

REPORT OF THE AUDITOR-GENERAL ON THE NATIONAL LAND COMMISSION FOR THE YEAR ENDED 30 JUNE, 2019

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of The National Land Commission set out on pages 1 to 20, which comprise the statement of assets and liabilities as at 30 June, 2019, and the statement of receipts and payments, statement of cash flows and summary statement of appropriation-recurrent and development 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 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 The National Land Commission as at 30 June, 2019, 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 Public Finance Management Act, 2012 and National Land Commission Act, 2012.

Basis for Qualified Opinion

1. Inaccuracies in the Financial Statements

Discrepancies Between Financial Statements and IFMIS Figures

The following discrepancies were noted between figures in the financial statements and figures in the Integrated Financial Management Information System (IFMIS) statements:-

Item Description	Balance as per IFMIS statements Kshs.	Balance in the Financial statements Kshs.	Difference Kshs.
Provisions	(6,846,521,646)	-	(6,846,521,646)
Opening balance reserves	5,622,553,360	-	5,622,553,360
Total	(1,223,968,286)		(1,223,968,286)

Management has not provided an explanation for the variances.

In the circumstances, the accuracy of the financial statements for the year ended 30 June, 2019 could not be confirmed.

2. Accounts Receivable

Note 11 to the financial statements reflects accounts receivable balance of Kshs.11,086,956 which includes Government imprests of Kshs.1,267,000 that have been outstanding for more than one year. This is contrary to Section 93 (5) of the Public

Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station. Section 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

Consequently, it has not been possible to confirm the validity and recoverability of the Government imprest balance of Kshs.1,267,000.

3. Other Expenses - Payments on Behalf of Other Government Entities

Included in other expenses balance of Kshs.22,150,772,986 reflected in the statement of receipts and payments and as further disclosed under Note 8 to the financial statements, are payments on behalf of other Government entities amounting to Kshs.12,423,333,959 out of which compensations amounting to Kshs.215,622,898 were paid without harmonized valuations from both the Commission and the Ministry of Lands and Physical Planning as detailed below:

Parcel No	Amount paid Kshs
Ngong /Ngong/44858	22,366,389
Ngong /Ngong/86111	16,277,593
Ngong /Ngong/90093	43,638,299
Ngong /Ngong/22155	11,821,522
Ngong /Ngong/89759	52,550,005
Ngong /Ngong/60410	24,380,851
Ngong /Ngong/12638	25,516,742
Ngong /Ngong/41618	19,071,497
Total	215,622,898

The payments were made contrary to the directives communicated by the Principal Secretary, Ministry of Lands and Physical Planning vide a letter dated 1 August, 2018 which was a follow up to a meeting held on 31 July, 2018 and chaired by the Head of the Public Service. The letter provided that:

- i) Any affected property whose value variance between The National Land Commission and the Ministry of Lands and Physical Planning figure is below 20% should be paid out.
- ii) Variance between 21% - 49% to be revalued by a joint team from both the The National Land Commission and the Ministry of Lands and Physical Planning with a view to harmonize the values.
- iii) Any variance of 50% and above should be re-inspected by the joint team with a view to carrying out a revaluation.

In the circumstances, the propriety of the payments totalling to Kshs.215,622,898 included in other expenses could not be confirmed.

4. Acquisition of Assets

As disclosed at Note 7 to the financial statements, included in the acquisition of assets figure of Kshs.63,908,120 is an amount of Kshs.18,000,000 described as domestic public non-financial enterprises. Available information indicates that these were funds transferred to the Commission Staff Mortgage and Car Loan Fund managed by the National Bank of Kenya. However, the Commission did not prepare separate financial statements for the Fund for the year under review which is contrary to Section 24(10)(a) of the Public Finance Management Act, 2012 which requires the Accounting Officer to prepare separate financial statements for each fund in the form specified by the Public Sector Accounting Standards Board. In addition, the staff car and mortgage loan fund regulations and the contract between the National Bank of Kenya and the Commission were not availed for audit review.

In the circumstances, the propriety of domestic public non-financial enterprise expenditure of Kshs.18,000,000 included under acquisition of assets could not be confirmed for the year ended 30 June, 2019.

5. Accounts Payables-Deposits

The statement of assets and liabilities reflects accounts payable – deposits balance of Kshs.13,511,623,477. However, the supporting schedule provided reflects accounts payable amounting to Kshs.12,693,925,376 resulting into an unexplained difference of Kshs.817,698,101. In addition, the reported accounts payable balance excludes staff welfare deductions that had accumulated to Kshs.3,671,000 as at 30 June, 2019. Further, a review of the accounts payable-deposits schedule provided for audit indicated long outstanding balances totalling Kshs.864,726,930 that are yet to be paid to the beneficiaries.

No plausible reason has been provided for the delay in settlement of the liabilities.

In the circumstances, the accuracy and completeness of the reported accounts payables-deposits balance of Kshs.13,511,623,477 could not be confirmed.

6. Pending Bills

The Commission reported pending bills totalling to Kshs.848,023,800 as at 30 June, 2019 which as disclosed at Annex 1 of the financial statements includes legal fees payable totalling Kshs.273,326,211. However, included in this amount of Kshs.273,326,211 is Kshs.242,600,000 payable to a lawyer but supporting documents on how the legal services were procured and invoices for the payable amount of Kshs.242,600,000 were not availed for audit verification.

In the circumstances, the validity of pending legal fees totalling to Kshs.242,600,000 included in the pending bills balance of Kshs.848,023,800 as at 30 June, 2019 could not be confirmed.

7. Summary of Fixed Assets Register

As disclosed at Annex 3 of the financial statements, the summary of fixed assets register for the year ended 30 June, 2019 reflects additions during the year of Kshs.63,908,120. The additions however, exclude the cost of two motor vehicles totalling to Kshs.11,377,034 financed under other expenses – administrative costs as disclosed under Note 8 to the financial statements.

In the circumstances, the accuracy and completeness of the summary of fixed assets register for the year ended 30 June, 2019 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of The National Land Commission 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 statement of the current year. Except for the matters described in the Basis for Qualified Opinion section of my report, I have determined that there are no other 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 under 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

Terms of Service for Directors

During the Commission's plenary on 8 May, 2018, it was resolved that Directors' contracts be renewed for a period of five years or upon attainment of retirement age of sixty years whichever came earlier and all other staff be put on permanent and pensionable terms. However, as reflected under Minute No.5 of the Special Commission meeting held on 13 December, 2018, the Chairman of the Commission issued instructions to the Chief Executive Officer to convert terms for all staff on contract to permanent and pensionable with effect from 9 May, 2018. Consequently, the Directors' terms of service were converted to permanent and pensionable which is against the resolutions of the Commission's meeting held on 8 May, 2018.

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, 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 standard requires that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, 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 control, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the Commission's ability to continue to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of intention to liquidate the Commission 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 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 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 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 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 Commission'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 Commission to cease to 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 Commission 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.



Nancy Gathungu
AUDITOR-GENERAL

Nairobi

13 October, 2020