

REPORT OF THE AUDITOR-GENERAL ON COUNTY ASSEMBLY OF NYAMIRA 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 Nyamira set out on pages 1 to 24, 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 Nyamira 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. Unreconciled Variance and Expenditure/Payables Not Captured in Ledgers

- i. The General Ledger provided for audit indicates that a contractor was paid an amount of Kshs.19,904,400 during the year under review while the IFMIS encumbrance report, payment voucher and bank statement shows that the same contractor was paid an amount of Kshs.5,033,319 leading to unreconciled variance of Kshs.14,871,081.
- ii. Disclosed under Note 4.10 (1) to the financial statements are pending accounts payables of Kshs.5,515,452, made up of supply of goods of Kshs.2,144,016 and supply of services of Kshs.3,371,436 which however were not supported by any ledgers and other documentary evidence.
- iii. Disclosed in Note 3 to the financial statements under use of goods and services is an expenditure of Kshs.3,189,671 in respect of office and general supplies, out of an amount of Kshs.2,871,471 was not supported by the relevant ledgers.
- iv. Included in Note 3 to the financial statements is an expenditure on training of Kshs.4,070,680, out of which an amount of Kshs.1,912,180 was not supported by the relevant ledgers.

- v. The County Assembly paid some suppliers a sum of Kshs.196,800 on 26 April 2018 but the amount was not captured as expenditure in the ledgers and financial statements.

2. Exchequer Releases

Examination of records relating to the County Revenue Fund Bank Account No. 1000170891 held at Central Bank of Kenya (CBK) revealed that an amount of Kshs.157,931,733 comprising of three exchequer releases of Kshs.61,681,927, Kshs.5,249,806 and Kshs.91,000,000 were paid on 3 July 2018 after the financial year end. However, Note 1 to the financial statements indicates that the amount of Kshs.157,931,733 was received in June 2018. This is contrary to IPSAS cash basis of accounting which recognizes income as and when cash is received.

Under the circumstances, the exchequer releases of Kshs.157,931,733 are not fairly stated in the financial statements for the year ended 30 June 2018.

3. Compensation of Employees

3.1. Payments Made Outside IPPD Payroll

Examination of compensation of employees records revealed that Nyamira County Assembly made payment of salaries and allowances amounting to Kshs.14,756,768 outside the Integrated Personnel and Payroll Database(IPPD) Management System. Consequently, the accuracy and completeness of compensation of employees' expenditure of 261,023,905 reflected in the financial statements for the year ended 30 Jun, 2018 cannot be ascertained.

4. Foreign Travel and Subsistence Expenses

During the year under review, the County Assembly spent an amount of Kshs.9,116,356 on foreign travel and subsistence as disclosed in Note 3 to the financial statements. The expenditure includes an amount of Kshs.4,368,260 spent by County Assembly Service Board for training in Uganda. The officers who were being trained were paid subsistence allowances for seven days.

Examination of supporting documents including copies of passports of the staff who had travelled, however, revealed that the staff entered Uganda on 17 December 2017 and exited on 22 December 2017. This amounted to days spent in Uganda and not seven. Therefore, the officers were irregularly paid subsistence allowances of Kshs.1,042,386 for the extra two days and in consequence the propriety of that expenditure cannot be confirmed.

5. Domestic Travel and Subsistence Expenses

During the year under review, an amount of Kshs.133,157,486 was spent on domestic travel and subsistence as disclosed under Note 3 to the financial statements. However, expenditure records produced for audit review revealed instances where some committee members were facilitated to attend meetings and workshops but no documentary evidence were attached to support the actual attendance, leading to unaccounted for expenditure of Kshs.462,000.

6. Ward Expenses

Examination of payment vouchers and supporting documents in respect of ward expenses of Kshs.3,565,000 revealed that imprests advanced to ward employees were surrendered through cash sale receipts that were neither serialized nor ETR generated. Further the management did not provide for audit review tenancy agreements between the County Assembly and the landlords for the various ward offices for which rent was paid.

As a result, the validity and propriety of the expenditure of Kshs.3,565,000 incurred on the ward offices cannot be confirmed.

