

REPORT OF THE AUDITOR-GENERAL ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND - KESSES CONSTITUENCY 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 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 - Kesses Constituency set out on pages 17 to 72, which comprise of 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 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 - Kesses Constituency 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 comply with the National Government Constituencies Development Fund Act, 2015 and the Public Finance Management Act, 2012.

Basis for Qualified Opinion

1. Unconfirmed Cash and Cash Equivalents

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.51,964,899 as disclosed in Note 10A to the financial statements. Review of the bank reconciliation as at 30 June, 2021 revealed unrepresented cheques totalling to Kshs.2,821,288, comprising (5) unrepresented cheques totalling to Kshs.1,830,000 which had not been cleared as at the time of the audit in April, 2022 and had subsequently become stale. Further, the stale cheques were not reversed in the cash book.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs.51,964,899 could not be confirmed.

2. Inaccuracies in the Financial Statements

The statement of assets and liabilities reflects nil balance in respect of accounts payables-deposits and retentions as disclosed in Note 12A to the financial statements. However, audit review of payment vouchers, cash book and bank statements revealed outstanding retentions in respect of 10% retention fee deducted from a contractor amounting to Kshs.362,262 as at 30 June, 2021 which was not included in the statement of assets and liabilities.

In the circumstances, the accuracy and completeness of the Nil accounts payables - deposits and retentions balance could not be confirmed.

3. Unconfirmed Fixed Assets

Annex 4 to the financial statements - Summary of Fixed Asset Register reflects a balance of Kshs.21,229,942 as at 30 June, 2021. Included in the summary of fixed assets balance is a grounded Land Rover Double Cabin registration number GKB 501F valued at Kshs.4,800,000 whose logbook was not provided for audit.

Further, the asset register does not indicate the acreage and value of land where Kesses National Government Constituencies Development Fund office is constructed.

In addition, the Fund received assets from the National Government Constituencies Development Fund Board without values, contrary to the requirements of the Public Sector Accounting Standards Board.

In the circumstances, the accuracy, ownership, completeness and valuation of the fixed assets balance of Kshs.21,229,942 could not be confirmed.

4. Presentation and Disclosure of Financial Statements

The status of the progress on follow-up of the prior year auditor's recommendations was not provided in the financial statements as required by the Public Sector Accounting Standards Board (PSASB).

In the circumstances, the Fund's financial statements do not comply with the financial reporting guidelines provided by PSASB pursuant to Section 194 of the Public Finance Management Act, 2012.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the National Government Constituencies Fund - Kesses 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 budgeted receipts of Kshs.225,739,806 and actual receipts of Kshs.180,650,927 resulting in budget shortfall of Kshs.45,088,879 or 20% of the approved budget. Similarly, the statement reflects final budgeted payments of Kshs.225,739,806 and actual payments of Kshs.128,936,028 resulting in net under expenditure of Kshs.96,803,778 or 43% of the budget.

The underfunding and the under performance affected the planned activities which may have 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 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. Implementation Status of Projects

The project status report provided for audit review shows that the fund had an approved budget of Kshs.225,739,806 to finance two hundred and fourteen (214) projects out of which Kshs.197,766,464 was disbursed to one hundred and ninety-three (193) projects, which had a total budget of Kshs.220,953,123, resulting in underfunding of Kshs.23,186,559. In addition, twenty-one (21) projects with a total budget of Kshs.11,190,140 were not funded during the year. Lack of funding for approved projects indicates that planned programmes/activities were not implemented thus not achieving the intended objective of improving service delivery to the public.

Further twenty-nine (29) projects with disbursements of Kshs.47,900,000 were physically verified during the audit in April, 2022. Twenty-four (24) projects with funding of Kshs.35,900,000 were found to be complete, while five (5) projects with funding of Kshs.12,000,000 are delayed in completion. Ownership of the land on which the developments were carried out and the registration status of the institutions with the Ministry of Education could not be ascertained as the Fund does not retain a copy of the certified documents. Further, a primary school which was not duly registered received funding for construction of two classrooms.

In the circumstances, delay in implementation of projects denies the public benefits that could have accrued from utilisation of the assets.

2. Delayed Disbursements of Funds from the Board

The statement of receipts and payments reflects transfers from National Government Constituencies Development Fund Board during the year amounting to Kshs.161,867,724. The amount includes Kshs.69,867,724 or 43% of total receipts which includes Kshs.500,000 late disbursement for the year 2015/2016 and Kshs.69,367,724 late disbursements for the year 2019/2020. Further, the Fund received Kshs.92,000,000 out of the budgeted funds of Kshs.137,157,879 or approximately 67% of budgeted funds resulting to budget underfunding of Kshs.45,157,879 or approximately 33% of the budgeted funds, contrary to Section 16(a) of the National Government Constituencies Development Fund Act, 2015.

In the circumstances, the Board is breach of the law and delay in fund disbursements from the Board results in delay in implementation of approved projects or programs and therefore, denies the public the services and benefits accruing from completed projects.

3. Project Management Committee Bank Balances

Note 17.4 to the financial statements discloses Project Management Committee (PMC) account balances of Kshs.97,696,774 held in 117 commercial bank accounts as further disclosed in Annex 5 to the financial statements. Although bank statements were provided, cash books and bank reconciliation statements were not provided for audit.

