

## ANNEX 4. FIDUCIARY SYSTEMS ASSESSMENT

### 1. Conclusions

#### 1.1 Reasonable assurance

1. The World Bank team conducted the fiduciary capacity and performance assessment on Ministry of Education (MoE), and Teachers Service Commission (TSC) systems and procedures in February 2022 under the original credit, and the Jomo Kenyatta Foundation (JKF) for part of the Elimu Scholarship Programme as the implementing entities for the PforR and established that, both the Procurement and FM arrangements capacity and performance are adequate to provide reasonable assurance that the funds will be used for the intended purposes with due attention to the principles of economy, efficiency, effectiveness, transparency, and accountability.

#### 1.2 Risk assessment

2. The fiduciary risk for the expanded Program is assessed as **Substantial**. To strengthen the existing systems of the implementing entities and mitigate the fiduciary systems risks, various actions are analyzed as fiduciary actions and others as Program Action Plans.

3. The key fiduciary risks identified during the assessment and their mitigating measures under procurement and Financial Management for MoE, TSC and JKF and how they will be mitigated and managed before and after approval of the operation include:

**Table 4.1:**

Risk:	Planned mitigation actions:
<ul style="list-style-type: none"> <li>a) Absence of an internal procurement guidance manual</li> <li>b) Inadequate disclosure of procurement information to the public</li> <li>c) Inadequate monitoring of the procurement activities</li> <li>d) Delays in infrastructure procurements</li> <li>e) Procurement related Complaint handling system</li> <li>f) Inconsistencies in reporting contract awards</li> <li>g) There are some delays in release of funds by the Exchequer to the Ministry of Education and from MoE to schools and counties.</li> <li>h) There are budget cuts that result to inadequate fund allocations on the planned activities</li> <li>i) There is insufficient coordination and monitoring at the counties due to COVID 19 pandemic and associated protocols and restrictions</li> <li>j) The assessment noted external audit queries that include inaccuracies in recording financial, transactions, lack of account reconciliations, multiple imprests and imprest not surrendered within due dates and unresolved prior year matters.</li> <li>k) The assessment further noted that the institutional audit and two of the three projects within the state department of Early Learning and Basic education had qualified audit opinion in 2019/2020.</li> <li>l) Capturing of financial transactions at the MOE county offices is manual and therefore susceptible to manipulation.</li> <li>m) The staff at the county level do not have sufficient knowledge on Bank procedures.</li> <li>n) Both the CAJ and the EACC have received complaints against the implementing agencies around issues of F&amp;C and maladministration complaints, respectively. These</li> </ul>	<ul style="list-style-type: none"> <li>(a) Preparation and issuance of a procurement guidance manual within the provisions of The Public Procurement and Asset Disposal Act (<i>No. 33 of 2015</i>) (PPADA, 2015) and The Public Procurement and Asset Disposal Regulations, 2020</li> <li>(b) Public Procurement Regulatory Authority (PPRA) to undertake compliance assessment</li> <li>(c) Continues monitoring infrastructure activities/contracts, periodically and during implementation support missions</li> <li>(d) Ensure Public Disclosure of procurement opportunities and contract awards information for all procurements in Compliance with Executive Order No.2 of 2018</li> <li>(e) Director Supply Chain Management to prepare comprehensive monthly contract implementation Reports to the Accounting Officer in line with the PPADR,2015.</li> <li>(f) Establishment of an internal procurement related complaint handling mechanism with an interface to accept complaint and detailed provisions on complaint resolution other than through PPARB.</li> <li>(g) The Exchequer and MoE to release funds to MOE and counties on timely basis respectively.</li> <li>(h) The government to ensure minimum budget cuts- at least not to zero as that means no expenditure for what was budgeted.</li> <li>(i) Improvement on coordination and monitoring at the counties</li> <li>(j) Strengthening of the financial record keeping, reporting and monitoring at the county level by automating all the Ministry of Education County financial operations</li> <li>(k) Strengthening of the staff capacity by training the finance/accounting staff on Bank procedures and financial reporting</li> <li>(l) Use of vote book management system by the District Accountants to improve on reporting at the county level</li> <li>(m) The Program will monitor both the CAJ and EACC annual certification process as part of the “resolution of public complaints” and “corruption prevention indicators” under the Performance Contracting system. Any weaknesses observed and actions taken towards addressing these will be monitored</li> </ul>

point to institutional challenges that need to be addressed	throughout the program. Both the EACC and the CAJ will submit bi-annual information/reports to the World Bank on any complaints related to the project. All implementing agencies will be required to comply with the Anti-Corruption Guidelines, which have stringent disclosure and reporting requirements.
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### 1.3 Procurement exclusions

4. There are no activities or high value contracts in the Government’s program and all high value contracts should be excluded from the PforR component in accordance with the World Bank's Policy and Directive on Program-for-Results Financing. Therefore, the Program procurement does not involve procurements within the World Bank Operations Procurement Review Committee (OPRC) thresholds.

### 2. Scope

5. The scope covers MoE, TSC and JKF to determine whether the fiduciary systems provide reasonable assurance that are in placed systems that ensure increased transparency and efficiency in procurement processes and contract management, and financial management to undertake the PforR program, the program under preparation for the Kenya Basic Education Equity in Learning Program (P176867) and the Global Partnership for Education (GPE) (AF for Primary Education Equity in Learning program (P179670).

6. The PforR will focus resources on specific outcomes or results which are relevant for the Country to achieve equitable and quality basic education.

### 3. Review of Public Financial Management Cycle

#### 3.1 Planning and Budgeting

##### 3.1.1 Planning & Budgeting

Overall FM objective - the Program budget is realistic, is prepared with due regard to government policy and is implemented in an orderly and predictable manner.

7. The government budgeting is anchored in the PFM Act 2012 and PFM Act Regulation 2015. The annual budget estimates are captured in the IFMIS using the standard chart of accounts (SCOA). The program budget and expenditures will be captured and reported through the specific SCOA codes in the IFMIS. The staff in Planning and Finance are well qualified and experienced.

8. The program expenditure framework selected expenditures under State Department of Early Learning & Basic Education- primary education and cross cutting issues in all state departments focusing on primary school, school capitation grants in lagging counties and camp-based refugee schools; activities supported under primary education are school meals program, scholarships for girls, teacher training and sanitary towels.

Table 4.2: Program Expenditure Framework with AF marked in color (US\$ million)

Program / Sub-Program	Results Area	Delimitation	#2021/22	#2022/23	#2023/24	#2024/25	#2025/26	#2026/27	#Projected Cost
<b>All State Departments</b>									
Sector Governance and Accountability	RA3	No delimitation	4.6	4.7	4.3	2	1.9	1.9	19.4
Cross-Sector issues	RA3	No delimitation	0.5	0.7	0.4	0.1	0.1	0.1	1.8
<b>State Department of Early Learning &amp; Basic Education</b>									
Pre-Primary Education									
Develop an equity-based financing program for institutions serving refugees and refugee host-communities	RA1	School meals program for targeted areas	-	0.4	0.4	0.4	0.4	0.5	2.1
Improve pre-primary education standards and quality assurance	RA3	No delimitation	11.4	11.4	11.4	-	-	-	34.2
<b>Primary Education</b>									
Universal Primary Education	RA1	Only for targeted counties	17.1	14.9	12.6	12.9	13.1	13.4	84
Universal Primary Education - AF	RA1	Expand counties	3.4	3	2.5	2.6	2.6	2.7	16.8
Construction - AF	RA1	Expand number of schools	12.8	9.2	6.5	6.7	6.7	6.7	48.6
Reduce disparities in access and retention in primary education	RA1	School meals program for targeted areas and scholarships	8.9	10.9	11.3	11.6	11.9	12.3	67
Scholarships - AF	RA1	Expand scholarships	4	4.9	4.1	4.2	4.4	4.5	26.1
Recruit teachers for primary schools serving refugees and refugee-host communities	RA1	Recruit teachers for public primary schools, including in refugee host communities	2.3	3.1	3.5	3.9	4.3	4.8	21.9
Develop an equity-based financing program for institutions serving refugees and refugee host-communities	RA1	Capitation grants in host communities	2.2	2.5	2.9	3.2	3.6	3.8	18.1
Reduce disparities in access and retention in primary education (gender)	RA2	Menstrual hygiene and inclusion	2.6	5.6	5.9	6.2	6.5	6.9	33.8
Governance and Accountability	RA3	No delimitation	0.6	4.8	5.1	5	4.2	4.2	24
Teacher colleges and system strengthening			0.2	1.4	1.5	1.5	1.3	1.3	7.2
<b>Total</b>			<b>70.6</b>	<b>77.5</b>	<b>72.4</b>	<b>60.3</b>	<b>61</b>	<b>63.1</b>	<b>405</b>

9. For the free primary education Sector (supported by capitation grants), the approved budget for the 47 counties was Kshs 17.838B/USD162M, Kshs15.452B/USD 140M and Kshs16.767B/152M for FY2018/19, FY2019/20 and FY2020/21 respectively with actual expenditure of Kshs 17.813B/USD162M, Kshs 11.090B/USD101M and Kshs 14.998B/USD136 respectively translating to a performance of 99.9% ,71.8% and 89.4% for the 3 years respectively. The PforR is focusing on 10 counties for purpose of capitation grants. Hence prorating the figures above to 10 counties, we get budget of USD 34.5M, USD 29M and USD32M for FY2018/19, FY2019/20 and FY2020/21 with actual expenditures of USD34.4M, USD21.5M and USD29M respectively.

