

REPORT OF THE AUDITOR-GENERAL ON TOURISM FUND 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 consider 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

Opinion

I have audited the accompanying financial statements of Tourism Fund set out on pages 1 to 44, which comprise of the statement of financial position as at 30 June, 2023, the statement of financial performance, statement of changes in net assets, statement of cash flows, and statement 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, the financial statements present fairly, in all material respects, the financial position of the Tourism Fund as at 30 June, 2023 and 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 Tourism Act, 2011 and the Public Finance Management Act, 2012.

Basis for Opinion

The audit was conducted in accordance with the International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Tourism Fund Management in accordance with ISSAI 130 on the 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 opinion.

Emphasis of Matter

Negative Working Capital

During the year, the current liabilities of the Fund balance of Kshs.1,280,146,473 exceeded its current assets of Kshs.1,057,118,757 resulting to a negative working capital of Kshs.223,027,716 as at 30 June, 2023. The Fund's continued existence as a going concern is dependent on financial support from the Government and its creditors.

My opinion is not qualified in respect of this matter.

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

1. Delay in Collection of Long Outstanding Rental Income Deposits

The statement of financial position and as disclosed in Note 17 to the financial statements reflects receivables from exchange transactions balance of Kshs.131,032,343 which includes rental income deposit balance of Kshs.17,035,644 owed by a local real estate agency. The deposits have been outstanding from the previous years. The Agency was to refund the deposits to the Fund on or before 5 August, 2021. However, as at the time of audit in the month of November 2023, a balance of Kshs.13,598,986 had not been refunded. This is contrary to Regulation 64(1) of the Public Finance Management (National Government) Regulations, 2015 on revenue management.

In the circumstances, the recoverability of receivables from exchange transactions balance of Kshs.13,598,986 could not be confirmed.

2. Unresolved 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. However, the Management had not resolved the issues or given any explanation 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.

1. Construction Works for Proposed Ronald Ngala Utalii College

The construction works of the proposed Ronald Ngala Utalii College was awarded to a local contractor on 14 May, 2013 at a contract sum of Kshs.8,961,370,998. The contract commencement date was on 20 June, 2013 and date of practical completion on 19 June, 2018.

On 25 August, 2014 the contract sum was scaled down from Kshs.8,961,370,998 to Kshs.4,923,005,000 with revised contract completion date of 28 February, 2017 as per second addendum, Further, a third addendum to the agreement was agreed on 20 April, 2021 valid for a period of twelve (12) months from the date of execution.

The Accounting Officer on 6 May, 2021 granted the contractor an extension of thirty-six (36) months with effect from 8 June, 2020 to 7 July, 2023 also on 21 June 2023 as per letter Ref: TF/CONF/1/158/VOL.XIX(46) granted further extension of time for completion of the project from with effect from 21 June 2023 to 20 June 2024.

Review of the implementation of the contract during the year ended 30 June, 2023 revealed the following issues.

1.1 Contractual Claims by Sub-Contractor

According to interim certificate No.53 dated 14 December, 2022, certified work for the electrical subcontractor amounted to Kshs.303,001,854 which includes unanalyzed and unsupported contractual claims of Kshs.8,000,000.

1.2 Interest on Delayed Payments

The interim certificate No.53 further, includes interest charged on delayed payments amounting to Kshs.629,752,500. The delayed interest payments have a huge financial implication to the overall cost on completion of the project.

1.3 Delay in Project Completion

As at the time of audit in the month of November 2023 and according to monthly progress report dated 30 October, 2023, the project completion rate was estimated at 79%. However, the project has delayed in completion since the last approved completion date of 28 February, 2017.

In the circumstances, the value for money on project expenditure may not be realized.

2. Contract for Consultancy, Supervision and Management of the Proposed Ronald Ngala Utalii College

2.1 Excess Fee Note Amounts

According to the latest interim Fee Note No.13 dated 7 November, 2022 (Ref: UC/P/105/FN13) the Quantity Surveyor claimed total fees of Kshs.1,523,276,352; Out of which cumulative payments of Kshs.1,107,493,069 had been made resulting to unpaid amount of Kshs.415,783,283. In addition, the Fee Note reflects VAT amount of Kshs.124,962,768 calculated on the basis of total amount of Kshs.781,017,305 which includes reimbursement instead of the vatable fees of Kshs.737,221,201 with VAT amount of Kshs.117,955,392 as detailed below;

Item	Interim Fee Note Amount (Kshs.)	Expected Audited Amounts (Kshs.)	Variance (Kshs.)
Reimbursements	43,796,104	0	43,796,104
Sub-total	781,017,305	737,221,201	43,796,104
16% VAT	124,962,768	117,955,392	7,007,376
Reimbursements	-	43,796,104	(43,796,104)
Total Fee Note Amount	1,523,276,352	1,516,268,975	7,007,376
Net Payable	415,783,283	408,775,906	7,007,376

As per the above analysis, the fee note has unjustified excess VAT amount of Kshs.7,007,376.

2.2 Interest on Delayed Payments

Review of the consultants' fee notes for the supervision of the contract during the year revealed continued imposition of interest on delayed payments on interim certificates amounting to Kshs.2,397,311,894 as at 30 June, 2023 as shown below;

Consultant	Interim Fee Note No.	Reference	Interest Penalty (Kshs.)
Lead Architect	Interim Fee Note	Tf/22/10/Bsl dated 20 July, 2022	961,650,867
Quantity Surveyors	13	UC/P/105/FN13 dated 7 November, 2022	617,296,278
Civil and Structural Engineers	42	220/100FN/12 dated 08 October, 2020	459,687,377
Mechanical and Electrical Engineers	17	WC/GEN/RNUC/G/1222 8 December, 2022	724,806,494
Total			2,763,441,016

Although Management has explained that the reason for levying of interest penalties is due to insufficient budgeted amounts to the project by The National Treasury over the

years, the continued delay in disbursements of funds to the project has resulted in continued escalation of project costs from interests and penalties which were not budgeted for.

In the circumstances, the value for money on the project expenditure incurred on account of interest charged on delayed payments and reimbursements costs to projects consultants may not be realized.

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 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 Board of Trustees

The 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 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 controls, 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.

The Board of Trustees 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 controls 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 controls 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 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 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 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 the 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.



FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

12 February, 2024