

REPORT OF THE AUDITOR-GENERAL ON COUNTY ASSEMBLY OF BOMET FOR THE YEAR ENDED 30 JUNE 2018

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of County Assembly of Bomet set out on pages 1 to 38, which comprise the statement of financial assets and liabilities as at 30 June 2018, and the statement of receipts and payments, statement of cash flows and statements of comparison of budget and actual amounts - recurrent, development and combined 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 effects 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 the County Assembly of Bomet as at 30 June 2018, 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 Public Finance Management Act, 2012.

Basis for Qualified Opinion

1. Compensation of Employees

The statement of receipts and payments for the year ended 30 June 2018 reflects an amount of Kshs.208,888,868 in respect of compensation of employees. However, an analysis of IPPD and manual payrolls show a total expenditure of Kshs.202,389,670 for compensation of employees, leading to unreconciled and unexplained variance of Kshs.6,499,198.

2. Travel and Subsistence Expenses

Included in use of goods and services expenditure of Kshs.291,142,260 is an amount of Kshs.115,794,895 in respect of travel and subsistence expenses. The latter in turn includes an expenditure of Kshs.528,500 which was not supported by relevant documentation including attendance register. As a result, the propriety and validity of the expenditure of Kshs.528,500 on travel and subsistence cannot be confirmed.

3. Training Expenses

Included also in the use of goods and services expenditure of Kshs.291,142,260 is an amount of Kshs.44,394,680 relating to training, which includes payments of tuition fees,

training allowances, and hire of conference facilities. The following anomalies were observed:

- i. Training needs assessment report was not produced for audit review.
- ii. Approvals from the training committee were not provided for audit review.
- iii. An expenditure amounting to Kshs.2,161,450 relating to hire of conference facilities for training was not supported with attendants lists.
- iv. Expenditure totalling Kshs.2,798,475 was not included in the training expenditure schedules.

Consequently, the validity and accuracy of the training expenditure of Kshs.44,394,680 cannot fully be confirmed.

4. Other Operating Expenses

The use of goods and services expenditure of Kshs.291,142,260 also includes is an amount Kshs.47,607,994 relating to other operating expenses. However, the following anomalies were noted:

- i. Expenditure of Kshs.4,032,380 incurred on holding public participation meetings was not supported by notices and minutes of the meeting or reports documenting the outcome of the same. It is, therefore, not clear if the meetings actually took place.
- ii. An amount of Kshs.1,743,580 incurred on purchasing goods and services for running the ward offices was not supported by approved requisitions.
- iii. Further, the goods purchased were not taken on charge. It is, therefore, unclear if the goods and services were actually received and utilized in the ward offices in the absence of documentation through counter receipt voucher(S13).

Consequently, the validity and propriety of the expenditure of Kshs.47,607,994 on other operating expenses cannot be fully confirmed.

5. Data Analytics of IFMIS Transactions

Examination of bank statements and IFMIS records revealed that payments totalling Kshs.163,916,642 were made through cash withdrawals in the name of County Assembly of Bomet for onward payments outside the recommended IFMIS electronic payment system. No explanation has been provided for this anomaly.

6. Pending Payables (Bills)

The financial statements of the County Assembly indicate that accounts` payables (bills) amounting to Kshs.55,134,125 were not settled during the year under review but were carried forward to 2018/2019 as summarized below:

Category	Amount (Kshs)
Construction of Buildings	6,890,027
Construction of Civil Works	999,200
Supply of Goods and Services	10,244,898
Car Loan and Mortgage	37,000,000
Total	55,134,125

Had the bills been paid and the expenditure charged to the accounts for the year under review, the statement of receipts and payments for the year ended 30 June 2018 would have reflected a deficit of Kshs.54,776,279 instead of the surplus of Kshs.357,846 now shown. This is an indication that the management entered into financial commitments for which no resources were available.

Further, failure to settle bills during the year to which they relate distorts the financial statements for that year and adversely affects the provisions for the subsequent year to which they have to be charged.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of County Assembly of Bomet 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 Basis for Conclusions on lawfulness and effectiveness in use of public resources and effectiveness of internal controls, risk management and governance sections of my report, I have determined that there are no key audit matters to communicate in my report.

Other Matter

1. Budget Performance

The Bomet County Treasury did not release funds amounting to Kshs.140,319,534 allocated for the County Assembly in the year under review. The Assembly received Kshs.608,882,000 only, out of the final approved total budget of

Kshs.749,201,534 translating into 19% budget shortfall or underfunding as shown below:

Component	Final Approved Budget Kshs	Actual Receipts/ Expenditure Kshs	Variance Kshs	Variance %
Receipts				
Receipts from Bomet County Executive	749,201,534	608,882,000	140,319,534	19%
Payments				
Compensation of Employees	235,423,846	208,888,868	26,534,978	11%
Use of Goods and Services	318,427,664	291,142,260	27,285,404	9%
Transfers to Other Govt. Entities	140,000,000	94,000,000	46,000,000	33%
Acquisition of Assets	55,350,024	14,460,936	40,889,088	74%
Finance Costs	0.00	104,777.00	-104,777	
Total	749,201,534	608,596,841	140,604,693	19%

The underfunding of the budget consequently affected delivery of service to the residents of Bomet County such as inadequate oversight of projects implemented by the county government and public participation exercises.

