REPORT OF THE AUDITOR-GENERAL ON COUNTY EXECUTIVE OF MARSABIT FOR THE YEAR ENDED 30 JUNE, 2021

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 control, 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 County Executive of Marsabit set out on pages 1 to 61, which comprise the statement of assets and liabilities as at 30 June, 2021, and the 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, in all material respects, the financial position of the County Executive of Marsabit 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 (Cash Basis) and do not comply with the County Governments Act, 2012.

Basis for Adverse Opinion

1.0 Cash and Cash Equivalents

1.1 Variance Between Cash Book and Financial Statements Balances

The statement of assets and liabilities and as disclosed in Note 21A to the financial statements reflects Kshs.834,000,498 in respect to cash and cash equivalents. Included in this amount are balances totalling Kshs.58,922,818 relating to seven (7) bank accounts which differ with their respective total cash book balances resulting to an unexplained and unreconciled variance of Kshs.9,796,792.

Under the circumstances, the cash and cash equivalents balance of Kshs.834,000,498 as at 30 June, 2021 could not be confirmed.

1.2 Undisclosed Balance and Unsupported Expenditure of Covid – 19 Funds

As disclosed under note 11 on Other Important Disclosures, a balance brought forward from the previous year of Kshs.118,819,000 in respect of Covid – 19 Funds was received but not fully utilized. During the year under review, the County Executive spent a total of Kshs.89,991,568, however, the balance of Kshs.28,827,432 was not included in the bank balance as at 30 June, 2021.

Further, procurement records to support the aforementioned expenditure were not provided for review contrary to Section 68(6) of Public Procurement and Assets Disposal Act, 2015, that requires that an accounting officer shall maintain a proper filing system with clear link between procurement and expenditure files that facilitates an audit trail.

In the circumstance, the accuracy of the Covid-19 Fund balance totalling Kshs.28,827,432 as at 30, June 2021 and the validity of the expenditure of Kshs.89,991,568 for the year ended 30 June, 2021 could not be confirmed.

2.0 Unsupported Accounts Payables Balance

The statement of assets and liabilities and as disclosed in Note 23 to the financial statements reflects Kshs.53,437,096 in respect to accounts payables being retention monies owed to contractors as at 30 June, 2021. However, supporting documents for the balances were not provided.

Consequently, the accuracy, completeness and validity of the balance of Kshs.53,437,096 as at 30 June, 2021 could not be confirmed.

3.0 Overstatement of the Financial Statements

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflect Kshs.2,551,779,547 in respect of Compensation of Employees.

However, re-computation of the financial statements amounts using IFMIS chart of account codes relating to compensation of employees totaled to Kshs.2,459,789,378 resulting to a variance of Kshs.91,990,169.

Consequently, the compensation of employees' expenditure is overstated by Kshs.91,990,169 contrary to Paragraph 1.3.27 (c) of Cash Basis IPSAS (2017) which prescribes that financial statements shall present information that is a faithful representation of the cash receipts, cash payments and cash balances of the entity and the other information disclosed in the financial statements in that it is: complete, neutral and free from material error.

4.0 County Own Generated Receipts

4.1 Under-Reporting of Receipts

The statement of receipts and payments and as disclosed in Note 9 to the financial statements reflects Kshs.107,446,569 in respect to County Own Generated Receipts. Included in this amount is a balance of Kshs.50,065,800 in respect to Hospital-Facility Improvement Fund. However, revenue records provided reflected Kshs.51,507,475 resulting to an unexplained variance of Kshs.1,441,675.

Consequently, the accuracy and validity of the County Own Generated Receipts amounting to Kshs.107,446,569 for the year ended 30 June, 2021 could not be confirmed.

4.2 Unaccounted for Land Rates

Included in the County Own Generated Receipts totalling Kshs.107,446,569 is an amount of Kshs.3,514,647 in respect to land transaction charges. However, records maintained by the lands office revealed that nine (9) registers used in collection and recording of land rates were not updated and the rates payable were not indicated.

Consequently, the accuracy and completeness of revenue due from land rates for the year ended 30 June, 2021 could not be confirmed.

