

REPORT OF THE AUDITOR-GENERAL ON NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND - MALINDI CONSTITUENCY FOR THE YEAR ENDED 30 JUNE, 2019

REPORT ON THE FINANCIAL STATEMENTS

Adverse Opinion

I have audited the accompanying financial statements of National Government Constituencies Development Fund – Malindi Constituency set out on pages 1 to 21 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 the 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, because of the significance of the matters discussed in the Basis for Adverse Opinion section of my report, the financial statements do not present fairly, the financial position of National Government Constituencies Development Fund-Malindi Constituency 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 do not comply with the National Government Constituencies Development Fund Act, 2015 and the Public Finance Management Act, 2012.

Basis for Adverse Opinion

1.0 Inaccuracies and Presentation of Financial Statements

The financial statements for the year ended 30 June, 2019 submitted for audit contained inaccuracies as detailed below:

- (i) The statement of receipts and payments reflects use of goods and services of Kshs.9,812,939 which varies with the balance of Kshs.7,312,939 reflected under Note 5 to the financial statements, resulting into an unreconciled and unexplained variance of Kshs.2,500,000.
- (ii) Note 7 to the financial statements reflects bursary to secondary schools of Kshs.15,627,725. However, Kshs.6,280,000 related to bursary to tertiary institutions. Further, bursary to secondary schools amounting to Kshs.540,000 was excluded.
- (iii) Note 7 to the financial statements reflects bursary to tertiary institutions of Kshs.13,569,500. However, an amount of Kshs.8,041,000 related to bursary to secondary schools.
- (iv) The summary statement of appropriation-recurrent and development combined reflects actual transfers from the Board of Kshs.171,121,888. However, the figure

varies with the receipts of Kshs.171,621,887 - comprising transfers from the NGCDF Board of Kshs.164,325,359 as per statement of receipts and payments and the fund balance brought forward of Kshs.7,296,528 - by Kshs.499,999.

- (v) Further, the summary statement of appropriation-recurrent and development combined reflects total receipts utilization difference of Kshs.4,000,040, while the re-computed amount is Kshs.4,500,040, thus resulting into an unreconciled and unexplained variance of Kshs.500,000.
- (vi) The summary statement of appropriation-recurrent and development combined reflects a total budget utilization difference of Kshs.60,351,347. However, no further disclosure has been given on the unutilized balances under Note 15.3 to the financial statements and Annex 3 as required.
- (vii) Various prior year audit issues remained unresolved as at 30 June, 2019. Management has not provided reasons for the delay in resolving the prior year audit issues. Further, the unresolved prior year issues are not disclosed under the progress on follow up of auditor's recommendations section of the financial statements.
- (viii) The statement of cash flows reflects Note 8 for other payments instead of Note 9.

Consequently, the accuracy and completeness of the financial statements as well as compliance with the requirements of International Public Sector Accounting Standard No. 1 – Presentation of Financial Statements and the prescribed financial reporting guidelines could not be confirmed.

2.0 Variances Between Balances in Financial Statements and Supporting Schedules

The financial statements balances were at variance with the supporting schedules provided as summarized below:

No.	Item	Note	Financial Statement Figure (Kshs.)	Supporting Schedule Figure (Kshs.)	Variance (Kshs.)
1.	Use of Goods and Services	-	9,812,939	10,337,724	(524,785)
2.	Transfers to Other Government Entities – Transfers to Tertiary Institutions	6	1,500,000	0	1,500,000

3.	Other Grants and Payments – Bursary Secondary Schools	7	15,627,725	15,538,000	89,725
4.	Acquisition of Assets	8	500,000	0	500,000
5.	Other Payments	9	2,000,000	3,500,000	(1,500,000)

In the circumstances, the accuracy and completeness of the financial statements balances could not be confirmed.

3.0 Bank Balance

The statement of assets and liabilities and Note 10A to the financial statements reflect bank balances of Kshs.56,351,346. The amount included unrepresented cheques totaling to Kshs.1,575,545. However, bank statements to confirm the dates when the cheques were subsequently cleared were not provided for audit. Further, no satisfactory explanation was provided for not updating the cash books with the receipts totalling Kshs.34,115 in respect to unspent balances in Project Management Committee bank accounts returned to the Constituency bank account in January, 2019 and with the bank charges totaling to Kshs.8,030.