7. Cash and Cash Equivalents Balance

The statement of financial assets and liabilities reflects bank balances of Kshs.730,363 as at 30 June 2018. The County Assembly operates a total of four bank accounts, two at Central Bank of Kenya (CBK) and two at the Kenya Commercial Bank (KCB). However, the following matters have been noted with regard to the cash and cash equivalents balance:

- i. The bank reconciliation statements were not being updated on a monthly basis as is required.
- ii. CBK Recurrent Account No. 100023975 balance of Kshs.526,421 disclosed under Note 8 to the financial statements cannot be ascertained because relevant bank statements and cash book as 30 June 2018 have not been produced for audit review;
- iii. In addition, the CBK Development Account No. 1000326905 balance of Kshs.202,744 under Note 8 to the financial statements was not supported by bank statements and cash book;
- iv. The County Assembly did not provide a board of survey certificate for cash and bank balances as at 30 June 2018;
- v. According to Note 6 on significant accounting policies, deposits and retention held on behalf of third parties have been recognized as accounts payables. Although, deposits and retentions amounting to Kshs.5,515,452 were outstanding as at 30 June 2018, bank statement relating to the same was not provided for audit review.

In view of the above circumstances, it is not possible therefore to confirm the accuracy and completeness of the cash and cash equivalents balance of Kshs.730,363 as at 30 June ,2018.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Nyamira County Assembly 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 Conclusion on lawfulness and effectiveness in use of public resources sections of my report, I have determined that there are no key audit matters to communicate in my report.

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 Conclusion on lawfulness and effectiveness in use of public resources 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. Construction of Offices for Staff and Members of the County Assembly (MCAs)

Included in capital and development expenditure budget for the year ended 30 June 2018 of Kshs.180,000,000 was an amount of Kshs.57,703,650 in respect a construction of offices for staff and MCAs. The tender was advertised in the daily nation and the star on 13 April 2018. Twelve firms responded and after technical and financial evaluation, the tender was awarded to a contractor at a contract sum of Kshs.367,000,000. The contact period is for 156 weeks commencing on 13 June 2018 to 13 June 2021. However, the following anomalies have been noted:

- i. The tender evaluation minutes indicated that only two bidders, that is, who quoted Kshs.367,000,000 and Kshs.336,812,604, respectively responded. However, the tender evaluation committee recommended award of the tender to the second

lowest bidder at a tender sum of Kshs.367,000,000 and not the lowest responsive bidder with a tender sum of Kshs.336,812,604 which could have resulted in a possible savings of Kshs.30,187,396.

- ii. No payment had been made during the financial year under review, and thus it is not clear how the Kshs.57,703,650 budgeted for the project was utilized.
- iii. Physical verification conducted on 19 Nov 2018 indicated that the construction work was at foundation level despite four months of the contract period having elapsed. This reflects slow progress of works that may occasion delay in completion of the project.

2. Implementation of Projects

- i. During the year under review, the County Assembly had an approved budget for a total of twelve projects at an estimated cost of Kshs.180,000,000. However, a comparison of the budget and the status report, revealed that four projects valued at Kshs.72,711,600 had not started; six projects valued at Kshs.78,300,000 were ongoing; and two project valued at Kshs. 28,988,400 had been completed and certificate of completion issued. There is no evidence that the funds allocated for the unimplemented projects were re-voted at the closure of the financial year to ensure implementation in the following financial year.
- ii. The total expenditure on the projects in the year 2017/2018 was Kshs.65,788,644 out of the total development budget of Kshs.180,000,000 occasioning underutilization of funds amounting to Kshs.114,211,356 or by 63%.

3. Erection and Completion of Water Tank Tower & Construction of Septic Tank and Ablution Block

Contract for the proposed erection and completion of the water tank tower was awarded to a contractor at a tender sum of Kshs.7,042,812. Amount paid so far to the contractor is Kshs.5,876,948, leaving a balance of Kshs.1,165,864.

Contract for the construction of septic tank and ablution block was awarded to a contractor at a tender sum of Kshs.9,079,610. An amount of Kshs.7,766,142 has been disbursed to the contractor, leaving outstanding commitment of Kshs.1,313,468.

The two projects have delayed by six months and no explanations have been given for the delay. The contractors for both projects were not on site at the time of physical verification in the month of November 2018. This implies that the projects have either been abandoned or have stalled. The County Assembly may not have received value for money already spent.

