:

9.	Mr. K.A. Tanui	-	Deputy Director, Corporate Affairs
10.	Mr. Charles Mwale	-	Principal Human Resources Officer

and submitted as follows;

Unmodified Opinion

1700. There were no material issues noted during the audit of the financial statements of the Agency.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1701. Special Duty Allowance

As disclosed in Note 8 to the financial statements, the statement of financial performance for the year ended 30 June, 2021 reflects employees cost of Kshs.339,263,697 out of which an amount of Kshs.108,491,060 relates to housing benefits and allowances. Included in this balance is an amount of Kshs.2,498,480 in respect of special duty allowance paid to various officers for more than six (6) months. This is contrary to Section 6.10.3 of the Witness Protection Agency Human Resource Policy Manual (May 2011) which states that Special Duty Allowance will not be granted for more than six (6) consecutive months. It further states, during that period, arrangements should be made to fill the higher post in substantive capacity. Further review of records revealed that renewal of extensions for payment of special duty allowance were issued every six months dating back from the year 2017 to 2021.

Consequently, there was Management override of the HR Policy manual resulting to irregular expenditure amounting to Kshs.2,498,480 incurred on special duty allowance.

Submission by the Accounting Officer

The Accounting Officer submitted that the Kenya's Witness Protection Agency is an independent and autonomous State Agency established under the Witness Protection Act No. 16 of 2006 Laws of Kenya which came into operation on 1st September, 2008 vide Legal Notice No. 110/2008 dated 19th August, 2008 as amended by the Witness Protection (Amendment) Acts No. 2 of 2010 and No. 45 of 2016. Further amendments to the Act were made through the Statute Law (Miscellaneous Amendments) Acts No. 18 of 2018 and No. 20 of 2020.

The Accounting Officer futher submitted that the object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

The Agency was operationalized in 2011 by staff who were deployed from various ministries, departments and agencies (MDAs). In 2012, the Agency because of budget constraints, hired staff at lower positions to increase the number of officers employed and also allow for upward mobility (growth) as it optimized its operations. Consequently, these hired officers performed duties of higher positions from 2017 and were made to draw Special Duty Allowance as they obtained the requirements for promotion. Only officers who had not attained the requirements for promotion or appointment to higher positions continued to draw the special duty allowance.

The Agency has consistently sought for funding for recruitment from the National Treasury as per the provided letters:

1. Referenced WPA/ADM/BUDGET/003/K dated 23rd September, 2021.
2. Referenced WPA/ADM/BUDGET/003/K dated 5th July, 2018.
3. Referenced WPA/ADM/BUDGET/003/K dated 13th November, 2017.
4. Referenced WPA/ADM/BUDGET/003/K dated 28th November, 2016.
5. Referenced WPA/ADM/BUDGET/003/K dated 28th July 2015.

This occasioned the Agency continuing paying the Special Duty Allowance to officers with hope that the National Treasury could approve the budget for recruitment.

Owing to the understaffing at the Agency, there has been historical vacant positions which necessitated the payment of Special Duty Allowance to Officers who have been performing duties of higher positions in addition to their own duties. Special Duty Allowance has only been renewed after a new survey is conducted that establishes that the officers are still performing the duties of a higher position because the position is yet to be filled.

However, the payment has since been stopped by Management in December 2021 which has impacted negatively on staff motivation due to their continued performance of duties of higher responsibility.

Between July 2022 and February 2023, Management has been able to promote a number of staff who were drawing the Special Duty Allowance to higher positions based on the availability of budget in the financial year 2022/2023.

Committee Observations and Findings

i. **The Committee noted that the Agency flouted its own Human Resource Manual with regard to recruitment by paying special duty allowance for a period of three years as their policy allowed for only six months;**

ii. **The Agency confirmed that it has since stopped payment of the allowance since December 2021, an admittance to the breach of law.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to adhere to the Agency's Human Resource manual.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1702. Under-Staffing

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, 2021.The under staffing may hinder effective delivery of services by the Agency.

Submission by the Accounting Officer

The Accounting Officer submitted that Understaffing at the Agency is a historical issue since 2011. Management has continuously sought for budget and authority to recruit as per appendices II to V. Following the requests, the National Treasury gave authority to recruit 39No. staff in 2018 vide their letter referenced RES 1321/18/01/A/3 dated 11th September 2018 (Appendix XI), who were recruited in 2019. However, this did not address the understaffing and Management further sought budget and authority to recruit as per appendices I, VI and VIII. Specifically, the Agency sought authority from the National Treasury to recruit vide letter referenced WPA/ADM/BUDGET/003/K dated 23rd September, 2021 (Appendix VI). The National Treasury responded vide letter referenced TNT/ZZ 253/032/ "A" dated 9th November, 2021 (Appendix VII) 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 (Appendix VIII) 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 Kes66,175,840 (29No.), FY 2023/2024 budget request of Kes52,905,920 (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 (Appendix IX) 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 Kes46,405,920 for purposes of recruiting additional staff in the FY 2023/2024. This was further scaled down by the National Treasury to Kes15 million.

The Agency wrote to the National Treasury vide letter referenced WPA/ADM/BUDGET/003/K dated 18th May 2023 (Appendix X) requesting for authority to start the recruitment exercise. The Agency is waiting for the response of the same.

Committee Observations and Findings

The Committee noted that this under staffing may lead to lack of operational efficiency.

Committee Recommendations;
The Committee recommends that the Accounting Officer engages the Treasury on budgetary requirements in order to hire the required number of staff within six (6) months following the adoption of this report.

49. KENYA NATIONAL COMMISSION ON HUMAN RIGHTS - VOTE 2011

REPORT ON THE FINANCIAL STATEMENTS

Dr. Benard Mogesa, the Chief Executive Officer/Commission Secretary and Accounting Officer for the Kenya National Commission on Human Rights appeared before the Committee on 24th July 2023 accompanied by the following officers: -

1.	Mr. Joseph Ndiku	-	Director, Cooperate Services
2.	Mr. John Wamewange	-	Finance Manager

and submitted as follows;

Unmodified Opinion

1703. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1704. Pending Bills

As disclosed under Note 15.1 to the financial statements, the Commission had pending bills totalling Kshs.8,257,097 in respect of supply of goods as at 30 June, 2021 that were not settled during the year but were instead carried forward to 2021/2022 financial year. Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year to which they have to be first charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the Kenya National Commission on Human Rights had pending bills totalling Ksh.8,257,097 as at 30th June 2021. The pending bills were as a result of insufficient balances in the respective budget lines. The insufficiency in the budget lines were occasioned by the budget cuts.

The Accounting Officer also submitted that all the pending bills of Ksh.8,257,097 were paid by the end of January, 2022.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1705. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1706. There were no material issues relating to effectiveness of internal controls, risk management and governance.

50. NATIONAL LAND COMMISSION- VOTE 2021

REPORT ON THE FINANCIAL STATEMENTS

Ms. Kabale Arero Tache, the Acting Chief Executive Officer and the Accounting Officer for the National Land Commission (Vote 2021) appeared before the Committee on 5th May, 2022 to adduce evidence on the Audited Financial Statements for the National Land Commission (Vote 2021) for the Financial Year 2020/2021. She was accompanied by the following officers:

1. Mr. Bernard Cherutich - Director Finance and Corporate Planning.
2. Mr. Daniel Mwakio - Principal Finance Officer.
3. Mr. Brian Ikol - Director Legal Affairs and Dispute Resolution
4. Mr. Moses Laibuta - Personal Assistant

And submitted as follows:

1710. Discrepancies between Financial Statements and IFMIS Figures

The financial statements reflect account balances which are at variance with the Integrated Financial Management Information System (IFMIS) reports as shown below:

Details	Amount as per Financial Statements. Kshs	Amount as per IFMIS Reports. Kshs	Differences Kshs
Transfers from other government entities	23,368,906,644	0	23,368,906,644
Other receipts	430,968,597	0	430,968,597
Compensation of employees	895,675,066	908,445,594	12,770,528
Use of goods and services	181,495,370	182,934,970	1,439,600
Other payments	20,760,665,076	0	20,760,665,076
Board expenses	14,210,129	0	14,210,129
Bank balances	15,484,718,883	1,628,760,665	-13,855,958,218
Accounts receivable	3,302,084	4,399,704	1,097,620
Accounts payable	15,865,604,201	459,943,635	15,405,660,566

Consequently, the accuracy and completeness of the above account balances included in the financial statements for the year ended 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer admitted that there were discrepancies between figures in the Financial Statements and IFMIS figures due to Compensation's payments which are processed outside IFMIS system and Board/Commission emoluments which is reported separate in the Financial Statements from other line items in the budget.

It is worth noting that all Compensation Funds received from acquiring Entities are already processed Via IFMIS which has also been voted through the respective acquiring entities or parent Ministries. The funds received also go through the National Government budget making process.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Discrepancies between Financial Statements and IFMIS Figures is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1711. Unexplained Negative Working Capital.

The statement of assets and liabilities reflects total financial assets of Kshs.15,488,020,967 and total financial liabilities of Kshs.15,865,604,201 resulting in a negative working capital of Kshs.377,583,235 whose cause was not explained.

Submission by the Accounting Officer

The Accounting Officer admitted that the statement of Assets and Liabilities reflect a negative working capital of Kshs.377,583,235. The working capital is temporarily negative because the Commission had incurred a large cash outlay of compensation funds which did not correspond with the increase in receipts of the compensation funds during the year under review. The funds paid during the year under review were balances brought forward from previous financial years hence resulting to a negative working capital.

This is not a permanent scenario since the working capital indicated does not mean that the Commission is struggling to meet its financial obligations. The compensation funds are not used on day to day operations of the Commission but used for compensation of land to Project Affected Persons (PAPs) whose land has been acquired by the government for constructions of public projects such Roads, Dams and Wayleave etc.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Unexplained Negative Working Capital is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1712. Pending Bills

The Commission had pending bills amounting Kshs.586,683,355 as at 30 June, 2021 which were not settled in the year under review but carried forward to the financial year 2021/2022. Included in the pending bills is an amount of Kshs.552,726,643 relating to legal fees payable. However, supporting invoices/fee notes for the legal fees were not provided for audit review. As a result, validity of the legal fees payable could not be ascertained.

Failure to settle bills during the year in which they relate to distorts the financial statements for that year and adversely affects the provisions of the subsequent year to which they have to be charged.

Submission by the Accounting Officer

The Accounting Officer admitted that the Commission had a pending bill of Kshs.586,683,355. during the year under review which had not been settled due to budget constraints. Kshs.552,726,643 relating to legal fees payable had not been settled as at 30th June, 2021.The Commission was allocated Kshs.250 Million during the Supplementary I Budget Estimates FY 2021/22 to settle part of the pending bills. The Commission is in the process of settling the same. The Commission has again requested the unpaid balance in the ongoing Supplementary II budget estimates.

Committee Observations and Findings

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

(ii) However, the Committee observed that one pending bill of about half a billion shilling was attributable to a single law firm.

Committee Recommendation

The Committee recommends that the Accounting Officer ascertains the legitimacy of the amount owed and considers negotiations for reasonable terms of settlement, and avails a status report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1713. Slow Process of Compensating Persons Affected by Projects (PAPS)

During the year under review, the Commission received compensation money for twenty-five (25) projects all totalling Kshs.1,860,489,954 out of which an amount of Kshs.647,155,960 only was paid to the beneficiaries leaving an unpaid balance of Kshs.1,213,333,995.

Consequently, slow process of compensating Persons Affected by Projects (PAPs) may have resulted in low absorption of the funds and delayed implementation of the planned projects ' activities.

Submission by the Accounting Officer

The Accounting Officer admitted that the Commission received funds from various Acquiring bodies to pay Project Affected Persons whose Land has been Compulsorily acquired by the Government for implementation of National projects. Out of the Twenty-Five (25) Projects whose funds were received by the Commission Twenty (20) Projects totaling to Kshs.910,583,721 are active and payments is ongoing and the remaining Five (5) projects totaling to Kshs.302,750,735 are not active. These projects are highlighted below:

1. Posta-Nairobi Kisima Maralal Road Project. Kshs.5,289,050
2. Kirigiti Ngewa Road Project. Kshs.26,394,200
3. Enaishiara – Ciakariga Road Project.Kshs.13,726,700
4. Mwatate Taveta Road Project.Kshs.152,880,317.50
5. Kisumu Northern Bypass Road Project.Kshs.104,459,926.

While carrying on due diligence process for the above named five (5) projects the Commission encountered challenges which prevented timely disbursement of funds to the affected persons. Some of these challenges are but not limited to: Disputes, Lack of Searches and other ownership documents, Court cases, designing and re designing of the projects. The Commission in conjunction with the acquiring entities has analyzed the pay ability of the funds and already doing reallocation where necessary and in compliance with provision of Land Acquisition Act. The funds will be disbursed to the Project Affected Persons as soon as some of these challenges are addressed.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Slow Process of Compensating Persons Affected by Projects (PAPS) is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1714. There were no material issues relating to effectiveness of internal controls, risk management and governance.

