

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

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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 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 - Ugunja Constituency set out on pages 25 to 66, which comprise of the statement of receipts and payments for the year ended 30 June, 2022, statement of assets and liabilities, 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 National Government Constituencies Development Fund - Ugunja 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 Public Finance Management Act, 2012.

## **Basis for Qualified Opinion**

### **1.0 Unexplained Variance in Receipts**

The statement of receipts and payments reflects total receipts amounting to Kshs.175,777,758. Review of the Fund's bank statements and computation of all the receipts to the Fund during year revealed a total of Kshs.180,277,758, resulting to unexplained variance of Kshs.4,500,000.

In the circumstance, the accuracy and completeness of receipts totalling Kshs.175,777,758 could not be confirmed.

### **2.0 Unreconciled PMC Bank Balances**

Note 17.4 to the financial statements reflects Project Management Committees (PMC) accounts balances amounting to Kshs.22,325,620 and as detailed in Annex 5. However, bank reconciliation statements for the accounts and other related supporting documents such as bank statements and cashbooks 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 not later than the 10th day of the subsequent month to the National Treasury with a copy 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 as required in the National Government Constituency Development Fund Regulations, 2016.

In the circumstances, the accuracy and completeness of Project Management Committee account balances totalling of Kshs.22,325,620 could not be confirmed.

### **3.0 Non-Remittance of Unutilized Funds**

Note 17.4 reflects Kshs.50,942,967 in respect of opening balance of Projects Management Fund. The balance relates to the monies held in the Projects Management Committee bank accounts at the beginning of the year under review with some dating far back to 2013/2014 financial year. Review of the project implementation report revealed that projects which the balances related to were reflected as complete and therefore the funds ought to have been returned to the Constituency Development Fund account as

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provided for in Section 12(6) of the National Government Constituencies Development Fund Act, 2015

In the circumstances, the accuracy and completeness of cash and cash equivalent balance of Kshs.8,895,764 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the National Government Constituencies Development Fund - Ugunja Constituency Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my 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 summary statement of appropriation reflects final receipts budget and actual on comparable basis totalling Kshs.195,627,714 and Kshs.191,127,714 respectively, resulting to an underfunding of Kshs.4,500,000 (or 2%) of the budget. Similarly, the Fund expended Kshs.182,231,950 against an approved budget of Kshs.195,627,714 resulting to an under expenditure of Kshs.13,395,764 (or 7%) of the budget.

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

## **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**

#### **1.0 Expenditure of Emergency Funds on Other Projects**

The statement of receipts and payments reflect Kshs.92,654,207 in respect of other grants and transfers. As disclosed in Note 7 to the financial statements, the amount includes Kshs.7,192,207 incurred on emergency projects. However, review of the records

of funded projects revealed that they did not meet the criteria set in in Section 8(3) of the National Constituency Development Fund Act, 2015 of 'urgent, unforeseen need for expenditure that could not be delayed until the next financial year without harming the public interest of the constituents'.

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 contrary to Regulation 20(2) of the National Government Constituencies Development Fund Regulations, 2016.

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

## **2.0 Procurement of Goods and Services**

### **2.1 Irregular Award of Contract**

A local construction company was awarded a contract for construction of ablution block at Dr. Ida Odinga Girls Secondary School at a contract price of Kshs.1,938,637. According to the evaluation committee report of 1 January, 2022, two bidders were found responsive in technical evaluation by both scoring thirty (30) marks and were subjected to financial evaluation, scoring 19.2 and 20 marks respectively.

The tender documents indicated that the highest score was to be determined from combining technical and financial scores, which would have resulted in a combined score of 49.2 and 50 for the two bidders respectively. However, the evaluation committee recommended award to the bidder with lower combined score of 49.2. This effectively led to the Fund incurring an extra cost of Kshs.75,677 since the awarded bidder had quoted Kshs.1,862,960 compared to that of Kshs.1,787,283 by the higher scorer. In addition, the Project Management Committee further directly engaged the contracted company for further works costing Kshs.324,914 to complete the ablution block without justification.

### **2.2 Un-procedural Procurement of Sports Items**

A supplier was contracted to supply sports items for tournaments held on 12 March, 2022 and 21 March, 2022 for Kshs.386,000 and Kshs.524,400 respectively. The Management during procurement of the items issued quotations to only two suppliers contrary to Section 106(2)(b) of the Public Procurement and Asset Disposal Act, 2015 which provides that quotations should be issued to as many persons as necessary to ensure effective competition and shall be given to at least three persons. Further, the supplier was awarded the second supply contract at a price of Kshs.524,400 which was higher compared to the other bidder who had quoted Kshs,521,600 for the same items.

