

REPORT OF THE AUDITOR-GENERAL ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND - UGENYA 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

Qualified Opinion

I have audited the accompanying financial statements of National Government Constituencies Development Fund - Ugenya Constituency set out on pages 1 to 45, which comprise of the statement of assets and liabilities as at 30 June, 2022, statement of receipts and payments, statement of cash flows and 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, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the National Government Constituencies Development Fund - Ugenya 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 comply with the National Government Constituency Development Fund Act, 2015 and the Public Finance management Act, 2012.

Basis for Qualified Opinion

1. Inaccuracies in the Financial Statements

The statement of receipts and payment and statement of cash flows reflect transfer to other government units expenditure of Kshs.82,695,000. However, the amount is at variance with Ksh.83,695,539 reflected in Note 6 to the financial statements, resulting to an unexplained variance of Kshs.1,000,539.

In addition, the statement of receipts and payment and the statement of cash flows reflects total payments amount of Kshs.185,750,832. However, re-computation of the amounts resulted in a total amount of Kshs.184,720,284 resulting in an unexplained variance of Kshs.1,030,548.

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

2. Inaccuracies in Cash and Cash Equivalents

The statement of assets and liabilities reflects bank balance of Kshs.34,216,208. Review of the bank reconciliation statements for the month of June, 2022 revealed stale cheque amounting to Kshs.1,061,244 which continued to be carried in the cashbook as payments. Further, a reconciling amount of Kshs.1,775,763 reflected as payments in cashbook not recorded in the bank statement included payments totalling Kshs.198,519 which had not cleared as at the time of audit in February, 2023 but were yet to be reversed in the cashbook.

In the circumstances, the accuracy of cash and cash equivalents balance of Kshs.34,216,208 as at 30 June, 2022 could not be confirmed.

3. Expenditure Charged to Wrong Account

The statement of receipts and payments reflect Kshs.77,933,383 in respect of other grant and transfers as disclosed in Note 7 to the financial statements. The amount includes bursaries to secondary schools and tertiary institutions amounting to Kshs.45,316,000 and Kshs.16,313,190 respectively. Review of the bursaries disbursements records provided for audit revealed payments totalling of Kshs.1,329,000 towards purchase of facemasks, hand sanitizers, communication expenses, transport costs and lunch payments which were incorrectly charged to the bursaries account.

In the circumstance, the accuracy of other grants and transfers expenditure of Kshs.1,329,000 could not be confirmed.

4. Under Provision of Employees Gratuity

The Fund recruited fourteen (14) employees during the financial year under review on contract for twelve (12) months. Review of the employees' contracts revealed that the terms of service included payments of 10% gratuity upon expiry of contract period. However, the gratuity provided for in the contracts was contrary to statutory requirement of 31% for state officers engaged for short periods of service. Further, review of employee costs revealed that nine (9) employees were paid Kshs.300,000 as gratuity after the end of contract period instead of Kshs.930,000.

In addition, the Management did not make a provision for the gratuity not paid although the employees had been engaged since 2018. Further, the same was not disclosed in the statement of assets and liabilities as provided for by the financial reporting guidelines and templates issues by the Public Sector Accounting Standards Board.

In the circumstance, the accuracy and completeness of the financial statement could not be ascertained.

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

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

1. Budgetary Control and Performance

The Fund expended Kshs.185,720,823 against an approved budget of Kshs.220,973,198 resulting to an under-expenditure of Kshs.35,252,375 or 16% of the budget.

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

2. Delay in Implementation of Projects

The projects implementation status report for Ugenya Constituency revealed that the Management had planned to implement one hundred and three (103) projects with a funding allocation of Kshs.137,088,879 in the year under review. The report further indicates that sixty-eight (68) projects with an allocation of Kshs.35,701,454 or 26% of the planned projects had been completed, while thirty-five (35) projects with a funding

allocation of Kshs.101,378,452 or 74% had not started or still ongoing as at the time of audit in March, 2022.