DONOR FUNDED PROJECT SUPPORT TO THE ATTAINMENT OF VISION 2030 THROUGH DEVOLVED LAND REFORMS IN COMMUNITY LAND OF KENYA PROJECT NO. GCP/KEN/085/EC (LETTER OF AGREEMENT NO. FAOR 2018/001)

Unmodified Opinion

1715. There were no material issues noted during the audit of the financial statements of the Project.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1716. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE.

Conclusion

1717. There were no material issues relating to effectiveness of internal controls, risk management and governance.

51. INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION - VOTE 2031

REPORT ON THE FINANCIAL STATEMENTS

Mr. Marjan Hussein Marjan, the Chief Executive Officer and Accounting Officer for the Independent Electoral and Boundaries Commission appeared before the Committee on 6th February 2023 and 13th March 2023 accompanied by the following officers:

1. Ms. Ruth K. Kulundu – Deputy Commission Secretary - Operations
2. Mr. Osman Ibrahim – Director, Finance
3. Mr. Chrispine Owiye – Director, Legal Services
4. Mr. Michael Ouma – Director, ICT
5. Mr. Moses Sunkuli – Director, Voter Registration and Electoral Operations
6. Mr. Jascktone Nyonje – Ag. Director, Voter Education and Partnerships
7. Dr. Harley Mutisya – Director, Supply Chain
8. Mr. Hassan Abdalla – Ag. Director, Human Resource and Administration
9. Dr. Meshack K. Lomoywara – Director, Research
10. Mr. Patrick Nyakira – Senior Accountant

and submitted as follows;

Basis for Qualified Opinion

1718. Long Outstanding Accounts 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 fourteen (14) years since 2008. As disclosed in Note 10 and Note 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 their final dues but retained by The National Treasury. Management has however indicated that the Commission is engaging The National Treasury with a view of getting the money refunded or obtaining an approval to write it off from the Commission's accounting records but this has not been issued. In the circumstances, the recoverability of the long outstanding accounts receivables balance and car loans amounting to 37,353,000 could not be ascertained.

Submission by the Accounting Officer
The Accounting Officer submitted that the Commission participated in the National Treasury Taskforce on the Resolution of Old Balances as at 30 June 2013 Financial Year. Consequently, part of the Commissions' ECK Old balances of Kshs. 4,409,10,916.55 of the initial amounts of Kshs. 4,420,710,916.55 were cleared by both the Taskforce and Auditor General to pass adjustments in the Commission's financial statements leaving a balance of Kshs.11,160,000 (salary advance Kshs.9,214,000 and temporary imprests (Kshs.1,946,000). The Commission has written to the Attorney General office and the Cabinet Secretary - National Treasury to assist in instituting recovery measures.

The receivable of Kshs. 26,192,965.00 relates to funds recovered from the final dues of Electoral Commission of Kenya (ECK) Commissioners by the National Treasury. The recoveries were on account of ECK car loan scheme balances. The Commission expects the total amount to be refunded since the IEBC Car Loan Scheme has been operationalized and is being administered by the Commission.

The Commission is engaging the National Treasury with a view of obtaining the money or approval to write it off from the Commission books of accounts. Further, the Commission will write off the above accounts receivables once the Cabinet Secretary National Treasury grants the approval as per Section 69 (1-4) of the PFM Act, 2012.

The Accounting Officer during his submission provided various supporting documents including correspondences from the Commission to the Attorney General and the National Treasury requesting for assistance in recovering the ECK salary advances and temporary imprests.

Committee Observations and Findings

- **(i) The Committee observed that there was no proper handover from the defunct Electoral Commission of Kenya to the Independent Electoral and Boundaries Commission;**
- **(ii) The Committee also observed that there was neither clear record of payment nor major effort to track the officers and commissioners concerned; and**
- **(iii) The Committee further observed that the letter from the then Ministry of Justice, National Cohesion and Constitutional Affairs dated 25th July, 2011 acknowledging that liabilities from former ECK staff were recovered didn't have names of the officers affected and amounts.**

Committee Recommendation

The Accounting Officer to follow up with the National Treasury and provide evidence of 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.

1719. Property, Plant and Equipment

As disclosed in Note 12 to the financial statements, the statement of financial position reflects property, plant and equipment balance of Kshs. 1,763,349,000. Review of the balance revealed the following unsatisfactory matters:

1719.1 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 is yet to obtain ownership documents for eighty-five (85) parcels of land allocated by the National and County Governments and whose values have also not been included in the financial statements. The financial statements also excludes the value of a parcel of land located in Mandera whose value has not been determined and is a subject of ownership dispute between the Commission and the County Government of Mandera. In addition, and as reported in the previous years, the Commission maintained an asset register which was not comprehensive as provided under Regulation 143(2) of the Public Finance Management (National Government) Regulations, 2015.

Submission by the Accounting Officer

The Commission acknowledged that it has not obtained ownership documents to some of its parcel of lands and value for some of its land and buildings for inclusion in the financial statements. The state of affairs is attributed to the fact that some of the parcel of lands and buildings inherited from the defunct Electoral Commission of Kenya (ECK) had no ownership and registration documents at the time of the handover to the Independent Electoral and Boundaries Commission (IEBC). Further, their value could not be ascertained due to lack of official hand over from the defunct ECK.

The Commission has initiated the following processes to ascertain the value of the lands and buildings: -

1. The Commission is collaborating with respective government agencies to obtain land allotment letters and partial development plans (PDPs) where the Commission has been allocated land. So far, the Commission has obtained 20 allotment letters and 3 PDPs.

2. The acquisition of title deeds for all parcel of lands allocated to it irrespective of whether the land is developed or not. The Commission has set aside funds to facilitate the registration of ownership documents**.**

3. Additional budget will be sought from the National Treasury to complete the registration process and to comprehensively undertake the valuation of all land and buildings. This will culminate in the development of a detailed Assets Register of Land and buildings as envisaged in Section 143(2) of the Regulations.

4. The process will culminate with valuation of all parcel of lands, office blocks and warehouses in the county offices and constituencies in collaboration with the State Department for Public Works.

The Chief Executive Officer lamented that the Commission may not get titles for some of their parcels of land since they share property with other government agencies. For example, in Meru County.

Committee Observations and Findings

The Committee observed that the Commission was inordinately long to address the issue.

Committee Recommendation

The Accounting Officer to liase with the NLC to acquire the title documents for the parcels of land and report to the Committee within three (3) months of adoption of this report.

1719.2 Unconfirmed Ownership and Valuation of Motor Vehicles

The balance includes motor vehicles with a carrying amount of Kshs. 57,743,000. However, examination of the motor vehicles status report as at 30 June, 2021 revealed that out of the two hundred and fifty-six (256) motor vehicles, three (3) motor boats and two (2) folk lifts, only the cost of one hundred and fifty-six (156) motor vehicles was included in the balance indicated. Further, two hundred and ten (210) motor vehicles logbooks and still registered under the defunct Electoral Commission of Kenya and have not been transferred to Independent Electoral and Boundaries Commission while eightysix (86) motor vehicles, three (3) motor boats and one (1) folk lift were grounded with some being unserviceable and having been idle for over three (3) years. In the circumstances, it has not been possible to ascertain the accuracy, completeness and ownership of the property, plant and equipment balance of Kshs. 1,763,349,000.

Submission by the Accounting Officer

The Commission acknowledged that the value of some of its vehicles had not been included in the financial statements as the said vehicles were inherited from the defunct ECK and had no ownership and registration documents.

Further, their value could not be ascertained due to lack of official hand over from the defunct ECK. However, the Commission has over the period made deliberate steps to remedy the situation. 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. The next step is to actively engage NTSA in facilitating the registration of the vehicles. The process of transfer of ownership is expected to start once the necessary funds have been secured.

The Commission will continue disposing of grounded, obsolete and unserviceable vehicles to minimize the cost of maintenance. The first phase was implemented in the F/Y 2021/22.

Committee Observations and Findings

(i) The Committee noted that 210 motor vehicles' logbooks were still registered under ECK and

(ii) The committee found the financial status to be distorted and misleading due to lack of an updated fixed asset register.

Committee Recommendation

The Accounting Officer to liase with NTSA to acquire the ownership documents for the motor vehicles and report to the Committee within three (3) months after adoption of this report.

1720. Undisclosed and Valuation of Inventories

The statement of financial position reflects total assets balance of Kshs. 1,950,580,000. However, the Commission held significant quantities of strategic and non-strategic election materials in various stores located in various warehouses at its county and constituency offices. These include items of undetermined values inherited from the defunct Electoral Commission of Kenya. Further, as reported in the previous years, the values of these inventories have not been determined and disclosed in the financial statements. Consequently, the accuracy and completeness of the total assets balance of Kshs. 1,950,580,000 reflected in the statement of financial position as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that in the FY 2021/2022, the Commission managed to incorporate the values of purchased election materials in the financial statements as part of the implementation of Public Accounts Committee recommendation. The amount so far disclosed in the statements is Kshs. 907,560,000.

The Commission had embarked on an elaborate disposal process that would have culminated in reducing the stock levels in the Commission warehouses. However, due to competing critical election activities, the Commission could not undertake the stock taking as planned.

In addition, the end of the financial year was very close to the 9th August, 2022 General Election and there was continuous movement of materials and consumables from suppliers and warehouses and it would not have been possible to have a static position of the inventory at that particular time.

The Commission has since acquired an Information Technology Service Management (ITSM) that include an Asset and Inventory Management module. The process of populating and updating the inventory into the system is ongoing and will culminate in determination of quantities and values for inclusion into the subsequent financial statements.

Committee Observations and Findings

i. **The Committee observed that an Inventory Management System was put in place which the Office of Auditor General was to review by April 2023; and**
ii. **Further, the Committee noted that the Accounting Officer committed that the system will be fully operational by June 2024.**

Committee Recommendation

i. **Within three (3) months of tabling and adoption of this report, the Accounting Officer avails a status report on the inventory management system to the Committee.**
ii. **The Accounting Officer to ensure the inventories are properly valued and disclosed in the FY 2022/23.**

Other Matter

1721. Unresolved Prior Year Matters

Various prior year audit issues remained unresolved as at 30 June, 2021. Management has not provided reasons for the delay in resolving the prior year audit issues.

Committee Observations and Findings

The committee noted the oral submissions of the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1722. Long Outstanding Court Awards

As reported in the previous years, the statement of financial position reflects receivables from non-exchange transactions balance of Kshs. 16,837,000 which, as disclosed in Note 9 to the financial statements, includes Appropriations-In-Aid (AIA) receivables amounting to Kshs. 5,396,000. The balance relates to amounts due from court cases which were decided in the year 2013 and costs awarded to the Commission. However, Management has not demonstrated the measures taken to collect the amounts awarded or collect the 597 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 has put in place mechanisms to recover costs awarded in its favour from the various petitioners as follows: -

a) **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.

b) **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.

c) **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.

d) **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.

e) **Regular Updates:** The law firms have been updating the Commission on progress made in recovery of the costs.

f) 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.

g) In some matters, the courts have issued Notice to Show Cause to judgment debtors to pay the costs or be committed to civil jail.

h) 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 and is expensive and without adequate payment of pending fees the firms are unable to pursue the same.

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 in itself requires additional funding thereby making the process costly.

Committee Observations and Findings

(i) The committee acknowledged the Accounting Officer's efforts to provide the necessary details and information. However, the committee observed that the Accounting Officer needed to indicate the amount paid to IEBC and the amount outstanding out of Kshs. 5,396,000.

(ii) The committee further observed that there was need for the legal team to put more effort in collection and recovery of Court awards.

Committee Recommendation

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.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1723. Pending Bills

As disclosed in Note 14 to the financial statements, the statement of financial position reflects accounts payables totaling to Kshs.2,299,626,000 as at 30 June, 2021 (2019/2020: Kshs.3,124,814,000) that were not settled during the current financial year but were instead carried forward to 2021/2022 financial year.

Failure to settle bills during the year in which they relate adversely affects the provisions of the subsequent years to which they have to be charged.

Submission by the Accounting Officer

The Accounting Officer submitted schedules of pending bills for the 2020/2021, 2021/2022 and 2022/2023 Financial years and the Pending bills movement schedule for respective three financial years with last financial period ending 10th March, 2023.

The Accounting Officer reiterated that the Commission has continued to settle pending bills totaling Ksh. 1,834,747,645 for the last three financial years to 30th June 2022. Payment as first charge on voted provision amounted to Ksh. 1,334,737,645 while those related to funding by the government as additional budgetary allocation for the payment of pending bills amounted to Ksh. 500,000,000.

As at 10th March, 2023, the Commission's outstanding bill amounted to Ksh. 4,393,558,052. The movement schedule is summarized below;

Table 3: Pending bills Movement Schedule

Description	**2022/2023 FY**	**2021/2022 FY**	**2020/2021 FY**	**TOTAL (KSH)**
	Amount (Ksh) 10thMarch, 2023	**Amount (Ksh)**	**Amount (Ksh)**	
Pending bills at the beginning of the year	**2,051,567184**	**2,299,626,329**	**3,124,814,677**	**3,124,814,677**
New pending bills in the year	3,065,990,868	181,552,329	52,280,843	3,299,824,040
Negotiation savings & credit notes	-	-	(196,333,021)	(196,333,021)
Paid during the year (Ksh. 654 million awaiting exchequer)	(724,000,000)	(429,611,474)	(681,136171)	(1,834,747,645)
Pending bills at the close of the year/period	**4,393,558,052**	**2,051,567,184**	**2,299,626,328**	**4,393,558,052**

The total outstanding bills as at 10th March, 2023 amounted to Ksh.4.393 billion. The total outstanding bills as at 30th June 2022 amounted to Ksh.2.051 billion. The outstanding bills as at 30th June 2021 being the period under review was Kshs.2.299 billion.

