

REPORT OF THE AUDITOR-GENERAL ON COUNTY ASSEMBLY OF NYAMIRA 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 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 the County Assembly of Nyamira set out on pages 1 to 23, which comprise the statement of financial assets and liabilities as at 30 June, 2022, and the statement of receipts and payments, statement of cash flows and statement of comparison of budget and actual amounts - 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, except for the effects of the matter described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of County Assembly of Nyamira 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 Public Finance Management Act, 2012.

Basis for Qualified Opinion

Failure to Reconcile Exchequer Releases

The statement of receipts and payments and Note 1 to the financial statements reflects total Exchequer releases of Kshs.784,723,483. However, the County Executive of Nyamira statement of receipts and payments and Note 5 to the financial statements reflects transfers to the County Assembly balance of Kshs.701,140,292 resulting to an unreconciled variance of Kshs.83,583,191.

Consequently, the accuracy and completeness of the total receipts of Kshs.784,723,483 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Assembly of Nyamira 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

Pending Bills

Other important Disclosures and Annexure 1 related to pending accounts payable balance of Kshs.22,523,319 which were not settled during the year under review but were carried forward to 2022/2023 financial year. Had these bills been paid and charged to the accounts for 2021/2022 financial year, the statement of receipts and payments for the year under review would have reflected a deficit of Kshs.22,653,044 instead of the deficit of Kshs.129,725 now shown and will affect the next year's budget to which they will have to be charged.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in the Use of Public Resources and basis for qualified opinion sections 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. Delayed Construction of (MCAs) Offices

Included in the pending accounts payable of Kshs.22,523,319, and as disclosed in Annexure 1 to the financial statements, is a balance of Kshs.12,194,111 in respect to construction of buildings owed to a local contractor emanating from a Kshs.367,000,000 contract for the construction of offices for staff and Members of County Assembly (MCAs). Review of project documents revealed that the contract was to be carried out in one hundred and fifty-six (156) weeks with expected initial completion date of May, 2018 but has been severally revised with the latest completion date set on 17 July, 2023. However, physical verification of the project at the time of audit revealed that the reinforced superstructure was at third floor but the contractor was not on site. In addition, Management did not provide for audit review the revised work schedule as well as the extended performance bond.

As a result, value for money may not be realized from the delayed works.

2. Non-Compliance with One Third Rule

The statement of receipts and payments and Note 2 to the financial statements indicated that Kshs.335,098,676 was spent on compensation of employees. Review of staff establishment and employment records revealed that during the month of June, 2022 eleven (11) officers were earning a net salary less than a third of their basic salary contrary to provisions of Section 19(3) of the Employment Act, 2012 and Section C.1 (3) Human Resource Policies and Procedures Manual for the Public Service, 2016 which requires that deductions made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages.

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

3. Lack of Ethnic Diversity in Staff Composition

The Assembly had two hundred and sixty (260) employees during the year under review. Two hundred and fifty-nine (259) of all the employees or 99.6% were from one ethnic community while only one (1) or 0.4% was from other ethnic communities contrary to

Section 7 (2) of the National Cohesion and Integration Act, 2008 which requires that the public establishment shall have more than one third of its staff from the same ethnic Community.

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

4. Irregular Employment of Ward Staff

As previously reported, review of personal records revealed that Members of the County Assembly directly employed eighty (80) ward members of staff without involving the County Assembly Service Board (CASB) in contravention of Section 12(7)(b) of the County Governments Act, 2012 which provides that the County Assembly Service Board is responsible for constituting offices in the County Assembly service, and appointing and supervising office holders. Further, review of records revealed that the Assembly engaged four (4) employees for each ward in all the twenty (20) wards resulting to overemployment of one (1) staff in each ward contrary to the directive from the Commission on Revenue Allocation through circular Ref CRA/CSO/CGM/18/Vol.8/(1) dated 11 May, 2015 on the County Governments' budget ceilings on recurrent expenditure, limiting the number of employees for each ward to three (3).

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 procedures performed, except for the matters 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

Ineffectiveness of Internal Audit and Audit Committee Function

Even though the Internal Audit Department and the Internal Audit Committee were in existence, Management did not provide for audit verification any quarterly or annual internal audit reports and no follow-up on the implementation of the recommendations of internal and external auditors.

In the circumstances, the internal audit and audit committee function on issues of risk, control and governance and associated assurance was not effectively discharged.

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 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 overall governance.

In preparing the financial statements, Management is responsible for assessing the County Assembly'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 Assembly 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 County Assembly'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 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 Assembly's ability to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the County Assembly to cease to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the County Assembly 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
19 April, 2023