10. In FY 2019/20, Kshs. 375M/USD 3.4M was used to provide sanitary towels for 1.3M girls in 47 counties. In FY 2020/21, Kshs. 470M/USD 4.2M was used to procure pads for 1.68M girls across the country. The pads promote retention and reduced absenteeism in school going girls. School Meals Program: In FY 2018/19, Kshs. 1,850M/USD 16.8M was used to provide hot day meals for 1.62M learners. In FY 2019/20, Kshs. 1,856M/USD 16.9M was utilized to feed 1.36M pupils. In FY 2020/21, Kshs. 1,850M/USD 16.8M was used for 1.84M learners. In addition, Kshs. 200M/USD 1.8M from GPE was used to provide fortified porridge to mitigate against impact of Covid-19, in urban slums under learning continuity in basic education. Further, Kshs. 240M/USD 2.2M provided in the FY 2020/21 was used to procure cereals for use by the learners given the harsh economic and weather conditions.

Primary Schools Infrastructure Improvement: In FY 2018/19, Kshs. 200M was used to upgrade infrastructure in 307 schools. In FY 2019/20, Kshs. 330M was used to upgrade infrastructure in 211 schools and in FY 2020/21, Kshs. 120M was used to upgrade infrastructure in 181 schools. In addition, Kshs. 150M was used to construct 4 ablution blocks, 8 dining halls and 21 dormitories in 33 Low-cost boarding primary schools under the Economic Stimulus Package (ESP) in FY 2020/21. The target primary schools were 60 but target was reduced to 30 due to budget cuts due to austerity measures. Further, Kshs. 900M was used to procure 360,000 desks for 5,136 public primary schools in FY 2020/21. There are CBC classroom construction for KPLEEP and also under SEQIP. The actual expenditure to date under the parent PforR program is USD136.5 Millions and includes USD 5.5M on scholarships paid by Equity Bank that MoE is to reimburse Equity, and USD 32.3 M in construction/infrastructure.

11. For TSC, compensation of employees for FY21 was budgeted at USD 2.5B and utilization was 100%. FY 19 Budget was USD2.2B with a 100% utilization.

12. The reduced performance in 2019/20 was due to; a) some funds not released by the donor, UNICEF b) low absorption under reduced disparities in access and retention to primary education was due to closure of schools following COVID 19 pandemic and associated protocols and restrictions c) Zero absorption in some expenditure items was due to budget cuts (budget reduced to zero) during supplementary budgeting.

13. From the foregoing, the key potential risks are; a) budget cuts resulting to inadequate budget allocation of resources to finance the program b) Donor not releasing funds as expected/budgeted.

14. Proposed actions: a) Government to allocate adequate budget to the program and avoid budget cuts that are up to zero level; b) Donor-Government agreements adherence. Government could also

ensure adequate funding to the program by addressing any shortfall to the budget occasioned by development partners not releasing funds.

### 3.1.2 Adequacy of budgets.

15. Adequate budgeting processes are in place at MoE, TSC and JKF. The budgeting process in the three implementing entities are anchored and undertaken according to the PFM Act 2012 and PFM Act regulations 2015. The institutions prepare annual budget estimates that are approved by parliament to use through Appropriation Bill. The annual budget estimates are captured in the IFMIS through the budget classification codes. The IFMIS system is capable of tracking budget executions reports by fund source and project components and specific program expenditures. Budget processing in three entities is led by the budget office and follows the government budgeting cycle.

**Table 4.3: Analysis of Programme and Sub-Programmes (Current and Capital) Resource Requirement (KES Millions)**

Programme/Sub programme	Printed Estimates 2021/22			2022/23			2023/24			2024/25		
	Current	Capital	Total	Current	Capital	Total	Current	Capital	Total	Current	Capital	Total
<b>EARLY LEARNING &amp; BASIC EDUCATION</b>												
Programme I: Primary Education												
SP.1.1 Free Primary Education	13,575	1,676	15,251	14,761	2,208	16,969	14,985	2,448	17,433	14,026	2,059	16,085
SP.1.2 Special Needs Education	841	151	992	1,328	100	1,428	1,730	100	1,830	1,872	50	1,922
SP.1.4 Early Child Capital and Education	3	15	18	18	18	36	20	20	40	25	14	39
SP.1.5 Primary Teachers Training and In-Servicing	406	185	591	496	330	826	529	400	929	583	519	1,102
SP.1.6 Alternate Basic Adult & Continuing Education	64	16	80	220	20	240	266	36	302	217	41	258
SP.1.7 School Health, Nutrition and Meals	1,982	18	2,000	2,822	10	2,832	2,862	10	2,872	2,885	10	2,895
SP.1.9 ICT Capacity Capital	-	110	110	-	1,500	1,500	-	2,000	2,000	-	3,000	3,000
<b>Total Programme</b>	<b>16,871</b>	<b>2,171</b>	<b>19,042</b>	<b>19,645</b>	<b>4,186</b>	<b>23,831</b>	<b>20,392</b>	<b>5,014</b>	<b>25,406</b>	<b>19,608</b>	<b>5,693</b>	<b>25,301</b>

#### FY 22/23 (under free primary & secondary school education) printed estimates

<b>1066101500 Primary Schools infrastructure Improvement.</b>	<b>Total</b>	<b>1,240,000,000</b>
1066101504 Rehabilitation/Construction of Classrooms in Primary Schools-ESP	2630201 Capital Grants to Semi-Autonomous Government Agencies	140,000,000
1066101505 Improve Infrastructure in Low-Cost Boarding Schools in ASALs - ESP	2630201 Capital Grants to Semi-Autonomous Government Agencies	200,000,000
1066101506 Provision of Locally Fabricated Desks for Primary Schools under ESP	2630201 Capital Grants to Semi-Autonomous Government Agencies	900,000,000
1066102415 secondary schools Infrastructure Improvement		
Construction of 10,000 classrooms to Support CBC	2630201 +Capital Grants to Semi-Autonomous Government Agencies	4,000,000,000

**Table 4.4: Budget Policy 2022-Summary of Expenditure by Programmes, 2022/23 – 2024/25 (Ksh Million)**

2091 Teachers Service Commission	281,059.0	645.1	281,704.1	295,953.0	656.0	296,609.0	300,089.0	799.0	300,888.0	308,144.0	95.0	308,239.0
0509000 Teacher Resource Management	272,634.3	600.0	273,234.3	287,858.0	600.0	288,458.0	291,289	718	292,007	299,151	-	299,151
0510000 Governance and Standards	1,012.5	-	1,012.5	1,161.0	-	1,161.0	1,178	-	1,178	1,196	-	1,196
0511000 General Administration, Planning and Support Services	7,412.2	45.1	7,457.3	6,934.0	56.0	6,990.0	7,622	81	7,703	7,797	95	7,892

16. In terms of adequacy of budget, the MTEF provisions above show that there is adequate budget provision for capitation grants, construction and school meals (see Table 2 PEF). There is a unique case of the funding for the teachers and student capitation for refugee schools. MoE has no budget line for teachers in refugee schools. These are currently paid by various UN agencies/NGOs directly at the Camps. TSC however has a budget line for teachers in 'regular' public primary schools. For TSC, the PforR will not be paying teachers, but 'influencing' deployment of recruited teachers to schools with the highest teachers' shortage. MoE/NT has no budget line for student's capitation grant to refugee schools. Students' capitation grants are to 'regular' public primary schools hence the analysis has used this budget line.

### **3.1.3 Procurement planning.**

17. The reviewed budgets and procurement plan for MoE in the past two FYs, the absorption rates are 85.9% and 67.4% for PRIEDE project while for Kenya GPE Covid-19 Learning Continuity in Basic Education implemented in last FY the absorption rate is 75.2%. In TSC's reviewed budgets and procurement plans for the past two FYs the absorption rates are 99% and 96% respectively.