The Accounting Officer lamented that in the 2022/2023 Financial Year, the Commission was not allocated any funds for the settlement of the pending bills in the budget despite making various appeals for additional funding.

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 are legal fees amounting to Ksh.3.8 billion.

The Accounting Officer also submitted that the Commission has an outstanding/unfunded exchequer amounting to Ksh. 4.0 billion as at 10th March, 2023. The outstanding exchequer is meant for payment of 2022 General elections suppliers and service providers, who supplied goods and rendered services both at the county and the headquarters but have not been paid due to lack of exchequer. These bills are likely to translate into additional pending bills if the Commission will not have received the exchequer by 30th June, 2023.

The Accounting Officer further submitted that the Commission was only allocated 39.4 billion as opposed to the 44 billion it had requested. The Commission was not also given the fees it incurred on gazette notices during the election. The Commission is currently liaising with the National Treasury to assist in clearance of the remaining pending bills.

The Commission is guided by area of specialty, geographical location, capacity of law firm among other factors when assigning duties to a law firm as guided by the Commission's Legal Service Procedures Manual.

The Accounting Officer explained that most of the pending bills relate to petitions filed against the Commission and Election petitions whereas others emanate from procurement related disputes. The Commission confirmed that all the payments to law firms abide with the Advocates Remuneration Order and that savings and credit notes arise due to negotiation and that they operate on first in first out basis. The Accounting Officer further informed the Committee that the Commission has employed seven (7) Advocates and 148 pre-qualified legal firms every two years.

Committee Observations and Findings

(i) The Committee noted that approximately 80% of pending bills were legal fees;

(ii) The Committee observed that the Advocates Remuneration Order caps the legal fees/gives the base but doesn't provide ceiling hence the Commission negotiates with advocates on compensation. There was however neither clarity on the criteria used for picking of the law firms nor negotiations leading to huge disparities between fees paid to the various law firms;

(iii) Further, the Commission did not involve the Attorney General on negotiations of the various legal fees and their rationale;

(iv) The Committee observed that the Commission spent monies not appropriated by Parliament contrary to the Public Finance Management Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to formalize over-expenditure through Treasury and Parliament, and recommends that 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 avils this to the National Assembly within six (6) months of adoption of this report.

1724. Status of Critical Election Equipment

The Commission procured and distributed forty-five thousand (45,000) KIEMs kits during the financial year 2016/2017. However, the kits status report as at 30 June, 2021 indicated that only forty-four thousand, nine hundred and ninety-three (44,993) kits existed resulting in an unexplained variance of seven (7) kits. Further, the status report indicated that some of the kits had missing components, damaged components and had not been tested for functionality.

In addition, the Commission also procured and distributed a total of fifteen thousand (15,000) Biometric Voters Registration (BVR) kits in the 2012/2013 financial year. However, the data provided at the Headquarters indicated that only eleven thousand and seventy-five (11,075) kits were available, resulting in an unexplained variance of three thousand, nine hundred and twenty-five (3,925) kits.

The BVR kits status report as at 30 June, 2021 showed that there were a total of two thousand, four hundred and thirty-five (2,435) kits with various faults. In addition, the status report as at 30 June, 2021 indicated other critical election equipment items that were missing as follows:

Component	Number Missing
Laptops	392
Hard Disks	1315
Finger print Scanners	116
Webcam Cameras	408
USB Hubs	1062
Chargers	104
Flash disks A&B	8041

In the circumstances, evidence of existence of effective internal controls including security on assets could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows; that

a) As at 30th June 2021, the functional Biometric Voter Registration (BVR) kits were 11,075 as reported by the Auditor General. The Auditor General had indicated that 3,925 BVR kits were missing, however, the Commission is pleased to report that the 3,925 BVR kits were not lost but rather not functional and could not be used during the 2022 Enhanced Continuous Voter registration exercise.

b) The Commission maintains a comprehensive inventory system which tracks the movement of every equipment both at the county and national warehouse.

c) The commission requested the county election managers to provide the status report of the BVR kits in their warehouses to ascertain their locations and distribution across the counties.

d) The counties submitted the status reports on BVR kits and the Commission compiled a report from all the counties and directorates.

e) The Commission used the information obtained from the counties to reconcile the number of BVR kits as held in various warehouses. Below is the reconciliation statement of the 15,000 BVR kits procured in 2012.

Table 4: Summary of BVR Inventory Report

S/No.	Description	Count	Remarks
1.	Procured BVR Kits	15,000	
2.	National Warehouse	64	
3.	County Warehouse	13,556	
4.	Directorate of Voter Education and Partnership	6	

5.	Directorate of Voter Registration and Electoral Operations	18	
6.	Directorate of ICT	77	
7.	Issued to Commission Staff for Administrative use	1,218	BVR laptops for official use.
8.	Stolen Kits - under investigation	125	
	Variance	0	

1. From the summary above, 125 BVR kits were missing and are currently under investigation.
2. Notably, the BVR kits were procured in 2012 which means they are over ten years old, have technically reached end of life (EOL), are obsolete and have zero book value. The Commission has planned to dispose of all the BVR kits in the 2022/2023 Financial Year.
3. Consequently, the Commission is currently in the process of transiting to the Kenya Integrated Election Management System (KIEMS) for registration of voters as the enrollment software for use in the KIEMS kits has been acquired.
4. The lost kits were only the hardware without any sensitive election data hence no implication on election operations and security. In addition, all data in the BVR kits are always encrypted to ensure integrity and confidentiality.
5. Regarding the 7 KIEMS variance reported by the auditor, the Commission submitted that, in preparation for the 2022 General Elections, the Commission requested for a report on the status of electoral technology to inform the acquisition for any additional KIEMS kits and its accessories.
6. The internal report (referenced by the Auditor General) indicated that as at 30th June, 2021, the functional KIEMS kits were 44,993. The Auditor General had indicated that 7 kits were missing, however, the Commission clarified that the 7 kits were not lost but rather not functional and could not be used during the 2022 General election.
7. Informed by the report referenced above, the Commission acquired additional 14,100 KIEMS kits in anticipation of the increase in the number of polling stations and to act as a backup during the General election.
8. As far as the other election equipment items that were reported missing are concerned, the Commission submitted as follows;
    a) The Commission records and accounts for election equipment's as a whole rather than parts/accessories. The policy of the Commission is that whenever an accessory is lost by a staff, the same is chargeable against the staff or the staff is expected to replace before dues are paid to the officer.
    b) Further, most of the items enlisted are consumable and are not reusable, hence do not require further accounting and recording as summarized in the table below;

Other Equipment and Accessories

Component	**Count as per the Audit Report**	**Status**

Laptops	392	Items isolated for disposal due to obsolescence/unserviceability
Hard Discs	1315	i. Theft case reported to various police stations. ii. Others marked for disposal in the current FY due to obsolescence caused by age and change in technology. iii. Administrative disciplinary action taken against staff i.e. Supply Chain Management Assistance formerly in Thika.
Finger Print Scanners	116	i. The items are marked for disposal due to age and change in technology. ii. The same have been lying in one of the Commission Warehouses in Likoni road.
Webcam cameras	408	The items are marked for disposal due to age and change in technology.
USB Hubs	598	The items are consumables expensed at issuing. The technology is also no longer in use.
Chargers	104	The items are marked for disposal due to age and change in technology.
Flash Disks A&B	8,041	The items are consumables expensed at issuing.

To improve on the management of such equipment and accessories, the Commission has put in place the following measures;

i. Constructed a modern IT warehouse and centralized maintenance of all ICT equipment at its National Warehouse which will facilitate maintenance but also recording and control over the assets and ICT inventory.

ii. Acquired an IT Service Management System (ITSM) which includes asset and inventory management module that is expected to improve on the documentation and management of critical election equipment.

Committee Observations and Findings

(i) The Committee observed from the submissions by the Accounting Officer that the loss of the equipment seemed to have taken a curious geographical pattern, and seemed well coordinated;

(ii) The Accounting Officer admitted to some losses and claimed that some investigations were ongoing, albeit with no timelines.

Committee Recommendation

The Committee recommends that a special audit be done on the matter.

52. PARLIAMENTARY SERVICE COMMISSION - VOTE 2041

REPORT ON THE FINANCIAL STATEMENTS

Mr. Jeremiah M. Nyegenye, CBS, Clerk of the Senate and Accounting Officer for the Parliamentary Service Commission appeared before the Committee on 12th April 2023 accompanied by the following officers: -

1. Mr. Irungu Kigundu - Director Finance and Accounts
2. Mr. Anthony Njoroge - Director Litigation and Compliance
3. Mr. Ajele Dan - Chief Procurement Officer
4. Mr. Antony Ndubi - Senior Accountant

and submitted as follows;

Unmodified Opinion

1725. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1726. Pending Bills
Annex 1 to the financial statements indicates that the Parliamentary Service Commission had pending bills totalling Kshs.82,653,588 as at 30 June, 2021, which were not settled in 2020/2021 financial year but were instead carried forward to 2021/2022 financial year. 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.

Submission by the Accounting Officer
The Accounting Officer submitted that the pending bills arose due to lack of exchequer towards the end of the Financial Year. The Commission thereafter processed and paid all the pending bills as they formed the first charge during the 2021/2022 financial year.

The Accounting Officer reiterated that while the Parliamentary Service Commission has sought to liaise and work closely with the National Treasury to resolve the issue of lack of exchequer, the problem has continued to persist.

The Accounting Officer confirmed that lack of exchequer indeed affected the operations of the Commission. The pending bills therefore end up eating on the budgeted activities.

The Accounting Officer further submitted that some of the pending bills were historical particularly those that did not have sufficient supporting documentation.

Committee Observations and Findings

(i) The Committee observed that the pending bills were paid as a first charge in the subsequent financial year in line with Regulation 42 of the Public Finance Management (National Government) Regulations, 2015;

(ii) The Committee also observed that the explanation and documents submitted by the Accounting Officer were satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1727. Procurement of Office Supplies and Services, Accommodation and Transport Service at County Offices

The statement of receipts and payments reflects an expenditure of Kshs. 2,408,347,233 in respect of use of goods and services which, as disclosed in Note 4 to the financial statements, includes an amount of Kshs. 544,757,609 relating to other operating expenses. The latter balance includes an amount of Kshs. 12,602,311 incurred on office supplies and services, food and accommodation and transport services at the County offices. The expenditure was paid for in cash contrary to cash purchase threshold of Kshs. 50,000 per item per financial year for goods and services as per the second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020. The Management was therefore in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Parliamentary Service Commission provides funds for the operation of County offices. 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 the accounting officer for the office.

The Commission operates a County Liaison Office which provides compliance guidelines and best practices in the use of public funds entrusted to these offices.

In that regard and to foster compliance, the County Liaison Office undertakes extensive training of these managers. However, there is a very high employee turnover experienced in many of the County offices, resulting in handing-over and accounting transition challenges and the need for constant training of the newly hired staff.

The Accounting Officer assured the Committee that the Parliamentary Service Commission shall provide regular trainings to encourage adherence to set procurement guidelines. He further insinuated that it was difficult to supervise staff they have not appointed and have no contractual obligation with.

Committee Observation and Findings

(i) The Committee noted that despite the County Constituency Offices being run by the Constituency Office Managers, the buck stops with the Accounting Officer to safeguard prudent use of tax payer's money;

(ii) The Committee further observed that there was need for the Accounting Officer to take action on respective Constituency Fund Managers that fail to adhere to the regulations governing the Constituency Office Fund.

Committee Recommendation

The Accounting Officer must always act in accordance with second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020.

1728. 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 a historical cost brought forward and additional amount during the year of Kshs. 8,159,400,157 and Kshs.113,388,304 respectively, totalling Kshs.8,272,797,461 as at 30 June, 2021. However, the Parliamentary Service Commission did not maintain an assets register during the year under review to keep track of the assets. This is contrary to Regulation 143 of the Public Finance Management 600 (National Government), Regulations, 2015. Further, the assets held by the Parliamentary Service Commission are not tagged for ease of traceability and accountability. Further, and as previously reported in the year 2019/2020, ownership documents for the main Parliament Building, Center for Parliamentary Studies and Training, Juvenile Court House, County Hall and Protection House all owned and controlled by the Commission were not provided for audit review. Under the circumstances, completeness and legal ownership of assets owned by the Parliamentary Service Commission as at 30 June, 2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Parliamentary Service Commission has not put in place a comprehensive asset register to manage the assets it holds. However, the book value of the fixed assets was taken to be the historical cost incurred to procure the fixed assets.

The Accounting Officer also submitted that the existence, location, physical condition and ownership of some assets could not be confirmed with certainty because the assets are jointly owned by the three Votes of Parliament which are the Parliamentary Service Commission (Vote 2041), the National Assembly (Vote 2042) and the Parliamentary Joint Services (Vote 2043).

