

REPUBLIC OF KENYA



*Paper laid to  
the Table of the  
House by the leader  
of majority party  
on the 04/06/14*  
*[Signature]*

KENYA NATIONAL AUDIT OFFICE

PARLIAMENT  
OF KENYA  
LIBRARY

TABLE OFFICE  
S/No.....  
04 JUN 2014  
Sign.....  
PAPER LAID

**REPORT**  
**OF**  
**THE AUDITOR-GENERAL**  
**ON**  
**THE FINANCIAL STATEMENTS OF**  
**NATIONAL ENVIRONMENT TRIBUNAL**  
  
**FOR THE YEAR ENDED**  
**30 JUNE 2013**





**ANNUAL REPORT  
AND  
ACCOUNTS**

**For the year ended 30<sup>th</sup> June 2013**

**NATIONAL ENVIRONMENT TRIBUNAL  
DRSRS Building  
Popo Road – Bellevue, off Mombasa Road  
P.O. Box 74772-00200  
NAIROBI  
Telephone 0254-020-6003729  
[www.net.or.ke](http://www.net.or.ke)**

## **CONTENTS**

THE CORE BUSINESS OF NATIONAL ENVIRONMENT TRIBUNAL.....	2
THE TRIBUNAL INFORMATION .....	2
THE TRIBUNAL MEMBERSHIP .....	2
CHAIRMAN'S REPORT .....	3
REPORT OF AUDITOR GENERAL .....	5
STATEMENT OF FINANCIAL POSITION .....	7
STATEMENT OF COMPREHENSIVE INCOME .....	8
CASH FLOW STATEMENT .....	9
NOTES TO THE ACCOUNTS .....	11

## 1. THE CORE BUSINESS OF NATIONAL ENVIRONMENT TRIBUNAL

The National Environment Tribunal (NET) is created under section 125 of the Environmental Management and Coordination Act (EMCA) of 1999.

Its principal function is to hear and determine appeals arising from administrative decisions of NEMA on issuance, denial, revocation and putting conditions to EIA licenses. Similarly under the Forests Act, No. 7 of 2005, appeals from the Forests Service Board go to the NET.

## 2. THE TRIBUNAL INFORMATION

### PRINCIPAL PLACE OF BUSINESS

Department of Resource Surveys and Remote Sensing (DRSRS)  
Popo Road – Bellevue, off Mombasa Road,  
P.O. Box 74772-00200,  
NAIROBI.

### BANKERS

Kenya Commercial Bank Ltd,  
KICC Branch,  
P.O. Box 24030-00100,

NAIROBI.

### AUDITORS

Kenya National Audit Office (KENAO)  
P.O. Box 30084-00100,

NAIROBI.

## 3 THE TRIBUNAL MEMBERSHIP

Pursuant to section 125 of EMCA, the Tribunal consists of the following:

- a. A chairman nominated by the Judicial Service Commission- and is a person qualified to be appointed a High Court judge. We have **Donald Wacieni Kaniaru** whose term is expiring with effect from 31<sup>st</sup> December 2013.
- b. An advocate of the High Court of Kenya nominated by the Law Society of Kenya. We have **Prof. Tom Ojienda** whose term is expiring with effect from 31<sup>st</sup> January 2014.
- c. A lawyer with professional qualifications in environmental law appointed by the Minister. We had **Dr. Jane Dwasi** whose term expired with effect from 1<sup>st</sup> July 2013; and
- d. Two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the Minister. In this position we only have **Mr. Evans Gaturu** whose term expired with effect from 1<sup>st</sup> July 2013. The other member has not been appointed since the year 2010.

## 4. FUNCTIONS AND RESPONSIBILITIES OF THE TRIBUNAL

The functions of the Tribunal are to consider appeals against the following:

- a. The refusal to grant a licence or to transfer a licence under the Act;
- b. The imposition of any condition, limitation or restriction on a licence issued under the Act;
- c. The revocation, suspension or variation of a licence issued under the Act;
- d. The amount of money required under the Act;
- e. The imposition of an environmental restoration order or environmental improvement order issued under the Act; and
- f. Any other action of the Director General, the Authority or its committee under the Act.

