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

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 - Rarieda Constituency set out on pages 1 to 51, which comprise of the statement of assets and liabilities as at 30 June, 2022, the statement of receipts and payments, statement of cash flows and the summary statement of appropriation 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 the National Government Constituencies Development Fund - Rarieda Constituency as at 30 June, 2022 and of 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 National Government Constituencies Development Fund Act, 2015 and the Public Finance Management Act, 2012.

Basis for Adverse Opinion

1. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects payments amounting to Kshs.99,223,297 and Kshs.3,358,015 in respect of transfers to other Government units and acquisition of assets respectively. However, Note 6 and Note 8 to the financial statements reflect expenditures of Kshs.99,523,297 and Kshs.36,141,370 respectively in respect of the two expenditure components resulting in unexplained variances of Kshs.300,000 and Kshs.32,783,355 respectively.

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

2. Unsupported Training Expenses

The statement of receipts and payments reflects an amount of Kshs.20,158,538 in respect of use of goods and services, as disclosed in Note 5 to the financial statements. The amount includes an expenditure of Kshs.1,991,855 incurred on training of the Fund's employees on different occasions during the year. However, Management did not provide any evidence of a training needs assessment or a training plan to support the expenditure.

In the circumstances, the accuracy and completeness of the training expenses totalling Kshs.1,991,855 could not be confirmed.

3. Inaccuracies in Compensation of Employees

The statement of receipts and payments reflects Kshs.3,487,113 in respect of compensation of employees as further disclosed in Note 4 to the financial statements. However, the expenditure differed with the total amount of Kshs.3,640,239 reflected in the payment vouchers resulting in an unexplained variance of Kshs.153,126. Further, review of the year's payroll records revealed basic salaries total of Kshs.2,702,000 which differed with the amount of Kshs.3,465,513 reflected in Note 4 to the financial statements resulting in an unexplained and unreconciled variance of Kshs.763,513.

In addition, the payroll vouchers for the twelve (12) months reflected basic salaries total expenditure of Kshs.2,922,775 which differed with the payroll total amount of Kshs.2,702,000 thus resulting to an unexplained variance of Kshs.220,775.

In the circumstances, the accuracy and completeness of compensation of employees amount of Kshs.3,487,113 could not be confirmed.

4. Inaccuracies in Cash and Cash Equivalents

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.8,478,339 as disclosed in Note 10A to the financial statements. However, the cashbook revealed an opening cash on hand balance of Kshs.543,138. However, the amount was not reflected in the prior year's financial statements. Further, the prior year balances have not been restated in the year under review to correct the error. Further, Management did not provide the reasons for the reversal of Kshs.3,500,000 reflected in the cashbook relating to a cheque made in favor of Kisumu Polytechnic during 2020/2021 financial year. Similarly, a cheque of Kshs.700,000 paid to Osewre Primary School paid on 24 August, 2021 was reversed on 25 November, 2021. However, the amount was not reflected as a reconciling item in the month of September and October, 2021, casting doubts on whether the payment was made back to the school.

In addition, review of the bank reconciliation statement for the month of June, 2022 revealed receipts in bank statement not in the cashbook amounting to Kshs.1,300,000. However, the amount had been received in the cashbook and from which Kshs.400,000 and Kshs.900,000 cheques were made out to St. Lazarus Primary School and Gagra Secondary School respectively. The bank reconciliation statement also reflected two cheques of Kshs.179,057 which had been outstanding for more than 8 months and were therefore stale.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs.8,478,339 could not be confirmed.

5. Unsupported Procurements

The contract for construction works at the Kenya Medical Training College Masala Campus was awarded to a local contractor at a contract price of Kshs.400,000. However, the procurement documents for the project were not provided for audit.

Similarly, the contract for the grading works of the 900m road from Akado junction to Rarieda Science Teachers Training College was awarded to a local contractor who was paid an amount of Kshs.100,000. However, the contract price, contract terms and procurement process could not be confirmed as procurement documents were not provided for audit. Further, no explanations were provided on why the Constituency Committee procured and paid for works yet both the Kenya Medical Training College and Rarieda Teachers Training College had established Project Management Committees and bank accounts for the projects.

In the circumstances, the accuracy and propriety of the expenditure totalling Kshs.500,000 incurred on procurements 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 - Rarieda 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.

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 report in the year under review.