In the circumstance the constituents of Ugenya constituency did not realize fully the benefits as intended during the year under review.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Failure to Follow Procurement Process

During the year under review, the Management procured several works, goods and services. Review of sampled project files in the procurement processes of contractors and suppliers of goods revealed the following:

- i. Management did not make a thirty percent (30%) reservation of the procurement budget for youth, women and persons with disabilities as provided for in Regulation 149 of Public Procurement and Asset Disposal Regulations, 2020.
- ii. The Project Management Committees and the Constituency Committee did not issue the standard tender documents to bidders as required in Section 70 of the Public Procurement and Asset Disposal Act, 2015.
- iii. There were no appointments of evaluation and opening committees by the Accounting Officer as provided in Section 46 of the Public Procurement and Asset Disposal, 2015. In some instances, the committees had more than the required number of members some having more than ten (10) members. Further, the Fund Manager and the Chairman of the Constituency Fund sat in the tender opening and evaluation committees for some tenders.
- iv. No professional opinions were issued after evaluation of tenders as required in Section 84 of the Public Procurement and Assets Disposal Act, 2015. Instead, the winning bidder was issued with an award letter which was either signed by the Fund Manager or the Chairman of the PMC contrary to the Act.
- v. A local company was awarded a contract for construction of a single storey administration block and lecture hall complex at Ugenya forestry college for Kshs.22,848,652. Review of a scoresheet compiled by the evaluation committee revealed the awarded company was non-responsive at technical evaluation since it had scored 53 points out of 72 or 74%. The evaluation criteria provided that that for

a bidder to be considered for further evaluation, they needed to score at least 54 point (75%) and above.

- vi. Several works undertaken were not advertised in the manner prescribed in Section 96 (2) of the Public Procurement and Asset Disposal Act, 2015 which require the procuring entity to advertise tenders in dedicated Government tenders' portals or in its own website or a notice in at least two daily newspaper of nationwide circulation or a notice in at least two free to air television station and two radio stations of national reach.
- vii. The Management awarded a tender for construction of building block at Ugenya Industrial Development Centre to a construction company at a contract price of Kshs.3,837,327. Review of evaluation scoresheet revealed that the awarded company was not responsive at preliminary stage since it did not attach a valid tax compliance certificate which was a mandatory requirement. Further, a bidder who was responsive at the preliminary stage was not subjected to the technical and financial evaluation under unclear circumstances.

In the circumstance, Management was in breach of law.

2. Lack of Bank Reconciliation Statements for PMC Bank Balances

Other important disclosures in Note 17 to the financial statements reflects Project Management Committees (PMC) accounts balances amounting to Kshs.16,861,809 as disclosed in Note 17.4 and detailed in Annex 5 to the financial statements. However, bank reconciliation statements and other supporting documents such as cashbooks, bank statements and certificates of confirmation of bank balances were not provided for audit review contrary to Regulation 90(1) of the Public Finance Management (National Government) Regulations, 2015 which require that Accounting Officers to ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and, and submitted the National Treasury not later than the 10 day of the subsequent month and a copy submitted to the Auditor-General.

Further, returns from the PMCs to the constituency committee were not provided for audit review hence, it was not confirmed whether the PMCs accounted for funds transferred to the respective accounts. This is contrary to Section 10 of the National Government Constituencies Development Fund Act, 2015 which requires project management committees to keep proper books of accounts and make returns to the Constituency committee on how the sum has been used.

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

3. Stalled Projects

During the year under review, Management implemented several projects which as at 30 June, 2022, were at different stages of completion as reflected in the projects

implementation status report. Physical verification at sampled project sites revealed two projects which had stalled as detailed below:

- i. The Constituency committee allocated a total budget of Kshs.22,000,000 in 2017/2018, 2019/2020 and 2021/2022 financial years to Ugenya Forestry College for construction of a single storey administration block and lecture halls complex, the Principal, Deputy Principal, Deans office, a waiting lounge and visitor's toilets, staffroom, and two lecture halls on the ground floor, and four (4) lecture halls on the 1st floor. Physical verification of the works in March, 2022 revealed that the works were incomplete, no ongoing works and the contractor had abandoned the site. In addition, the doors and windows in the building constructed had started rusting. Further, the Management had transferred all the allocated funds to the PMC bank account despite the works having stalled.
- ii. Management contracted a local company to undertake construction of four (4) workshop and administration office, construction of six (6) door latrine for staff with one chamber catering for person with disability, fencing five acres of land using concrete posts and chain link, construction of gate and sentry box and connection to water and electricity at Ugenya Industrial Development Centre. However, physical verification at the site revealed that the contractor had abandoned the site and the only works that had been completed were fencing of the land, the gate and extraction of a trench to demarcate between building blocks. Further, Management transferred total allocated funds for the projects amounting to Kshs.14,000,000 to the PMC bank account despite the works having stalled and the contractor abandoning the site.