**N/B: All the appointments are by name and by Gazette Notice issued by the Minister.**  
**Operationalization of the Tribunal**



## CHAIRMAN'S REPORT

This is the 2012/2013 Annual Report of the National Environment Tribunal (NET). The year 2012 marked the 10<sup>th</sup> anniversary of the Tribunal. During this period, the Tribunal has moved several steps forward and has achieved a lot in line with its mandate as stipulated under Section 126 (2) of EMCA.

In August 2010, the country promulgated a new constitution which has provided unwavering commitment in the field of the environment. Subsequent reports since then are being guided by the human rights and principles provided in the constitution and specific legislations arising therefrom. The previous eight reports covered the period 2002/2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 respectively. This report briefly covers the creation of the Tribunal and its activities during the year under review.

In this report, the Tribunal reiterates its commitment, achievements and challenges faced and continues to face since its inception in 2002.

### A. NET ACTIVITIES DURING THE YEAR FINANCIAL YEAR UNDER REVIEW 2012

1. Since inception in 2002 and receiving the first appeal in 2005, the number of appeals filed each year have been on the increase. Between 10<sup>th</sup> January 2012 and 17<sup>th</sup> December 2013, a total of 37 appeals were received. Twenty one (21) other appeals were carried forward from previous years. As at the time of this report, only 12 appeals have not been finalized. To date, only one appeal has reached the Tribunal, challenging decision of the Director or Kenya Forests Board under the Forests Act.
2. The Tribunal also participated and made a presentation in the 15<sup>th</sup> Annual Conference on Litigating Takings Challenges to Land Use and Environmental Regulations held on November 9<sup>th</sup> and 10<sup>th</sup> 2012 at UC Hastings Law School, San Francisco, California.

### B. CHALLENGES

**Office accommodation:** As indicated in our previous reports, the Tribunal is still housed at the Department of Resource Surveys and Remote Sensing. However, the office and court space available is very limited and there is need for more appropriate working environment capable of meeting Tribunal needs. In fact, this is one of the hindrances to NET staff recruitment.

### TRIBUNAL STAFF AND FUNDING

- a. **Staff:** The Tribunal had the three staff seconded from the Ministry of Environment and Mineral Resources.

The Tribunal has an establishment of eleven staff, but due to severe financial constraints it is facing now, coupled with limited office accommodation, it would not be possible to engage any additional staff.

- b. **Funding:** During the year 2012/2013, the Tribunal was allocated ksh.24 million for operations, but only 18 milion disbursed. During budget preparations, the Tribunal requested Treasury through the Ministry for approval of personnel emolument funds but the request was not granted. This will still be pursued during the annual budget preparations for the year 2014/2015.

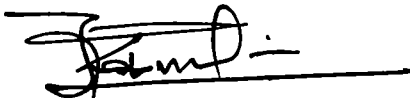
### **C. ACHIEVEMENTS**

The Tribunal wishes to underline the following:

- a. **Independent Budgetary Allocation:** at inception the Tribunal was allocated a one line budget together with NEMA and PCC. NEMA was not willing to allow the Tribunal full access to its funds, thus hindering its smooth operations. An appeal was lodged to the Treasury through the Ministry and a separate vote head granted during the 2003/2004 financial year. The Tribunal continues to enjoy this status.
- b. **Quick Determination of Appeals.** Between 15<sup>th</sup> January 2010 and 10<sup>th</sup> December 2010 the Tribunal received 16 appeals. 11 others were brought forward from the previous year- totaling 27 appeals. Out of these, 9 have been fully heard and disposed of. 1 matter was withdrawn for out of court settlement, 4 were taken to the High Court for judicial review, 6 are in process and will be finalised soon, 2 were struck out for failure by the appellants to prosecute, 1 matter sent back to NEMA because it was prematurely brought before the Tribunal, 2 appeals were dismissed at preliminary stage and two others dismissed for lack of jurisdiction by the Tribunal to entertain them. In circumstances where a matter has dragged or delayed before determination, that is normally caused by unavailability of counsel representing the parties or when they move to superior court and hence the matter is stayed at the Tribunal.

### **D. CHALLENGES**

11. The following challenges have, at times, hindered smooth implementation of Tribunal mandate:
  - a. Attempt by some parties not to comply with its orders.
  - b. Jurisdiction and misinterpretation of EMCA, particularly of section 129 (4) of EMCA.



