

# **REPORT OF THE AUDITOR-GENERAL ON ATHI WATER SERVICES BOARD FOR THE YEAR ENDED 30 JUNE 2017**

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## **REPORT ON THE FINANCIAL STATEMENTS**

### **Qualified Opinion**

I have audited the accompanying financial statements of Athi Water Services Board set out on pages 1 to 31, which comprise the statement of financial position as at 30 June 2017, and the statement of 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, 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 of Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Athi Water Services Board as at 30 June 2017, and of its financial performance and its cash flows for the year then ended, in accordance with the International Public Sector Accounting Standards (Accrual Basis) and comply with the Water Act, 2016.

In addition, and as required by article 229(6) of the Constitution, based on the procedures performed, except for the matters described in the Basis for Qualified Opinion and Other Matter sections of my report, I confirm that, nothing else has come to my attention to cause me to believe that public money has not been applied lawfully and in an effective way.

### **Basis for Qualified Opinion**

#### **1. Property, Plant and Equipment**

##### **1.1. Inherited Assets**

The statement of financial position reflects property plant and equipment balance of Kshs.26,522,346,511 as at 30 June 2017. However, and as previously reported, the Board inherited non-current assets of undetermined value previously held by the Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation in respect of water infrastructure which have not been incorporated in the financial statements.

##### **1.2. Fully Depreciated Assets**

Further, included in the property, plant and equipment balance of Kshs. 26,522,346,511 as at 30 June 2017 are fully depreciated assets whose original cost is Kshs. 213,150,059. These assets are still in good working conditions and were in use during the year and review. Management has not revalued them contrary to IPSAS 17 Paragraph 44 and failed to review their useful economic lives before the assets were fully depreciated.

In view of the foregoing, it has not been possible to confirm the accuracy, valuation and completeness of the property, plant and equipment balance of Kshs.26,522,346,511 as at 30 June 2017.

## **2. Debtors**

### **2.1. Long Outstanding Debtors**

The statement of financial position as at 30 June 2017 reflects a debtors balance amounting to Kshs.9,471,672,234 which include an amount of Kshs. 2,976,806,935 owing from Nairobi Water and Sewerage Company as administrative fees which has been outstanding for a long period and whose recoverability has not been confirmed.

Further, included in the debtors' balance of Kshs. 9,471,672,234 as at 30 June 2017 are operating debtors amounting to Kshs.269,704,736 due from water service providers as administration fees which have also been outstanding for long period and keep increasing. Also included in other debtors' balance of Kshs. 13,292,390 (Note 19) is an amount of Kshs. 7,092,497 and Kshs. 510,746 owing from Judiciary and Angela Kimani respectively which have been outstanding for long.

Any provision that would have been necessary in relation to this uncertainty has not been incorporated in the financial statements.

In the circumstances, it has not been possible to confirm the accuracy, completeness and recoverability of debtors' balance of Kshs. 9,471,672,234 as at 30 June 2017.

## **3. Cash and Bank Balances**

The cash and bank balance of Kshs.386,587,938 as at 30 June 2017 include a balance of Kshs.33,009,340 held at Chase Bank which is under receivership. Currently there is little or no access to these funds. No provision or disclosure has been given in the financial statements to reflect this risk as required by the accounting standards.

Consequently, the recoverability of the Kshs.33.009,340 held at Chase Bank remain doubtful.

## **4. Relocation of Water and Sewerage Facilities at Thika Road**

### **4.1. Contract Variation**

The Board contracted Funan Construction Company Limited on 5 May 2009 to relocate the water and sewerage facilities along Thika road during the construction of the super highway at a contact sum of Kshs.440,000,000 and a contract duration of 20 months ending 20 January 2011.

The Board approved the contact variation of Kshs.194,977,200 or 45% of the contract sum contrary to the Public Procurement and Disposal Act, 2005. This increased the contract sum to Kshs.634,977,200. The contract was not completed within the contract duration of 20

Weeks. The Board approved an extension of three months after which the contractor did not make good the snag of work identified instead the contractor went to court demanding Kshs.189,720,615, a claim which was later amended to Kshs.1,314,245,166. The same was finally settled out of court at Kshs. 73,772,240.

In consequence, the Board did not get value for money from the contract on fair competition and due to non-completion of the project and did not seek liquidated damages for delays.