The process of identifying and establishing ownership of the assets has been initiated and is ongoing with a view to coming up with an Assets Register that truly reflects the correct individual entity ownership of the Commission's assets.

The Accounting Officer further submitted that a draft Assets Management Policy was under consideration by the Commission. 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-

No.	LR NO.	REGISTERED PROPRIETOR	NAME
1	209/5444	Commissioner of Lands	Main Parliament grounds where mausoleum of the late His Excellency President Jomo Kenyatta is located.
2	12836/9	Parliamentary Service Commission	Centre for Parliamentary Studies and Training (CPST) - KAREN.
3	209/4316	Commissioner of Lands	Juvenile Court Building.
4	209/5412	Parliamentary Service Commission	Stores and parking for Parliament opposite County Hall.
5	209/4335	Government of Kenya	County Hall
6	209/9677	National Assembly of Kenya	Continental House
7	209/4991/13	Commissioner of Lands	Main Parliament building.
8	209/8000/42	Parliamentary Service Commission	Official residence of Speaker of the National Assembly.
9	209/4317	Parliamentary Service Commission	Red Cross Building.
`10	209/4314		Protection House.
11	209/26964	Parliamentary Service Commission	Official residence of the Speaker of the Senate.
13	209/11456	National Assembly of the Republic of Kenya.	Multi Storey Office Block.
14	209/4311	Parliamentary Service Commission	County House.

Regarding the issue of the failure to obtain title deeds and related ownership documents, the following is the position with regard to each property of the Commission that has no title-

PROPERTY	LR NO	RESPONSE
Main Parliament Buildings	209/54444 & 209/4991/13	The Parliamentary Service Commission has through the office of the Secretary and the Chairman written several letters to the National Land Commission and the Cabinet Secretary Lands to facilitate the Commission to get title deeds to the land holding the Main Parliament Buildings but has not been successful. The Commission is still following up with the relevant government agencies on the same.
Centre for Parliamentary Studies & training	12836/9	The title to the property got lost and all efforts to trace the same have been in vain. The Commission lodged an application for the replacement of the title document for the above captioned property at land registry but it is yet to receive the same. The Commission has engaged the Cabinet Secretary

PROPERTY	LR NO	RESPONSE
		Ministry of Lands to assist fast-track the replacement of the title deed.
Juvenile Court House	209/4316	The Commission has through the office of the Secretary and the Chairman written several letters to the National Land Commission and the Cabinet Secretary Lands to facilitate the Commission to get title deeds to the land holding the Juvenile Court Buildings but has not been successful. The Commission is still following up with the relevant government agencies on the same.
County Hall	209/4335	The land on which County Hall sits has a title deed registered in the name of the Government of Kenya. The Commission is following up with the relevant government agencies including the National Land Commission and the Ministry of Lands to have the property registered in its name.
Protection House	209/4314	The Parliamentary Service Commission took physical possession of the property from the Ministry of Housing in 2010. In 2019, the Commission wrote to the Principal Secretary, National Treasury who had custody over the original title to the property, requesting for the surrender of the original titles and the transfer of the property in favour of the Commission. The Commission is still following up with the National Treasury for the said transfer to be effected.

As far as asset tagging is concerned, the Commission is in the process of development of a policy of labelling all assets for ease of identification and location.

In addition, the Accounting Officer submitted that labelling all assets will ensure that assets procured and owned by the Commission are 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.

The Accounting Officer assured the Committee that the Commission will have an Assets register by the end of the year.

Committee Observation and Findings

(i) The Committee noted the lack of an updated asset register;

(ii) Committee also noted the lack of ownership documents by Parliament for its buildings.

Committee Recommendation

The Committee recommends that the Accounting Officer liases with the National Land Commission and obtain ownership documents, and reports to the Committee within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1729. There were no material issues relating to effectiveness of internal controls, risk management and governance.

53. NATIONAL ASSEMBLY - VOTE 2042

REPORT ON THE FINANCIAL STATEMENTS

Mr. Samuel Njoroge, the Clerk and Accounting Officer for the National Assembly appeared before the Committee on 12th April 2023 accompanied by the following officers: -

1.	Ms. Serah Kioko, MBS	-	Deputy Clerk
2.	Mr. Irungu Kigundu	-	Director Finance
3.	Mr. Sheriffsam Mwendwa	-	Director, Litigation and Compliance
4.	Mr. Peter A. Meikoki	-	Deputy Director, Finance and Accounts
5.	Mr. Kennedy Malinda	-	Chief Procurement officer

and submitted as follows;

Unmodified Opinion

1730. There were no issues noted during the audit of the financial statements of the National Assembly.

Other Matter

1731. Pending Bills

Annex 2 to the financial statements indicates that the National Assembly had pending bills totalling Kshs.80,008,601 as at 30 June, 2021, which were not settled in 2020/2021 but were instead carried forward to 2021/2022 financial year. Further, these pending bills comprised an amount of Kshs.18,851,651 relating to 2020/2021 financial year and Kshs.61,156,950 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 are charged.

Submission by the Accounting Officer

The Accounting Officer confirmed that the accounts for the financial year 2022/2021 reflected an amount of **Kshs.80,008,601**, largely containing historical bills.

The amounts were pending bills related to goods supplied, services rendered and imprest paid out to various Members of Parliament and Staff during the year but which remained unaccounted for by closure of the financial year. The outstanding amount is broken down as follows:

(a)	Goods supplied	-	**Kshs.23,038,575.15**
(b)	Services rendered	-	**Kshs.56,970,025.85**

The outstanding bills were occasioned by -

(i) Processing challenges caused by IFMIS connectivity towards the end of the financial year such that the state department could not complete all the payment processes to the end for remittance to Central Bank through Internet Banking.

(ii) The exchequer requisitions were made in time but exchequer releases were received on the last day of June yet there was a system breakdown that did not allow payments to be effected. Further, it was impossible to utilize the funds towards clearance of pending invoices when the funds were received on the last day of the financial year.

(iii) Parliament was experiencing some transitional issues during that year following the split of the main Vote into Votes 2041 (Senate) and 2042 (National Assembly). Additionally, some shared services were initially procured under the one vote but required to be paid under the separate votes.

(iv) Bills for procurements of air tickets and hotel accommodation were submitted when the IFMIS System was already closed and commitments already made could not be reversed to clear them.

(v) There was late submission and receipt of invoices by Suppliers and Service Providers towards closure of the Financial Year.

Current status of pending bills

The Accounting Officer submitted that the National Assembly has since settled 78% of the pending bills, as the position has since changed with **Ksh.63,013,885.45 of** the total pending bills having been retired during the 2021/2022 and 2022/2023 financial years.

The balance of **Ksh.16,994,715.60** was yet to be settled either due to lack of sufficient supporting documents or where the amounts are disputed. All efforts are being made to retire any pending bill that meets the threshold of payment.

The Accounting Officer reiterated that they are prioritizing settling of pending bills that meet the thresholds during the current financial year 2022/2023.

The Accounting Officer informed the Committee that the Directorate of Criminal Investigations (DCI) undertook investigation in Parliament on procurement of goods and services carting away important documents regarding procurement.

Committee Observations and Findings

The Committee observed that the Accounting Officer was yet to clear Ksh.16,994,715.60 due to lack of supporting documents.

Committee Recommendation

The Committee recommends that the Accounting Officer obtains from the DCI, copies of documents taken for investigation and avails a report to the Committee within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1732. Procurement of Office Supplies and Services, Accommodation and Transport Service at Constituency Offices

The statement of receipts and payments for the year ended 30 June, 2021 reflects an expenditure of Kshs.7,901,868,832 in respect of use of goods and services. As disclosed in Note 3 to the financial statements, the amount includes Kshs.2,538,672,137 relating to other operating expenses out of which Kshs.79,721,723 was incurred on office supplies and services, accommodation and transport at the Constituency Offices. Although the expenditure for the Constituency Offices in various cases were above the threshold for low value procurement method, the Management of the Constituency Offices did not apply alternative procurement methods as required under Section 91 of the Public Procurement and Asset Disposal Act, 2015 but procured the above goods and services directly through cash purchases.

Submission by the Accounting Officer

The Accounting Officer confirmed that the 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 Honourable Members at the constituency level were presentable while being used to offer services to the citizens.

The constituency managers under whose charge the procurement was to be done were issued with proper guidance on: -

(i) Importance of strict adherence to the Public Procurement and Asset Disposal Act, 2015 while procuring goods and services.

(ii) Use of lists of registered suppliers from any procuring entity or County Assembly or County Government in their area of jurisdiction as long as the registered list had 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.

(iv) Funds would only be released upon meeting the above criteria.

In mitigation of the issues raised, the following measures have been instituted-

(a) 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 matter. Further, a training was carried out in collaboration with the Kenya Revenue Authority on taxation matters.

(b) To ensure compliance, managers have been advised to use NG-CDF prequalified suppliers in procuring services and/or goods and always seek guidance from our office wherever they need support. There was high turnover of the managers which had a negative impact on compliance. To address the aforementioned challenge, an additional training was held in October 2021 on Public Procurement as well as tax compliance among other office matters in order to enhance accountability of government resources at the constituency/county level.

(c) Further, the National Assembly was reviewing the Constituency/County operations manual and regulations for use during this financial year and current parliamentary term. This will enhance capacity building for all staff at the Constituency/County level in management and accountability of public resources in these offices. The National Assembly was 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.

Committee Observation and Findings

(i) The Committee noted that despite the County Constituency Offices being run by the Constituency Office Managers, the buck stops with the Accounting Officer to safeguard prudent use of tax payer's money;

(ii) The Committee further observed that there was need for the Accounting Officer to take action on respective Constituency Fund Managers that fail to adhere to the regulations governing the Constituency Office Fund.

Committee Recommendation

The Accounting Officer must always act in accordance with second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020.

1733. Accounts Receivables - Outstanding Imprests

The statement of assets and liabilities as at 30 June, 2021 reflects accounts receivables amounting to Kshs.11,048,121. As disclosed under Note 9 to the financial statements, the amount includes Kshs. 8,869,990 relating to outstanding imprests which ought to have been accounted for on or before 30 June, 2021. This is contrary to Regulation 93(5) and (6) of the Public Finance Management (National Government), Regulations, 2015.

Submission by the Accounting Officer

The Accounting Officer confirmed that the Statements of Assets and Liabilities reflected an outstanding imprest amounting to **Ksh.8,869,990** as at 30th June 2021 owed 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 with some crossing over at the end of financial year as they were not due for surrender.

However, the amounts were accounted for on maturity. Some amounts were yet to be surrendered on the due date for failure by respective persons in not availing the requisite documentation to account for the amounts issued.

Ultimately, the long outstanding amount of Kshs.8,869,990 was fully recovered during the 2021/2022 financial year through mileage, sitting allowances, domestic facilitation allowances and monthly salary.

Committee Observations and Findings

The Committee observed that the long outstanding amount of Kshs.8,869,990 was fully recovered during the 2021/2022 financial year.

Committee Recommendation

The Committee recommends that the matter is resolved.

1734. Lack of Assets Register

Disclosed in Annex 3 to the financial statements is a summary of fixed assets register which reflects historical cost brought forward and additional amount during the year of Kshs.411,381,199 and Kshs.132,355,579 respectively, totalling Kshs.543,736,778 as at 30 June, 2021. However, the National Assembly did not maintain an assets register during the year under review to keep track of the assets. This is contrary to Regulation 143 of the Public Finance Management (National Government), Regulations, 2015.

Submission by the Accounting Officer

The Accounting Officer confirmed that the cumulative figure of Ksh.543,736,778 in the audit report comprises of all assets acquired since the 2015/2016 financial year when the National Assembly vote was created. The National Assembly purchased fixed assets worth Ksh.132,355,579 during the financial year 2020/2021.

The Accounting Officer also submitted that the Commission was on the verge of vesting assets between the three accounting entities in Parliament and the process will be concluded by the 2023/2024 financial year.

The Accounting Officer further submitted that there were ongoing consultations on the ownership of assets that were in existence prior to the creation of the current three votes i.e., Parliamentary Service Commission, the National Assembly and Parliamentary Joint Services. The outcome of the said discussions will have a bearing on the outlook of the final assets register.

The Accounting Officer further reiterated that the management was in the process of developing an assets management policy as well as maintaining a comprehensive assets register which will help in tracking of all the assets owned by the National Assembly.

Committee Observations and Findings

i. **The Committee observed that the Accounting Officer was yet to develop a complete asset register contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015;**

ii. **The Committee also observed that the Management was in the process of developing assets management policy as well as maintaining a comprehensive assets register.**

Committee Recommendation

Within three (3) months after the adoption of this report, the Accounting Officer submits to the Committee a complete Asset Register.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1735. There were no material issues relating to effectiveness of internal controls, risk management and governance.

