

REPORT OF THE AUDITOR-GENERAL ON KENYA NATIONAL HIGHWAYS AUTHORITY FOR THE YEAR ENDED 30 JUNE, 2023

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines, and manuals and whether public resources are applied in a prudent, efficient, economic, transparent, and accountable manner to ensure Government achieves value for money and that such funds are applied for the intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management, and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient, and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations and that its internal controls, risk management, and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Kenya National Highways Authority set out on pages 1 to 48, which comprise of the statement of financial position as at 30 June, 2023, statement of financial performance, statement of changes in net assets, statement of cash flows and the statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Kenya National Highways Authority as at 30 June, 2023, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Public Finance Management Act, 2012 and the Kenya Roads Act, 2007.

Basis for Qualified Opinion

1. Irregular Board Expenses

The statement of financial performance reflects Board expenses amount of Kshs.55,969,000 which, as disclosed in Note 14 to the financial statements includes expenditure in respect of ministerial and other official functions amounting to Kshs.7,381,293. Review of supporting documents revealed that the expenditure related to travel expenses by the Principal Secretary and Cabinet Secretary for State Department for Roads and other ministerial staff while on official site visits of the Authority's road projects. However, no plausible explanation was provided why the State Department for Transport functions were being funded from the Authority and charged to Board expenses while the State Department has a travel and subsistence allowance vote.

In the circumstances, the accuracy of Board expenses amounts of Kshs.55,969,000 could not be confirmed.

2. Lack of Land Ownership Documents

The statement of financial position reflects a balance of Kshs.726,602,109,784 in respect of property, plant and equipment which, as disclosed in Note 25 to the financial statements includes a balance of Kshs.268,360,000 in respect of land assets. However, it was noted that some properties occupied by the Authority are owned exclusively or jointly with other road Authorities but are not formally vested to KeNHA as tabulated below:

No.	Status	No. of Stations
1	Camps exclusively owned by KeNHA	25
2	Camps owned jointly (KeNHA, KURA and KeRRA)	136
3	Camps owned jointly (KeNHA and KeRRA)	14
4	Camps owned jointly (KeNHA and KURA)	120

The value and ownership status of the above pieces of land could not be confirmed.

In the circumstances, the accuracy and completeness of assets balance of Kshs.726,602,109,784 could not be confirmed.

The audit was conducted in accordance with the International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Kenya National Highways Authority Management in accordance with ISSAI 130 on the Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of Matter

1. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual receipts on a comparable basis amounts of Kshs.38,046,956,578 and Kshs.29,020,023,427, respectively resulting in an under-funding of Kshs.9,026,933,151 or 24% of the budget. Similarly, the Authority expended an amount of Kshs.31,345,938,487 against an approved budget of Kshs.36,338,362,966 resulting in an under-expenditure of Kshs.4,992,424,479 or 14% of the budget. Further, the Authority expended Kshs. Nil against capital expenditure budget of Kshs.241,982,376 resulting to under expenditure of Kshs.241,982,376 or 100% of the budget.

The underfunding and under-expenditure affected the planned activities and has impacted negatively on service delivery to the public.

2. Contingent Liabilities

I draw your attention to Note 34 to the financial statements which reflects an amount of Kshs.22,136,767,733 in respect of Contingent liabilities relating to court cases against the Authority, unclaimed interest on works, land acquisitions, unresolved contractual claims, estimated legal fees and interest awards. Although, in the opinion of the Management, the Authority is likely to obtain favorable judgements in many of the cases, the Authority's operations would be adversely affected if any of the liabilities was to crystallize.

My opinion is not modified in respect of these matters.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

Unresolved Prior Year Issues

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 issues have not been discussed by the Public Audit Committee and therefore remain unresolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness

and Effectiveness in Use of Public Resources section of my report, I confirm that nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Avoidable Expenditure

The statement of financial position reflects trade and other payables balance of Kshs.84,073,202,210 as disclosed in Note 27 to the financial statements. The balance increased by Kshs.3,907,619,872 from the previous year balance of Kshs.80,165,582,338. The increase represented 11% of the final budgeted operating expenditure of Kshs.36,338,362,996 which was higher than the 2% prescribed in Section 94(1)(b) of the Public Finance Management Act, 2012. Further, review of trade and other payables records revealed accumulated interest on delayed payments of Kshs.438,259,720 that could have been avoided.

