

REPORT OF THE AUDITOR-GENERAL ON COMMUNICATIONS AUTHORITY OF KENYA FOR THE YEAR ENDED 30 JUNE 2017

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Communications Authority of Kenya set out on pages 1 to 28, which comprise the statement of financial position as at 30 June 2017, 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 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 Communications Authority of Kenya as at 30 June 2017, 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 Kenya Information and Communication Act., Cap 411A Laws of Kenya.

In addition, as required by Article 229(6) of the Constitution, except for the matters described in the Basis for Qualified Opinion and Other Matter sections of my report, based on the procedures performed, I confirm that nothing 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. Irregular Procurement Methods

1.1 Event Management Services

As disclosed in Note 12 to the financial statements the general expenses figure of Kshs.1,969,111,000 includes an amount of Kshs.95,408,000 in respect of consumer affairs. The figure of Kshs.95,408,000 also includes Kshs.13,302,560 being cost of event management services during the Authority's ICT forum held on 11 November 2016 whose service provider was identified through request for quotations method of procurement yet the tender amount exceeded the allowable threshold of Kshs.2 million. This is contrary to Public Procurement and Asset Disposal Act, 2015. In addition, no signed formal contract between the Authority and the service provider was availed for audit review. Further, the figure of Kshs.95,408,000 includes an amount of Kshs.20,130,998 paid to another firm in respect of event management services for Kikao Kikuu in Busia without a signed contract agreement contrary to section 44(1)(f) of the public procurement and asset disposal Act, 2015 which requires an accounting officer to approve and sign all contracts of the procuring entity.

In the circumstances, it has not been possible to confirm the propriety of expenditure totalling Kshs.33,433,557 for the year ended 30 June 2017.

1.2 Design, Printing, Supply and Delivery of Branded Items

Further, the general expenses figure of Kshs.1,969,111,000 includes an amount of Kshs.95,408,000 in respect of consumer affairs under note 12 to the financial statements. The amount of Kshs.95,408,000 also includes Kshs.11,977,070 for the design, printing, supply and delivery of branded give away including umbrellas and spiral notebooks by three firms identified through request for quotations instead of open tendering method for a contract of such magnitude.

However, available information revealed that on 21 June 2017 all the three firms which were awarded the tender were notified further changes affecting their contracts from one off supply to a framework contract/agreement. The change to framework contract was done contrary to section 114(1) of the Public Procurement and Asset Disposal Act 2015, which provides that a framework contract can only be entered into through open tender and when the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement.

Consequently, the Authority is in breach of the law and the propriety of expenditure totaling Kshs.11,977,070 for the year ended 30 June 2017 could not be confirmed.

1.3 Unclear Excessive Procurement of Brochures

As disclosed in note 12 to the statements financial statements the general expenses figure of Kshs.1,969,111,000 includes an amount of Kshs.95,408,000. The amount of Kshs.95,408,000 also includes Kshs.13,862,670 in respect of a contract for supply of various brochures awarded to a firm on 4 November 2015 at a contract sum of Kshs.7,675,538 for a period of one year, with a performance bond of 5% equivalent to Kshs.383,776.88. However, available information indicate that on 5 April 2016 and 13 October, 2016 the Authority wrote to the above supplier to quote and supply additional brochures worth Kshs.9,292,500 and Kshs.5,683,485 through direct payment. The supplier was subsequently paid for the additional brochures vide Payment Voucher. No.s VB/C/2006/12/14958 dated 18 August 2016 and VB/C/2006/12/13271 dated 23 December 2016 respectively. This was contrary to section 106(2)(b) of Public Procurement and Asset Disposal Act 2015 which requires that the request shall be given to as many persons as necessary to ensure effective competition and shall be given to at least three persons, unless that is not possible.

A physical visit to the store one year later in December 2017, revealed that a total of 139,250 child online brochures worth Kshs.12,323,625 were still lying in store unutilized. In the circumstances, it has not been possible to confirm the propriety of expenditure totalling Kshs.13,862,670 for the year ended 30 June 2017 and that the Authority was in breach of the Law.