Consequently, the validity and accuracy of the bank balance of Kshs.56,351,346 as at 30 June, 2019 could not be ascertained.

4.0 Other Receipts

The statement of receipts and payments reflects a nil balance for other receipts. However, available records indicated that the Fund collected Kshs.6,000 from sale of tender documents for the Proposed Erection of Classrooms at Shomani Girls Secondary School project to six (6) tenderers. The receipts were neither recorded in the cash book nor banked, contrary to Section 12 of the National Government Constituencies Development Fund Act, 2015 which requires all funds received by the Constituency to be banked in the Constituency's bank account.

In the circumstances, the Management was in breach of the Law. Further, the accuracy and completeness of the nil balance for other receipts could not be confirmed.

5.0 Unsupported Expenditure on Transfers to Other Government Entities

The statement of receipts and payments reflects transfers to other government entities of Kshs.59,904,775. Included in the balance and as disclosed at Note 6 to the financial statements are transfers of Kshs.28,554,775 to primary schools out of which an amount of Kshs.8,076,250 was paid for various projects undertaken in five (5) primary schools. However, the Purchase Orders issued in accordance with Section 106(5)(a) of Public Procurement and Asset Disposal Act, 2015 were not provided for audit.

In the circumstances, the validity and propriety of transfers to primary schools amounting to Kshs.8,076,250 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the National Government Constituencies Development Fund – Malindi Constituency 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 adverse 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. There were no key audit matters to report in the year under review.

Other Matter

Budgetary Control and Performance

According to the summary statement of appropriation-recurrent and development combined, the National Government Constituencies Development Fund – Malindi Constituency had an approved expenditure budget of Kshs.175,621,928 while actual expenditure totalled to Kshs.115,270,541 resulting to an under-expenditure of Kshs.60,351,347 or 34%.

The under-expenditure affected the planned activities and may have impacted negatively on service delivery to the constituents of Malindi.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, because of the significance of the matters discussed in the Basis for Adverse Opinion and Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources sections of my report, based on the audit procedures performed, I confirm that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Projects Monitoring and Inspection

Audit inspection to various projects revealed anomalies as detailed out under **Appendix I**.

The anomalies may be attributed to lack of proper supervision by the Constituency Development Fund Committee. There is therefore the need to ensure that all projects are properly supervised to satisfactory completion and to the specifications outlined in the bills of quantities for the benefit of the citizens of Malindi Constituency.

2. Projects Implementation Status

During the year under review, the Management budgeted to implement twenty-nine (29) projects at a total cost of Kshs.66,180,203. The implementation status of the projects as at 30 June, 2019 is as summarized below:

Status	Number of Projects	Allocation (Kshs.)
Ongoing projects	1	12,650,000
Not started	17	33,046,635
Completed projects	11	20,483,568
Total	29	66,180,203

As illustrated in the report, the Fund had only one (1) ongoing project at Shomani Girls Secondary School for construction of a four storey block at a cost of Kshs.12,650,000 and whose expected completion date was 30 June, 2019. However, the audit inspection carried out in the month of November, 2020 revealed that the works were still in progress. In addition, implementation of seventeen (17) projects with a total budgeted cost of Kshs.33,046,635 planned for implementation during the year under review, had not commenced.

No satisfactory explanation was provided for failure to implement the projects when the Fund had a balance of Kshs.56,351,346 in the bank as at 30 June, 2019 for the projects. Failure by Management to implement the budgeted projects may impact negatively on delivery of services to the residents of Malindi Constituency.

3. Other Grants and Transfers

3.1 Bursary Awards

Note 7 to the financial statements reflects bursaries to secondary schools amounting to Kshs.15,627,725 and bursaries to tertiary institutions and universities amounting to Kshs.13,569,500. However, audit revealed anomalies in the awarding of bursaries as summarized below:

No.	Description	No. of Institutions	No. of Students	Amount (Kshs.)
1.	Students without admission numbers - Secondary Schools	25	51	230,000
2.	Students awarded twice-Secondary	6	6	44,000
3.	Students without admission numbers -Tertiary Colleges	11	12	76,000
4.	Students without admission numbers - University	2	2	22,000
5.	Students awarded twice - University	1	1	12,000

Total	45	72	384,000
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The Management has not explained why and how such anomalies arose and the corrective measures in place.