18. From the foregoing activities, one of the key potential risks are inadequate monitoring of the procurement activities which may hinder measuring of the procurement plan implementation through defined KPI's. The assessment proposed actions to put in place for adequate monitoring of the granular level procurement information.

### **3.1.4 Procurement profile of the Program.**

19. The Program consists of main procurable consulting services for strengthening data and sector coordination, scholarship administration and the scholarships, implementation of Competency Based Curriculum (CBC) for students and primary school teachers colleges, digitalizing assessments, conducting learning assessments, hiring independent verifiers; construction of classrooms and WASH facilities works; and procurement of school meals, teaching and learning equipment for primary school teachers training colleges and others.

## **3.2 Budget Execution**

### **3.2.1 Treasury management and funds flow.**

20. Funds are requested from the Bank through Client Connection; the funds are then released from the World Bank to the National Treasury Consolidated Fund upon achievement and verification of the Disbursement Linked Indicators by Independent verification Agency (IVA). Bank policy allows for advance disbursement against achievement of future results or agreed results achieved prior to the effectiveness of the Program. For the PforR, program funds are disbursed to a Special Fund Account which serves as a sub-account of the Governments national Treasury consolidated Fund at Central Bank of Kenya (CBK). The funds are then released from the Euro account at CBK to the mainstream Kshs development account upon the Implementing Entities requesting for the funds including GoK counterpart funding from the Exchequer. Funds are either spent from the development account or are released to a segregated Kshs project account. Review of MoE state departments of Early Learning and Basic Education and PRIEDE project within the state department indicate that, there are some delays (9-18days) between the time fund requests are made and the time the exchequer releases the funds. (Table 3A). This observation is collaborated by the OAG finding in 2019/2020 audit of the state department that indicated that funds amounting to Kshs 540,406,486 were released by exchequer and received by the state department at close of the FY in June 2020 (Table 4.5).

**Table 4.5: PRIEDE PROJECT 2020/2021 FINANCIAL YEAR ANALYSIS OF EXCHEQUER REQUISITION AND RECEIPT**

DATE OF EXCHEQUER REQUISITION	DATE OF EXCHEQUER RECEIPT	# Days	AMOUNT RECEIVED(KSHS)
6/12/2021	6/22/2021	10	32,310,000.00
6/2/2021	6/10/2021	9	105,177,637.95
2/16/2021	2/26/2021	10	26,915,358.40
2/16/2021	2/26/2021	10	272,536,590.05
11/16/2020	11/26/2020	10	37,256,965.00
10/24/2020	11/5/2020	12	182,453,717.55
8/22/2020	9/11/2020	18	108,120,000.00
<b>TOTAL</b>			<b>764,770,268.95</b>

21. In table 4.6 below, given that the GOK Financial year ends on June 30, funds released within that month, will lead to low absorption on such funds as there is no time to spend until the next FY.

**Table 4.6: Releases by Exchequer to State Department Early Learning & Basic Education**

Date received	Amount received Kshs
15-Jun-20	213,100,663
25-Jun-20	314,640,943
30-Jun-20	12,664,880
Total	540,406,486

**Funds flow from MoE to counties and schools:**

22. **MoE disburses funds/capitation directly to schools based on the number of pupils and students** who are registered on the National Education Management Information System (NEMIS) platform which is spread in a 50:30:20 ratios for term 1, 2 and 3 respectively. This is meant to be disbursed before a term begins but at times funds are delayed (see table 3C below). MoE developed the NEMIS that automated end to end management of education data and associated administrative functions. NEMIS tracks information on the learners instead of prior arrangement where MoE was relying on learners' information/data provided by the Principals/Head teachers and countersigned by the County Directors of Education. Although NEMIS automated the data management and associated administrative functions, it still relies on some information/data provided by the principals' /head teacher and County education officers outside NEMIS.

23. **Funds to counties are disbursed based on programs or activities being implemented** as reflected in the AWP&B and memo requesting for funds. Inefficiencies in planning and release of funds has at times led to an activity that is dependent on schools closing period being postponed.

Table 4.7:

STATE DEPARTMENT OF EARLY LEARNING AND BASIC EDUCATION				
FREE PRIMARY EDUCATION CAPITATION GRANTS DISBURSEMENT				
FOR THE FINANCIAL YEAR 2021/2022				
SCHOOL TERM	GRANT	EXPECTED DATE OF DISBURSEMENT	DATE DISBURSED	AMOUNT DISBURSED Kshs
1	CAPITATION	01/07/2021	03/08/2021	7,861,150,215.00
1	SNE TOP-UP GRANT	01/07/2021	24/09/2021	113,749,971.00
1	LOW COST BOARDING	01/07/2021	24/09/2021	200,000,000.00
2	CAPITATION	01/11/2021	02/11/2021	2,188,904,474.75
	<b>TOTAL</b>			<b>10,363,804,660.75</b>
PRIEDE PROJECT DISBURSEMENT TO COUNTIES				
FOR THE FINANCIAL YEAR 2021/2022				
S/NO.	ACTIVITY	EXPECTED DATE OF DISBURSEMENT	DATE DISBURSED	AMOUNT DISBURSED Kshs
1	STRENGTHENING SCHOOL BASED TEACHER SUPPORT	01/07/2021	16/09/2021	129,178,900.00
2	REFRESHER TRAINING OF SCHOOL KEY STAKEHOLDERS	18/07/2021	08/10/2021	186,631,300.00
				<b>315,810,200.00</b>
Exchange Kshs 107= USD				

24. **Key potential risks and actions:** a) there are some delays in exchequer releases to MoE and from MoE to counties and schools b) Misstated capitation per school due to wrong data arising from manual intervention rather than fully relying on NEMIS.

25. **Proposed actions:** a) The Exchequer in National Treasury should ensure timely release of funds and MoE to ensure fast verification and monitoring process for the DLIs achieved. b) Fix/upgrade NEMIS to eliminate human intervention. Meanwhile, cleansing and harmonizing of the NEMIS data vs actual enrollment in the schools is necessary. (c) MoE to address issues for late release of capitation as well as delays in release of funds for county-based activities.

### 3.2.2 Accounting and financial reporting.

26. The reforms implemented under PFMR 2013-2018 were successful in establishing a solid foundation for PFM. These are: Government SCOA developed and in use, IFMIS was rolled out to MCDAs, Public Sector Accounting Standards Board formulating accounting standards and templates was established, and financial reporting improved with timely and consolidated financial statements prepared. The PFMR 2018-2022 has built on the successes of PFMR 2013-18. This has resulted to improvements in the accounting and reporting.



27. The Program will use existing Government accounting and financial reporting systems through use of core PFM including the specific SCoA provided in IFMIS. The Program budgets and expenditures will be accounted and reported as a program audit rather than an institutional one.

28. From the review, the key potential risk is the difficulty in tracking government expenditures because of the challenge of using slightly different names in NESSP that may not exactly be the names used in the GOK SCoA, or one is more granular than the other or in case of refugee teachers' salaries and capitation, the fact that their funding has been from outside the budget from UN agencies or NGOs. For this reason, a semi-annual unaudited financial report in the format agreed with World Bank during the appraisal will be submitted 45 days after the semester to which it relates.

### **3.2.3 Procurement processes and procedures.**

29. Procurement activities under the PforR program will be undertaken at the Ministry of Education (MoE), Teachers Service Commission (TSC) and Jomo Kenyatta Foundation (JKF). The Implementing Agencies will procure and implement activities under the PforR component in accordance with the National Public Procurement Procedures laid out in the Public Procurement and Asset Disposal Act (*No. 33 of 2015*) (PPADA, 2015) and the attendant Public Procurement and Asset Disposal Regulations, 2020 (PPARD, 2020). The Program will be subject to the World Bank's Anti-Corruption Guidelines, dated October 15, 2006, revised in January 2011 and on July 1, 2016.

30. From the review, the Kenya Secondary Education Quality Improvement Project (SEQIP), approved in September 2017 had significant delays in the procurement of infrastructure improvements in primary and secondary schools that included provision of water and sanitation facilities, additional classrooms, and laboratories under component 2.2 with a budget of Euro 72 million. The contract signature had been delayed more than a year and was a potential mis-procurement by the Bank. However, after a lot of discussion and further guidance, the contracts are signed and now under implementation. Therefore, infrastructure procurement is a high-risk activity under the MoE, but the key risks and mitigation measures are stated in the Program Systems and Capacity Improvements in table 4.10 as PAP and non-PAP actions.

### **3.2.4 Contract Administration.**

31. Procurement activities will be managed by designated procurement officers in the MoE, TSC and JKF. At the county level, there is no procurement that will be undertaken, rather the procurement will be done by the procurement units at the MoE, TSC and JKF at the national level and will be distributed to the counties through the county designated offices. Procurements will be based on the approved annual work plan and procurement plan. The contracts will be managed by IAs in collaboration with other contracting authorities and counties.