### **2.3 Irregular Procurement of Renovation works**

The Management awarded a contract to a local contractor for renovation of three classrooms at Sirandumb Primary School under emergency fund. Review of the project file revealed that the contractor was not the lowest evaluated bidder in the combined technical and financial score according to the evaluation committee report. The three

evaluated bidders had registered a combined score of 18, 40, and 39.87 respectively. However, the bidder who registered a score of 39.87 was awarded the contract under unclear circumstances. In addition, the contract period was ninety (90) days but the contractor had taken more than six (6) months with no extension to the contract period and the works were still incomplete as at the time of audit in March, 2023.

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

### **3.0 Un-procedural change of Project Scope**

The statement of receipts and payments reflects transfers to other Government units amounting to Kshs.76,182,407. As disclosed in Note 6 to the financial statements, the transfers include an amount of Kshs.39,821,286 to secondary schools. Review of the beneficiaries of the funds revealed that Kshs.6,000,000 and Kshs.2,000,000 disbursed to Dr. Ida Odinga Girls Secondary School, Asango for construction of twenty (20) cubicle rooms bungalow dormitory and construction of 10-room capacity ablution block with five rooms for people living with disabilities (PWD) in accordance with the approved work plan and procurement plan.

Physical verification of the projects revealed change of the scope of the projects whereby the school ablution block done was changed to 8-room capacity ablution block with no rooms for the PWD. Further, the school dormitory contained only seven (7) cubicles instead of the twenty (20) cubicles room capacity initially planned for and approved by the board. The change of scope was not supported by requisite approvals, design changes and price variation and adjustments.

In the circumstances, the value for money for the project could not be confirmed and the accruing benefits to the school were yet to be realized.

### **4.0 Invalid Contract**

During the year under review, Management engaged a contractor for construction of two classrooms at Murumba Nyiro Primary School at a contract price of Kshs.1,949,496. Physical verification of the works at the school in March, 2023 revealed the contractor was still on site and the project was ongoing despite the contract period having elapsed in September, 2022. Although the contractor had sought an extension of one month from 24 September, 2022 and which was approved by the Project Management Committee, no other extension was sought after the lapse of the one-month extension. The contractor was therefore working without a valid contract.

In the circumstances, Management was in breach of law and delay in completion of the project denied the community accruing benefits from the project.

### **5.0 Expenditure above Procurement Threshold**

The statement of receipts and payments reflects expenditure on use of goods and services amounting to Kshs.11,087,736. Review of the payment vouchers and supporting documents revealed expenditure of Kshs.1,682,970 being payment for supplies of food items, computer, office supply, stationery and electrical items which were purchased in

cash using standing imprest. However, the expenditures exceeded the approved limit of Kshs.50,000 allowed under the Public Procurement and Assets Disposal Act, 2015 for use of cash purchases and ought to have been procured competitively.

In the circumstances, the regularity for expenditure of Kshs.1,682,970 on use of goods and services could not be confirmed.

## **6.0 Summary of Fixed Assets**

The summary of fixed asset register in Annex 4 to the financial statements indicate that the Fund had assets valued at Kshs.22,923,184 as at 30 June, 2022. However, the ownership documents for one motor vehicle and a motorcycle reflected in the assets register were not provided for audit review.

Further, although the Fund's vehicle and motorcycles were said to have been insured, the respective insurance policies were not provided for audit review.

In the circumstances, the ownership of the motor vehicle and motorcycle could not be confirmed.

## **7.0 Delays in Implementation of Projects**

Review of the projects' implementation status report for Ugunja Constituency as at 30 June, 2022 revealed that Management planned to implement fifty-three (53) projects and allocated a total of Kshs.137,088,879 in the year under review. However, forty-nine (49) projects with an allocation of Kshs.125,008,879 or 91% of the planned projects had been completed, while four (4) projects with allocation of Kshs.12,000,000 or 9% had not started or were still ongoing as at the time of audit in March, 2023.

In the circumstances, the residents of Ugunja Constituency were denied the benefits associated with the completed projects.

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, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective

### **Basis for Conclusion**

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 controls, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

### **Responsibilities of Management and those Charged with Governance**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and overall governance.

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

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

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

Those charged with governance are responsible for overseeing the Fund's financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

### **Auditor-General's Responsibilities for the Audit**

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error,

and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal controls in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal controls would not necessarily disclose all matters in the internal 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 controls may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the Fund's policies and procedures may deteriorate.

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

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



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

I communicate with Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.



**CPA Nancy Gathungu, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**06 July, 2023**