**DONALD W. KANIARU**  
**CHAIRMAN**



# **REPORT OF THE AUDITOR GENERAL**



# REPUBLIC OF KENYA

Telephone: +254-20-342330  
Fax: +254-20-311482  
E-Mail: [oag@oagkenya.go.ke](mailto:oag@oagkenya.go.ke)  
Website: [www.kenao.go.ke](http://www.kenao.go.ke)



P.O. Box 30084-00100  
NAIROBI

## KENYA NATIONAL AUDIT OFFICE

### REPORT OF THE AUDITOR-GENERAL ON THE NATIONAL ENVIRONMENT TRIBUNAL FOR THE YEAR ENDED 30 JUNE 2013

#### REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of National Environment Tribunal set out on pages 7 to 15, which comprise the statement of financial position as at 30 June 2013, and the statement of comprehensive income, statement of changes in equity and statement of cash flows 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 14 of the Public Audit Act, 2003. 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.

#### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 13 of the Public Audit Act, 2003.

#### **Auditor-General's Responsibility**

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the provisions of Section 15 (2) of the Public Audit Act, 2003, and submit the report in compliance with Article 229 (7) of the Constitution of Kenya. The audit was conducted in accordance with International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.

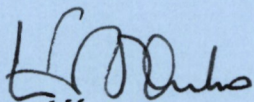


In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Tribunal's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my audit opinion.

### **Opinion**

In my opinion, the financial statements present fairly, in the all material respects, the financial position of the Tribunal as at 30 June 2013, and of its financial performance and its cash flows for the year then ended, in accordance with International Financial Reporting Standards and comply with the Environment Management Coordination Act, 1999.



**Edward R. O. Ouko, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**16 May 2014**



**STATEMENT OF FINANCIAL POSITION AS AT 30TH JUNE 2013**

	Notes	2013 Kshs	2012 Kshs
<b>ASSETS</b>			
<b>Non-Current Assets</b>			
Property, Plant and Equipment	(6)	1,356,504.00	1,458,901.00
<b>CURRENT ASSETS</b>			
Cash and Cash equivalent	(9)	<u>5,567,643.10</u>	<u>9,586,237.10</u>
<b>TOTAL ASSETS</b>		<b><u>6,924,147.10</u></b>	<b><u>11,045,138.10</u></b>
 <b>FUNDS AND LIABILITIES</b>			
Accumulated funds	(5)	6,924,147.10	11,045,138.10
Revenue Reserves		-	-
		<u>6,924,147.10</u>	<u>11,045,138.10</u>
 <b>Current Liabilities</b>			
Trade and other payables	(8)	-	-
<b>TOTAL FUNDS AND LIABILITIES</b>		<b><u>6,924,147.10</u></b>	<b><u>11,045,138.10</u></b>

SIGNATURE: .....  ..... DATE: ..... 28/4/14 .....  
(Signature of Jashon K. Awuor)

JASHON K. AWUOR  
 SECRETARY  
  
(Signature of Abel N. Okemwa)  
 SIGNATURE: ..... DATE: ..... 28/09/014 .....

ABEL N. OKEMWA  
 FOR: CHAIRMAN



**STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30TH  
JUNE 2013**

	<b>Note</b>	<b>2013 Kshs</b>	<b>2012 Kshs</b>
Government grants - recurrent	(3)	19,872,000.00	20,999,999.80
		<hr/>	<hr/>
<b>EXPENDITURE</b>		<b>19,872,000.00</b>	<b>20,999,999.80</b>
Staff costs		-	-
Administrative costs	4(a)	9,200,214.00	-
Board expenses	4(b)	14,583,157.00	-
Utilities	4(c)	197,190.00	-
Finance Costs	4(d)	12,430.00	-
<b>Total Expenditure</b>		<b>23,992,991.00</b>	<b>17,866,378.80</b>
<b>Surplus/(Deficit)</b>		<b>(4,120,991.00)</b>	<b>3,133,621.00</b>
		<hr/> <hr/>	<hr/> <hr/>