## **3.3 Internal Controls**

### **3.3.1 Internal controls.**

32. The Government internal control system involves structured approval and authorization of expenditures, segregation of functions in payment processes, internal check mechanism and internal audit. The assessment noted that, in all the implementing entities there are arrangements that allow for adequate approval and authorization of expenditures, segregation of functions in payment processes and internal check mechanism.

### 3.3.2 Internal audit.

33. On internal audit, the PFM Act 2012 and PFM Act regulation 2015 defines the legal framework for internal audit. The Internal Audit function falls under the Directorate of Accounting Services domiciled at national Treasury. The Internal Audit Department staff are seconded to the MDAs and have dual reporting lines, technically to the MDAs Audit Committees/Internal Auditor General and administratively to the accounting officers in the MDAs. The Audit Committee of the Ministry was recently appointed. It was however inactive from end of 2019 due to expiry of their term, but the term was extended this year and made a sitting in June 2022 and continues to operate and to have another meeting in November 2022. The MoE IAD, has 11 auditors who audit all the operations of the ministry. The staff are well qualified and are experienced. Their annual work plan is approved by the audit committee. Reports are issued after completion of every engagement and management takes action on the internal audit findings which is mainly that they will issue a circular to the Counties. In addition to the IAD, MoE has a directorate that specifically deals with schools' audits.

34. **Key risks identified** (i) IAD Limited time to sample many schools per county and sub county (ii) limited capacity in terms of staff given wide audit universe - the whole Ministry operations and at times funding issues for their activities impeding the effectiveness of the internal audit function (iii) Challenges auditing through the systems-NEMIS platform. (iv) Period of inactivity of Audit Committee can weaken the oversight (iv) Failure by counties to adhere to laid down regulations (v) Lack of value for money (iv) Lack of authenticity for payment made leading to loss of public funds. (vi) Enrolment numbers at the school did not tally with NEMIS data which was the basis by which capitation funds were disbursed. (vii) Weakness in accountability of capitation grants: - cash books not updated, no payment vouchers to support payments (viii) some schools unable to account for rice received under school feeding program

35. **Mitigating measures:** (i) Training on auditing via NEMIS platform would address the capacity issue (ii) Fix/upgrade NEMIS to eliminate human intervention. Meanwhile, cleansing and harmonizing of the NEMIS data vs actual enrollment in the schools is necessary. (iii)The Government to allocate adequate funds to finance the Internal Audit work plans including follow up audits to ensure recommendations are fully implemented. (iv) Ensure no gaps in audit committee terms of service (v) Enhance internal controls in the in the supply and distribution of the food items at all levels in order to realize the full benefit of the program and to ensure that the program has self-checking mechanisms.

### 3.3.3 Program governance and anticorruption arrangements

#### ***Assessment of Legal and Institutional Arrangements for Fighting Fraud and Corruption (F&C)***

36. *The Constitution and legal framework have strong provisions on combating F&C.* This legal framework gives significant and independent powers to the Office of the Director of Public Prosecutions (ODPP), National Police Service Commission (NPSC), and Ethics and Anti-Corruption Commission (EACC) to exercise their relevant mandates at both national and county government levels. The responsibility for investigating F&C is shared between the Directorate of Criminal Investigations (DCI) and the EACC, while prosecution is the sole mandate of the ODPP (with provision to delegate these powers).

37. *The legal framework makes clear distinctions regarding institutional responsibilities for investigating and prosecuting corruption; however, the mandate to investigate fraud is shared.* The EACC has powers to investigate corruption (bribery, fraud, embezzlement, misappropriation of funds, abuse of office, breach of trust, and offences involving dishonesty), while the CID on all aspects of criminal conduct (including fraud by public officers [which is considered as a corruption offence under the Anti-Corruption and Economic Crimes Act]). The Director of Public Prosecutions has the sole mandate to institute and undertake criminal proceedings against any person or authority including F&C.

38. *As shown in the Box below, in recent years, anti-corruption efforts have become more high-profile and visible.* This is demonstrated by Cabinet reshuffles, several high-profile arrests and arraignments in court, property reclaimed, assets recovered, and illegal structures destroyed. There has been increased funding to select anti-corruption agencies. The World Bank through various projects and programs continues to support some of these efforts. While much remains to be done, these measures appear to be achieving results. For example, Kenya has improved its ranking in the most recent Transparency International Corruption Perception Index (2020) by 13 places (to 124th/179); as recently as 2018, Kenya ranked 144th.

Recent Anti-Corruption Efforts :

- Adopting a new digital platform for public sector procurement and attendant regulations, to improve transparency and the accountability of public spending (supported by the Kenya DPO series).
- Strengthening institutions that are mandated to fight corruption, such as the Attorney General's Office, the Ethics and Anti-Corruption Commission, the Department of Criminal Investigations, and the Office of the Director of Public Prosecution. The GoK has established a Multi-Agency Team on Corruption to enhance coordinated investigation and prosecution. The intensification of the fight against corruption has led to unprecedented arrests of several senior politicians and government officials, and the return of embezzled funds.
- Increasing funding for anti-corruption institutions: for instance, between FY 2014/15 and FY 2018/19, allocations to the Office of the Director of Public Prosecutions and the Ethics and Anti-Corruption Commission increased by 67 percent and 153 percent respectively.
- Issuing executive orders to ensure public servants' compliance with rules on ethics (Executive Order No.6, 2016) and on public procurement (Executive Order No2 of 2018).
- Vetting all Procurement Heads and Heads of Accounts of government agencies to screen out corrupt officials; and conducting of lifestyle audits on public officers, in line with the Public Officer Ethics Act.
- Enforcing the signing of Accountability Pledges by State and Public Officers.
- Amending the Companies Act to require companies to keep a register of beneficial owners with at least 10 percent ownership rights and lodge a copy of the register with the Registrar of Companies. This new requirement brings greater transparency in business transactions and reduces potential conflict of interest. In addition to generally improving corporate governance, in the public sector this measure makes it more difficult for state officials and politicians to use shell companies to win public contracts.
- Establishing dedicated anti-corruption courts to expedite pending cases and introducing greater transparency and scrutiny to anti-corruption cases, by publishing regular reports on the backlog of anti-corruption cases. These efforts are demonstrating results. For example, (a) as of June 2020, 190 anti-corruption cases were pending in the High Court, none of which were 5 years or more in age; (b) for the FY 2020/2021, the case clearance rate in the High Court was 122 percent, with 67 cases filed and 82 cases resolved.<sup>1</sup>
- Increasing digitization of services to counter money laundering and tax evasion.
- Increasing cooperation with non-state actors and international partners, which has seen the repatriation of proceeds of crime held outside the country, extradition of suspects and receipt of key evidence to support cases.
- Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT): the GoK plans to undertake a second Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) mutual evaluation of its AML/CFT framework this year.

**The EACC has a well-functioning, well known and accessible complaints management system linking key investigative, and transparency agencies.** EACC receives complaints through a dedicated email address, dedicated telephone, suggestion boxes and through all social media.

<sup>1</sup> Source: State of the Judiciary Address Report, 2020.

39. The EACC has received complaints against implementing agencies, a number of which have been referred for investigation. These are summarized in the Table 4 below (source: Ethics and Anti-Corruption Commission)

**Table 4.8:**

<b>Nature of Complaint/Investigation</b>	<b>Ministry of Education</b>	<b>TSC</b>
Embezzlement/Misappropriation of public funds	196	31
Abuse of office	66	36
Maladministration	9	6
Public Procurement Irregularities	42	17
Bribery	22	34
Unethical conduct	18	42
Unexplained wealth	4	6
Fraudulent acquisition of public funds	16	19
Fraud	9	6
Penal Code Offences	6	3
Conflict of interest	4	1
Bid rigging	1	-
Civil issues	-	2
<b>Total</b>	<b>393</b>	<b>201</b>

40. Assessment of Legal and Institutional Arrangements for Handling Complaints on Maladministration and Service Delivery in Kenya

41. The legal framework has strong provisions on handling of complaints on maladministration and service delivery. The Commission of Administrative Justice (CAJ) is established to enforce administrative justice and address maladministration through effective complaints handling and alternative dispute resolution.<sup>2</sup> CAJ services are accessed from 15 different locations across the country (four, including 11 Huduma Centres). In FY 2018/2019, the CAJ handled 9,574 complaints, which included 4,016 new complaints and 5,558 complaints carried forward from the previous year. In total, 3,049 complaints have been resolved, which brings the resolution rate to 32 percent. Complaints have been received against the two KEELP implementing agencies as shown below.