3.2 Failure to Vet Beneficiaries of Bursaries

Note 7 to the financial statements reflects Kshs.15,627,725, Kshs.13,569,500 and Kshs.804,000 being bursaries to secondary schools, tertiary institutions and special schools respectively, all totalling to Kshs.30,001,225. However, the Management did not provide the minutes of the vetting committee to confirm that needy students were identified using approved criteria, as required under Regulation 21(3) of National Government Constituency Development Fund Regulations, 2016 which provides that a Constituency Committee shall vet all persons proposed to receive support in accordance with guidelines issued by the Board.

Further, Regulation 21(4) of National Government Constituency Development Fund Regulations, 2016 requires a Constituency Committee to, in supporting social security programmes, consult with the relevant National Government Agencies. However, there was no evidence that the relevant Government Agencies which include the Ministry of Education and the County Government were involved in the identification of beneficiaries of the bursaries to avoid issuing multiple bursaries to the same parties.

In the circumstances, the Management was in breach of the Law and the propriety of bursaries totalling Kshs.30,001,225 could not be confirmed.

3.3 Bursary Budgetary Allocation

Regulation 21(5) of the National Government Constituency Development Fund Regulations, 2016 provides that a Constituency Committee shall allocate not less than twenty-five per cent (25%) of the funds allocated to a constituency for bursaries. However, out of the total budget of Kshs.109,040,915, the Fund allocated an amount of Kshs.21,808,000 or 20% to bursaries.

Consequently, the Management was in breach of the Law.

3.4 Emergency Projects

Note 7 to the financial statements reflects expenditure on emergency projects amounting Kshs.4,142,961. However, review of supporting documents for the payments revealed that the activities did not satisfy the criteria for emergency expenditure as provided under Section 8 (3) of the National Government Constituencies Development Fund Act, 2015, which provides that emergency shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.

In the circumstances, the propriety and lawfulness of emergency projects totaling to Kshs.4,142,961 could not be confirmed.

4. Transfers to Other Government Entities

4.1 Expenditure Not in Procurement Plan

Note 6 to the financial statements reflects transfers to primary schools totaling Kshs.28,554,775. However, included in the amount is Kshs.9,208,750 in respect of expenditure which was not in the procurement plan, contrary to Regulation 50(3) of the Public Finance Management (County Governments) Regulations, 2015 which provides that an accounting officer of a Government entity shall make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Disposal Act, 2015.

Consequently, Management was in breach of the Law and the propriety of the expenditure of Kshs.9,208,750 could not be ascertained.

4.2 Transfers to Secondary Schools

Note 6 to the financial statements reflects transfers of Kshs.29,850,000 to secondary schools, out of which an amount of Kshs.20,807,956 was paid to various firms for implementation of projects. However, review of the tender documents revealed that the responsiveness of the tenders submitted by the tenderers awarded the contracts was in doubt as some of the eligibility and mandatory requirements were not met as summarized below:

Project Description	Amount Paid (Kshs.)	Audit Observations
Proposed construction of 1 block of 2 No. Classrooms at Ganda Secondary School	3,002,280	Successful tenderer did not attach to the tender documents- proof of sound financial capability; valid/current Tax Compliance Certificate; valid PIN and VAT certificate; copy of receipts on purchase of tender documents. National Construction Authority (NCA) certificate, names, qualifications and experience of key personnel available for this work.
Proposed construction of 1 block of 12 No. door Units toilet block at Muyeye Secondary School	1,699,890	Tax compliance certificate attached dated 1 March, 2019 after submission and evaluation of bids hence tender not awarded to responsive tenderer
Proposed erection of 8 No. classroom block phase (1) for Shomani Girls Secondary School	12,627,864	Sound financial capability (Bank Statements) and reports of financial standing (Audited accounts and Bank Statements) of tenderer for the past three years (From 2013 to date) not evaluated nor attached to bids by successful tenderer. NCA 7 certificate not attached by successful tenderer instead attached NCA 6.