4.3 Uncollected Market Stalls Rents

Included in the County Own Generated Receipts totalling Kshs.107,446,569 is an amount of Kshs.1,076,010 in respect to market charges. However, the monthly revenue reports provided revealed that the County Government was unable to collect revenue from Saku sub-county market stalls for the current and other previous years. No explanation was given as to why the County Government was not collecting revenue from market stalls and no measures have been put in place to ensure the recoverability of the uncollected amount.

Under the circumstances, the accuracy and completeness of the County Own Generated Receipts amounting to Kshs.107,446,569 for the year ended 30 June, 2021 could not be confirmed.

5.0 Unsupported Payment of Casual Wages

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects Kshs.2,551,779,547 in respect to compensation of employees. Included in the amount is Kshs.127,463,299 in respect to basic wages of temporary employees which comprises of Kshs.11,817,000 paid to casuals engaged in waste collection in Saku sub county whose supporting documents were not provided.

Under the circumstances, the accuracy and validity of the expenditure of Kshs.11,817,000 for the year ended 30 June, 2021 could not be confirmed.

6.0 Unaccounted for Expenditure on Basic Salaries

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Included in the amount is Kshs.2,350,465,973 relating to basic salaries of permanent employees which also consists of Kshs.36,934,332 paid to one hundred and thirty-one (131) ECDE employees through a manual payroll system.

It was therefore not possible to ascertain the accuracy of this amount as the manual system requires manual calculation of deductions, net pay and constant monthly and/or annual updates which could be subject to errors. Also, it was not possible to establish why Management did not incorporate these employees into the Integrated Payroll and Personnel Database (IPPD) system.

In the circumstances, the accuracy, completeness and validity of the expenditure of Kshs.36,934,332 for the year ended 30 June, 2021 could not be ascertained.

7.0 Unsupported Stipends for Interns

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Included in the amount is Kshs.2,350,465,973 relating to basic salaries of permanent employees which consists of Kshs.60,769,000 paid as stipend to youth engaged through work placement program for a period of one-year effective 1 March, 2020. However, supporting documents were not provided contrary to Regulation 119(2) of Public Finance Management (County Governments) Regulations, 2015, which provides that the budgetary allocation for personnel costs shall be determined on the basis of a detailed costing of a human capital plan of a county government entity as approved by the responsible county department for public service management matters, the County Public Service Board and County Treasury.

In the circumstance, the validity of Kshs.60,769,000 expenditure as at 30 June, 2021 could not be confirmed and the Management was in breach of the law.

8.0 Unsupported Expenditures on Use of Goods and Services

The statement of receipts and payments and as disclosed in Note 12 to the financial statements reflects an amount of Kshs.738,831,196 in respect to use of goods and services. However, the audit revealed the following unsatisfactory issues: -

i. Included in the amount is Kshs.129,615,875 in respect to domestic travel and subsistence allowance which consists of Kshs.3,445,700 paid to officers and participants as per diems and other allowances for various trainings and workshops. However, supporting documents were not provided.

Consequently, the validity and value for money of the expenditure of Kshs.3,445,700 for the year ended 30 June, 2021 could not be confirmed.

ii. Similarly, the amount includes Kshs.42,670,531 in respect to training expenses which further includes Kshs.10,346,700 paid to members of staff as allowances.

However, the County Executive paid the allowances to staff to attend and facilitate official duties away from their duty stations instead of advancing them with imprest in accordance with section 93 (3) of the Public Finance Management Regulations that states that temporary imprest shall be issued mainly in respect of official journeys and are intended to provide officers with funds with which they can meet travelling, accommodation and incidental expenses. Further, supporting documents for the expenditure were not provided.

Consequently, the validity and value for money for the expenditure of Kshs.10,346,700 for the year ended 30 June, 2021 could not be confirmed.

iii. Further, the amount includes training expenses amounting to Kshs.42,670,531 which further includes Kshs.4,803,260 in respect to procurement of assorted sports items. However, supporting documents for the expenditure were not provided.