<sup>2</sup> As per Article 59(4) of the Constitution and the Commission on Administrative Justice Act, 2011.

42. Complaints Received by the CAJ Against KEELP Implementing Agencies 2014-2021 (source: CAJ November 2021)

**Table 4.9:**

NATURE OF THE COMPLAINT	Teachers Service	Ministry of Education
Maladministration	32	73
Unresponsive Official Conduct	22	36
Delay	57	66
Unfair Treatment	72	54
Abuse of Office	3	18
Manifest Injustice	31	37
Inaction	8	11
Total	225	295

43. *The services of the CAJ are accessible to the public.* Access includes the establishment of an SMS Platform, Hotline number, and through an electronic system of lodging complaints through Twitter, Face Book, and an interactive website (web posting). Notwithstanding these efforts, accessibility of the CAJ services remains a major challenge as decentralization of CAJ services is currently hampered by financial constraints.

44. *The Public Service Act Cap 185 (and regulations), Public Service Values and Principles Act 2015 and Commission on Administrative Justice Act (and regulations), provide for how internal and external complaints are handled.* These laws provide for several internal institutional structures that exist in relation to handling of complaints and these are operational in the implementing agencies. This includes: (a) a complaint handling committee that meets quarterly to review status of complaints received and refers any matters to the CAJ etc.; (b) a Corruption Prevention Committee (CPC) that meets quarterly and gives policy direction on handling matters relating to corruption; and (c) Integrity Assurance Officers who support and report to the CPC. As noted later in this section, while there has been considerable capacity building on strengthening complaints handling systems by the CAJ and EACC, more still needs to be done and capacity building provided to improve the actual workings of these Grievance Redress Mechanisms (GRMs). This will be done alongside institutions such as the CAJ.

**Assessment of Complaints and Grievance Handling Systems within KEELP Implementing Agencies**

45. *As part of performance contracting and the CAJ “Reporting Framework on Resolution of Public Complaints and Access to Information”, all ministries, departments, and agencies (MDAs)/public institutions are required to report on the corruption eradication and complaints resolution indicators and report (on a quarterly basis) on implementation of various measures.* Non-compliant institutions are not issued with compliance certificates and their overall scoring is lowered as a result of non-compliance. The Program will monitor the annual certification process of the Ministry of Education, Jomo Kenyatta Foundation Teachers Service Commission to inform any additional actions that may have to be included to ensure that these governance arrangements are fully in place and operational in these implementing agencies as required by law.

46. MoE, TSC and JKF have various channels for reporting public complaints, including email/website, telephone, in person, letters and suggestion/anti-corruption boxes. The public can also channel its complaints directly to the CAJ EACC, Public Procurement Complaints Review and Appeals Board (PPCRAB), National Environment Management Authority (NEMA), and National Lands Commission (NLC), in terms of complaints on maladministration, F&C, procurement, Environment and Land complaints, respectively.

Complaints can also be channeled internally within implementing agencies by way of internal memos. In addition to this:

- Within the MoE, a Project Coordination Unit (PCU) has been operational for a number of years. The PCU has handled other World Bank projects and an appropriate GRM is already in place. The Ministry has also developed “*Standard Operating Procedures Administration Department Processes*” aligned with the CAJ “*Reporting Framework on Resolution of Public Complaints and Access to Information*”. The MoE has a detailed service charter that outlines the time frames and cost of each service provided to the public.
- The TSC has developed and implemented an evaluation and monitoring system to track the almost 1000 email queries that come in daily and are channeled to various directorates. Cumulatively, all directorates have a 95% compliance rate. Similarly, on a daily basis, the TSC also tracks responses to issues raised via social media.
- JKF has developed and operationalized a number of policies and procedures round complaints handling. This includes a customer complaints handling procedure, codes of conduct and ethics and a quality policy.

47. While significant progress has been made on GRM, more still needs to be done and there will be ongoing capacity building to improve the actual workings of these GRMs. As part of program implementation, regular trainings and capacity building opportunities will be provided to implementing agencies by the CAJ. The CAJ also publishes regular reports on the status of complaints handling systems, which will also be used to reflect on any issues that need to be addressed as part of capacity building.

### ***Reports and Reporting Responsibilities***

48. The Program will be implemented in accordance with the memorandum of understanding (MOU) signed between the World Bank’s Integrity Vice Presidency (INT) and the EACC in September 2014. The MOU provides for terms of cooperation, privileges and immunities, confidentiality, and communication to third parties. Implementation of the KLEEP will be aligned with: (a) the Anti-Corruption Guidelines (ACGs) applicable to PforR operations, i.e., “*Guidelines on Preventing and Combating F&C in Program-for-Results Financing*”, dated February 1, 2012 and revised on 10th July 2015, and (b) the ACGs applicable to Investment Project Financing (IPFs) operations “*Guidelines on Preventing and Combating F&C in Projects*”, dated October 15, 2006, revised in January 2011 and July 1, 2016 and July, 1, 2016. The ACG consists of three basic elements:

- (a) *Sharing of information with the World Bank on F&C allegations*<sup>3</sup>: All Program managers and beneficiaries are required by law to report any allegations of F&C to the EACC. The EACC and CAJ will share such information with the World Bank task team in real time (every six months) on all allegations of F&C received from the public, and from the complaints and grievance system.
- (b) *Sharing of World Bank’s debarment and suspended lists of firms and individuals*: The Public Procurement and Regulatory Authority will share with the implementing agencies, at least on a quarterly basis, the list of firms and individuals debarred by the World Bank which have been debarred or suspended from participating in procurement in Kenya. This is to ensure that these individuals or firms are not allowed to bid for contracts or benefit from a contract under the Program during the period of debarment or suspension.

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<sup>3</sup> Template for reporting F&C will be included in the POM.

- (c) *Investigation of F&C*: The EACC has the legal mandate to investigate any allegations of F&C and the *Directorate* for Public Prosecution any prosecutions arising therefrom. Thus, all allegations of F&C will be investigated by the EACC and those found to be credible will be sent for prosecution by the DPP. The World Bank may make administrative inquiries relating to F&C allegations made against the entire Program or part of the Program, and in such cases, implementing agencies will collaborate with INT to acquire all records and documentation that INT may reasonably request from the operation regarding the use of the Program financing.

49. *Program reporting will be aligned to existing complaint reporting channels available, and the KLEEP will similarly adopt the following process for reporting on complaints for the Program. These will be more intricately spelt out in the POM:*

- (a) Implementing agencies complaints focal points shall receive complaints (F&C, procurement, environment, land, etc.) from the public, and on a quarterly basis, provide summary reports of these complaints and actions taken on them to the PCU.
- (b) As part of routine operations, oversight agencies (PPOA, EACC, NEMA, CAJ, KNCHR, NLC, PPCARB, and NGEN) compile and publish periodic reports of their respective institutions (including on complaints received and action taken).
- (c) The PCU shall, on a quarterly basis, collate and compile information received in (a)-(b) above as well as any other complaints from the public (through its own complaints handling system) into quarterly reports (of complaints received relating to the Program). The Program annual report will include a summary of all complaints received in a year.
- (d) The PCU shall assume overall responsibility for disseminating and informing implementing agencies of prescribed complaint handling and reporting arrangements.

### **3.4 Auditing**

#### **3.4.1 Program audit.**

50. MOE, TSC and JKF have adequate external audit and oversight arrangements. Institutional audits for the entities are undertaken under PFM Act 2012, PFM Regulations 2015 and Public Audit Act 2015. The PFM Act 2012 sets the timelines for submission of Annual Financial Statements to the Office of the Auditor General (OAG) by MDAs as September 30, while audit reports should be finalized not later than December 31. MOE, TSC and JKF have complied to this requirement. The PFM act also stipulates that OAG submits the audited financial to the parliament and parliament within 3 months' parliament to debate, consider and take action on the report.

51. MoE has not implemented a PforR before but has several IPFs projects with project specific audited reports that are usually submitted on time. The Head of Accounting Unit however indicated that they have prepared program financial statements for program audits under a different development partner and as such, a program rather than an institutional audit will be done for KPLEEP.

