

# REPORT OF THE AUDITOR-GENERAL ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND - MALINDI CONSTITUENCY FOR THE YEAR ENDED 30 JUNE, 2022

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## 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

### **Adverse Opinion**

I have audited the accompanying financial statements of National Government Constituencies Development Fund - Malindi Constituency set out on pages 1 to 38, which comprise of the statement of assets and liabilities as at 30 June, 2022, and statement of receipts and payments, statement of cash flows and summary statement of appropriation - recurrent and development combined 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, because of the significance of the matters discussed in the Basis for Adverse Opinion section of my report, the financial statements do not present fairly the financial position of National Government Constituencies Development Fund - Malindi Constituency as at 30 June, 2022, and its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards

(Cash Basis) and do not comply with the Public Finance Management Act, 2012 and the National Government Constituencies Development Fund Act No.30 of 2015.

### **Basis for Adverse Opinion**

#### **1. Unexplained Variances between the Financial Statements, Ledgers and Notes to the Financial Statements**

Review of the reports and financial statements presented for audit revealed the following unexplained variances:

<b>Description</b>	<b>Note</b>	<b>Financial Statements Amount (Kshs.)</b>	<b>Ledger Amount (Kshs.)</b>	<b>Absolute Variance (Kshs.)</b>
<b>Statement of Receipts and Payments</b>				
Transfers to Other Units		106,200,000	103,460,000	2,740,000
Other Grants and Transfers		63,958,113	66,698,113	2,740,000
<b>Description</b>		<b>Budget Execution by Sector and Project Amount (Kshs.)</b>	<b>Notes to the Financial Statements Amount (Kshs.)</b>	<b>Absolute Variance (Kshs.)</b>
Bursary - Primary Schools	7	24,049,416	0	24,049,416
Bursary Secondary Schools	7	11,504,920	24,049,416	12,544,496
Bursary - Tertiary Institutions	7	1,342,000	1,342,000	1,342,000

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

#### **2. Unsupported Budget Utilization**

The statement of budget execution by sectors and projects reflects a final budget of Kshs.216,737,372 and actual on comparable basis of Kshs.184,763,756 resulting to a budget utilization difference of Kshs.31,973,616. Review of records revealed the following:

##### **2.1 Compensation of Employees**

Included in the total budget execution by sectors and projects was a final budget of Kshs.6,587,152 in respect of compensation of employees and a corresponding actual on comparable basis of Kshs.4,340,304 resulting to unutilized amount of Kshs.2,246,848. However, details of the unutilized amount were not provided for audit verification.

##### **2.2 Unbudgeted Funds**

Included in the total budget execution by sectors and projects was a previous year's outstanding disbursements in respect of Ganda Primary School of Kshs.2,000,000. However, the outstanding disbursements of Kshs.2,000,000 as reflected in the statement of budget execution by sectors and projects was not supported with the approved list of unfunded projects and corresponding Authority to Incur Expenditure.

In the circumstances, the accuracy and completeness of the budget execution by sectors and projects could not be confirmed.

### **3. Unsupported Payments on Emergency Projects**

The statement of receipts and payments reflects payments in respect of other grants and other transfers of Kshs.63,958,113, out of which Kshs.4,820,000 was in respect of emergency projects. The schedule in support of the expenditure reflected a transfer of Kshs.2,100,000 to Ganda Primary School for the proposed re-roofing of five (5) classrooms at a contract sum of Kshs.2,101,601. Review of records revealed that as at 30 June, 2022, the total contract price of Kshs.2,101,601 had been made while the Project Management Committee (PMC) bank statements revealed that a total of Kshs.4,100,000 was disbursed during the year under review resulting to unexplained variance of Kshs.1,998,399. However, Management did not provide the bills of quantities for the project. In addition, at the time of project inspection in March, 2023, the building had not been labelled contrary to Regulation 11(1)(cc) of the National Government Consistencies Development Regulations, 2016 which requires that the Constituency Committee ensure projects are labelled in accordance with the guidelines issued by the Board.

In the circumstances, the accuracy, completeness and regularity of emergency projects cost of Kshs.4,820,000 could not be confirmed.

### **4. Undisclosed and Unsupported Other Receipts Amount**

The statement of receipts and payments and Note 3 to the financial statements reflects other receipts totalling to Kshs.203,254 out of which Kshs.23,000 is in respect of sale of tender documents. However, the supporting receipt books provided for review indicated that Kshs.43,000 was receipted, resulting in an unexplained variance of Kshs.20,000. In addition, the other receipts include an amount of Kshs.143,893 indicated as unutilized funds from Project Management Committees. Management indicated that the amount related to a refund for accommodation costs for Constituency Development Committee members who did not participate in the entire training programme. However, no listing of the members, days not attended and credit note issued in support of this receipt were provided for audit review.

