

REPORT OF THE AUDITOR-GENERAL ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND - KIBWEZI WEST CONSTITUENCY 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, 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 - Kibwezi West Constituency set out on pages 1 to 70, which comprise of the statement of assets and liabilities as at 30 June, 2022, and the statement of receipts and payments, statements 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 - Kibwezi West Constituency as at 30 June, 2022, and of its financial performance and 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 and the National Government Constituencies Development Fund Act, 2015.

Basis for Qualified Opinion

1. Inaccuracies in Cash and Cash Equivalent

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.24,721,702 as disclosed in Note 10 to the financial statements. Review of the bank reconciliation statements revealed unrepresented cheques which include stale cheques of Kshs.278,663 as at 30 June, 2022. The cheques had not been written back to cashbook or replaced.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.24,721,702 could not be confirmed.

2. Unsupported Bursary Disbursements

The statement of receipts and payments reflects other grants and transfers amount of Kshs.97,252,441 as disclosed in Note 7 to the financial statements. This amount includes bursaries to secondary schools, tertiaries` and special schools of Kshs.54,214,000, Kshs.16,042,000 and Kshs.3,980,000 respectively. Review of the process of bursary award revealed the following anomalies;

- i. The bursary vetting committee held vetting meetings which were not supported by minutes and outcomes of deliberations.
- ii. There was no approved criteria used for bursary award.
- iii. The support schedule for students from tertiary institutions awarded the bursary amounting to Kshs.16,042,000 lacked the admission numbers for the students.
- iv. Two payment vouchers for Kshs.19,280,000 and Kshs.18,816,000 were not provided for audit.

In the circumstances, the accuracy and regularity of the bursary funds 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 - Kibwezi West 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

1. Budgetary Control and Performance

The summary statement of appropriation reflects a receipt budget and actual on comparable basis amounting to Kshs.229,561,606 for each. However, the Fund spent Kshs.204,839,904 resulting to underperformance of Kshs.24,721,702 or 12 % of the budget.

The under-expenditure affected implementation of the planned activities and programs and impacted negatively on service delivery to the public.

2. Unresolved prior year's Audit issues

In the audit report of the previous year, several issues were raised under the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. The Management has however, not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board template.

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. Unapproved Utilization of Receipts and Unutilized PMCs

The statement of receipts and payments reflects other receipts of 829,744 as disclosed in Note 3 to the financial statements which includes receipts from sale of tender's documents amounting to Kshs.308,244. However, the receipts were not approved and allocated by the National Government Constituencies Development Board for utilization by the Fund.

In the circumstances, the regularity of other receipts amount of Kshs. 308,244 could not be confirmed.

2. Failure to Implement Project

The statement of receipts and payments reflects other grants and transfers amount of Kshs.97,252,441 as disclosed in Note 7 to the financial statements. This amount includes security projects of Kshs.12,325,000 out of which, Nguumo Police Post was allocated Kshs.2,000,000 for the construction of the main office, reception, armory and a cell with electricity installed at Kshs.1,700,000 and 3 doors pit latrine at Kshs.300,000 to completion. The funds were transferred to Nguumo's police post PMC bank account on June, 2022. However, the project had not been started as at the time of audit in the month of March, 2023, due to land disputes.

In the circumstances, public funds were not effectively utilized and therefore value for money on the transfer of Kshs.2,000,000 was not obtained.

3. Poorly Implemented Project

The statement of Kisayani Police Post receipts and payments reflects other grants and transfers amount of Kshs.97,252,441 as disclosed in Note 7 to the financial statements. This amount includes security projects amount of Kshs.12,325,000 out of which Kshs.1,700,000 was allocated to for the construction of main office, reception, armory and a cell. Review of the procurement documents and field visit in the month of March, 2023 revealed the following unsatisfactory matters;

- i. The contractor was awarded the contract and the notice of award was sent on 30 June, 2022. The contract was signed on 6 July, 2022, which was less than the fourteen (14) days mandatory period between award and signing of the contract.
- ii. Review of the bill of quantities and payment documents revealed that the costs had been overcast by Kshs.30,000 and an amount of Kshs.1,642,090 was paid instead of Kshs.1,612,090.
- iii. The site visit revealed that the project had been completed and had not been put to use. A letter from the officer in charge of Kibwezi police post, dated 21 October, 2022 indicated that various key considerations including reinforcing of armory, windows and doors had not been implemented to make the building operational as a police post.

In the circumstances, public funds were not effectively utilized and therefore value for money for Kshs.1,700,000 was not obtained.