In the circumstances, realization of value for money incurred on the projects could not be confirmed.

4. Unbudgeted Expenditure

During the year under review, Ugenya Forestry college was allocated Kshs.1,000,000 and Kshs.300,000 for fencing of 5 acres of land with concrete posts and chainlink, and purchase and installation of a gate respectively. However, review of the project file revealed that a contractor was awarded Kshs.3,119,685 for the works therefore, exceeding the approved budget by Kshs.1,819,685. Approval for the extra fund was not provided for audit review. This is contrary to the Regulation 25(2) of the National Government Constituencies Development Fund Regulations, 2016 which states 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 the circumstance, Management was in breach of law.

5. Expenditure Above Limits-Office and General Supplies Expenditure

The statement of receipts and payments reflects expenditure on use of goods and services amounting to Kshs.11,052,701. Review of the payment vouchers and supporting documents revealed expenditure on office and general supplies, printing services and supplies, specialized materials and services and consultancy services amounting to Kshs.1,569,764 through standing imprests. This expenditures exceeded the approved limit of Kshs.50,000 contrary to Regulation 92 of the Public Procurement and Asset

Disposal Regulations, 2020 which states that a procuring entity may use low value procurement method under section 107(b) of the Act, where low value procurement method. (a) the estimated cost of the goods, works or services being procured per item per financial year is as per the threshold matrix in the Second Schedule of a maximum Kshs.50,000 per item per financial year.

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

6. Over Expenditure on Bursaries

The statement of receipts and payments reflects other grants and transfers amounting to Kshs.77,933,383. As disclosed in Note 7 to the financial statements, the amount includes Kshs.45,316,000 and Kshs16,313,190 in respect of bursaries to secondary and tertiary institutions respectively all totaling to Kshs.61,629,190. However, the amount exceeded 35% of the Constituency allocation ceiling to be allocated for education bursaries from the Constituency Fund, as provided for under Section 48 of the National Government Constituencies Development Fund Act, 2015.

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

7. Expenditure of Emergency Funds on Other Projects

The statement of receipts and payments reflect Kshs.77,933,383 in respect of other grants and other transfers. As disclosed in Note 7 to the financial statements, the amount includes Kshs.9,949,500 incurred on emergency projects. However, review of the records of funded projects revealed that Kshs.3,622,000 was incurred on a project that did not meet the criteria set in in Section 8(3) of the National Constituency Development Fund Act, 2015. Further the utilization of the emergency fund was not reported to the Board within thirty (30) days of the occurrence of the emergency in the format prescribed by the board

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

8. Employees with Expired Contracts

Review of personal files for the employees of National Government Constituencies Development Fund - Ugenya Constituency revealed that eight (8) employees were working and drawing salaries from the Fund without valid contracts as their contract period had expired 1 February 2022. No explanation was provided for the anomaly. In addition, according to the approved budget of the Fund, Kshs.3,692,400 was allocated for the employee cost in the financial year 2021/2022. However, the actual expenditure on employee costs amounted to Kshs.4,039,200 resulting in unauthorized over expenditure of Kshs.346,800.

In the circumstance, 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, based on the audit procedures performed, except for the matter described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing else has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

Uninsured Fixed and Movable Assets

The summary of fixed asset register in Annex 4 to the financial statements reflects assets valued at Kshs.24,441,031. Review of the detailed fixed asset register provided for audit revealed the following inaccuracies and anomalies:

- i) Ownership documents for a Land Rover Defender 110, Yamaha Motorcycle, and land located in Ugenya were not provided for audit review.
- ii) A motorcycle that has since been grounded was not included in the asset register.
- iii) While the Constituency Fund vehicle and motorcycles were said to have been insured, their respective insurance policies were not provided for audit review.

In the circumstances, the existence of adequate controls on management of fixed assets 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 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 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 control 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 control would not necessarily disclose all matters in the internal control 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 control 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 constituency 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 control.
- 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 going concern 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 control 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

18 July, 2023