In the circumstances, the accuracy and completeness of other receipts amounting to Kshs.166,893 could not be confirmed.

### **5. Undisclosed Project Management Committee (PMC) Bank Balances**

Annex 5 to the financial statements reflects PMC bank balances of Kshs.30,207,552 as at 30 June, 2022. However, twenty-one (21) PMC bank accounts whose projects had been completed were still operational but the bank balances were not disclosed. In addition, PMC bank accounts with closing balances totalling to Kshs.2,069,441 as at 30 June, 2021 reflected Nil opening balances. No report was provided of the accounts

closure and refund of the unutilized balances to the Constituency Committee bank account.

In the circumstances, the accuracy and completeness of the PMC bank balances of Kshs.30,207,552 could not be confirmed.

## **6. Unsupported and Irregular Payments of Security Operations**

The statement of receipts and payments and Note 5 to the financial statements reflects payments on use of goods and services totalling to Kshs.10,265,339. Included in this amount are payments for security operations of Kshs.156,000. However, the contract agreement in support of these payments was not provided for the period between 26 September, 2017 and 30 June, 2022.

As a result, the accuracy, completeness and validity of the security operations amount of Kshs.156,000 could not be confirmed.

## **7. Unbudgeted and Unsupported Payments on Security Projects**

The statement of receipts and payments reflects payments in respect of other grants and other transfers of Kshs.63,958,113. Included in the payments is Kshs.16,900,000 for security projects, out of which payments totalling to Kshs.4,250,000 relates to projects which were not budgeted for contrary to Regulation 25(2) of the National Government Constituencies Development Fund Regulations, 2016 which provides that a Constituency Committee shall not incur expenditure unless such expenditure is supported by an approved work plan, a procurement plan and a budget. In addition, included in the payments on security projects was a payment in respect of purchase of twenty-two (22) motorcycles for Chiefs and Assistant Chiefs at a total cost of Kshs.3,960,000. However, the expenditure was not supported with invoices, delivery notes, distribution list, committee minutes approving the project and PMC bank statements. Further, only sixteen (16) of the motor cycles had log books but which had not been transferred to the Fund. Log books for the remaining six (6) motor cycles were not provided for audit review.

In the circumstances, the accuracy and propriety of the payments in respect of security projects totalling Kshs.16,900,000 could not be confirmed.

## **8. Un-vouched Payments on Bursary to Secondary Schools**

The statement of receipts and payments reflects payments totalling to Kshs.63,958,113. Included in these payments is Kshs.Kshs.24,049,416 in respect of payments for bursary disbursements to Secondary Schools. However, payment vouchers in support of bursary payments totalling to Kshs.13,020,416 were not provided for audit review.

As a result, the accuracy, completeness and regularity of the bursary payments to Secondary Schools of Kshs.24,049,416 could not be confirmed.

## **9. Unconfirmed Payments on Transfers to Tertiary Institutions**

The statement of receipts and payments reflects payments in respect of transfers to tertiary institutions of Kshs.15,000,000. Review of the supporting payment vouchers and bank statements revealed two (2) transfers to the PMC of Malindi Kenya Medical Training College. However, the project was not implemented and a re-allocation of the funds was approved by the National Constituencies Development Fund Board through letter

reference dated 15 August, 2022. However, no evidence was provided to confirm that the funds were transmitted back to the to the Constituency Committee bank account. In addition, the College bank statements were not provided for audit review.

In the circumstances, the accuracy and completeness of the payments in respect of transfers to tertiary institutions of Kshs.15,000,000 could not be confirmed.

#### **10. Unsupported Payments on Sports Projects**

The statement of receipts and payments reflects payments on other grants and other transfers of Kshs.63,958,113 which includes Kshs.5,341,777 is in respect of two (2) sports projects. However, the projects were not supported with the project management committee minutes, procurement documents, payment documents, implementation reports and evidence that the participants or the receivers of the sports items received the same or the events occurred. In addition, , the PMC comprised of one (1) Constituency Committee member and two (2) Fund employees, contrary to Regulation 15(6) of National Government Constituencies Development Fund Regulations, 2016 which prohibits a Constituency Committee from converting itself into a project management committee.

In the circumstances, the accuracy, completeness and regularity of the payments on sports projects amounting to Kshs.5,341,777 could not be confirmed.

#### **11. Unsupported Bursary Payments**

The statement of receipts and payments reflects payments in respect of other grants and transfers of Kshs.63,958,113 which includes payments of bursary to Secondary Schools of Kshs.24,049,416, Tertiary institutions of Kshs.11,504,920 and Special Schools of Kshs.1,342,000. However, the Constituency Committee and Sub Committee minutes approving the bursaries, selection and award criteria, and reports on the application and criteria for the award of the bursaries and how the bursary amount per beneficiary was determined were not provided for audit as well as payment vouchers in support of bursary totalling Kshs1,342,000 in respect of Tertiary institutions. In addition, Management did not provide the procedure and criteria used in identifying and allocating funds to the beneficiaries.