54. PARLIAMENTARY JOINT SERVICES – VOTE 2043

REPORT ON THE FINANCIAL STATEMENTS

Mr. Clement Nyandiere, Director General and Accounting Officer for the Parliamentary Joint Services appeared before the Committee on 12th April 2023 accompanied by the following officers:-

1.	Mr. Irungu Kigundu	-	Director, Finance and Accounts
2.	Mr. Nyadewo Onyangoh	-	Deputy Director, Finance and Accounts
3.	Mr. Johnson N. Muyera	-	Acting Chief Accountant
4.	Mr. Keith M. Kisinguh	-	Chief Procurement officer
5.	Eng. John K. Nguru	-	Acting Chief Engineer
6.	Ms. Susan Walala	-	Acting Deputy Director

and submitted as follows;

Unmodified Opinion

1736. There were no material issues noted during the audit of the financial statements of the Services.

Other Matter

1737. Pending Bills

As disclosed in Note 14.1 and Annex 1 to the financial statements, the Parliamentary Joint Services had pending bills totalling Kshs.357,688,738 as at 30 June, 2021, which were not settled in 2020/2021 but were instead carried forward to 2021/2022 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 Accounting Officer affirmed that the financial statements disclosed pending bills amounting to Kshs.357,688,738 which were not settled as at 30th June, 2021 but were carried forward to 2021/2022 financial year.

The Accounting Officer also submitted that pursuant to the Presidential directive of 1st June, 2019, the Parliamentary Joint Services managed to settle all the bills, after review and approval by a pending bills verification committee.

The Accounting Officer further submitted that the pending bills could not be paid in the previous year due to insufficient supporting documentation and lack of exchequer releases.

Committee Observation and Findings

The Committee observed that the pending bills were paid as a first charge in the subsequent financial year in line with Section 41 of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1738. Assets Register

The summary of fixed assets register under Annex 3 to the financial statements reflects assets with a historical cost of Kshs.1,643,577,283 and additions of Kshs.2,537,047,011 during the year under review. However, the Parliamentary Joint Services did not maintain a detailed 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.

Submission by the Accounting Officer

The Accounting Officer submitted that 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 three votes. The policy is awaiting the approval of the Commission. Once approved, the fixed asset register will be implemented and the tagging of assets will be done as per the direction of the policy.

In addition, the Accounting Officer submitted that tagging of assets will ensure that items procured and owned by the Parliamentary Joint Services are 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 Observation and Findings

- **(i) The Committee observed that the Accounting Officer was yet to develop a complete asset register contrary to Regulation 143(1) of the Public Finance Management (National Government), Regulations, 2015;**
- **(ii) The Committee also observed that the Management was at an advanced stage of developing a policy for tagging of the assets for ease of development of the assets register.**

Committee Recommendation

Within three (3) months after the adoption of this report, the Accounting Officer submits to the Committee a complete Asset Register.

1739. Construction of the Proposed Multi-Storey Office Block

The statement of receipts and payments reflects an expenditure of Kshs.2,537,047,012 under acquisition of assets which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.2,220,311,155 in respect of construction of buildings which related to payments for the proposed multi-storey office block. The project was estimated to take 42 months from 1 July, 2014 to 31 December, 2017 but was granted the first and second extensions with completion dates of 16 January, 2018 and 23 August, 2020, respectively.

However, by the time of the audit inspection in November, 2021, the construction of the office block had not been completed. Further, 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. In addition, due to non-completion of the project, the Parliamentary Joint Services continued to pay rent amounting to Kshs.392,205,511 for the leased offices during the year under review.

Submission by the Accounting Officer

The Accounting Officer submitted that the statement of receipts and payments reflects an expenditure of Kshs.2,537,047,012 under acquisition of assets which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.2,220,311,155 in respect of construction of buildings which related to payments for the proposed multi-storey office block.

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, 2021, the construction of the Office Block had not been completed.

The Accounting Officer also submitted that 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 Accounting Officer further submitted that 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.

In addition, the Accounting Officer submitted that: -

i) The Ministry of Public works is the project manager for all Government projects including the above-mentioned project and that there are 14 sub-contractors and also consultants;
ii) The building was initially costed at Sh. 5.893 billion in 2013. So far 7.09 billion has been paid and 1.055 billion more will be paid before completion;
iii) The building has been ready for occupation since September 2022 but there was no furniture inside. Some furniture has been procured but there cannot be partial occupancy. The Joint Service is awaiting exchequer to finalize the issue of furniture; and
iv) The Commission is considering seeking external legal aid in anticipation of further challenges.

Committee Observations and Findings

The Committee was concerned about the inordinate delay in completion of the Multi-Storey Office Block, from July 2014 to date.

Committee Recommendation
The Committee recommends that the Accounting Officer ensures the building is completed and occupied within three (3) months of adoption of this report, without further cost variations.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1740. There were no material issues relating to effectiveness of internal controls, risk management and governance.

55. JUDICIAL SERVICE COMMISSION - VOTE 2051

REPORT ON THE FINANCIAL STATEMENTS

Ms. Anne A. Amadi, CBS, the Chief Registrar of Judiciary and Accounting Officer appeared before the Committee on 20th April 2023 accompanied by the following officers;

1.	Mr. Paul N. Maina	- Deputy Chief Registrar Judiciary
2.	Ms. Rebecca J. Kiplagat	- Director, Finance and Administration
3.	Mr. Ronald W. Wanyama	- Director, Audit
4.	Mr. Maxwell Suero	- Deputy Director, Building Services
5.	Mr. Dominic Maina	- Assistant Director, Accounts
6.	Ms. Esther Nyaiyaki	- Registrar, Office of the Chief Registrar Judiciary
7.	Mr. Ken Ogutu	- Legal Advisor
8.	Mr. Wycliffe Wanga	- Accounts Controller

And submitted as follows;

Unmodified Opinion

1741. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1742. Pending Bills

According to Annex 1 to the financial statements, the Commission had pending bills totalling to Kshs.18,656,969 as at 30 June, 2021, which were not settled in 2020/2021 but were instead carried forward to 2021/2022 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

The Accounting Officer submitted that the Commission had pending bills of Kshs. 18,656,969 as at 30th June 2021.However, the Commission has settled the same in full in the subsequent years and provided copies of bank statements in that regard.

The same have been submitted to the Office of the Auditor General for review and verification

Committee Observations and Findings

The Committee observed that the pending bills did not form the first charge as required under Section 74 (4) (d) of the PFM Act, 2012.

Committee Recommendation

The Accounting Officer should ensure that pending bills in any financial year form the first charge in the budget of the subsequent financial year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1743. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1744. Lack of Logbooks

Disclosed in Annex 2 to the financial statements is a summary of fixed assets register which reflects transport equipment having a historical cost brought forward and additions during the year amounting to Kshs.38,604,415 and Kshs.16,632,415 respectively, all totalling to Kshs.55,236,830 as at 30 June, 2021. However, the Commission did not provide logbooks for a motor vehicle acquired in the year 2019/2020 and a motor cycle acquired in the year 2020/2021. In the circumstances, existence of effective controls on assets records management could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission followed up on the logbooks with NTSA and the two logbooks that were missing at the time of audit were received and submitted to Auditor General for verification.

Committee Observations and Findings

The Committee observed that the Commission had now provided the required log books to both the Committee and the Office of Auditor General.

Committee Recommendation

The Committee recommends that the matter is resolved.

56. COMMISSION ON REVENUE ALLOCATION - VOTE 2061

REPORT ON THE FINANCIAL STATEMENTS

Mr. James Katule, the Chief Executive Officer/Commission Secretary for the Commission on Revenue Allocation appeared before the Committee on 27th April 2023 accompanied by the following officers;

1.	Mr. Koitamet Ole Kina	-	Vice Chairperson
2.	Ms. Angela Kariuki	-	Director, Cooperate Services
3.	Ms. Maureen K. Junge	-	Finance Manager

and submitted as follows: -

Unmodified Opinion

1745. There were no material issues noted during the audit of the financial statements of the Commission.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1746. Non-Compliance with the Law on Fiscal Responsibility - Wage Bill
The statements of receipts and payments reflects an expenditure of Kshs.190,087,159 on compensation of employees representing 55% of the total receipts of Kshs.346,390,074. This is contrary to the provisions of Regulation 26(1)(a) of the Public Finance Management (National Government) Regulations, 2015, which requires that compensation of employees not to exceed 35% of revenue. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer submitted that Article 249(3) requires that Parliament shall allocate adequate funds to enable the Commission to perform its functions. This clearly places the requirement to fund the Commission on Parliament. Further, Commission on Revenue Allocation has always prepared its budget in line with the requirements of the law. In this particular case, the amount which was allocated to the Commission was not sufficient to cater for both expenditure items on technical mandates, compensation of employees and other items on operations and maintenance. In addition, compensation for employees comes with a separate ceiling which helps hedge on reduction of its budget whenever there were budget cuts. Technical sub-programme's budget would also have been secured if the Commission had a development vote.

The Accounting Officer also submitted that the Commission prepared its Financial Year 2020/2021 budget in line with the requirements of the Public Financial Management Act (2012) regarding fiscal responsibility with a total resource requirement of Ksh.577.16 Million. However, during the sector working group retreat and upon finalization of the budget process in the said year, the resource allocation was reduced to Ksh.371.98 Million. This budget was later again affected by budget cuts of Ksh.42.4 million and 10.12 Million during Supplementary I and II respectively leaving the Commission with a final revised budget of Ksh.319.45 Million. In that revised budget, personnel emoluments was allocated Ksh.178.5 Million translating to 56% of budget.

The Accounting Officer further submitted that CRA's interpretation of the specific provision of the Act is that the wage bill provision ration refers to the consolidated National government and not individual MDA's. The Public Finance Management Act Section 15(2) (b) states that 'the National Governments expenditure on wages and benefits for its public officers shall not exceed a percentage of the national government revenue as prescribed by regulations'.

The PFM Regulations 26(1)(a) states that 'National Government's expenditure on the compensation of employees (including benefits and allowances) shall not exceed 35% of the national government equitable share of the revenue raised nationally plus other revenues generated by the national government pursuant to Article 209(4) of the Constitution. It is also noteworthy that the constitutional mandate of the commission is set out in such a way that it requires heavy human resource outlay to deliver.

The Commission has continually lobbied the National Treasury and the Standing Committee of Finance and National Planning (National Assembly) to consider enhancing our annual budget allocations. In the current Financial Year (2022/2023) Supplementary Estimates No. I, the Commissions budget was increased by Ksh.56.8 Million through intervention of Parliament.

The Accounting Officer reiterated that the revision has reinstated their compliance status as required by the PFM Regulations, 2015. To deal with this, the Commission proposed allocation of a development vote for CRA's core mandate.

Committee Observations and Findings
The Committee noted that the issue related more to the national Government than individual MDA's.

Committee Recommendation
The Committee recommends that the matter is resolved.

1747. Irregular Promotion of Staff Based on an Unapproved Salary Structure
Examination of human resource records revealed that during the year under review, the Commission implemented a new salary structure and accorded direct promotion to fourteen (14) staff members without the necessary approval from the Salaries and Remuneration Commission, (SRC) 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 has explained that the Commission 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 should be approved by the Salaries and Remuneration Commission (SRC). It is however, noted that the Commission sought for the advisory opinion from the SRC on structural reorganization and staffing but went ahead and implemented the unapproved structure before receiving the advisory claiming that the Salaries and Remuneration Commission was only to provides advisory services and that they are at liberty to accept or reject the advisory. By the time of the audit in the month of November 2021, the SRC advisory opinion had not been provided for audit review. In the circumstances, Management was therefore in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that CRA's Act section 16 provides that 'the Commission shall, pursuant to Article 252(1) of the Constitution, employ its own staff through a competitive and transparent process. This formed the basis on which the 1st Commission approved an Organogram for purposes of implementation of the salary structure and the promotions in question. The second organogram was driven by the second strategic plan (2017-2022) but the pay structure was never changed.

In view of the query, the Commission wrote to the National Treasury seeking approval of its new Organogram and Salary Structure on 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 FY 2020/2021. It further requested the Commission to seek the 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 2021/22 – 2024/25 remuneration review cycle, the Commission was requested to await the outcome of the job evaluation exercise.

The CRA 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 the state department awaited the completion of the SRC process.

Furthermore, the Commission revised its salary structure within the original structure which had no huge financial implications for staff whose remuneration were way below their counterparts.

The Accounting Officer reiterated that the Commission is cognizant of results of the job evaluation undertaken by the SRC 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. CRA then received its 3rd Commission effective January 2023 and were in the process of developing the 3rd Strategic plan which will take into consideration the revised Organizational and Salary structures aligned to SRC's Job Evaluation.

Committee Observations and Findings
The Committee noted that the agency had disregarded SRC's recommendations.

Committee Recommendation
The Committee reprimands the Accounting Officer for acting contrary to Article 230 (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.

1748. Irregular Issuance of Salary Advance to Commissioners
As disclosed in Note 12(c) to the financial statements, review of the statement of financial position for the year ended 30 June, 2021 indicates that the receivables from non-exchange transactions balance of Kshs.42,251,095 constitutes an outstanding salary advance of Kshs.2,558,624 which

includes salary advances to two Commissioners amounting to Kshs.1,200,000. Review of records revealed that the Commissioners had applied the provisions under the Commission on Revenue Allocation (CRA) Human Resource Manual to irregularly access salary advances despite the fact that their salaries are drawn from the Consolidated Fund as per Article 250(7) of the Constitution of Kenya, 2010 and have been servicing it through their allowances from the Commission's budget. Management has however stated that the Commission is committed to expunge the clause which earlier allowed Commissioners to access salary advances and engage The National Treasury to consider facilitating future requests from Commissioners. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission during F/Y 2021/22 undertook to review five of its operational manuals among them was the operational manual. Following the audit query on issuance of salary advances to Commissioners, the revision of the HR manual involved expunging the clause which earlier allowed Commissioners to access salary advances.