In the circumstances, the validity and value for money for the expenditure of Kshs.4,803,260 for the year ended 30 June, 2021 could not be confirmed.

iv. The amount also includes Kshs.77,877,509 in respect to fuel, oil and lubricants which further includes Kshs.16,002,000 in respect to fuel consumed by various departments. However, supporting documents including fuel registers, work tickets, detail orders and statements of consumption from the contracted suppliers were not provided for audit review.

Consequently, the validity and value for money for the Kshs.16,002,000 expenditure for the year ended 30 June, 2021 could not be ascertained.

v. Included in the amount is Kshs.78,600,000 in respect to insurance costs which comprises of Kshs.55,875,076 for comprehensive medical cover for county staffs. However, records provided revealed that the medical cover catered for 493 out of the total 2,174 county members of staff leaving 1,681 staffs not covered. The management did not provide supporting documents.

Consequently, the completeness and validity of the expenditure of Kshs.55,875,076 on medical cover for the year ended 30 June, 2021 could not be confirmed.

9.0 Unsupported Expenditure on Purchase of Success Cards

The statement of receipts and payments and as disclosed in Note 15 to the financial statements reflects an amount of Kshs.1,549,598,660 in respect to other grants and payments. Included in the amount is Kshs.725,707,853 in respect to other capital grants and transfers which further includes two payments totalling to Kshs.3,633,702 paid to a firm for the supply and delivery of success cards and other school items used by candidates during exams. However, supporting documents were not provided contrary to Section 104(1) of the Public Finance Management (County Government) Regulations, 2015 which states that all receipts and payment vouchers of public moneys shall be properly supported with a pre-numbered receipt and that payment vouchers shall be supported by the appropriate authority and documentation.

In the circumstances, the validity of the transaction of Kshs.3,633,702 for the year ended 30 June, 2021 could not be confirmed.

10.0 Unsupported Procurement of Relief Food

The statement of receipts and payments and as disclosed in Note 15 to the financial statements reflects an amount of Kshs.1,549,598,660 in respect to other grants and payments. Included in the amount is Kshs.349,961,230 relating to emergency relief and refugee assistance which consists of an expenditure of Kshs.19,575,000 for purchase and supply of maize, beans and cooking oil.

However, supporting documents were not provided contrary to Regulation 104(1) of the Public Finance Management (County Governments) Regulations, 2015 which states that all receipts and payments voucher of public moneys shall be properly supported with a pre-numbered receipt and that payment vouchers shall be supported by the appropriate authority and documentation.

Consequently, the validity and value for money for the expenditure of Kshs.19,575,000 for the year ended 30 June, 2021 could not be confirmed.

11.0 Unaccounted for Motor Vehicles

The statement of receipts and payments and as disclosed in Note 17 to the financial statements reflects an amount of Kshs.657,937,366 in respect to domestic payables from previous financial year. Included in the amount is Kshs.38,215,899 paid to Toyota Kenya Limited for procurement of motor vehicles. However, supporting documents were not provided. In addition, review of the summary of fixed assets register revealed that the additional motor vehicles were not included.

In the circumstances, the validity and the value for money for the Kshs.38,215,899 as at 30 June, 2021 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Executive of Marsabit 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 judgement, 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

1.0 Project Implementation Status Report

The Executive had an approved development budget of Kshs.4,562,150,638. However, the projects implemented during the year were five hundred and eighteen (518) with a budget of Kshs.1,654,747,736 resulting to unexplained variance of Kshs.2,907,402,902. The project implementation status report shows that 253 projects worth Kshs.682,689,711 were completed, 167 projects worth Kshs.564,983,835 were ongoing, 92 projects worth Kshs.238,798,150 had not started while 6 projects worth Kshs.39,410,886 were completed and not in use. This may be an indication of inadequacy in project planning and control mechanisms to ensure efficient absorption of available funds.

Under the circumstances, the residents of the County may not have gotten the expected services.

2.0 Budgetary Controls and Performance

The summary statement of appropriation-recurrent and development combined reflects final receipts budget and actual on comparable basis of Kshs.8,715,102,211 and Kshs.8,224,789,009 respectively resulting to an under-funding of Kshs.490,313,203 or 6% of the budget. Similarly, the County Executive expended Kshs.7,647,843,718 against an approved budget of Kshs.8,715,102,211 resulting to an under-expenditure of Kshs.1,067,258,493 or 12% of the budget.