In the circumstances, Management was in breach of the law and effective use public resources could not be confirmed.

2. Long Outstanding Refundable Deposits

The statement of financial position reflects refundable deposits from customers balance of Kshs.228,934,138 which as disclosed in Note 28 to the financial statements includes, long outstanding balances totalling Kshs.58,068,272 dating back to 2010/2011 financial year. No plausible explanation was given why the deposits had not been surrendered to the Consolidated Fund as provided by Regulation 106 of the Public Finance Management (National Government) Regulations, 2015 that states that unless otherwise exempted by an Act of Parliament, any deposit which has remained unclaimed for 5 years may, with the approval of the Cabinet Secretary, be paid into Consolidated Fund and thereafter the Accountant-General may refund the deposit to any person entitled thereto, if he or she is satisfied that the claim is authentic.

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

3. Anomalies Noted During Projects Inspection

Physical inspection on projects carried in the month of July, 2023 revealed delayed works on various projects in different regions as highlighted below:

i) Construction of Dhogoye Bridge and Approach Roads on Kisian-Usenge-Osieko (B10) Road (KeNHA/RD/HP&D/RP 3287/2021)

The Authority awarded a contract No.KeNHA /RD/HP&D/RP 3287/2021 to two companies in a joint venture at a contract sum of Kshs.1,999,349,505 for a period of 18 months effective 21 June, 2021. However, review of the monthly progress report of June, 2023 revealed that the contractors have achieved only 21% overall works completion compared to time elapsed of 24%, an indication that works were behind schedule. Further, records reviewed revealed that only one certificate of Kshs.83,862,151.83 had been raised and part payment of Kshs.74,478,949 or 89% had been paid. Management explained that the slow work progress was due to non-payment of advance payment requested by the

contractors of Kshs.199,934,950.60 vide IPC 1 out of which an amount of Kshs.35,000,000 had been paid. However, review of the contract Clause 60.12 of the conditions of the contract revealed that it was not mandatory for employer to pay the advance amount to the contractor and therefore it was not enough justification for slow work progress.

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In the circumstances, the project risks incurring additional funds due to cost escalation. In addition, delay in implementation of the project has impacted negatively on service delivery to the public.

ii) Mau Mau Road Lot II

The contract was awarded to a Company at a contract sum of Kshs.4,519,821,279 for 36 months from 20 February, 2020 but was revised to 47 months. Mau Mau Road Lot III was implemented in Nyeri County. A letter Ref: KeNHA/08/CV812/2023 dated 10 May, 2023 from Director General to the contractor revealed that the contractor was awarded extension of time for a further period of three hundred and thirty-seven (337) days. However, physical inspection carried out in the month of July, 2023 revealed that the amount certified to date (up to IPC 12) which had been fully settled was an amount of Kshs.1,775,574,791 and stood at 39.28% of the contract sum. The inspection revealed that spur roads works were at the initial stages and behind schedule despite the revised completion date of 18 February, 2024.

Further, the main road drainage banks had not been reinforced by stone pitching and loose soil on the drainage sides were falling down inside the drainage channels on several sections of the road. Delayed maintenance/repair works may result to further deterioration of the defects attracting huge repair costs.

In the circumstances, effectiveness and efficiency in use of public resources 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.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management, and governance were not effective.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal controls, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and the Board of Directors

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Authority's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services, and using the applicable basis of accounting unless Management is aware of the intention to terminate the Authority or to cease operations.

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

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions, and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

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

Auditor-General's Responsibilities for the Audit

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

or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

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

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

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

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal controls.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My

conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Authority to cease to continue to sustain its services.

- Evaluate the overall presentation, structure, and content of the financial statements, including the disclosures and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Authority to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

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

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



FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

27 March, 2024