Additionally, the Commission stopped further issuance of salary advances to Commissioners and instead wrote to the National Treasury to consider facilitating the same to those that may be in need. It was also agreed that the outstanding salary advances for some of the Commissioners at the time be cleared as soon as possible.

The Accounting Officer reiterated that the Commission recovered the entire salary advance from Commissioners of Ksh.1,200,000 in the subsequent year. Further the Commission amended the HR policy and procedures manual to exclude Commissioners from requesting and receiving salary advances.

The Accounting Officer further submitted that the Commission had charged the advances on telephone allowances to commissioners and that there would be no further salary advances.

Committee Observations and Findings

The Committee noted that the Commission had breached the law.

Committee Recommendation

The Committee reprimands the Accounting Officer for approving the payment Commissioners contrary to Article 250(7) of the Constitution of Kenya, 2010.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1749. There were no material issues relating to effectiveness of internal controls, risk management and governance.

57. PUBLIC SERVICE COMMISSION - VOTE 2071

REPORT ON THE FINANCIAL STATEMENTS

Dr. Simon K. Rotich, CBS, the Commission Secretary/Chief Executive Officer and Accounting Officer for Public Service Commission appeared before the Committee on 23rd March 2023 accompanied by the following officers:

1. Mr. Maina Njoroge – Finance and Planning Director
2. Dr. Julius O. Moturi – Deputy Director Accounts
3. Mr. Patrick Malakwen – Deputy Director Supply Chain Management
4. Mr. Simiyu Njacale – Assistance Director Finance
5. Mr. Joseph Njoroge – Assistant Director Accounts

and submitted as follows;

Unmodified Opinion

1750. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1751. Delay in Exchequer Releases

Review of Exchequer records revealed that the Public Service Commission received an amount of Kshs.401,567,003 or 18% of the allocated amount in form of Exchequer releases from The National Treasury in the month of June, 2021 as detailed below:

Date Funds Released by The National Treasury	Exchequer Ref. No	Vote	Amount Received (Kshs.)
2 June, 2021	166/17/20/21	Recurrent	63,099,867
21 June, 2021	175/18/20/21	Recurrent	4,137,366
24 June, 2021	179/49/20/21	Recurrent	152,009,129
28 June, 2021	181/30/20/21	Recurrent	121,744,613
30 June 2021	187/30/20/21	Recurrent	56,786,268
30 June 2021	153/21/20/21	Development	3,789,760
Total			401,567,003

The delayed Exchequer releases may have negatively affected timely implementation of the programmes of the Commission and provision of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the Public Service Commission received exchequer amounting to Kshs.401,567,003.90 late in the month of June, 2021. This amount comprised 18%

of total exchequers received in financial year 2020/2021. The delay in release of exchequer by the National Treasury was beyond the control of the Commission.

The Accounting Officer also submitted that IFMIS remained closed in the months of April and May 2021 to facilitate finalization and approval of Supplementary Estimates No. 2. The delay in release of Supplementary Estimates II that was approved on 30th June 2021 also attributed to late requisitioning of Exchequer. However, advance planning by the Commission facilitated requests of exchequer within the 2020/2021 financial year.

The Commission requisitioned exchequer releases amounting to Kshs.105,174,628.10 in May 2021, and Kshs.296,392,374.90 in June 2021, as shown in the analysis here below. However, the releases were all made in the month of June 2021.

Date Funds released by The National Treasury	Exchequer Ref No.	Vote	Amount Received	Date Funds were requested from The National Treasury	Amount Requested
02-06-21	166/17/20/21	Recurrent	63,099,867.00	26-05-21	63,099,867.00
21-06-21	175/18/20/21	Recurrent	4,137,366.00	06-05-21	4,137,366.00
24-06-21	179/49/20/21	Recurrent	152,009,129.00	15-06-21	152,009,129.00
28-06-21	181/30/20/21	Recurrent	121,744,613.00	20-05-21	37,937,395.10
28-06-21	181/30/20/21	Recurrent		04-06-21	8,129,932.45
28-06-21	181/30/20/21	Recurrent		22-06-21	50,272,505.00
28-06-21	181/30/20/21	Recurrent		25-06-21	25,404,780.15
30-06-21	187/30/20/21	Recurrent	56,786,268.00	30-06-21	37,557,700.30
30-06-21	187/30/20/21	Recurrent		30-06-21	19,228,568.00
30-06-21	153/21/20/21	Development	3,789,760.00	30-06-21	3,789,760.00

summary			Month	Amount-kshs	
Exchequer requests			May-21	105,174,628.10	
Exchequer requests			Jun-21	296,392,374.90	
TOTAL				401,567,003.00	

The Commission will in future engage the National Treasury for early and timely release of exchequer requests. However, the Commission fully implemented all the planned activities within the approved annual budget of Kshs.2,184 million with 98% absorption rate.

Committee Observations and Findings

The Committee observed that the delay in exchequer releases were attributable to National Treasury.

Committee Recommendations

The Committee recommends that the National Treasury ensures timely release of funds.

1752. Accounts Payables

As disclosed in Note 10 to the financial statements, the statement of assets and liabilities reflects a balance of Kshs.13,896,633 in respect of retention monies for contractors. However, the schedule for the retention funds indicated that some of the withheld funds date back to 2013/2014 financial year which is beyond the defect's liability period of six (6) months. No effort appears to have been made by the Management to pay the contractors or provide satisfactory explanations for the delay in refunding the retention monies.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission's Statement of Assets and Liabilities as outlined under **Note 10** to the financial statements reflects an amount of Kshs.13,896,633/- reported as retention monies for contractors. Retention monies have been held beyond the defect liability period of six (6) months with some having been in the accounts since year 2013.

The release of retention monies is based on payment certificates to the contractors which originate from the State Department for Public Works when the Project Manager is satisfied that the works have been fully completed and stood the test of quality and other documented specifications after the defect liability period has expired as guided by Chapter 14, Part 14.8 of the Government Financial Regulations and Procedures. The retention money can only be paid upon receipt of payment certificates from the Project Manager (Public Works).

The retention is normally deposited in the deposit account held at Central Bank of Kenya. Payments to the contractors from the deposit account can only be made upon presentation of authorized payment certificates issued by the State Department for Public Works.

The outstanding retention monies held by the Commission as at the time of audit, the State Department for Public Works had not submitted the payment certificates for release of these funds to the respective contractors. However, the Commission has made efforts to pursue the matter with the Principal Secretary, State Department of Public Works for submission of payment certificates for release of retention monies to contractors.

The Commission notified the State Department for Public Works to carry out the necessary inspections so that all retention monies could be settled once the stipulated defect liability period lapsed. As a follow up, the Commission through a letter Ref. PSC/ACCT/9/(10) dated 25th May 2022, reminded the Principal Secretary, State Department of Public Works on the release of the outstanding contractors' retention funds.

The management has made efforts to ensure that the retention funds are paid to the contractors through several correspondences and follow-up with the Principal Secretary, State Department of Public Works. At the close of financial year 2020/21, the outstanding retention money was Kshs.13,896,633/- As of 12th October, 2022, the outstanding retention money had reduced by Kshs.4,390,788.65 to Kshs.9,505,844.35 after twelve (12) payment certificates were received from the State Department for Public Works**.** In addition, the Commission sought advisory/guidance from Principal Secretary, the National Treasury, through a letter **Ref. PSC/ACCT/8/(53)** dated 16th February, 2023 on how to settle/clear the outstanding retention funds.

The Principal Secretary, the National Treasury, through a letter **Ref. AG.3/88 Vol.7/(24)** dated 15th February, 2023, directed all the Accounting Officers of MDAs that all retention monies held for more than 5 years be paid to the National Treasury Exchequer Account No.1000003987. The directive was in line with Section 106 of the Public Finance Management (National Government) Regulations, 2015.

In compliance with the directive, the Commission, on 22nd February, 2023 remitted Kshs.6,928,970.95 to the National Treasury **(letter Ref. PSC/ACCT/8/(54).** As of 6th March, 2023, the Commission has an outstanding retention balance of Kshs.2,576,872.95 only due to Calmape Engineering Ltd**.**

Committee Observations and Findings

(i) The Committee observed that there was inadequate communication between the Public Service Commission and the State Department for Public Works, resulting in inordinate delay in payment of contractors, some as far back as 2013. It emerged Public Works had not certified contractors for work done with no reasons adduced;

(ii) The Committee also noted that the National Treasury had a liability of Ksh.6,928,970.95 due to contractors as funds were remitted to the deposits account under Treasury.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures prompt payment to contractors.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1753. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1754. There were no material issues relating to effectiveness of internal controls, risk management and governance.

58. TEACHERS SERVICE COMMISSION- VOTE 2091

REPORT ON THE FINANCIAL STATEMENTS

Dr. Nancy Njeri Macharia, the Chief Executive Officer and Accounting Officer for TSC (Vote 2091), appeared before the committee on accompanied on 4th May, 2022 to adduce evidence audited Financial Statement for the Teacher service Commission (vote 2061) for the Financial Year 2020/2021. She was accompanied by the following officers:

1.	Mr. Cheptumo Ayabei	-	Director Finance and Accounts
2.	Mr. William Maina	-	Deputy Director Accounts
3.	Mr. Musundi Edwin	-	Legal Officer.
4.	Mr. Calvince Anyuor	-	Director, Legal

And submitted as follows:

Basis for Qualified Opinion

1758. Long Outstanding Accounts Receivables

The statement of assets and liabilities reflects an accounts receivables balance of Kshs.867, 537,156 which includes cash losses amounting to Kshs.2, 928, 398. As previously reported the cash losses occurred between the years 1998 and 2000 and the matter was investigated whereby the Director of Public Prosecutions directed the suspect to be charged with the offence of stealing 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 been recovered. In the circumstances, the recoverability of cash loss amount could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

Cash Losses

i) 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 un-economical to continue with the cases and recommended a write-off through the National Treasury.

ii) 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. Also sought was the Attorney General's legal opinion on the matter.

iii) The Attorney General vide letter Ref: AG/CONF/9/29 Vol II (43) dated 10th May, 2019 advised on 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.

iv) 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 un economical.

v) 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. Further, the Commission shall reapply for write-off from the National Treasury for the resolved cases.

Committee Observations and Findings
The Committee observed that the explanation given by the Accounting Officer with regards to Long Outstanding Accounts Receivables was Satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1759. Property, Plant & Equipment
As disclosed in annex XV –other important disclosures to the financial statements, property, plant & equipment balance of Kshs.4,764,948,850 as at 30 June, 2021, includes a balance of Kshs.88,096 being the residual value of one (1) motor vehicle procured in 2004 at a total cost of Kshs.2,085,869. A review of the matter in January, 2018 had 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.

In the circumstances, it has not been possible to confirm whether property, plant and equipment balance of Kshs.4,764,948,850 is fairly stated.

Submission by the Accounting Officer
The Accounting Officer submitted as follows;
Motor vehicle Registration No. KAR 246L
The Motor Vehicle Registration No. KAR 246L - Nissan Urvan whose residual value is Kenya shillings Eighty eight thousand and ninety six (Kshs.88,096) was repossessed from auctioneers. The original log book 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 judgment was finally delivered on 15th September, 2020, where the court ruled that the motor vehicle registration No. KAR 246L be released to the plaintiff. A copy of the judgment was attached. The Commission has appealed the ruling vide the Memorandum of Appeal dated 20th November, 2020. On 8th July 2021 the High Court delivered its ruling on the application and allowed it on condition that the

Commission deposits a Decretal sum of Kenya shillings One million eighty thousand (Kshs.1,080,000) with the Court within 30 days. Further, the Memorandum of Appeal was to be filed with the High Court Registry within 14 days.

Committee Observations and Findings

The committee observed that the matter was pending before a court of law pending hearing.

Committee Recommendation

The Committee recommends that the matter awaits the outcome of the court process, and the Accouting Officer to avail a status report to the Committee within three (3) months of adoption of this report.

1760. Un-authorized Expenditure on Insurance Costs

As disclosed in Note 5 to the financial statements, the statement of receipts and payments reflects use of goods and services balance amounting to Kshs.763,764,040. The amount includes insurance costs of Kshs.47,793,308 which further includes payments amounting to Kshs.7,005,775 in respect of compensation under the Work Injury Benefits Act (WIBA), 2007. However, the paid claims were approved for payment by the Chief Executive Officer in 2018 and 2019, but the claims had not been included as pending bills in the financial year 2019/2020. Further, no documentation was provided to show the approved budget reallocation to support the payments. Consequently, the validity of the insurance costs of Kshs.7,005,775 could not be ascertained.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

WIBA Compensation

The amount of Kenya shillings Seven million five thousand seven hundred and seventy five (Kshs.7,005,775) relates to compensation for claims received by the Commission from the Directorate of Occupational Safety and Health Services (DOSHS) for teachers who are injured at work place. The claims are usually subjected to a process of vetting to; (i) verify the percentage awarded for the injury, (ii) ascertain how and when the injury occurred and (iii) confirm the correctness/accuracy of the amount awarded.