Other Matter

1. Budgetary Control and Performance

Review of the approved budget for National Government Constituencies Development Fund - Rarieda Constituency revealed that there were some over-allocations of budgeted expenditure contrary to the budgetary ceilings set in Section 25 of the National Government Constituencies Development Fund Act (2015) as detailed in the table below;

Expenditure Item	Allocation Percentage	Required Budgetary Allocation (A) Kshs.	Final Budget (B) Kshs.	Over-Allocation (B-A) Kshs.
Admin, Recurrent Vehicle Maintenance	6%	11,874,214	12,262,681	388,467
Monitoring and Evaluation	3%	5,937,107	9,122,109	3,185,002
Emergency	5%	9,895,178	11,380,200	1,485,022

Further, the summary statement of appropriation reflects a budget over-expenditure on use of goods and services of Kshs.2,483,747 or 114% of the approved budget. The over expenditure has not been explained in the financial statement as required and no approval for the over expenditure was provided for audit review.

In the circumstances, the over-allocation over-expenditure may have affected other expenditure components and impacted negatively on service delivery to the public.

2. Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates.

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 and Basis for Conclusion on 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 Use of Restricted Tendering Process

Review of tender documents revealed that Management awarded a tender for the proposed fencing works, installation of gates and construction of two sentry boxes at Rarieda Science Teachers Training College to a local contractor at a contract price of Kshs.8,162,799. However, the following anomalies were noted:

i. The Chairperson and other Committee Members of the Constituency Committee were appointed to the Tender Opening Committee. This was against their oversight role, including on the procurement processes.

ii. The procurement plan for the year under review did not indicate the procurement method to be used for planned procurement or the budgeted amount for the activity.

iii. Management used restricted tendering for the procurement. However, no justification was provided for use of the method. Further, only five bidders from the list of pre-qualified suppliers were invited contrary to Regulation 89(5) of the Public Procurement and Asset Disposal Regulations, 2020 which requires at least ten suppliers to be invited.

iv. There was no indication of how past work experience requirement for bidders was to be measured without stating the number of years worked, the National Construction Authority registration categories and experience of key personnel in the tender documents. Therefore, the assessment criteria, did not comply with the provisions of Regulation 89(5) of the Public Procurement and Asset Disposal Regulations, 2020.

v. Standard procurement documents were not used in the bidding process as required by Section 58 of the Public Procurement and Asset Disposal Act, 2015.

vi. The notification of award for the contract was issued on 1 December, 2021 and contract signed on 13 December, 2021. However, the acceptance of award was received on 15 December, 2021 hence the contract was entered into retrospectively. Additionally, the contract lacked key provisions such as; special conditions, defects liability period and performance security.

vii. The professional opinion to the Accounting Officer after evaluation process was not provided for audit review.

viii. An audit inspection carried out at the site in March, 2023, revealed that the project had stalled and had passed the stated implementation period of 90 days which lapsed on 12 March, 2022. Several works including supply and fixing of chain-link, construction of one sentry box and wall finishes of the sentry boxes had not been executed and there was no evidence that a contract extension had been requested by the and approved by the Fund.

In the circumstances, value for money incurred on the project could not be confirmed.

2. Incomplete Resettlement of Displaced Persons

The Constituency Committee approved the construction of the proposed Rarieda Science Teachers College in the financial year 2019/2020. The construction was projected to displace forty-four (44) persons occupying 5.91 hectares of land valued at Kshs.4,360,000. The process of compensating the displaced persons was initiated by the Committee. However, although there was a resettlement action plan in place, the valid title deeds for the land were not provided for audit. Further, all the affected persons were yet to receive grants of administration of the estates. Management did not explain why the compensation was not handled by Project Management Committee contrary to Regulation 15(5) of National Government Constituency Development Fund Regulations, 2016.

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

3. Stalled Construction of Kenya Medical Training College Rarieda Campus

Review of records revealed that the Project Management Committee of the Kenya Medical Training College (KMTC) Rarieda Campus awarded tenders to several contractors at an estimated cumulative cost of Kshs.189,600,000 for the construction of the Campus. The construction of the campus started on 7 August, 2015. However, the contractor awarded to construct an administration block at the Campus, requested for a price variation of the works on 22 November, 2021, from the original contract price of Kshs.7,678,534 to Kshs.12,227,968 or 59%. However, approvals, contract variation evaluation documents and the contract addendum were not provided for audit.

Further, review of the project files revealed that as at 8 March, 2022, the contractor had received payments amounting to Kshs.9,062,918. However, whereas environmental and social impact assessments were conducted, there was no evidence to show that the report was certified by the National Environmental Management Authority (NEMA). Subsequently, approval from relevant institutions to set up the Campus were not provided for audit.

In addition, a Management report dated 8 March, 2022 indicated the project had been funded to a tune of Kshs.54,662,552. However, the statement of account for the project were not provided for audit. Audit inspection physical verification in March, 2023 revealed that the project had stalled, the hostel and administration block exhibited signs of poor workmanship that rendered the facility unfit for occupation. Eight (8) years had lapsed since the construction works started yet the facility remains incomplete and unutilized.

In the circumstances, the value for money on the expenditure of Kshs.37,356,863 incurred on construction of the Campus could not be confirmed.

