REPORT OF THE AUDITOR GENERAL ON NATIONAL COUNCIL FOR LAW REPORTING FOR THE YEAR ENDED 30 JUNE, 2023

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 the National Council for Law Reporting set out on pages 1 to 34, which comprise the statement of financial position as at 30 June, 2023 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 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 the National Council for Law Reporting as at 30 June, 2023, 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 Public Finance Management Act, 2012 and the National Council for Law Reporting Act No.11 of 1994.

Basis for Qualified Opinion

Unsupported Transfer to Retained Earnings

The statement of changes in net assets reflects transfers from capital/development grants/ fund amount of Kshs.23,565,276 to the retained earnings. However, the transfer was not supported by journal vouchers.

In the circumstances, the accuracy, completeness and occurrence of transfer from capital/development grants/fund amount of Kshs.23,565,276 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the National Council for Law Reporting 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

Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Lawfulness and Effectiveness in Use of Public Resources and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, Management had not resolved the issues or given any explanations for failure to implement the recommendations.

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. Delays in Transfer of Legal Ownership of Motor Vehicles

Note 21 to the financial statements reflects motor vehicle balance of Kshs.3,153,244. However, as previously reported, in the year 2006 a vehicle was procured through a donor

funded programme under the Governance, Justice, Law and Order Sector and another procured in financial year 2018/2019 through the Judicial Performance Improvement Project and both issued to the Council. However, the legal ownership including the log books have not been transferred to the Council without explanations.

In the circumstances, it is not clear why it has taken long time to transfer the legal ownership of these vehicles to the Council.

2. Non-Remittance of A-I-A to The National Treasury

The statement of financial performance and as disclosed in Notes 7 and 8 to the financial statements reflects revenues from rendering services amount of Kshs.10,020,454 and sale of goods of Kshs.4,483,938 totalling Kshs.14,504,392. However, collaborative information from the financial statements of State Law Office and Department of Justice revealed Appropriation-In-Aid (AIA) amount of Kshs.9,002,131. This resulted to excess revenue of Kshs.5,502,261 which was not remitted to the exchequer contrary to Regulation 84 of the Public Finance Management (National Government) Regulations, 2015.

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

3. Irregular Council Member's Appointment

Review of financial statements revealed that the Council had twelve (12) Members including a senior printer who represented the Government Printer since January, 2013 and holds a position rank below that of Deputy Government Printer. This was contrary to the National Council for Law Reporting Act, No.11 of 1994 (Revised, 2007) No. 4(h). Although, management explained that the Government printer was until 01 July, 2014 represented by an officer whose substantive position was the principal printer but has since left service. Thereafter, the Government printer replaced the officer from 01 July, 2014 with another officer of the same rank of principal printer.

In the circumstances, the Appointing Authority was in breach of the law.

4. Lack of Human Resource Instruments

During the year under review, the Council operated without the requisite human resource instruments approved and aligned to the recommendations of the Public Service Commission for the Kenya. This was contrary to State Corporations Advisory Committee (SCAC) circular dated 15 May, 2017 which requires all State Corporations to develop their Human Resource Instruments; Organizational Structure, Staff Grading and Establishment, Career Guidelines and Human Resource Policy and Procedures Manual. These guidelines should reach SCAC not later than 31 August, 2017 for necessary consideration and approvals.

In the circumstances, 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 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, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and 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 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 Council Members

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.

In preparing the financial statements, Management is responsible for assessing the Council's ability to sustain 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 Council 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 money is applied in an effective manner.

The Council Members is responsible for overseeing the Council'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 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 Council'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 Council 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 Council 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.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

17 April, 2024