As a result, the accuracy and propriety of bursary payments totalling to Kshs.36,896,336 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the National Government Constituencies Development Fund - Malindi Constituency Management in accordance with ISSAI 130 on 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 adverse opinion.

#### **Emphasis of Matter**

##### **Budgetary Control and Performance**

The summary statement of appropriation reflects final receipts budget and actual on comparable basis of Kshs.216,737,372. In addition, the Fund made payments totalling

to Kshs.184,763,756 against an approved budget of Kshs.216,737,373, resulting to an under-expenditure of Kshs.31,973,617 or 15% of the budget.

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

### **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 Matters**

In the audit report of the previous year, several paragraphs were raised. However, Management has not resolved and disclosed the status of all the prior year matters as prescribed in the reporting requirements set by the Public Sector Accounting Standards Board. Management has not provided satisfactory explanation for the delay in resolving the issues.

## **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

### **Conclusion**

As required by Article 229(6) of the Constitution, because of the significance of the matters discussed in the Basis for Adverse Opinion section and Lawfulness and Effectiveness in use of Public Resources sections of my report, based on the audit procedures performed, I confirm that public resources have not been applied lawfully and in an effective way.

### **Basis for Conclusion**

#### **1. Irregular Recruitment of Staff**

The statement of receipts and payments and Note 4 to the financial statements reflects payments in respect of compensation of employees totalling to Kshs.4,340,304 which includes payments totalling to Kshs.2,496,636 in respect of basic staff salaries out of which Kshs.70,000 was in respect of a newly recruited Clerk of Works. Review of the records revealed that the vacancy for the position was not advertised contrary to Regulation 18(1) of the National Government Constituency Development Fund Regulations, 2016 which provides that a Constituency Committee may engage staff in accordance with section 45 of the Act through a transparent and competitive process.

As a result, Management was in breach of the law.

#### **2. Irregular Payment of Committee Allowances**

The statement of receipts and payments and Note 5 to the financial statements reflects payments totalling to Kshs.10,265,339 in respect of use of goods and services which includes committee allowances of Kshs.5,550,000 out of which Kshs.850,000 is in respect of imprests issued to the Constituency Committee members for benchmarking, monitoring

and evaluation exercises. However, imprests totalling to Kshs.445,000 for which the supporting imprest warrants were not provided for audit review, contrary to Regulation 91(2) of the Public Finance Management (National Government) Regulations, 2015 which requires the officer authorized to hold and operate an imprest to make formal application for the imprest through an imprest warrant while the imprest was not recorded in the imprest register contrary to Regulation 93(4) which provides that before issuing temporary imprests, the accounting officer shall ensure that the applicant has been recorded in the imprest register including the amount applied for. In addition, the Constituency Committee members were paid two times for the same sitting allowances amounting to Kshs.104,000.

In the circumstances, the propriety of the payments could not be confirmed and Management was in breach of the law.

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, because of the significance of the matters in the Basis for Adverse Opinion and Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance sections of my report, based on the audit procedures performed, I confirm that internal controls, risk management and governance were not effective.

### **Basis for Conclusion**

#### **Un-updated Fixed Assets Register**

As disclosed in Annex 4 to the financial statements, the summary of the fixed assets register reflects a balance of Kshs.59,725,424. However, review of the register revealed the following anomalies:

- i. Some assets including land did not have monetary values attached to them, yet they were still in use by the Fund.
- ii. The register did not show serial numbers, makes and models of the grader, tractor, vehicles and motor cycles, source of funds and users.
- iii. Assets valued at Kshs.23,409,182 included a grader, a tractor, and a tractor-trailer worth Kshs.22,750,000 which are obsolete, thus overstating the value of assets by the amount.
- iv. Ownership documents for land, a grader, a tractor, and a motor vehicle were not provided for review.

- v. Assets valued at Kshs.59,725,424 reflected in the Annex varied with the value indicated in the fixed assets register of Kshs.25,326,966 by Kshs.34,398,458 that was not explained or reconciled.

In the circumstances, the ownership and safety of the fixed assets balance of Kshs.59,725,424 could not be confirmed.

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 those Charged with Governance**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for maintaining effective internal control 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 overall governance.

In preparing the financial statements, Management is responsible for assessing the Fund's ability 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 Fund 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.

Those charged with governance are responsible for overseeing the Fund'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 noncompliance. 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 Fund's 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 Management.
- Conclude on the appropriateness of 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 Fund's ability 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 Fund to cease 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 Fund 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 communicate with them all relationships and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.



**CPA Nancy Gathungu, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**31 May, 2023**