As a result, the claims were not declared as pending bills in 2019/2020 financial year as the process of vetting of the pending claims had not been concluded.

Further, the Commission had not been provided with adequate budgetary allocation to procure an insurance company to settle the claims due to the huge expected outlay on premiums. The National Treasury advised the Commission to manage these claims internally through the annual budgetary allocation. The claims are gradually settled with the available budget under Group Personal Accident Insurance.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Un-authorized Expenditure on Insurance Costs is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1761. Un-supported Accounts Payable

As disclosed in Note 10 to the financial statements, the statement of assets and liabilities as at 30 June, 2021 reflects accounts payables balance of Kshs.459,795,093 which includes a clearance account balance of Kshs.405,647,139. The balance constitute un-explained sundry creditors balance of Kshs.46,013,489, un-supported returned salaries of Kshs.25,958,415, returned EFT payments of Kshs.36,765,251 and un-supported stale cheques amounting to Kshs.4,509,310 which have been supported by listings showing outstanding transactions, dating back to financial year 2015/2015 and earlier. The clearance accounts of Kshs.405,647,139 has minimal movement over the last twelve months and no explanation was provided for the same.

Further, the balance of Kshs.459,795,093 includes an inter-ministerial agency account balance of Kshs.45,738,914. However, the reported amounts differs from the corresponding amounts in the State Department for Early Learning and Basic Education financial statements balance of Kshs.9,437,963 leading to un-reconciled variance of Kshs.36,200,951.

In the circumstances, the accuracy of the accounts payable balance of Kshs.459,795,093 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i)Sundry Creditors

The amount of Kenya shillings Forty six million thirteen thousand four hundred and eighty nine (Kshs.46,013,489) relates to monies deposited in TSC bank account being: -

(a) Payments made by TSC to various beneficiaries that have been returned as un-applied. This result from 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 the details in order to contact the beneficiaries to provide correct bank details.

(b) Payment to TSC by The National Treasury in respect 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 continues to clear the balance. The supporting schedule was availed for perusal by the Committee

(ii) Returned Salaries

The amount of Twenty five million nine hundred fifty eight thousand four hundred and fifteen (Kshs.25,958,415) 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 which include: -

(a) Wrong bank account;
(b) Bank account names not matching; and

(c) In dormant bank accounts, these payments are returned by the paying banks without the details of the teachers. The Commission liaises with the paying banks to obtain details of the teachers to enable it contact them to provide correct bank details. The Commission 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 with a copy of the bank plate/ copy of ATM card. The state department is progressively continuing to obtain correct details of the beneficiaries to clear the balance. The supporting schedule was availed for perusal by the Committee.

(iii) Returned EFT payments

The amount of Kenya shillings Thirty six million seven hundred sixty five thousand two hundred and fifty one (Kshs.36,765,251) relates to monies deposited in TSC bank account being: -

(a) Payments of 3rd party payroll deductions; and

(b) Payments of amounts due to teachers who have left service that are returned by the paying banks as un-applied. This results from 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. the state department is progressively continuing to obtain correct details of the beneficiaries to clear the balance. The supporting schedule was availed for perusal by the Committee.

(iv) Stale Cheques

The amount of Kenya shillings Four million five hundred nine thousand three hundred and ten (Kshs.4,509,310) relates to Cheques for payments to various beneficiaries that have not been presented to the banks for payment within six months. These are payments mainly done through the public trustees/law courts and fail to reach the intended beneficiaries. The Commission issues replacement cheques once the beneficiaries are contacted. Some of the cheques have remained outstanding due to difficulties in establishing the beneficiaries who are the next of kin to deceased teachers and beneficiaries of Court attachments for child support. Where the Commission is unable to reach the beneficiaries it has transferred the funds to Unclaimed Financial Assets Authority (UFAA). The supporting schedule was availed for perusal by the Committee.

(v) Inter-ministerial agency account variance

Inter-Ministerial Agency Account balance contains balance of AIEs received from the Ministry of Education to carryout activities of the Commission that had not budgeted under the Commissions budget. This includes funds for: -

(a) Teacher training under Competence Based Curriculum (CBC;
(b) Kenya Primary Education Development Project (PRIEDE); and
(c) Kenya GPE COVID 19 project.

The Ministry of Education provided the Commission with AIEs to implement Competency Based Curriculum (CBC) when budget to carry out the activity had not been included in the Commission's annual budget. At the closure of the 2020/2021 financial year, the unspent balance was Kenya shillings Thirty three million six hundred eighty five thousand nine hundred and fifty seven (Kshs.33,685,957).

During the 5 years of implementation of the Kenya Primary Education Development Project (PRIEDE), the Commission also received AIEs from Ministry of Education to implement the Components the Commission was responsible for. At the closure of the financial year 2020/2021, the unspent balance under PRIEDE was Kenya shillings Three million one hundred forty three thousand two hundred and seven (Kshs.3,143,207). The Commission also received AIE to implement the KENYA GPE COVID 19 project. The balance of the AIE at the closure of 2020/2021 financial year was Kenya shillings Eight million Nine hundred nine thousand Seven hundred and fifty (KShs.8,909,750).

The Commission reported the balances of the AIEs as per the records maintained at the Commission.

Committee Observations and Findings
The Committee observed that the explanation and documents given by the Accounting Officer with regards to Un-supported Account Payable is satisfactory.

Committee Recommendation
The Committee recommends that the matter is resolved.

1762. Accounts Receivables

1762.1 Long Outstanding Salary Advances

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects accounts payables balance of Kshs.867,537,156 which includes an amounts of Kshs.10,531,874 in respect of salary advances. However, the salary advances balances includes an amount of Kshs.2,125,414 described as undefined recoveries whose composition and support documents were not provided for audit review. Further, an amount of Kshs.4,264,665 in respect of one hundred and forty five (145) staff had no movement over the last twelve months. It was noted that some of the staff with outstanding balances had received additional salary advances during the year under review. Management did not give any reason for non-recovery of the salary advances.

Submission by the Accounting Officer
The Accounting Officer submitted as follows;

a) Undefined recoveries (Various 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 advances that were recovered through the payroll from various staff from July 2020 to June 2021. Ex-gratia advances arise where the Commission settles residual hospital bills for teachers to allow discharge of patients/release of bodies and the teachers are then granted ex-gratia ranging from 50% to 75% of the medical bill depending on availability of funds. The balance is then recorded as an advance against the teacher and recovered from payroll in installments. The supporting schedules were availed to the Committee for perusal.

b) 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 old cases where teachers were paid salary arrears through payment vouchers for (i) underpayment, (ii) reinstatement on payroll and (iii) promotion. The details of the payment vouchers were to be computerized in subsequent month's payroll. However, in the month of computerization, the teachers were no longer on payroll due to interdiction, death and retirement and the details of the payment vouchers could not be captured. The Commission is no longer facing this challenge due to the real time processing of salary payments through the IPPD system. The payments were due to the teachers and the Commission is in the process of clearing the balances.

Committee Observations and Findings

The Committee observed that the explanation and documents given by the Accounting Officer with regards to Longstanding Outstanding Salary Advances is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1762.2 County Disbursements

Further, the accounts receivables balance of Kshs.867,537,156 includes a balance of Kshs.475,068,169 in respect of disbursements to counties. However, the breakdown of the amounts owed by each county was not provided for audit review. Available records revealed that the reconciled county and regional county bank balances totaled to Kshs.34,575,199 representing un surrendered AIEs issued to the counties. The amount has however not been reconciled to the outstanding county disbursement balance of Kshs.475,068,169

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission adopted the use of GoK IFMIS in 2015/2016 financial year. The system is used to disburse funds for TSC operations at the county level through issuance of AIEs. The funds are disbursed as advances under a below the line account. The counties are required to account for the funds through submission of quarterly expenditure returns and any unspent balances returned to TSC headquarters. The expenditure reported in the returns and the unspent balances are posted in IFMIS system to clear the advance.

The amount of Kenya shillings Four hundred seventy five million sixty eight thousand one hundred and sixty nine (Kshs.475,068,169) represents (a) expenditure at the counties that could not be posted in IFMIS as a result of budget cuts due to austerity measures and (b) unspent AIEs at the counties that had not been surrendered at the end of the 2020/2021 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. Disbursement analysis of the balances for each county was provided for perusal by the Committee**.**

Committee Observations and Findings

The Committee observed that the explanation and documents given by the Accounting Officer with regards to County Disbursements is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

1762.3 Other Receivables

In addition, the account receivables balance of Kshs.867,537,156 includes an amount of Kshs.370,924,085 in respect of other receivables which further includes an amount of Kshs.352,853,152 relating to salary overpayment. However, the origin and the buildup of the salary overpayment has not been explained. The balance also includes receivables totaling to Ksh.10,416, 781 which had no recoveries or repayments in the last twenty-four months casting doubts on the recovery or realization of the amount.

In the circumstances, the accuracy and completeness of the accounts receivables balance of Ksh.867,537, 156 reflected in the statement of assets and liabilities as at 30 June,2021 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(i) Salary Overpayment

The Salary overpayment of Kenya shillings Three hundred fifty two million eight hundred fifty three thousand one hundred and fifty two (Kshs.352,853,152) occurred as a result of various reasons including death, desertion of duty, resignation, transfer of service, retirement, sick leave and absenteeism. The amount has accumulated over the years and recovery is progressive. Recovery is of the overpayment is done through; (a) The payroll for teachers who are still in TSC employment. (b) For teachers who are out of TSC employment, the Commission has designed mechanisms of following up the overpayment which are set out in the Overpayment policy which include (i) Issuing demand letters (ii) Making phone calls (iii) Liaising with Co-operative Societies to utilize any Sacco savings (iv) Liaising with other employers where the teachers are in other employment (v) Liaising with the Ministry of Foreign Affairs and Kenyan Embassies where the teachers are in foreign Countries.

The overpayment also includes liabilities recorded against teachers who have misappropriated school funds where the Commission is facilitating recovery on behalf of the schools. In order to separate Salary overpayment for school liabilities, the Commission is now treating school liabilities as 3rd party liabilities in order for the schools/Ministry of Education to engage other means of recovery in case the teachers exit TSC employment before the liability is fully recovered.

(ii) Receivable with no recoveries/repayments

The Kenya shillings Ten million four hundred sixteen thousand seven hundred and eighty one (Ksh.10,416, 781) relates to payroll deduction remitted to 3rd party institutions from undue salaries. The Commission recalls these deductions from the 3rd parties once the undue salaries are reversed. Where the 3rd parties fail to refund, the Commission recovers the amount from the remittances that are due to them. The amount shall be recovered progressively.

Committee Observations and Findings

The Committee observed that the explanation given by the Accounting Officer with regards to Other Receivables is satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

Other Matter

1763 Budgetary Control and Performance

The summary statement of appropriation - development reflects final receipts budget and actual on comparable basis of Kshs.240,000,000 and Kshs.40,000,000, respectively resulting to an under-funding of Kshs.200,000,000 or 83% of the budget. Further, the statement reflects final expenditure budget and actual on comparable basis of Kshs.240,000,000 and Kshs.117,677,710, respectively resulting to an under-expenditure of Kshs.122,322,290 or 51% of the budget. The under-funding and under-expenditure affected the planned activities of the Commission and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission had an allocation of Kshs. 240,000,000 under the development budget of which Kshs. 200,000,000 was provided under SEQIP project. The SEQIP workplan had included a face-to-face training of techers on school based teacher support system. Due to covid-19, the face-to-face training did not take place but was done virtually.

The budgeted amount could thus not be fully utilized, as well as the Kshs.100 billion for teacher CBC training**.**

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1764 Failure to Deduct and Remit Pay-As-You-Earn (PAYE) from Employees

During the year under review, Management did not deduct Pay As You Earn (PAYE) tax due from five thousand and twelve (5412) Commission's staffs and twenty-five (25) Secretariat's staffs with a gross pay amounting to Kshs.2,194,204,398 and Kshs.12,608,086 respectively.

Review of the Commission's payrolls revealed that employees with special needs, as prescribed under Section 11(3) of the 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 the Kenya Revenue Authority. Failure to deduct and remit Pay As You Earn (PAYE) tax is contrary to the Income Tax Act CAP 470.

Consequently, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that of the 25 identified staff, 1 was an employee with special needs and was tax exempt while the 24 were those whose PAYE was deducted from their taxable income. They were however not on payroll in various months for varied reasons and therefore not paid for varied periods, hence no tax payable.

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the matter is resolved.

1765 Non-Compliance with Public Finance Management Act, 2012

During the year under review, Management granted a rent waiver of Kshs.621,622 to one of the Commission's tenants due to COVID-19 challenges which had affected its business. The tenant was supposed to pay an annual rent of Kshs.1,896,060 as per the lease agreement but this was reduced to Kshs.1,274,438. The Commission did not provide any evidence of seeking authority from The National Treasury. This is contrary to Section 77 of the Public Finance Management Act, 2012 which requires an entity to seek authority from The National Treasury for any waiver or write-off for any amount owing.