1.4 Supply of Computers to Schools and E Resource Centers

In addition included in the general expenses figure of Kshs.1,969,111,000 under note 12 is an amount of Kshs.95,886,000 in respect of universal service obligation. The amount of Kshs.95,886,000 also includes Kshs.58,577,271 paid to a firm for supply of computers to schools and E-resources centres out of which Kshs.55,035,471 was for supply and installation of computers, Kshs.2,934,800 for annual computer hardware maintenance and Kshs.607,000 for annual renewal fees for anti-virus for a period of two (2) years and three (3) months.

However, examination of available records revealed that the supplier attached a manufacturer authorization letter which had a disclaimer on warranty of the products in place of the Standard Manufacturer's Authorization form/letter specified in the tender documents where Quality of the Product is guaranteed by the manufacturer.

Although the management explained that they intended to award the tender to more than one bidder as a way of extending the opportunities to the women, youth and persons with disabilities in order to minimize the risk of any possible setback to the entire project in the event that a single bidder experienced challenges that may affect the delivery of goods and services, the maximum number of lots that were to be awarded to any one bidder were three (3) out of the total five (5) lots. However, this was not the case as the above supplier was awarded all the five (5) lots. Consequently, the Authority is in breach of the law and the propriety of expenditure of Kshs.58,577,271 for the year ended 30 June 2017 could not be confirmed.

2. Unaccounted for Expenditure

Included in the general expenses figure of Kshs.1,969,111,000 under note 12 is an amount of Kshs.54,786,000 in respect of corporate social responsibility. The amount of Kshs.54,786,000 also includes Kshs.23,000,000 being sponsorship of the National Youth Talent Academy. The sponsorship was on furtherance of 28 June 2012 agreement between the Authority and UNICEF Kenya to sponsor the National Youth Talent Academy boys football team established by the government through the Ministry of Sports, Culture and Arts at a cost of Kshs.17,763,250 per year for three years, with a commencement date of 28 June 2012. The agreement was later renewed on 9 May 2016 for a total sum of Kshs.69,000,000 for period of three financial years with effect from June 2016 to 2019 at Kshs.23,000,000 per annum. However, the Kenya Academy of sports has not submitted any returns and financial reports of the football club (Talanta) or accounted for the grants or the donations as per agreement between the two parties.

Further, according to the agreement, the utilization of the funding was to be subjected to an annual external audit by the Auditor General. The Authority was also mandated to call at any time for any of the financial accounting and other project records maintained by Kenya Academy of Sports in pursuant to the agreement and subject the records to an audit process of its choice. However, no evidence to show that the financial records of Kenya Academy of Sports were subjected to any audit was availed for audit review.

In addition, it was noted on 13 December, 2016 the acting Director Corporate Services for Kenya Academy of Sports wrote to Director General Communication Report of the Auditor-General on the Financial Statements of Communications Authority of Kenya for the year ended 30 June 2017

Authority of Kenya through letter Ref. No: KAS/A/13(21) requesting for a change in remittance of the second instalment of Kshs.23,000,000 for the football club (Talanta), from the old account No. 0260500659 at Equity Bank as per the agreement to a new account at Jamii Bora Bank account No.1001823633002. The request was honored on 20 January, 2017 without authority from the parent Ministry and the National Treasury.

Further, Communications Authority of Kenya did not notify Kenya Academy of Sports and the Ministry of Sports, Culture and Arts of the transfer of the funds.

Consequently, it has not been possible to confirm the propriety of expenditure totalling Kshs.23,000,000 transferred to Jamii Bora bank account for the year ended 30 June 2017.

3. Directors Expenses

3.1 Irregular Payments to Directors

Included in the directors expenses figure of Kshs.47,211,000 under note 10 is an amount of Kshs.1,656,000 in respect of board welfare. The amount of Kshs.1,656,000 also included Kshs.1,200,000 being Christmas Shopping vouchers worth Kshs.100,000 to each Board director. The Universal Service Advisory Council members were also given Christmas shopping vouchers worth Kshs.900,000 which is included in note 12 under universal advisory council of Kshs.47,261,000. The payment of christmas shopping totalling Kshs.2,100,000 was made without parent Ministry and National Treasury approval. This was done contrary to provisions of circular ref OP/CAB9/21/2A/LII/43 dated 24 November 2004: Guidelines on terms and conditions of service annex IV paragraph (i) at page 42 that provides that any other benefits that are not provided in annex **iv** do not apply. Consequently, the management was in breach of the Law and the propriety of expenditure totaling Kshs.2,100,000 for the year ended 30 June 2017 could not be confirmed and was not a proper charge to public resources.