4. Low Budgetary Allocation for Projects

Review of records revealed that the contract for construction of a multipurpose hall at Ruma Primary School for Kshs.3,706,730 was entered into on 11 November, 2022 with a completion duration of three (3) Months. However, the approved budgetary allocation for the project during the year under review was only Kshs.1,000,000. Site inspection at the time of audit revealed that the contractor had performed substructure works up to slab level constituting 30% of project completion and had been paid a first installment of Kshs.998,000. The project has since stalled awaiting the next allocation in the subsequent year's budget.

Similarly, a contract for construction of an administration block at Ndori Police post comprising of three (3) offices was awarded at a contract price of Kshs.9,148,111 against a budgetary disbursement of Kshs.2,000,000 during the year under review. Review of the procurement process revealed the tenders were opened on 17 November, 2020. However, tender evaluation was conducted through verbal interviews of the bidders and scores awarded based on their verbal responses. The lowest evaluated bidder who attained a highest score of 65% was not awarded the contract which was awarded to the highest bidder with a score of 55%. The basis for the award and suitability of the tenderers could not be confirmed since tender documents and copies of the professional opinion were not provided for audit. Further, although the construction commenced in January, 2021, the project remained 40% complete as at the time of audit.

In the circumstances, the value for money from on funds incurred in the projects could not be confirmed.

5. Unapproved Change of Project Scope

Review of records revealed that the Project Management Committee for Mituri Primary School requested for change of project activity from construction of one (1) classroom to fencing, gate installation and renovation of a classroom and proceeded to implement the same with the disbursed amount of Kshs.900,000. However, no approval from the Board was provided to support the change. Similarly, the Project Management Committee of Okiro Primary School requested for change of project activity on 8 December, 2022 from fencing of the 2-acre school compound and installation of gate to renovation of two (2) classrooms. Disbursement to the school was Kshs.600,000. However, no Board approval was provided to support the change of project activity.

Further, the Project Management Committee of Manywanda Primary School requested for change of project activity on 18 July, 2022 from completion of one (1) classroom plastering, flooring, fitting of windowpanes and painting, to renovation of six (6) classrooms and proceeded to implement the same. Disbursement to the school was

Kshs.200,000. However, there was no Board approval provided to support the change of project activity.

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

6. Non-Remittance of Statutory Deductions

The National Social Security Fund (NSSF) employees and employer contributions for the period between 1 January, 2022 and 30 June, 2022 were not included in the payroll and no evidence of contributions payment to NSSF was provided for audit. Further, review of payment vouchers revealed that the Fund was assessed for income tax by the Kenya Revenue Authority (KRA) and penalised a total of Kshs.14,014 for non-compliance in the month of December, 2021.

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

7. Non-Deduction Withholding Value Added Tax

Review of payment records revealed that Management paid contractors a total of Kshs.6,289,470 during the year under review, without deducting withholding Value Added Tax (VAT) and retention monies where applicable as per the requirement of Income Tax Act, VAT Act, 2013 and the Public Procurement and Asset Disposal Act, 2015. Further on 27 June, 2022, Management reversed VAT amounting to Kshs.65,490 without explanation or evidence that payments were made to the Kenya Revenue Authority to offset the liability.

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

8. Non-Remittance of Unutilized Funds

Annex 5 to the financial statements reflects a balance of Kshs.583,801 in respect of the opening balances of Project Management Committees (PMC) bank account balances. Review of the Fund’s project implementation report revealed that projects for which the balances related to, were complete and therefore the funds ought to have been returned to the Constituency Development Fund Account as provided for in Section 12(6) of the National Government Constituencies Development Fund Act, 2015.

In the circumstances, 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 discussed 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 overall governance were not effective.

Basis for Conclusion

1. Lack of a Strategic Plan

During the year the Fund did not have an approved Strategic Plan to guide on preparation of estimates of expenditure, revenue, and operations as per the provisions of the Public Finance Management Act, 2012.

In the circumstances, the Management was not able to effectively formulate medium and long-term strategy for funding and implementation of projects.

2. Lack of Updated Fixed Assets Register

Annex 4 to the financial statements - summary of fixed assets register reflects total assets balance of Kshs.21,889,180 as at 30 June, 2022. However, the balance differs with the total assets value of Kshs.6,546,506 reflected in the fixed asset register provided, resulting to an unexplained variance of Kshs.15,342,647. Further, the asset register did not contain a breakdown of the opening balance of buildings and structures amounting to Kshs.7,971,517 as disclosed under Annex 4 to the financial statements.

In the circumstances, the accuracy and completeness of the summary of the fixed assets register balance of Kshs.21,889,180 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 control, 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 controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the Fund's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to terminate the 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 control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

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

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

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal controls.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.

- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Fund to cease to continue to sustain its services.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the 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 July, 2023