#### **4.2. Voidable Legal Fees**

The Board hired Kipkenda and Company Advocates (law firm) to represent it in a court case (Funan Construction Company vs Athi Water Service Board). The legal services were single sourced contrary to Public Procurement and Disposal Act 2005.

The law firm was paid Kshs.28,805,812 based on Kshs.1,314,245,166 which the contractor was claiming. The claim was finally settled at a modest amount of Kshs.73,772,240. Had the legal fees been based on the final settlement, it could have costed the Board Kshs.2,282,153. The Board therefore overpaid the law firm by Kshs.26,523,659.

#### **5. Representative Member from the Office of Attorney-General**

The composition of the Board does not include a representative from the Office of the Attorney-General as it is the case with all other State Corporations. The Board's mandate of planning, development and expansion of water and sewerage infrastructure on behalf of National Government, require it to undertake huge capital projects. Such contracts require legal expertise which can be better provided by the Government Chief Legal Officer who is the Attorney-General. The absence of such legal expertise in the Board can therefore lead to serious legal challenges in drafting contract agreements.

#### **6. Creditors and Accruals**

The statement of financial position indicates a creditors and accruals balance of Kshs.634,223,619 as at 30 June 2017. However, no aging analysis was provided for audit review. Further, the amount includes Kshs.5,398,591 described as payroll creditors whose supporting documents were not made available for audit review. In addition, the balance includes VAT and withholding tax of Kshs.83,742,739 and accounts payable of Kshs.545,026,020 without disclosure of creditors listing.

No reason has been given for failure by the Board to pay its obligations when they fall due and risk penalties and interest expenses.

#### **7. Unapproved Budget Expenditure**

The statement of comparison of budget and actual amounts discloses an amount of Kshs.18,526,147, Kshs.151,672,146 and Kshs.345,063,591 all totaling Kshs.515,261,884 for pans and dams, GOK Counterpart expenses and project costs respectively that had not been budgeted for in the year under review. This amounts to unapproved expenditure.

Management has not explained nor disclosed the circumstances that led to incurring expenditure without the prerequisite approvals.

## **8. Unsupported Expenditure**

The Board incurred expenditure in respect of pans and dams - Kshs.18,526,147. Gok Counterpart expenses - Kshs.151,672,146 and Project costs- Kshs.345,063,591 adding up to Kshs.515,261,884. However, the supporting documents and details were not made available for audit review. Further, GOK Counterpart funds and project costs are not specific expense items nor budget lines casting doubt on the legality and validity of the payments. Consequently, it has not been possible to confirm the accuracy, legality and validity of the expenditure of Kshs.515,261,884 as at 30 June 2017.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Athi Water Services Board in accordance with ISSAI 30 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 our professional judgment, are of most significance in the audit of the financial statements. Except for the matters described in the Basis for Qualified Opinion and Other Matter sections of my report, I have determined that there are no other Key Audit Matters to communicate in my report.

### **Other Matter**

#### **Non Compliance with Legal Notice No. 101 of August 2006 -Transfer Plan**

According to the transfer plan under the Water Act 2002, which was operationalized vide legal Notice No. 101 of August 2005, Water Service Board ought to have taken over the assets, staff and other water infrastructure inherited from the Ministry of Water and Irrigation, the National Water Conservation and Pipeline Corporation. Although, Athi Water Service Board, the Ministry of Water and Irrigation and the National Water Conservation and Pipeline Corporation had finalized the revaluation of the assets, Athi Water Service Board had not taken over the Assets as at 30 June 2017. The Board is therefore in contravention of legal Notice No. 101 of August 2005 and the Water Act 2002.

### **Management's Responsibility and Those Charged with Governance for the Financial Statements**

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 such 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.

In preparing the financial statements, management is responsible for assessing the Board's ability to continue as a going concern disclosing, as applicable, matters related to going concern of services and using the going concern basis of accounting.

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.

Those charged with governance are responsible for overseeing the Board's financial reporting process.

### **Auditor-General's Responsibilities for the Audit of the Financial Statements**

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 of Kenya. 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 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.

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.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances and for the purpose of giving an assurance on the effectiveness of the Board's 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 going concern 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 Board's ability to continue as a going concern. 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 Board to cease to continue as a going concern.

- 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 of the entities or business activities to express an opinion on the financial statements.

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 Edward R. O. Ouko, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**7 September, 2021**