#### **Some of the past audit findings include:**

- i. inaccurate and incomplete balances. e.g., UNICEF Education for Young People Programme the *statement* of financial assets reflects cash and cash equivalent of Kshs 1,078,280 as at the end of June 30, 2020, while the bank statement as at 30 June 2020 reflected payments in bank statements not recorded in cash book amounting to Kshs 503,350 in respect of outward payment whose nature has not been disclosed

- ii. lack of reconciliations of key balances e.g., Kenya Primary Education Development project, *proceeds* from domestic and foreign grants totaled Kshs 576,810,278 while the identical account balance in the special account statement as at 30 June 2020 amounted to Kshs 540,540,216,072 resulting to a variance of Kshs 36,594,206 which had not been reconciled at the time of the audit
- iii. Multiple imprests and imprest not surrendered within due dates. E.g., Secondary Education Quality *Improvement* Project multiple imprests totaling Kshs 1,169,618 during the year 2019/2020 and imprest totaling 220,858 past due dates
- iv. unresolved prior year matters with no progress indicated as required by the Public Sector Accounting Standard Board (PSASB). Secondary Education Quality Improvement Project the audit for the year ended 30 June 2019 highlighted differences of Kshs 5,259,898 between balances in the financial statements and those reflected in the IFMIS. Contrary to reporting requirements set by PSASB, management had not reported on the progress in resolving the differences, and
- v. delays in exchequer releases. Releases by exchequer totaling Kshs 540,406,486 were received by the *State* Department during the month of June 2020 when the FY was closing.

52. The Management of the Implementing agencies should strive to ensure that audit recommendations are fully implemented, and any prior year matters are resolved forthwith.

53. The office of the Auditor General is reasonably independent and is resourced to carry out their work by GOK. It is important for adequate resources to be allocated to OAG to ensure that the program is adequately audit. Incremental audit costs are provided in IPF audits especially where projects coverage is wide but for PforR, the GoK should ensure the resources are adequately provided.

### **3.5 Fiduciary Capacity**

54. The Program will be implemented by MoE, 10 targeted counties, TSC and JKF. MoE TSC, and JKF will rely on the existing structures (staff and offices) in the implementation of anticipated program activities in the targeted counties. It's important to note that Education is not a devolved function hence there is central control at MoE, TSC, and JKF. All IAs have adequate fiduciary staff which are experienced and able to manage the program. For TSC and JKF staff, capacity building will be provided as needed.



**Table 4.10: Program Systems and Capacity Improvements**

	Risk	Mitigation Action	Action by Date	Type of Action	Responsibility
1	Budget cuts resulting to inadequate funds to fund the program	Government to ensure adequate funds are available to fund the program by addressing any fund shortfalls and budget cuts	1 July 2022 and continuous thereafter	PAP	MoE/NT
2	Delays in release of funds by the National Treasury to MOE	Timely release of funds Exchequer to the Implementing Entities	1 July 2022 and continuous thereafter	PAP	NT
	Delays in release of funds by MoE to Counties and to schools	Timely release of funds by MoE			MoE
3	Limited capacity in terms of staff given the wide audit universe - the whole Ministry operations and at times funding issues for impeding the effectiveness of the internal audit function especially for county audits	Ensure provision of adequate resources including for follow up audits especially to the counties that seems not to be done.  Use of IT (see below on NEMIS) for audit such that one can audit partly from their desk	2023	PAP	IAD
4	Challenges in IAD auditing through NEMIS	Training on auditing the NEMIS Platform and monitor progressively how many of the audits are carried out on this platform	2022/23	PAP	IAD
5	Weak controls at the counties as evidenced by material findings from the Internal audit	Though management response is that they issue circulars to counties, scheduled monitoring/follow ups is necessary	2022	PAP	IAD
6	Lack of oversight between Audit Committee terms in office leading to gap in oversight of ministry's activities	Give notice of extension of audit committee term few months before expiry of term	continuous	Not PAP	MoE
7	On preparation of Financial Statements, some information from manual records is incorporated in addition to what is generated from IFMIS.	Financial Statements should be generated directly from the IFMIS -need to fix the current gap in IFMIS	2023	Not PAP	NT
8	Program expenditure may not be adequately tracked	Semi-Annual Unaudited Financial Report	2022	Not PAP	MoE
9.	Both the CAJ and the EACC have received complaints against TSC and MoE around issues of F&C and maladministration complaints, respectively.	The Program will monitor both the CAJ and EACC annual certification process as part of the "resolution of public complaints" and "corruption prevention indicators" under the Performance Contracting system. Any weaknesses observed and actions taken towards addressing these will be monitored throughout the program.  Both the EACC and the CAJ will submit bi-annual information/reports to the World Bank on any complaints related to the project	Continuous	Not PAP	WB/MoE/TSC
10	Lack of procurement compliance level assessment Report by PPRA as per requirements of PPADA, 2015 and Public Procurement and Asset Disposal Regulations, 2020.	PPRA to undertake compliance assessment	Annually after Program effectiveness	PAP	MoE, TSC, JKF, PPRA
11	Lack of internal Procurement related complaint handling mechanism.	To establish an internal procurement related complaint handling mechanism with an interface to accept complaint and detailed provisions on complaint resolution other than through Public Procurement Administrative Review Board (PPARB).	Immediately after the Program effectiveness	Not PAP	MoE, TSC, JKF
12	Absence of Internal procurement manual.	Preparation and issuance of a procurement guidance manual within the provisions of PPADA, 2015 and Public Procurement and Asset Disposal Regulations, PPADR 2020.	March 2023	PAP	MoE, JKF
13	Limited information about public procurement opportunities and contract awards availability in public domain through Public Procurement Information Portal (PIIP)	Public Disclosure of procurement opportunities and contract awards information for all procurements in Compliance with Executive order No.2 of 2018	After Program effectiveness & continues thereafter	Not PAP	MoE, JKF
14	Limited Oversight-Absence of demonstrated monitoring mechanism to oversee performance of procurement activities through monthly reports.	Director Supply Chain Management to prepare comprehensive monthly contract implementation Reports to the Accounting Officer in line with the PPADR, 2015.	After Program effectiveness & continuous thereafter	Not PAP	MoE, JKF
15	Delay in infrastructure procurement processes and contract implementation	Progress report on infrastructure activities/contracts periodically /during implementation support mission	Every ISM after Effectiveness	PAP	MoE

## ANNEX 8. INVESTMENT PROJECT FINANCING COMPONENT

### Financial Management (FM)

1. The World Bank team assessed MoE, TSC and JKF, the implementing entities for the IPF and established that the FM arrangements (a) are capable of recording correctly and completely all transactions and balances relating to the project; (b) are able to facilitate the preparation of regular, timely, and reliable financial statements; (c) can safeguard the project's assets; and (d) are subject to auditing arrangements acceptable to the Bank.

2. MoE is currently implementing GPE PRIEDE, GPE Covid 19 Learning Continuity in Basic Education Project, SEQIP and EASTRIP all funded and/or administered by World Bank for GPE. Some of the issues raised in the FM reviews include; Counties still submitting County Financial Reports late and with wrong reporting format despite a lot of training had been done; the internal audits from MoE IAD very infrequent. However, the IAD indicated that the projects are audited annually only that the sharing with the World Bank may not have been done. Regular refresher trainings on the counties are recommended and internal audit department will be required to have carried out internal audit of the project activities at least annually and reports shared with the World Bank.

3. **Ministry of Education (MoE):** The following strengths were identified; a) adequate financial processes and systems that will support the program-including the Financial Management System (IFMIS) for capturing financial transactions and reporting and b) development of a National Education Management Information System (NEMIS) that automated end to end management of education data and associated administrative functions. NEMIS tracks information on the learners instead of prior arrangement where Ministry of Education was relying on learners' information/data provided by the Principals/Head teachers and countersigned by the County Directors of Education. Gaps identified included a) though NEMIS automated the data management and associated administrative functions, it still relies on some information/data provided by the principals' /head teacher and County education officers b) budget cuts that are necessitated partly by development partners not releasing funds and, c) there were anomalies in subsidies (Free Day Secondary School Funds) amounting to Kshs 1,815,126,548 being overpayment to 2,610 public schools in different counties. The overpayment arose from erroneous computation of July to September 2019 disbursements, inflation of enrolment numbers in January 2020 and double payment to schools. Included is an expenditure of Kshs 26,835,700 disbursed to 5 schools whose existence was in doubt. Mitigation measures include a) Enhancement of NEMIS that accurately tracks information/data on learners to replace the earlier system that relied on provision of information/data by the principals and County Directors of education b) MoE has put in plans to recover any monies that were irregularly received by some schools.

### Teachers Service Commission (TSC) Level

4. Teacher Service Commission TSC will rely on the existing structures in the implementation of anticipated program activities. The commission has offices and staff at Headquarters and the counties. At the Head Quarters (HQ) and counties, the commission also has financial systems and processes that include funds flow, payment and reporting systems. At HQ, the commission uses the Government IFMIS for capturing financial data and reporting, while at the County level, funds are transferred and deposited into the approved local bank at the county. Disbursement of the funds is strictly on the purpose detailed in the instructions and only on approval by the respective authorized county staff. On spending, the support documents are sent to the Headquarters where they are reviewed and posted into the IFMIS. Regular monitoring visits by HQ staff and Internal audit functions to the county offices are maintained to ensure accountability of funds transferred to the counties. The assessment further noted the following

weaknesses: a) capturing of financial transactions at the Counties were manual and, b) insufficient coordination and monitoring at the county level due to COVID 19 pandemic and associated protocols and restrictions. The following action plans are suggested: a) strengthen the financial record keeping, reporting and monitoring at the county level by automating all the financial operations and, b) Strengthen the staff capacity by training the finance/accounting staff on Bank procedures and financial reporting.