3.2 Irregular Disposal of MacBook laptops and IPADS to Directors

Examination of available record revealed that Authority assets including macbook laptops and IPADs held by the former directors were un-procedurally disposed off to the individual directors. The nine (9) MacBook laptops with net book value of Kshs.466,551, nine (9) iPads with net book value of Kshs.160,515, ten (10) iPads with net book value of Kshs.200 and fourteen (14) laptops with net book value of Kshs.280 all totalling to Kshs.627,553 were offset with the directors' fees due to the former directors. Offsetting of said assets was done contrary to Section 164(3) of the Public Procurement and Asset Disposal Act 2015 which states that there shall be a technical report where appropriate by a relevant expert of the subject items for disposal that takes into account the real market price and in so doing the technical expert shall set up a reserve price which shall be the minimum acceptable price below real market value of the boarded items.

Consequently, the Authority was in breach of the law and the propriety of Kshs.627,546 for the year ended 30 June 2017 could not be confirmed.

4. Disputed Contract Payments

As previously reported, on 29 November 2002, the Authority awarded the tender for supply and installation of demountable office partitions to a firm at a contract sum of Kshs.45,195,200. The Authority also awarded the tender for supply and installation of carpets and vertical window blinds on a sub-contract agreement with the first firm at a tender sum of Kshs.12,619,846, resulting to a total contract sum of Kshs.57,865,046. Although the project was supposed to be completed on 14 July 2003, it was completed one year later on 23 June 2004. The payments to the contractor were based on work done as per the project quantity surveyor's, the Architect's valuations and the Architect's certificates. After the final payment of Kshs.1,286,319.45 in September 2005, the contractor raised a dispute claiming Kshs.1,277,961.90 being interest on delayed settlement of interim certificate No.6. The management has explained that the delay had been occasioned by a dispute over the material used by the contractor, which the project manager noted differed from those specified in the Bills of Quantities.

Further, on 5 December 2006 the contractor wrote to the Authority(Commission) claiming Kshs.51,378,300.40 in respect of purported losses and expenses incurred on the project due to delay of 45 days. The Authority disputed the claim and the contractor subsequently lodged an arbitration claim before an arbitrator.

Consequently the Arbitrator ruled that the Authority was to pay Kshs.47,284,879.45 for the claims and costs of arbitration of Kshs.2,783,370 all totalling Kshs.50,068,249.45, failure to which the amount shall attract simple interest at a rate of 18% per annum until payment is made in full. On 5 March 2015 the Board approved release of Kshs.51,860,882.75 held in the Escrow account and undertook to pay other outstanding sums of money amounting to Kshs.18,103,040 all totalling Kshs.69,963,922.75. A review of the matter in February 2018 revealed unchanged position.

In the circumstances, it has not been possible to confirm that Kshs.69,963,922.75 is a proper charge to public resources.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Communications Authority of Kenya 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 my 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 determine that there were no Key Audit Matters to communicate in my report.

Other Matter

Budgetary Control and Performance

The Authority had a total expenditure budget of 3,581,946,000 approved for the financial year 2016/2017. The budget absorption was as follows:

Item	Budget 2016-2017	Actuals 2016-2017	Under Expenditure	Absorption
	(Kshs.)	(Kshs.)	(Kshs.)	%
Personnel Emolument	1,193,382,000.00	1,193,354,000.00	28,000.00	100%
Board Expenses	55,000,000.00	47,211,000.00	7,789,000.00	86%
Operating/Administration Expenses	2,207,750,000.00	1,969,111,000.00	238,639,000.00	89%
Repairs and Maintenance	3,623,963,000.00	3,315,098,000.00	308,865,000.00	63%
		105,422,000.00	62,409,000.00	
Grand Total	3,623,963,000.00	3,315,098,000.00	308,865,000.00	91%

From the above analysis, the Authority underutilized the budget under repairs and maintenance by 37%. The under absorption of the approved budget is an indication of activities not implemented by the authority which implies non delivery of goods and services to the Kenyan Citizens for the year ended 30 June 2017.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

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 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 Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the management either intends to liquidate the Authority or to cease operations, or have no realistic alternative but to do so.

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 Authority'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 Authority'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 Authority'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 Authority to cease to continue as a going concern or continue to sustain its services.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the consolidated and separate 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 Authority 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 Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

10 May 2018