## CASH FLOW STATEMENT AS AT 30TH JUNE 2013

	2013 Kshs.	2012 Kshs.
<b>Cash flow operating activities:</b>		
Surplus/Deficit during the year	(4,120,991.00)	3,133,621.00
<b>Adjustment for:</b>		
Provision for depreciation	<u>327,397.00</u>	<u>323,514.00</u>
Net cash flow after adjustment	<b>(3,793,594.00)</b>	<b>3,457,135.00</b>
 <b>Cash flow from Investing Activities:</b>		
Purchase of property, plant and equipment	( 225,000.00)	-
 Cash and cash equivalent at the beginning of the year	<u>9,586,237.10</u>	<u>6,129,102.10</u>
Cash and cash equivalent as at 30/6/2013	<b><u>5,567,643.10</u></b>	<b><u>9,586,237.10</u></b>
 <b>Analysis of cash and cash equivalent</b>		
Cash at bank	5,542,042.10	9,580,754.10
Cash in hand	<u>25,601.00</u>	<u>5,483.00</u>
Cash and cash equivalent at the end of the year	<b><u>5,567,643.10</u></b>	<b><u>9,586,237.10</u></b>



## STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED 30TH JUNE 2013

	<b>Accumulated Fund KShs</b>	<b>Revenue Reserve KShs</b>	<b>Total KShs</b>
<b>At 1st July 2012</b>	11,045,138.10	-	11,045,138.10
Net movement for the year	(4,120,991.00)		(4,120,991.00)
<b>At 30th June 2013</b>	6,924,147.10	-	6,924,147.10

## NOTES TO THE ACCOUNTS 30<sup>TH</sup> JUNE, 2013

**1.** The National Environment Tribunal (NET) is created under section 125 of the Environmental Management and Coordination Act (EMCA) of 1999.

Its principal function is to hear and determine appeals arising from administrative decisions of NEMA on issuance, denial, revocation and putting conditions to EIA licenses. Similarly under the Forests Act, No. 7 of 2005, appeals from the Forests Service Board go to the NET.

### **2. ACCOUNTING POLICIES**

#### **(a) Statement of compliance**

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS).

#### **(b) Basis of preparation**

The financial statements have been prepared on the historical cost basis of accounting. The principal accounting policies are as stated below:

#### **(c) Revenue recognition**

Revenue is recognized to the extent that it is probable that the economic benefits will flow to the fund and the revenue can be reliably measured. The following specific recognition criteria must be met before revenue is recognized.

Government grants are recognized as income when they are actually disbursed to NET accounts and the entity will comply with the conditions attached to them. The grants are recognized as income on a systematic and rational basis over the period necessary to match them with the related costs.

#### **(d) Property, plant and equipment**

All property, plant and equipment are initially recorded at cost and thereafter stated at historical cost less depreciation. Depreciation is calculated on the reducing balance to write down the cost of each asset to its residual value over its estimated useful life using the following per annum rates:

Motor vehicle	25%
Furniture & fittings	12.5%
Computer, printers and software	33.3%

Gain/ (Loss) on disposal is recognized in the statement of comprehensive income.

#### **(e) Inventories**

There were no inventories reported during the year.



**(f) Taxation**

Grants received from the Ministry as income is exempt from tax.

**(g) Cash and cash equivalents**

For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand and deposits held on call with banks, net of bank overdrafts.

**(h) Currency**

The financial statements are prepared and presented in Kenya Shillings (KES)

**3. Government Grant**

Government grant represents the amounts received during the year from the Kenya Government to meet the operational expenditures for the committee.

Recurrent account	<b>2013(kshs)</b>	<b>2012 (kshs)</b>
	<u>19,872,000.00</u>	<u>20,999,999.80</u>

**4 (a) Administrative expenses**

	<b>2013 KShs</b>	<b>2012 Ksh</b>
Airtickets	1,026,770.00	
computer assessories	47,400.00	
Entertainment	311,275.00	
FUEL	911,366.00	
INSURANCE	57,930.00	
GENERAL MAINTAINANCE	64,650.00	
MISCLENIOUS	74,702	
SHOW EXPENSES	87,500.00	
NEWSPAPERS	3,665.00	
NIGHT OUT	1,236,000.00	
PRINTING	25,000.00	
OFFICE MAINTAINANCE	250,000.00	
SANITATION	176,570.00	
MEAL ALLOWANCE	3,006,399.00	
STAFF UNIFORM	39,000.00	
STATIONERY	1,428,908.00	
TAXI SERVICES	7,850.00	
TOWING CHARGES	9,742.00	
VEHICLE MAINTANANCE	79,850.00	
VIDEO COVERAGE	28,240.00	
DEPRECIATION	<u>327,397.00</u>	
	<b><u>9,200,214.00</u></b>	