The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

3.0 Prior Year Unresolved Issues

In the report of the previous year, several issues were raised under Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Control, Risk Management and Governance. However, although the Management has indicated that some have been resolved, the matters remained unresolved as the Senate and County Assembly are yet to deliberate on the Report for 2019/2020.

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, Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources 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 public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1.0 Non - Preparation and Submission of Quarterly Reports

During the year under review, the Management did not provide quarterly reports relating to the County Executive containing information on the financial and nonfinancial performance in a form that complies with the standards prescribed and published by the Public Sector Accounting Standards Board from time to time.

Further, no documentary evidence was provided confirming submission of quarterly reports to the County Assembly, the National Treasury, Controller of Budget and the Commission on Revenue Allocation as required by the Public Finance Management Act, Section 166 (4) which states that not later than one month after the end of each quarter, the County Treasury shall consolidate the quarterly reports and submit them to the county assembly; deliver copies to the Controller of Budget, National Treasury and the Commission on Revenue Allocation; and publish and publicize them.

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

2.0 Reallocation of Expenditure

During the year under review, expenditures totalling Kshs.21,242,040 were incurred and charged to the wrong expenditure item contrary to Regulation 43(2) of Public Finance Management (County Governments) Regulations, 2015 that requires the entity to execute their expenditure based on approved budgets, annual appropriation legislation, and the approved annual cash flow plan.

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

3.0 Non-Disclosure and Preparation of Financial Statements

3.1 Non-Disclosures of County Municipality Board

The Kenya Gazette Notice No.8065 of 10 August, 2018 was approved by the County Assembly and granted charter by the County Governor on the 30 August, 2019 establishing the Marsabit County Municipality Board. However, disclosure number 7 to the financial statements on establishment of other County Government entities did not include the municipality board.

3.2 Non- Preparation of Financial Statements

3.2.1 Failure to Prepare Financial Statements

The Municipality Board, County Executive of Marsabit Social Protection Fund, Marsabit County Enterprise Fund and Marsabit Water and Sewerage Company (MAWASCO) which were established in 2019, 2014 and 2017 respectively did not prepare and submit for audit the entities' financial statements. This is contrary to Section 167(1 to 3) of the Public Financial Management Act, 2012, which provides that the administrator of a county public fund established by the Constitution, an Act of Parliament or county legislation shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board which shall contain information on the financial and non-financial performance of the fund and not later than three months after the end of each financial year, the administrator of a county public fund shall submit the financial statements prepared under this section to the Auditor General.

3.2.2 Failure to Append Signature to Financial Statements

The Management of the County Executive presented financial statements for audit of three Funds, which had not been signed by the respective Fund Managers or the County Executive's Accounting Officer. These financial statements included; County Executive of Marsabit Emergency Fund, County Executive of Marsabit Car Loan Fund and County Executive of Marsabit Mortgage Fund.

This is contrary to Section 31(1) (b) of the Public Audit Act, 2015, which provides that at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable.

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

4.0 Uncompetitive Bidding on Construction of Roads Contracts

The statement of receipts and payments and as disclosed in Note 15 to the financial statements reflects an amount of Kshs.1,549,598,660 in respect to other grants and payments. Included in the amount is Kshs.725,707,853 in respect to other capital grants and transfers which consists of Kshs.13,492,683 relating to expenditure on access roads and spot improvement services paid to various contractors. However, the competitive bidding could not be confirmed since tender advertisements, technical and financial evaluation results by the accounting officers were not provided contrary to article 227 (1) of the Constitution which states that when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
Consequently, the validity and value for money for the expenditure of Kshs.13,492,683 for the year ended 30 June, 2021 could not be confirmed.

5.0 Delayed Completion of Modern Market

The statement of receipts and payments and as disclosed in Note 17 to the financial statements reflects an amount of Kshs.2,066,313,806 in respect to acquisition of assets. Included in the amount is Kshs.673,133,719 in respect to construction of buildings which further includes Kshs.37,695,673 being the final payment for the construction of a modern market. However, the contract included supply and installation of 16M3 capacity, 10-meter-high elevated steel tank complete with a booster pump at a cost of Kshs.5,000,000 which had not been completed and put in use as at the time of the audit.