### **Jomo Kenyatta Foundation (JKF) Level**

5. JKF is a Government of Kenya parastatal duly incorporated in the Republic of Kenya under the repealed Companies Act Cap 486 Laws of Kenya as a Company Limited by Guarantee. It follows GoK PFM regulations and procedures. The finance and ICT department is headed by a General Manager who reports to the Managing Director who in turn reports to the Board of Directors. It uses an integrated system (Syspro 8) that allows for proper recording of transactions and allocation of expenditures to respective components or cost centers and sources of funds. From assessment, there are adequate controls already in place for preparation of transactions, voucher examination and three levels of approval i.e Preparation, voucher examination, verification, review and approval. There is an Internal Audit & Risks Management department comprising of the General Manager and two internal auditors, which reports directly to the Audit Committee of the Board but administratively report to the Managing Director. The department will be able to incorporate the Audit review of the project in its annual plan and progressively monitor, evaluate and report its implementation as required. The organization has not implemented an external funded/ donor funded project. It would therefore require to be sensitized on World Bank Financial Management requirements to enable them implement the project effectively. It would also require to designate focal staff within its finance department to ensure project financial processes are well coordinated within the organization including reporting to the PCU.

6. The assessment covered the financial management arrangements in planning & budgeting, funds flow, accounting, reporting, internal controls and internal audit and external audit and oversight arrangements:

#### **6.1 Planning & Budgeting**

7. Adequate budgeting processes are in place at MoE, TSC and JKF. The budgeting process in the three implementing entities are anchored and undertaken according to the PFM Act 2012 and PFM Act regulations 2015. MoE, TSC and JKF prepare annual budget estimates that are approved by parliament to use through Appropriation Bill. JKF budget is based on its own incomes (appropriation in aid). The annual budget estimates are captured in the IFMIS through the budget classification codes. The IFMIS system is capable of tracking budget executions reports by fund source and project components and specific program expenditures. Budget processing in MoE, TSC and JKF is led by the budget office and follows the government budgeting cycle.

#### **6.2 Funds Flow, disbursements and banking arrangements**

8. There are adequate funds flow arrangements on transfer of funds from World Bank to MoE and TSC and to the MoE/TSC county offices. Funds from World Bank to MoE and TSC are deposited in the respective special USD/Euro Designated Accounts at Central Bank of Kenya. JKF, being an entity under MoE would receive funds through MoE. Non comingled accounts are maintained by MDAs at Central Bank of Kenya. **MoE and TSC have since opened two Euro bank accounts each in the CBK for the IDA credit and grant. A total of four (4) Euro designated accounts. With the GPE AF, they will use the opened (pooled) accounts. In Client Connection, the different finance sources will however be separated.**

Upon requisition, the funds are transferred to Kshs account at Central Bank of Kenya. Initial Withdrawal shall be based on cash forecast while subsequent replenishment requests shall be through filing of withdrawal applications through the Bank secure client connection. Replenishment and reimbursement of withdrawal applications will be accompanied by Statements of Expenditures (SOEs). Program funds deposited in Designated accounts are disbursed to only finance eligible program activities. The assessment notes that there are appropriate designated signatories to the program accounts.

9. Funds are transferred to the MoE and TSC county offices local bank accounts at the duly approved bank based on approved AIEs/approved activities. Drawing of the funds is strictly for the purpose as detailed in instructions. On spending, the support documents are sent to MoE/TSC headquarters where they reviewed and posted in the IFMIS.

10. **Key potential risk and action:** *a) Financial processes in MoE/TSC county offices are manual and therefore the potential risk of manipulation b) ineffective monitoring of financial spending at the county level. There is need to strengthen the financial reporting and monitoring at the county level by automating operations.*

### **6.3 Accounting**

11. At MoE, JKF and TSC there are well established accounting and financial systems with adequate staffing to ensure adequate program financial records are maintained. Standard Chart of Accounts has been developed and in use. Also accounting standards and templates have been developed through the Public Sector Accounting Standard Board (PSASB). MoE and TSC financial transactions are captured in the IFMIS through budget classification codes. JKF uses an integrated system (Syspro 8) that allows for proper recording of transactions and allocation of expenditures to respective components or cost centers and sources of funds. The accounting arrangements including maintaining of financial records and practices are captured through finance and accounting manuals. At MoE, the government wide accounting policy and procedures manual has not been updated. Program accounting is maintained on cash basis in accordance with International Public Sector Accounting Standards (IPSAS) cash basis adjusted to reflect commitments.

12. **Key potential risk and action:** *a) The Government wide accounting /policy and procedure manual not regularly updated and, b) projects staff technically qualified but not all of them are well versed with the Bank procedures. a) The government wide accounting/policy and procedure manual should be updated regularly and b) regular training of the accounting staff on Bank procedures.*

### **6.4 Reporting and Monitoring**

13. MoE, JKF and TSC have adequate financial systems and arrangements to provide quality and timely financial management reports. At the institutional level MoE, JKF and TSC financial reporting is anchored in the in the PFM Act 2012 and PFM Regulations 2015. Section 81(1) of the PFM act 2012 requires that at the end of each financial year, the accounting officer of a national government entity shall prepare financial statements in respect of the entity. MoE, JKF and TSC has consistently complied with. At the program level the Bank will require that MoE, JKF and TSC prepare and submit to the Bank Quarterly Interim Unaudited Financial Reports (IFRs) not later than 45 days after the end of the reporting period. The IFRs, shall be prepared in content and format as shall be agreed between the Bank and Implementing Entities. The FM assessment noted that IFMIS has the capability to support generation of the project financial reports directly from the system though currently being used for this function.

14. At the County level, where MoE/TSC have offices, the assessment notes that funds are sent to their county approved local bank as per the approved AIEs/approved activities to be implemented. When the funds are expended, the support documents are sent to headquarters for review and posting to the IFMIS system. As the system at the county offices are manual reporting of the expenditures are only done when support documents are received and posted in the system.

15. **Key potential risk and action:** *Reporting of the expenditures at the county offices are manual and prone to manipulation and b) monitoring of funds disbursed for activities at the county level is not on timely basis given the manual nature of reporting expenditures. strengthen the financial reporting and monitoring at the county level by automating operations.*

## 6.5 Internal Controls and Internal Audit arrangements

16. MoE, JKF and TSC have adequate internal controls and internal audit arrangements in place. Finance & Accounting/Accounting policy & procedures manual in existence in MoE, JKF and TSC. The manuals provide guidelines on expenditure processing, authorization, and payment procedures among others. Also, the Project Operations Manual (POM) that guides on project operations shall be prepared and regularly updated with emerging issues. The assessment further noted that there is adequate segregation of duties at MoE, JKF and TSC. Authorization, recording, and custody responsibilities are performed by different units or persons. Also controls exists in payment processing that require that all payments must be duly supported with appropriate/sufficient support documents. On fixed asset, the assessment notes that there is no automated fixed asset register.

17. Further the assessment notes that internal audit functions are in place in MoE, JKF and TSC with qualified and experienced staff. Though MoE has 11 officers, the audit universe is equally wide. So, follow ups of audits recommendations in the counties has not been done. To enhance the IA function performance, audit committees have been established in MoE, JKF and TSC. At TSC the audit committee is chaired by a non-commission officer and there are regular audit committee meetings. The Audit Committee of the Ministry was recently appointed. It was however inactive from end of 2019 due to expiry of their term, but the term was extended this year and made a sitting last month (October). Effectively therefore the internal control environment in MoE, JKF and TSC is strong (save for the counties that need some monitoring/follow ups) and will adequately support the Program.

18. **Key potential risk and action:** *Without an automated and comprehensive fixed asset register there are no adequate safeguard of program assets. An automated and comprehensive fixed asset register to be maintained. The follow up on county audit recommendations by the internal auditors is necessary.*

19. The EACC and CAJ have well-functioning, well known and accessible complaints management systems linking key investigative, and transparency agencies. MoE, JKF and TSC have various channels for reporting public complaints, including email/website, telephone, in person, letters and suggestion/anti-corruption boxes.

