

# **REPORT OF THE AUDITOR-GENERAL ON KENYA NUCLEAR REGULATORY AUTHORITY FOR THE YEAR ENDED 30 JUNE, 2021**

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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 intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment, and the internal controls developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

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

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

## **REPORT ON THE FINANCIAL STATEMENTS**

### **Qualified Opinion**

I have audited the accompanying financial statements of Kenya Nuclear Regulatory Authority set out on pages 1 to 19, which comprise the statement of financial position as at 30 June, 2021, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all

the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Kenya Nuclear Regulatory Authority as at 30 June, 2021, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Nuclear Regulatory Act, 2019 and the Public Finance Management Act, 2012.

## **Basis for Qualified Opinion**

### **1. Inaccurate Cash and Bank Balances**

The statement of financial position reflects cash and bank balances of Kshs.16,059,151 as disclosed in Note 10 to the financial statements. However, the balance omits an amount of Kshs.14,806,949 that was held in the former Radiation Protection Board bank accounts in Kisumu, Eldoret, Mombasa and Jomo Kenyatta International Airport branches.

Consequently, the accuracy and completeness of cash and bank balances of Kshs.16,059,151 could not be confirmed.

### **2. Inaccurate Property, Plant and Equipment Balance**

The statement of financial position reflects property, plant and equipment balance of Kshs.634,974,334. As disclosed in Note 12 to the financial statements, the amount includes land valued at Kshs.45,000,000 measuring approximately 0.0536 hectares situated at a Nairobi hospital which is registered under the Authority's name. However, the land ownership document (title deed) was not provided for audit and Management explained that the title deed was in the possession of the Ministry of Lands since 2014.

Consequently, the accuracy, completeness and ownership of property, plant and equipment balance of Kshs.634,974,334 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Kenya Nuclear Regulatory Authority 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 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

### Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects an expenses budget of Kshs.142,550,200 while actual expenditure amounted to Kshs.84,248,496 resulting to an under absorption of Kshs.58,301,704 or 41% of the budget.

In the circumstances, the under absorption affected the planned activities and may have impacted negatively on service delivery to the stakeholders.

## 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 matter 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

#### Governance

The Kenya Nuclear Regulatory Authority is established by the Nuclear Regulatory Act, 2019 (which repealed the then Radiation Protection Act Cap 243) to have a comprehensive framework for the regulation of safe, secure and peaceful utilization of atomic energy and nuclear technology, the production and use of radiation sources, the management of radioactive waste and protection of people and the environment against the hazards associated with the use of radiation sources, nuclear materials, associated technologies and facilities. However, the Authority is not fully operational as indicated below:

No	Observation	Law Breached	Risk
1	Lack of a Strategic Plan, Operational Plans, Organizational Structure	Section 68(2)(g) of the Public Finance Management Act, 2012 (g) which requires Accounting Officers of a National Government entity to prepare a Strategic Plan for the entity in conformity with the medium-term fiscal framework and fiscal policy objectives of the National Government.	Failure to ensure that policies, practices and strategic plans of the Organization Are aligned with Government Directives, National Policies and National Development Goals, including the Kenya Vision 2030.
2	Lack of an Audit Committee	The Public Finance Management Act, 2012 Section 73(5) which states that every National Government public entity shall establish an audit committee whose composition and functions shall be as prescribed by the regulations.	Lack of support for the accounting officers in regards to issues on risk, control, governance and responsibility over the management of risk, controls and governance processes

No	Observation	Law Breached	Risk
3	Lack of Internal Audit Department	The Public Audit Act, 2015 Section 33 Part 2 states that The Auditor-General shall have unhindered access to all internal audit reports of a state organ or any public entity, under Subsection (1) above, which is subject to audit by the Auditor-General.	Lack of knowledge of the effectiveness of internal controls of an entity and where improvements must be done thus exposing it to risks.
4	Lack of risk management policies	Public Finance Management Regulations, 2015 Regulation 165 – Part (1) states that the Accounting Officer shall ensure that the National Government develops a) risk management strategies which include fraud prevention mechanism and b) a system of risk management and internal controls that builds robust business operations.	May give room for fraud as there are no policies in place to manage the risks.
5	Failure to carry out risk assessment	The Mwongozo Code Chapter 3.2 sub-Chapter (1)(l).	Failure to ensure that there is an effective risk-based internal audit system.
6	Failure to have ICT Policy	The Mwongozo Code Chapter 3.6 sub-Chapter (1).	Failure to identify and manage ICT related risks
7	Failure to adhere to Mwongozo on appointment of Board of Directors	Mwongozo on appointment, composition and size of Board of Directors require the Board Membership of all State Corporations to be between seven (7) and nine (9) members.	Excess expenditure on Board expenses

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, 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**

### **Lack of Handover and Takeover Reports**

The Kenya Nuclear Regulatory Authority is established by the Nuclear Regulatory Act, 2019 (which repealed the then Radiation Protection Act Cap 243) and took over operations of the former Radiation Protection Board. However, there was no evidence of formal transfer of the assets and liabilities from the Board to the Authority as required by Regulation 141 of the Public Finance Management (National Government) Regulations, 2015 which states that when assets or liabilities of a Government entity are transferred to another Government entity or other institution in terms of legislation or following a reorganization of Government functions, both the Accounting Officer for the transferring national government entity and the Accounting Officer for the receiving national government entity or other institution shall sign the inventory when the transfer takes place. The Accounting Officer for the transferring National Government entity shall file a copy of the signed inventory with The National Treasury and the Auditor-General within two weeks of the transfer

In the circumstances, the ownership and completeness of assets and liabilities inherited from the Board 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 Board of Management**

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

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

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

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

The Board of Management is responsible for overseeing the financial reporting process, reviewing the effectiveness of how the Authority 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 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 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 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 applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue or to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Authority to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Authority to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the 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 to 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, 2022**