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 Qualified Opinion and Basis for Conclusions on lawfulness and effectiveness in use of public resources and effectiveness of internal controls, risk management and governance sections 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. Payment for Legal Services

During the year under review County Assembly of Bomet incurred expenditure totalling Kshs.7,956,852.65 on legal fees and compensation. The monies were paid to Kandie Mutai Mudeizi & Co Advocates, Gordon Ogola Kipkoech & Co Advocates and Hassan Mutembei and Company Advocates. The amounts paid were Kshs.3,066,363.80,

Kshs.754,000 and Kshs.4,136,488.85 to the three law firms respectively as explained below:

1.1 Kandie Mutai Mudeizi and Co Advocates

The above law firm was paid for representing the Speaker Bomet County Assembly and the County Assembly of Bomet in the High Court of Kenya at Bomet petition No 1 of 2017. The County Assembly of Bomet agreed to pay the above law firm an amount of Kshs.3,400,000 in an agreement dated 7th February 2017.

- i. It is not clear how the remuneration of Kshs.3,400,000 payable to the above firm was arrived at.
- ii. The petition was filed on 25 January 2017, while the instructions by the county assembly of Bomet to the above law firm requesting representation in court were issued on 7th February 2017. The petition was withdrawn on 28th March 2017 before going to a full hearing. It is not possible to justify the payment of Kshs.3,066,363.80 given that it does not correspond to the work done in the petition.

1.2 Hassan Mutembei and Company Advocates

The above law firm was paid a total of Kshs.4,136,488.85 as settlement for civil suit No.3358 of 2014 which was between Wamalwa Abdi and Co. Advocates versus Chairman Bomet County Assembly, Clerk Bomet County Assembly and Attorney General. The payment consisted of the principal amount Kshs.2,959,300 and an interest amount of Kshs.1,177,188.85. The above law firm represented the Plaintiff, M/s Wamalwa Abdi and Co. Advocates. The suit arose out of the refusal by the County Assembly of Bomet to pay the Plaintiff a total of Kshs.2,959,300 which he claimed for facilitating the training of members of County Assembly. The County Assembly of Bomet advocate on 8th September 2015 advised the Assembly to negotiate with the plaintiff in light of the overwhelming evidence in favour of the plaintiff.

- i. It is unclear why the above option was not pursued as it would have saved the County Assembly of Bomet from the interest amount of Kshs.1,177,188.85 and the legal fees arising out of the case.
- ii. Further, the services of Hassan Mutembei and Company Advocates were directly outsourced yet they were not in the list of prequalified law firms.

1.3 Gordon Ogola Kipkoech & Co Advocates

The above law firm was paid Kshs.754,000 for representing County Assembly of Bomet in industrial cause No.72 of 2016 in the High Court of Kenya at Kericho, Employment and Labour Relations Court. The matter was between the County Executive Committee Member for Finance and Economic Planning for the County Government of Bomet versus the Clerk, County Assembly of Bomet and the County Assembly Service Board

for the County Assembly of Bomet. The aforementioned claimant and respondents are mandated by the Constitution of Kenya to work for the residents of Bomet.

- i. It is unclear if alternative dispute resolution mechanism were sought in order to avoid burdening the residents of Bomet with unnecessary legal expenses.
- ii. The above firm was directly procured contrary to Public Procurement and Asset Disposal Act 2015.

2. Ethnic Composition

Examination of personnel records for the year under review indicated that as at 30th June 2018, the Assembly had hired sixty-nine new employees out of which fifty-six were from one dominant community contrary to Section 7 (1) and (2) of the National Cohesion and Integration Act, 2008 which states that all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its staff establishment from the same ethnic community.

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, except for the matters described in the Basis for Qualified Opinion and Basis for Conclusions on lawfulness and effectiveness in use of public resources and effectiveness of internal controls, risk management and governance sections of my report, 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

Board Audit Committee

The Bomet Assembly Audit Committee did not have a chairman after the appointed one resigned. There was no evidence that the Committee met regularly as required under regulation 172 (1) of the Public Finance Management Act (County Government) Regulations, 2015 which stipulates that the audit committee shall meet at least once in every three months (Quarterly).

The audit was conducted in accordance with ISSAI 1315 and ISSAI 1330. The standards require that I plan and perform the audit to obtain assurance about whether processes and systems of internal control, 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 control, risk management and governance.

In preparing the financial statements, management is responsible for assessing the ability of the County Assembly to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless the management either intends 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.

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 manner.

Those charged with governance are responsible for overseeing the financial reporting process, reviewing the effectiveness of how the entity 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 noncompliance. 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:

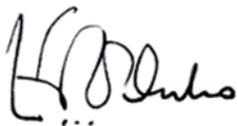
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting 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 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 ability of the County Assembly 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 County Assembly of Bomet to cease sustaining 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 County Assembly of Bomet 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

18 January 2019