4. Irregular Procurement of Projects

The statement of receipts and payments reflects transfers to other government units of Kshs.91,710,000, as disclosed in Note 6 to the financial statements. This amount includes

transfers to primary and secondary schools of Kshs.68,270,000 and Kshs.23,440,000 respectively. The transfers were for projects implementation. Review of the project procurement files revealed the following irregularities:

- i) The Ngelenge primary school was allocated Kshs.1,060,000 for the construction of one (1) classroom and 23 two-seater-desks. The tender evaluation minutes dated 27 September, 2021 indicate that the winning bidder was awarded the contract at a contract price of Kshs.947,100. The letter of notification sent on 30 September, 2021 was however given to a different contractor, the second lowest bidder at a contract sum of Kshs.959,400. Further, payment was made to a different firm and not the one awarded the tender.
- ii) The Matiku Secondary school was allocated Kshs.3,500,000 for construction of a science laboratory. The tender evaluation committee minutes dated 2 June, 2022 indicate that the contract was awarded to winning bidder at a contract sum of Kshs.3,115,950. The letter of notification of award dated 6 June, 2022 was however, issued to a different contractor at a contract sum of Kshs.3,159,360.
- iii) The Kikumini Secondary school was allocated Kshs.3,500,000 for construction of a science laboratory. The tender evaluation minutes dated 2 June, 2022 indicate the contract was awarded to the winning bidder at a contract price of Kshs.3,200,000. The letter of notification for award was however, given to a different contractor at contract sum of Kshs.3,300,000 which was higher than the lowest evaluated bid by Kshs.100,000.
- iv) The Emali Primary school was allocated Kshs.2,120,000 for construction of 2 classrooms and purchase of 46 two-seater desk. The tender evaluation minutes dated 2 June, 2022 recommended the award to a contractor at a contract sum of Kshs.1,996,200. The letter of notification for award dated 6 June, 2022 was however, given to a different contractor at a contract sum of Kshs.2,000,000 which was higher than the lowest evaluated bidder.
- v) The Kwakyai Primary school was allocated Kshs.1,060,000 for construction of 1 classroom and purchase of 23 two-seater desks. The tender evaluation minutes dated 9 June, 2022 indicate that the contract was awarded to a contractor at a contract sum of Kshs.1,045,300. The letter of notification of award dated 10 June, 2022 was sent to a different contractor at a contract sum of Kshs.1,052,220.

The awards were contrary to Section 81(1)(a) of the Public Procurement and Asset Disposal Act, 2015 which states that the successful tender shall be the one who meets any one of the following as specified in the tender document-the tender with the lowest evaluated price.

In the circumstance, the Fund Management was in breach of the law.

5. Irregular Utilization of Project Funds

The statement of receipts and payments reflects transfers to other government units amount of Kshs. 91,710,000 as disclosed in Note 6 to financial statements. This amount includes transfers to primary and secondary schools of Kshs.68,270,000 and Kshs.23,440,000 respectively. Included in the amount is an allocation for six (6) projects totalling Kshs.12,760,000 as indicated below.

| Name of School | Allocation (Kshs) | Project Cost (Kshs) | Unutilized Funds (Kshs) |
|---------------------------|--------------------------|----------------------------|--------------------------------|
| Nguumo Secondary School | 3,500,000 | 3,099,920 | 400,080 |
| Matiku Secondary School | 3,500,000 | 3,159,360 | 340,640 |
| Kikumini Secondary School | 3,500,000 | 3,300,000 | 200,000 |
| Ngelenge Primary School | 1,060,000 | 959,400 | 100,600 |
| Ngaikini Primary School | 1,200,000 | 1,054,831 | 145,169 |
| Total | 12,760,000 | 11,760,000 | 1,186,489 |

Out of the amount allocated of Kshs.12,700,00, Kshs.11,573,511 was utilized on budgeted projects leaving an amount of Kshs.1,186,489 unutilized. The unutilized funds were however, irregularly spent by the Project Management Committees without approval and the nature of the expenditure was not disclosed contrary to Section 6(5) of the National Government Constituencies Development Fund Act, 2015 which states that for avoidance of doubt, a return as set out in the First Schedule shall be made for the current financial year and every financial year on which some funds remain unspent.

In the circumstance, the Fund Management was in breach of the law.

6. Failure to Provide Procurement Documents

The statement of receipts and payments reflects use of goods and services amount of Kshs.10,361,393 as disclosed in Note 5 to the financial statements. Included in the amount are printing, advertising and information supplies and services and fuel, oils and lubricant amounts of Kshs.666,304 and Kshs.639,726 respectively, However, the items were not included in the procurement plan and the suppliers were not in the list of prequalified firms for the year under review contrary to Regulation 41(a) of the Public Procurement and Asset Disposal Regulations, 2020 which states that the annual consolidated procurement plan for each procuring entity shall include a detailed breakdown of the goods, works and services required.

In the circumstance, 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 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 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 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.

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 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 the Management.
- Conclude on the appropriateness of the Management's use of 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 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 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

14 July, 2023