Consequently, Management was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer submitted that the Kilimanjaro Food Court rent waiver was applied for by the tenant due to covid-19. The waiver was lifted from 1 June 2021.

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer enters into agreement with the tenant for settlement of the rent waived, in instalments, fully recovered within one (1) year of adoption of this report.

1766 Irregular Issuance of Imprest

The statement of assets and liabilities reflects an accounts receivables balance of Kshs.867,537,156 which, as disclosed in Note 9 to the financial statements, includes outstanding imprests balance of Kshs.11,013,028 out of which a balance of Kshs.1,255,655 was owed by eight officers who had more than one imprest. This contravenes Regulation 93(4)(b) of the Public Finance Management (National Government) Regulations, 2015 which requires the accounting officer to ensure that the applicant has no outstanding imprests before issuing additional imprests.

Consequently, Management was in breach of the law.

Submission by the Accounting Officer
The Accounting Officer submitted that the officers had already accounted for the 1st imprest before being issued with the 2nd. The process had however not been completed in IFMIS due to back-to-back training on CBC. The imprests have since been cleared.

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Auditor General confirms the assertion in subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

1767 Recovery of Salary Overpayments
Review of the detailed analysis of the payroll provided for the financial year 2020/2021 revealed that, thirty-two (32) teachers had an outstanding 'salary overpayment' balance amounting to Kshs.33,780,614. However, the repayment period for the recovery of the outstanding amounts is beyond the retirement age of the respective teachers. The recoverability of the balance is therefore doubtful.

In the circumstances, the existence of an effective internal control to safeguard loss of public resources could be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the the monthly recovery rate for overpayment is 1/3 of the basic pay as per section 19(3) of the Employment Act 2007. The recoveries from those retired are done from pensions**.**

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer demands full settlement from those overpaid within six (6) months of adoption of this report, failure to which those responsible for processing the overpayments be surcharged.

DONOR FUNDED PROJECT

SECONDARY EDUCATION QUALITY IMPROVEMENT PROJECT (IDA CREDIT NO. 6138-KE)

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1768 Receivables - Unspent Balances in the Counties

Note 11.4 to the financial statements shows an amount of Kshs.31,029,206 as other receivables. The balance represents AIEs issued to thirty County Directors that had not been surrendered as at 30 June, 2021. The funds are deposited in a designated project bank account where all the payments are made from and a cash book maintained for each account. However, two bank accounts held at National Bank in Murang'a and West Pokot reported to hold Kshs.149,210 had no bank reconciliation provided for audit review.

Further, twenty eight bank accounts statements reconciliations revealed that there were unexplained variances between the reported bank balance and the reconciled cash book balance all amounting to a net of Kshs.10,835,630.

Under the circumstances, the accuracy of the reported receivables balance could not be confirmed.

Submission by the Accounting Officer
The Accounting Officer submitted that the Kshs. 149,210 related to unspent Murang'a county balances and was accounted for. the variances between bank balance and reconciled cash book balance was due to bounced trainee payments, unpresented cheques and unspent balances already surrendered to CBK.

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the matter is resolved.

Other Matter

1769 Budgetary Control and Performance

The statement of comparative budget and actual amounts indicates that the Project received an amount of Kshs.200,000,000 or 100% of the approved budget. However, the Project utilized only Kshs.99,773,248 on use of goods and services resulting into under expenditure of Kshs.100,226,752 or 50% of the budget. Management has attributed the under-absorption of the budget was a result of the COVID-19 pandemic which prevented conducting of physical training of teachers on school based teacher support system. The Commission with the approval of the World Bank resulted to virtual trainings. The cost of this mode of training was lower than the cost of conducting the envisioned face to face training. This resulted in the under-absorption 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 non-provision of services to the stakeholders.

Submission by the Accounting Officer
The Accounting Officer submitted that the under absorption was due to covid-19**.**

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the matter is resolved.

1770 Project Performance

The Project has been in place for 45 months representing 60% of the Project timeline. The Project had donor commitment of Kshs.2,428,630,100 but the utilization to date amounts to Kshs.385,642,094 representing 15% utilisation. The Project is unlikely to achieve the target goal due to low funds absorption as it implies some of the activities will not be undertaken.

Submission by the Accounting Officer
The Accounting Officer submitted that the under absorption was due to covid-19**.**

Committee Observations and Findings
The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion
1771 There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion
1772 There were no material issues relating to effectiveness of internal controls, risk management and governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

1773 As required by Financing Agreement No. IDA 6138-KE I report based on my audit, that I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. Further, adequate accounting records have been kept and the Project's financial statements are in agreement with the accounting records and returns.

59. NATIONAL POLICE SERVICE COMMISSION - VOTE 2101

REPORT ON THE FINANCIAL STATEMENTS

Mr. Peter Leley, the Chief Executive Officer and Accounting Officer for the National Police Service Commission appeared before the Committee on 26th April 2023 accompanied by the following officers: -

1.	Dr. Silas Mc' Opiyo	-	Deputy, Chief Executive Officer
2.	Mr. J. M. Wambugu	-	Deputy, Chief Executive Officer
3.	Ms. Christine Rotich	-	Director, Human Capital Management
4.	Ms. Wairimu Rwenji	-	Manager, Legal Affairs
5.	Mr. Eric Nyaga	-	Manager, Accounts
6.	Ms. Annabel Chemeli Kuto	-	Finance Officer

and submitted as follows;

Unmodified Opinion

1774.There were no material issues noted during the audit of the financial statements of the Commission.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

1775. Leasing of Counselling Centre in Karen Nairobi

The Commission entered into a six-year lease agreement with Swara Safari Hotel Limited from 1 January, 2019 for a building erected on L.R. No. 12251/13 together with a vacant plot on L.R. No 12251/12 in Karen at a monthly rent of Kshs.1, 590,273 for use as a counselling centre.

A review of documents provided for audit revealed that L.R. Nos. 12251/12 and 12251/13 were registered in the names of Swara Safari Hotel Limited and Amazing Tours Ltd, respectively. However, through a letter dated 23 November, 2020, a law firm issued the Commission with a notice to vacate the plot on L.R. No 12251/13 on the claim that it was registered to Elicona Holdings Limited.

In March, 2021, Elicona Holdings Limited sued the Commission, alleging that the Commission had trespassed on its property L.R. No. 12251/13 and had refused to vacate.

A ruling was made by the Court in August, 2021 requiring the Commission to vacate the property and pay Elicona Holdings Kshs.750, 000 monthly rent with effect from 18 December, 2018 (a total Kshs.24, 750,000 for the period) plus the costs of the suit, which the Commission has since appealed.

The contingent liability has, however, been disclosed in the notes to the financial statements.

Submission by the Accounting Officer

The Accounting Officer submitted that the National Police Service Commission entered into a six-year lease agreement with Swara Safari Hotel Limited with effect from 18th December, 2018 for office accommodation located on LR No. 12251/13 together with a vacant plot No 12251/12 at a monthly rent of Ksh.1, 590,273.

However, through a demand letter dated 23rd November, 2020, from M/S T.K Rutto and Company Advocates acting on behalf of Elicona Holdings Limited, the Commission was issued with a notice to vacate Plot No. 12251/13 claiming that NPSC had trespassed on their land. The Commission did not vacate the premises in response to the demand letter from M/S T.K Rutto and Company Advocates as it appeared suspicious and it was not supported by a court order. Elicona holdings Limited went on to file a court case which culminated with a court ruling on 6th August, 2021.

In the ruling, the court ordered the commission to vacate the suit premises and in addition, pay Elicona Holdings Limited a total of Ksh.24, 750,000 for the period it had been in occupation of the said premises. The Commission vacated the premises as ordered by the court but lodged an appeal against payment of rent to Elicona Holdings Limited.

Due to the apparent fraud in this matter, the Commission immediately engaged the Principal Secretary State Department of Housing & Urban Development, the Principal Secretary Ministry of Lands and Planning and the Directorate of Criminal Investigations vide a letter dated 10th December, 2020 for investigation and clarification on the land ownership. In addition, and in consultation with the Attorney General, the Commission has procured a legal consultancy to represent it in the matter which is still active in court until it is concluded.

The Accounting Officer also submitted that the Commission did the last search in 2016 and that it was an omission on its part but there is a sworn agreement with Swara Ltd and necessary verification from the Ministry of Lands.

Committee Observations and Findings

(i) The Committee noted that the Commission had entered into agreement for lease on two plots where one is disputed, for their Counselling Centre in Karen Nairobi. One of the plots is vacant while the other one is occupied;

(ii) The Committee also noted that there was no invitation to tender documents provided for the acquisition and that there are procurement disputes between the two firms on matters unrelated to the Commission; and

(iii) The Committee wondered how one Counselling Centre situated in an empty plot in Karen, Nairobi would be used to help provide counselling services to all Police officers in the country.

Committee Recommendation

The Committee recommends that the EACC investigates the matter to establish possible loss of public funds and failure to follow the law.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1776. There were no material issues relating to effectiveness of internal controls, risk management and governance.

60. THE COMMISSION ON ADMINISTRATIVE JUSTICE - VOTE 2131

REPORT ON THE FINANCIAL STATEMENTS

Ms. Mercy Wambua, the Chief Executive Officer/Commission Secretary and Accounting Officer for the Commission on Administrative Justice appeared before the Committee on 26th April 2023 accompanied by the following officers: -

1. Mr. Dan Karamo - Director, Corporate Services
2. Mr. Benard Nyariki - Acting Director, Finance and Accounts
3. Mr. Justus Manyasa - Administrative Officer

and submitted as follows;

Unmodified Opinion

1777. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1781. Pending Bills

As disclosed in Note 13.1 to the financial statements, the Commission had pending bills totalling Kshs.2,545,903 as at 30 June, 2021 that were not settled during the year 2020/2021 but were instead carried forward to 2021/2022 financial year.

Failure to settle bills during the year to which they relate adversely affects provisions of the subsequent year as they form a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that during the Financial Year 2020/2021, the Commission had pending bills totalling Ksh.2,545,903. The Commission clarified that the pending bills were occasioned by factors beyond its control namely;

i. Austerity measures instituted by the Government in response to COVID-19 pandemic that affected budgetary items with running contracts among them postal services and contracted professional services. The Commission's budget was reduced by Ksh.24,300,000.
ii. Some suppliers delayed in providing relevant documentation to support payments on time.

The Accounting Officer reiterated that instituting austerity measures on items with running contracts risks exposing the Commission to costly litigation, for breach of contracts.

The Accounting Officer also submitted that the Commission has since settled all the pending bills as they formed a first charge on the budgetary provision for the 2021/2022 financial year. Further, the Commission has endeavoured to sensitize its suppliers on their obligation and the need to provide the required documentation promptly, to facilitate settling of their bills expeditiously.

Committee Observations and Findings

The Committee observed that the explanation and documents submitted by the Accounting Officer were conclusive and satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1782. There no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1783. There were no material issues relating to effectiveness of internal controls, risk management and governance.

61. NATIONAL GENDER AND EQUALITY COMMISSION - VOTE 2141

REPORT ON THE FINANCIAL STATEMENTS

Ms. Betty Sungura, MBS, the Chief Executive Officer/Commission Secretary and Accounting Officer for the National Gender and Equality Commission appeared before the Committee on 26th April 2023 accompanied by the following officers: -

1.	Dr. Chomba Munyi	-	Vice Chairperson
2.	Mr. Collins N. Lentupuw	-	Commissioner
3.	Mr. Thomas Koyier	-	Commissioner
4.	Ms. Beatrice J. Cheruiyot	-	Assistant Director, Finance, Accounts and Planning
5.	Mr. Benard Sompoika	-	Program Officer/ PA to CEO
6.	Mr. Edwin Njeru Gichovi	-	Program Officer/PA to Vice Chairperson
7.	Mr. Edson Mwandisha Mwaji	-	Senior Accountant

and submitted as follows;

Unmodified Opinion

1784. There were no material issues noted during the audit of the financial statements of the Commission.

Other Matter

1785. Pending Bills

As disclosed under Note 13 to the financial statements, the Commission had pending bills totaling Kshs.962,325 as at 30 June, 2021 that were not settled during the financial year 2020/2021 but were instead carried forward to 2021/2022.

Management attributed the delay in settlement of pending bills to late submission of invoices and late supply of goods and services. Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year to which they have to be charged.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills were all processed and paid in Financial Year 2021/2022.

Committee Observations and Findings

(i) The Committee noted that the Commission complained of exchequer delay by the National Treasury which was common to many agencies with pending bills promising to take up the matter with Treasury;

(ii) The Committee observed that the explanation and documents submitted by the Accounting Officer were conclusive and satisfactory.

Committee Recommendation

The Committee recommends that the matter is resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

1786. There were no material issues relating to lawfulness and effectiveness in use of public resources.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

1787. There were no material issues relating to effectiveness of internal controls, risk management and governance.

Sign:……………………… Date:………………..

HON. CPA JOHN MBADI NG'ONG'O, EGH, MP

CHAIRMAN, PUBLIC ACCOUNTS COMMITTEE