In the circumstances, the accuracy and completeness of the project management committee bank balances of Kshs.97,696,774 could not be confirmed.

4. Casuals Employed Continuously for More than Three Months

A review of manual payroll and letters of appointment revealed that five (5) casuals were engaged continuously for more than 3 months contrary to Section 37(1)(b) of Employment Act, 2007.

In the circumstances, Management was in breach of the law

5. Failure to Disburse Bursary Funds

The statement of receipts and payments reflects other grants and transfers amount of Kshs.11,650,000. However, Note 7 to the financial statements reflects zero balances for bursary for secondary, tertiary and special schools. Review of funds disbursed from the

Board revealed that the Fund received a total of Kshs.25,600,000 in respect of bursary allocation. However, despite the bursary sub-committee holding several meetings for the exercise, the Management failed to disburse the bursary funds.

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

6. Irregular Award of Tender for Proposed Construction of Kesses Police Station

The statement of receipts and payments reflects other grants and transfers amount of Kshs.11,650,000 which according to Note 7 to the financial statements includes Kshs.8,850,000 for security projects. The amount includes Kshs.6,300,000 transferred to Kesses Police Station Project Management Committee (PMC) for construction of Kesses Police Station office block.

Review of the procurement process revealed the following;

- (i) The Tender Opening Register, letters appointing the Tender Opening Committee members, letters appointing the members of the ad hoc Tender Evaluation Committee, individual score sheets were not provided for audit.
- (ii) Minutes of the Tender Opening Committee meeting were only signed by one member of the committee.
- (iii) The Tender Evaluation Report was only signed by one member of the tender evaluation committee instead of the listed five (5) members, contrary to Section 80 (4) & (7) of the Public Procurement and Asset and Disposal Act, 2015.
- (iv) The professional opinion issued by the Head of Supply Chain Management on 27th May, 2021 recommended that the contract be awarded to a local contractor Limited at a sum of Kshs.9,685,850, against a budget of Kshs.5.6M, contrary to Section 44(2) of the Public Procurement and Asset and Disposal Act, 2015.
- (v) A due diligence report, signed by a Public Works representative (and not by all members of the evaluation committee) and dated 21 July, 2021, indicated that the due diligence exercise/visit to a reference site was carried out on 20 July, 2021, whereas the contract between the Project Management Committee (PMC) and the bidder had been executed much earlier on 15 June, 2021, contrary to Section 83(1) & (2) of the Public Procurement and Asset and Disposal Act, 2015.
- (vi) There was no evidence that the procuring entity notified the Authority of the contract award, contrary to Regulation 131(1)(b) of the Public Procurement and Asset and Disposal Regulations, 2020.
- (vii) Notification of intention to award contract to the successful tenderer, as well as letters of regret were all dated 27th May, 2021. There was, however, no dispatch receipt for the successful tenderer's letter of notification of intention to award contract. The regret letters also failed to disclose who the successful tenderer was. All this was in contravention of Section 87(3) of the Public Procurement and Asset and Disposal Act, 2015.
- (viii) The Head of Supply Chain Management issued an undated, second professional opinion rescinding his initial professional opinion because it had come to his knowledge that the winning bidder had not met the preliminary tender requirements

by failing to submit a bid bond as required. He further advised the Accounting Officer not to proceed with the contract execution.

- (ix) The winning bidder, in his tender submission letter disclosed that he is an National Construction Authority (NCA), Category 6 contractor, whereas the tender advert targeted NCA Category 7 and above, implying that the bid should not have progressed beyond the preliminary stage.
- (x) On 15 June, 2021 a contract for the proposed construction was executed by the Sub County Police Commander (Kesses) and a director of the awarded contractor despite there was conflicting professional opinions from the Head of the Supply Chain, and before the mandatory expiry of 14 days after issue of notification to award tender, contrary to Section 135(3) of the Public Procurement and Asset and Disposal Act, 2015.
- (xi) Both the Accounting Officer and the county head of procurement function for the Fund proceeded with the procurement process despite lack of signed/valid tender opening minutes and lack of signed/valid tender evaluation report and signed individual score sheets, contrary to Section 44 of the Public Procurement and Asset and Disposal Act, 2015 and Regulation 23 of the Public Procurement and Asset and Disposal Regulations, 2020.

In the circumstances, the Kesses Police Station Project Management Committee breached the law and the regularity of the expenditure of Kshs.6,300,000 could not be confirmed.

7. Inadequacies in Construction of Kesses NG-CDF Office Block

The statement of receipts and payments reflects acquisition of assets amount of Kshs.4,662,623 which includes construction of buildings of Kshs.3,662,623 as disclosed in Note 8 to the financial statements, meant for construction of Kesses National Government Constituencies Development Fund office block. Review of the project file revealed that, Management did not obtain a bank guarantee issued by an authorized financial institution or letter of credit, as required under Section 143 of the Public Procurement and Asset Disposal Act, 2015. The Management instead provided a performance bond from an insurance firm.

In the circumstances, Management breached the law.

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements, 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 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 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 controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Fund'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 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 the 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 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 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 Fund'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 Fund 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 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 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

22 September, 2022