Further, an addendum contract was issued at contract sum of Kshs.11,601,490 for fencing and retaining wall and additional cabro works to parking, the bill of quantities included provision for laying and jointing carbs and channels on the edge of the road at a cost of Kshs.540,000 and painting of the doors to the stalls. Physical verification of the project revealed that the aforementioned works had not been done.

Consequently, the validity and value for money for the expenditure totalling Kshs.5,540,000 for the year ended 30 June, 2021 could not be confirmed.

6.0 Payment for Goods Not Delivered

The statement of receipts and payments and as disclosed in Note 17 to the financial statements reflects an amount of Kshs.2,066,313,806 in respect to acquisition of assets. Included in the amount is Kshs.52,389,250 in respect to purchase of specialized plant, equipment and machinery which consists of Kshs.2,000,000 for procurement of 400 fishing gears. The equipment was to be issued to Boat Management Unit responsible for fishing in Lake Turkana at Loyangalani sub-county office.

However, audit verification conducted in the month of October, 2021 revealed that the equipment had not been received contrary to Section 104(1) (i) of the Public Finance Management Act, 2012 which states that subject to the Constitution, a County Treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the County Government including ensuring proper management and control of, and accounting for the finances of the County Government and its entities in order to promote efficient and effective use of the County’s budgetary resources.

In the circumstances, the validity and value for money for the expenditure of Kshs.2,000,000 for the year ended 30 June, 2021 could not be confirmed.

7.0 Human Resource Management

7.1 Over Commitment of Salary

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Examination of payroll and human resource records and payments in the same regard revealed that fifty-two (52) employees received net pay which was below a third (1/3) of their basic pay contrary to Section 19 (3) of the Employment Act, 2007, which states that the total amount of deduction of the wages of an employee shall not exceed two-thirds (2/3) of such wages.

Consequently, the Management was in breach of the law.

7.2 Engagement of Casuals for More than 3 Months Continuously

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Included in the amount is Kshs.127,463,299 in respect to basic wages of temporary employees which further consists of Kshs.2,862,500 paid to casual employees in various departments who have been engaged continuously since June, 2020 contrary to Section 37 1(b) of the Employment Act, 2007 which stipulates that where a casual employee performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

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

7.3 Irregular Extension of Probationary Period

Records provided for audit verification including payroll data revealed that 593 employees employed on 1 December 2021 had been on probation for more than six months without approval contrary to Section 42(2) of the Employment Act, 2007 which states that a probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.

Consequently, Management was in breach of the law.

7.4 Irregular Earnings on Expired Contract

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Included in the amount is Kshs.127,463,299 in respect to Basic Wages of temporary employees which comprises of Kshs.455,260 paid to one employee whose contract had expired on 31 March, 2018 and whose salary payments had not been stopped or contract renewed contrary to Section B.20 (3) of Human Resource Policies and Procedures Manual for the Public Service dated May, 2016, which states that an officer serving on contract, and whose services are still required, will be informed in writing at least three (3) months before the expiry of the contract.

Consequently, Management was in breach of the law.

7.5 Overpayment of Basic pay

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.2,551,779,547 in respect to Compensation of Employees. Included in the amount is Kshs.127,463,299 in respect to Basic Wages of temporary employees which also consists of Kshs.1,190,740 paid to thirty-seven (37) contractual staff for their basic pay over and above the stipulated rate by salaries and remuneration commission through circular Ref. No. SRC /TS/JE/CG/3/33/Vol. III. (30) dated 8 July, 2020 on implementation of salaries.

In addition, examination and comparison of bank remittance records for manual payroll data and data stored in Integrated Personnel and Payroll Database revealed that in the month of June, 2021, five (5) officers were paid using both systems thus resulting to double payment amounting Kshs.377,875.

Consequently, the Management was in breach of the law.