Project Description	Amount Paid (Kshs.)	Audit Observations
Construction of one twin Staff House unit (Two bed room each)	3,477,922	Sound financial capability (Bank Statements) and reports of financial standing (Audited accounts and Bank Statements) of tenderer for the past three years (From 2013 to date) not evaluated nor attached to bids by successful tenderer. NCA 7 certificate not attached by successful tenderer instead attached NCA 6.
Total	20,807,956	

In the circumstances, Management was in breach of Section 79 (1) of the Public Procurement and Asset Disposal Act, 2015 which provides that a tender is responsive if it conforms to all the eligibility and other mandatory requirements in the tender documents.

4.3 Contracts Without Performance Bond

Section 142 of the Public Procurement and Asset Disposal Act, 2015 provides that, a successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract. However, 5% performance bond specified in the tender documents for five (5) contracts with a total contract sum of Kshs.23,806,593 and included in the reported balance of Kshs.59,904,775 for transfers to other Government entities were not provided.

Consequently, Management was in breach of the Law and may have no recourse in case of non-performance by the contractors.

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, because of the significance of the matters discussed in the Basis for Adverse Opinion and the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources sections of my report, based on the audit procedures performed, I confirm that internal controls, risk management and governance were not effective.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective 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 National Government Constituencies Fund - Malindi Constituency to sustain services, disclosing, as applicable, matters related to sustainability of services and using the going concern basis of accounting unless the Management is aware of the intention to terminate the Fund 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 Fund 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 Fund's 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 National Government Constituencies Fund-Malindi Constituency's 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 National Government Constituencies Fund-Malindi Constituency 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 National Government Constituencies Development Fund – Malindi Constituency 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 National Government Constituencies Development Fund – Malindi Constituency 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

16 September, 2021

APPENDIX I

No.	Name of Project	Project Activity	Contract Price (Kshs.)	Audit observations
1.	Shomani Girls Secondary School	Proposed Erection of 4 Classroom Block Phase (1) for Shomani Girls Secondary School	12,650,000	Project not completed. Four (4) of the eight (8) classrooms constructed but not completed despite value of works certified and paid of Kshs.11,871,000 out of the contract sum of Kshs.12,627,864.
2.	Shomani Girls Secondary School	Proposed one (1) unit 2 bedroomed staff Quarter for Shomani Girls Secondary School	3,500,000	Project completed. However, certificate of completion had not been issued. Further, no red oxide was applied to the floor as required by the Bills of Quantity.
3.	Malindi Police Station	Renovation of one Block at Malindi Police Station Offices and Residential Houses, Removing of Old Roof, replacing with new roof for 20 Offices, Patch Plastering of Walls, Replacement of Doors and Windows, Repair of Floor	4,500,000	Project Complete. However, no certificate of completion had been issued to the contractor nor handover report and labelling of the project done, contrary to Regulation 15 (1) of the National Government Constituencies Development Regulations, 2016 which requires the Project Management Committee to undertake project closure, labelling and handover upon completion.
4.	Malindi Mere Police post	Renovation of Buildings	4,000,000	Long outstanding Project-The project was started in 2015/16 However, works amounting to Kshs.931,610 entailing renovations had not been done despite being reported as complete. The outstanding work has not been completed since then.
5.	Primary School Desk	Distribution of desks to several primary schools	3,285,000	No distribution list availed for audit review, hence not verified.
6.	Kasimbiji Primary	Construction of 2 classrooms, foundation and slab,	3,063,568	Poor workmanship was evident with several cracks on the walls. It was also

No.	Name of Project	Project Activity	Contract Price (Kshs.)	Audit observations
		walling, doors and window fittings, paintings and roofing		noted that no pin board was in place nor red oxide applied on the floors as per the Bills of Quantities.
7.	St. Andrews Primary	Construction of 6 classrooms	6,348,568	The project was complete and in use. However, it was noted that no pin board was in place as per the Bills of Quantities.
8.	Goshi Primary	Construction to completion of 2 No Classrooms; Door and window fittings, floor skidding, painting and plastering	3,000,000	The project was complete. However, electrical works had not been fully done. It was also noted that no pin board was in place and red oxide not applied in the floors as per the Bill of Quantities.
Total			40,347,136	