4. Construction of the Car Park, Perimeter Fence, Gate Houses and Access Road

Contract for the construction of the car park, perimeter fence, gate houses and access road was awarded to a contractor at a contract sum of Kshs.27,625,516. However, Bills of Quantities (BQ) for the specific works for construction of the car park, perimeter fence, gate house and access road were not provided for audit hence making it impossible to ascertain how the contract amount of Kshs.27,625,516 is to be apportioned.

Physical verification of the project on 19 of November 2018 found the works incomplete. According to the status report, only 30% of the works involving a section of the walling, cabro car park and a section of the gate house had been done. In addition, the completion of the project has been delayed by twenty-two months. No justification or explanation has been provided for delay in completion of the project.

5. Automation of Broadcasting and Hansard Recording

Automation of broadcasting and hansard recording functions contract was awarded to an engineer at a contract sum of Kshs.17,698,000. A review of contract agreement documents revealed that the project has been delayed by twenty-five months. The total expenditure incurred on the project so far is Kshs.8,838,700. No explanation has been provided for delay in completion of the project.

6. Contract for Supply and Provision of Padding and Carpet for Debating Chambers

Contract for supply and provision of padding and carpet for the debating chambers was awarded to an investment company at a contract sum of Kshs.11,917,463. The project has not been inspected by the public works officials despite the contractor having requested for the final inspection on 3 August, 2018. Expenditure totalling Kshs.10,498,319 has been incurred on the project to date.

7. Legal Fees

The office of the Speaker of the County Assembly of Nyamira and County Assembly Service Board were sued by two petitioners for wrongful dismissal in two cases namely;

- i. Petition No. 33 of 2018 – Daniel Oginda Orina Vs the Speaker of the County Assembly of Nyamira and two others and
- ii. Petition No. 35 of 2018 – Vincent Mariita Omas Vs the Speaker of the County Assembly and two others.

A review of the County Assembly of Nyamira ad-hoc evaluation committee report on provision of legal services CAN/01/2017/2018 dated 2 May 2018 recommended that the legal services be offered by M/s Mose Nyambega and Advocates at instructions fee of Kshs.1,000,000, setting up fee of Kshs.100,000 and disbursements of Kshs.250,000. The bidder had quoted Kshs.1,516,666 for each case totalling

Kshs.3,033,332. The bidder issued fee note for the same amount which has been recognized as a pending bill.

The above fee charged was not in line with the Advocates (Remuneration) (Amendment) Order, 2014 schedule 6 (b). The order sets the instruction fees where the value exceeds Kshs.1,000,000 but does not exceed Kshs.20,000,000 at Kshs.120,000 plus additional 2% which brings the instructions fees to Kshs.124,000 for each case. This therefore means that in the two cases, the total instruction fees should have been Kshs.248,000 as opposed to Kshs.3,033,332 invoiced.

8. Procurement on the Provision of Air Ticket Services

Contract for provision of air tickets services was awarded to a supplier at a cost of Kshs.1,561,100 in the year under review. However, the supplier was not in the list of prequalified suppliers. Further, quotations from other five service providers were not provided for audit review. The County Assembly under the circumstances may not have received value for money for the air ticket services.

9. Procurement of Hospitality Supplies and Services

The County Assembly procurement plan for the year ended 30 June, 2018 stated that both conference and catering services were to be procured by use of quotations. However, audit review revealed the following irregularities:

- i. The assembly procured conference facilities amounting to Kshs.2,781,525 through direct procurement method contrary to the procurement plan of the entity.
- ii. The Assembly also awarded another contract of Kshs.704,000 for provision of the services to second lowest bidder instead of the lowest responsive bidder. No explanation has been provided for the anomaly.

10. Employment of Ward Staff

A perusal of the personnel records maintained by the human resources department revealed that eighty members of ward staff were recruited and appointed by the twenty Members of the County Assembly (MCAs) directly without regard to:

- i. The provisions of the County Government Act which bestows such powers on the County Public Service Board and which requires the process to be open, transparent and fair; and
- ii. The Commissioner of Revenue Allocation Circular Ref CRA/CSO/CGM/18/Vol. 8/ (1) of 11th May 2015 on County Governments' Budget ceilings on recurrent expenditure which limited the number of employees per ward to three as opposed to the four that the County Assembly engaged per ward.

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 Conclusion on 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 internal controls, risk management and governance were not effective.

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 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 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 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 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