7.6 Payment of Acting Allowance for more than Six Months

The County Executive staff establishment revealed that the Secretary/ Chief Executive Officer County Public Service Board has been in an acting capacity and drawing an acting allowance for a period of sixteen (16) months since 4 February, 2020 contrary to Section C.14 (1) of the Public Service Human Resource Policies and Procedures Manual 2016, which provides that acting allowance will not be payable to an officer for more than six (6) months.

Under the circumstances, the Management is in breach of the Public Service Human Resource Policies and Procedures Manual, 2016.

8.0 Irregular Procurement of Consultancy Services

The statement of receipts and payments and as disclosed in Note 12 to the financial statements reflects a balance of Kshs.738,831,196 in respect to use of goods and services. Included in the amount is Kshs.69,073,772 relating to other operating expenses which consists of Kshs.6,799,950 incurred on procurement of services for the formulation of county Information Communication Technology (ICT) policy, provision of consultancy services on guidelines and environmental consideration in eco-tourism and development of solid management bill and municipality tenancy agreement.

However, although the services were exclusively of predominant nature the county executive used request for quotation as a method of procurement contrary to Section 116(1) of the Public Procurement and Asset Disposal Act, 2015 which requires that all consultancy services be initiated through expression of interest/ request for proposal.

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

9.0 Nugatory Expenditure to County Assembly Forum

The statement of receipts and payments and as disclosed in Note 15 to the financial statements reflects a balance of Kshs.1,549,598,660 in respect to other grants and payments. Included in the amount is Kshs.428,929,577 relating to other current transfers and grants which consists of Kshs.4,100,000 paid for membership subscriptions to County Assembly Forum (CAF). However, a review of the CAF reveal that these bodies do not draw their mandate from the Constitution of Kenya or an Act of Parliament. Therefore, the basis for the payments made to this CAF is not legally supported and is contrary to Regulations 105(1) of the Public Finance Management (County Governments) Regulations, 2015, which states that an Accounting Officer may authorize payment vouchers provided such expenditure is in respect of and within the provision of the services in a County Treasury warrant and in accordance with the law and regulations.

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

10.0 Irregular Funding of Non-Devolved Functions

The statement of receipts and payments and as disclosed in Note 17 to the financial statements reflects an amount of Kshs.2,066,313,806 in respect of acquisition of assets. Included in the amount is Kshs.673,133,719 in respect to construction of buildings which further includes Kshs.12,127,635 incurred on various projects that relate to National Government entities. This is contrary to Paragraph 6 and 16 of the Fourth Schedule of the Constitution of Kenya, 2010, which stipulates that national defense and the use of the national defense services, Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, secondary schools and special education institutions to be national government functions.

Consequently, the Management was in breach of the law.

11.0 Unsupported Remittance of Statutory Deductions

The statement of receipts and payments and as disclosed in Note 11 to the financial statements reflects Kshs.2,551,779,547 in respect to compensation of employees. Included in this amount is Kshs.446,640,435 in respect to deductions from employees in form of PAYE, NSSF, NHIF and Pension Contributions. However, the Management did not provide evidence to confirm that the statutory deductions were remitted to the beneficiary organizations contrary to Section 19(4) of Employment Act, Cap 226, which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a), (f), (g) and (h) of the Act shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement, court order or arbitration as the case may be.

Consequently, the Management was in breach of 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 comply, 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 Article 229(6) of the Constitution, because of the significance of the matters discussed in the Basis for Adverse Opinion, Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources 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 public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1.0 Information Technology Internal Control Weaknesses

During the year under review, the County Executive did not have an approved ICT policy to enable it manage business processes for the delivery of services to the public in an effective and efficient manner. The Executive also lacked an IT continuity plan and a disaster recovery plan.

In the circumstances, the internal control and risk management used in purchase of ICT equipment including software could not be confirmed.

Further, the Executive data confidentiality, accuracy, reliability, integrity and availability could not be ascertained.

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 control, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the County Executive'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 dissolve the County Executive or 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 financial reporting process, reviewing the effectiveness of how the entity 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 County Executive of Marsabit'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 County Executive of Marsabit 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 County Executive of Marsabit 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

31 May, 2022