20. Within the MoE, a Project Coordination Unit (PCU) has been operational for a number of years. The PCU has handled other World Bank projects and an appropriate GRM is already in place. the Ministry has also developed "Standard Operating Procedures Administration Department Processes" aligned with the CAJ/Ombudsman "Reporting Framework on Resolution of Public Complaints and Access to Information)". The MoE has a detailed service charter that outlines the time frames and cost of each service provided to the public.

21. The TSC has developed and implemented an evaluation and monitoring system to track the almost 1000 email queries that come in daily and are channeled to various directorates. The TSC also tracks responses to issues raised via social media.

22. JKF has developed and operationalized a number of policies and procedures round complaints handling. This includes a customer complaints handling procedure, codes of conduct and ethics and a quality policy.

23.

24. As part of performance contracting and the CAJ/Ombudsman “Reporting Framework on Resolution of Public Complaints and Access to Information”, all ministries, departments, and agencies (MDAs)/public institutions are required to report on the corruption eradication and complaints resolution indicators and report (on a quarterly basis) on implementation of various measures. Non-compliant institutions are not issued with compliance certificates and their overall scoring is lowered as a result of non-compliance.

25. GAC reports and reporting responsibilities will be in accordance with the applicable World Bank Anti-Corruption Guidelines and as spelt out in detail in the POM.

26. **Key potential risk and action:** *MoE, JKF and TSC have complaints registered against them under review by the EACC and CAJ that point to existing institutional challenges and weaknesses. The Program will monitor both the CAJ and EACC annual certification process as part of the “resolution of public complaints” and “corruption prevention indicators” under the Performance Contracting system. Any weaknesses observed and actions taken towards addressing these will be monitored throughout the program. In addition, both the EACC and the CAJ will submit bi-annual information/reports to the World Bank on any complaints related to the project*

## 6.6 Governance and Anti-Corruption

27. The EACC and CAJ have well-functioning, well known and accessible complaints management systems linking key investigative, and transparency agencies. MoE, JKF and TSC have various channels for reporting public complaints, including email/website, telephone, in person, letters and suggestion/anti-corruption boxes.

28. Within the MoE, A Project Coordination Unit (PCU) has been operational for a number of years. The PCU has handled other world bank projects and an appropriate GRM is already in place. the Ministry has also developed “Standard Operating Procedures Administration Department Processes” aligned with the CAJ/Ombudsman “Reporting Framework on Resolution of Public Complaints and Access to Information”. The MoE has a detailed service charter that outlines the time frames and cost of each service provided to the public.

29. The TSC has developed and implemented an evaluation and monitoring system to track the almost 1000 email queries that come in daily and are channeled to various directorates. The TSC also tracks responses to issues raised via social media.

30. As part of performance contracting and the CAJ/Ombudsman “Reporting Framework on Resolution of Public Complaints and Access to Information”, all ministries, departments, and agencies (MDAs)/public institutions are required to report on the corruption eradication and complaints resolution indicators and report (on a quarterly basis) on implementation of various measures. Non-compliant

institutions are not issued with compliance certificates and their overall scoring is lowered as a result of non-compliance.

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## 6.6 External audit and oversight arrangements

33. MoE, JKF and TSC have adequate external audit and oversight arrangements. Institutional audit for MoE, JKF and TSC is undertaken under PFM Act 2012, PFM Regulations 2015 and Public Audit Act 2015. The PFM Act 2012 sets the timelines for submission of Annual Financial Statements to the Office of the Auditor General (OAG) by MDAs as September 30, while audit reports should be finalized not later than December 31. MoE, JKF and TSC have complied to this requirement. The PFM act also stipulates that OAG submits the audited financial to the parliament and parliament within 3 months’ parliament to debate, consider and take action on the report. The assessment notes non-compliance as parliament does not debate, consider and take action on audit reports within 3 months on receipt of audited reports from OAG. On program audit the bank requires that audited financial statements must be received by the Bank within six months after the end of the financial year. The audit would be in conformity with the Banks audit requirements and in accordance with internationally recognized International Standards on Auditing (ISA). The external auditors will also prepare Management Letter giving major observations, comments and providing recommendations for improvements in accounting records and financial systems, controls and compliance to the grant agreement and other legal /regulatory requirements. The audit report will be submitted to the Bank within 6 months after the end of the accounting period to which the audit relates to.

**Table 8.1: Program Systems and Capacity improvements-IPF Component**

#	Key potential risk	Mitigation Action
1	Financial processes in MoE/TSC county offices are manual and therefore there is potential risk of manipulation and ineffective monitoring of financial spending at the county level	Strengthen the financial reporting and monitoring at the county level by automating operations.
2	Projects staff technically qualified but not all of them are well versed with the Bank procedures	Strengthen staff capacity by training the finance/accounting staff on Bank procedures.
3	Fixed asset registers maintained are manual.	Strengthen the financial systems by automating the comprehensive fixed asset register maintained.
4	Insufficient coordination and monitoring at the count level due to COVID 19 pandemic and associated protocols and restrictions.	Strengthen the accounting and financial reporting and monitoring at the county level by automating operations.
5	Weak internal controls at the counties	Internal Audit to do follow up audits to monitor implementation of their recommendations

## 8.0 Financial Management Capacity

34. The assessment notes that MoE, TSC and their county offices have adequate staffing who are qualified and with extensive experience in financial management. The mitigating measures for issues raised in county audits will however need to be implemented to maintain a satisfactory rating. JKf has not implemented an external funded/ donor funded project. It would therefore require to be sensitized on World Bank Financial Management requirements to enable them implement the project effectively. There is also need to strengthen their capacity through training on World Bank procedures and PforR operations. Overall, the three implementing entities have the necessary financial management capacity to support the program.

## 9.0 Conclusion and Supervision plan

35. The overall FM risk for this operation is assessed **Substantial**, requiring regular Bank implementation support supervision. The implementation support supervision will be consistent with a risk-based approach and will involve a collaborative approach through the project implementation arrangements. Additional supervision activities will include desk review of quarterly IFRs and internal audit reports, audited Financial Statements and Management Letters as well as timely follow up of issues arising. The FM risks will form basis in updating the project Implementation Status Report (ISR).

## 10.0 Procurement

36. Procurements under MoE and TSC will be carried out in accordance with the World Bank Procurement Regulations for IPF Borrowers for Goods, Works, Non-Consulting and Consulting Services, dated July 2016 and revised in November 2017, August 2018, and November 2020, hereafter referred to as "Procurement Regulations". The Public Procurement Strategic for Development (PPSD) is a strategic document and it's the basis for the 18 months Procurement Plan to implement the IPF component. The first 18 months Procurement Plan will be updated at least annually or as required to reflect the actual Program implementation needs and improvements in institutional capacity. The IPF component of the Program will use the Systematic Tracking of Exchanges in Procurement (STEP), which is a planning and tracking system to plan, record, and track procurement transactions and performance.

37. Under the IPF component, all contracts using the national market approach shall follow the procedures set out in the PPADA 2015. Under the PPADA 2015, the Public Procurement Regulatory Authority (PPRA) has been established that has oversight and regulatory functions, including undertaking procurement monitoring, assess and review the public procurement and asset disposal system to ensure that they respect the national values and other provisions of the Constitution, including Article 227 and make recommendations for improvements. There is a Public Procurement Complaints Administrative Review and Appeals Board (Appeal Board) under the secretariat of PPRA that deals with complaints received from bidders or consulting firms following a national market approach. There will also be a complaint receiving and handling mechanism under the MoE and TSC.

38. When approaching the international market, procurement will be done using the World Bank's Standard Procurement Documents (SPD). Procurements while approaching the national market will be done using the National Standard Bidding Documents with appropriate modifications and additional annexes to address the World Bank's SEA/SH and Anti-Corruption Guidelines, universal eligibility, and the World Bank's right to inspection and audit, and others as stipulated in paragraph 5.3 to 5.6 of the WB procurement Regulations related to National Procurement Procedures.

39. The procurement capacity and risk assessment for IPF component indicates that the procurement capacity and risk at the MoE and TSC are rated as "**Substantial**". The major procurement risks to KPEELP are discussed in the project procurement strategy for development (PPSD). The PSD including the 18-



months Procurement Plan has been reviewed and updated to include the AF. The summary of the PPSD is included in the latest PAD.

**Table 8.2: Program Systems and Capacity improvements-IPF Component**

#	Key potential risk	Mitigation Action
1	Delays in contract signing and implementation	Establish an effective tracking system for contract monitoring and payments for service providers.
2	Lack of adequate knowledge of the Bank procurement regulations and procedures.	Participate in the World Bank procurement trainings, especially on consulting services
3	Lack of procurement compliance assessment Report	Regular procurement audit by the PPRA and the Kenya AOG; and full implementation of the corresponding audit findings.