<b>(b) Board Expenses</b>	<b>2013 Kshs</b>	<b>2012 Kshs.</b>
CALIFONIA EXPENSES	50,815.00	
HONARARIA	960,000.00	
RULLINGS	1,100,000.00	
SITING ALLOWANCES	11,568,353.00	
COURT HEARING	712,000.00	
ONSITE VISITS	<u>191,989.00</u>	
<b>Total</b>	<b><u>14,583,157.00</u></b>	

**(c) Utilities**

Airtime	157,700.00	
Postages	8,170.00	
Internet	<u>31,320.00</u>	-
	<b><u>197,190.00</u></b>	-

**(d) Finance costs**

Bank Charges & Commissions	<u>12,430.00</u>	-
	<b><u>12,430.00</u></b>	
<b>Total Expenditure</b>	<b><u>23,992,991.00</u></b>	<b><u>17,866,378.80</u></b>

**5. RESERVES**

**Accumulated Fund**

	<b>Kshs. 2013</b>	<b>Kshs. 2012</b>
<b>At start of the year</b>	11,045,138.10	7,911,517.10
Net Surplus/Deficit	<u>(4,120,991.00)</u>	<u>3,133,621.00</u>
<b>At end of the year</b>	<b><u>6,924,147.10</u></b>	<b><u>11,045,138.10</u></b>



## 6. PROPERTY, PLANT AND EQUIPMENT SCHEDULE

DETAILS	MOTOR VEHICLES Kshs. 25%	FURNITURE FITTINGS & EQUIP Kshs. 12.5%	COMPUTERS & PRINTERS Kshs. 33.3%	TOTALS  Kshs.
As at 1 <sup>st</sup> July 2012	2,825,560	3,405,479	3,144,840	9,375,879
Addition during the year:	-	-	<u>225,000</u>	<u>225,000</u>
<b>As at 30<sup>th</sup> June, 2013</b>	<b><u>2,825,560</u></b>	<b><u>3,405,479</u></b>	<b><u>3,369,840</u></b>	<b><u>9,600,879</u></b>
<b>Accumulated Depreciation</b>				
As at 1 <sup>st</sup> July, 2012	2,613,403	2,368,305	2,935,271	7,916,979
Charge for the year	<u>53,039</u>	<u>129,647</u>	<u>144,711</u>	<u>327,397</u>
<b>As at 30<sup>th</sup> June, 2013</b>	<b><u>2,666,442</u></b>	<b><u>2,497,952</u></b>	<b><u>3,079,982</u></b>	<b><u>8,244,376</u></b>
<b>NET BOOK VALUE</b>				
<b>AS AT:</b>				
<b>As at 30<sup>th</sup> June, 2013</b>	<b><u>159,118</u></b>	<b><u>907,527</u></b>	<b><u>289,858</u></b>	<b><u>1,356,504</u></b>
As at 30 <sup>th</sup> June, 2012	<u>212,157</u>	<u>1,037,174</u>	209,569	<u>1,458,901</u>

(a) Assets are valued on historical cost basis. A full year's depreciation is charged in the year of purchase.

Depreciation is on reducing balance method and the rates shown above have been applied.

## 7. Trade and other receivables

There were no trades and other receivables recorded for the year.

## 8. Trade and other payables

There were no trade and other payables for the year

## 9. Cash and Cash equivalent

	<b>2013</b> <b>Kshs</b>	<b>2012</b> <b>KShs</b>
<b>(a) Bank Charges</b>		
Recurrent Account	5,542,042.10	9,580,754.10
KCB KICC BRANCH		
AC NO 1102293830		
<b>(b) Cash in Hand</b>		
Cash in hand as at 30 <sup>th</sup> June, 2013	<u>25,601.00</u>	<u>5,483.00</u>
<b>Total cash and bank balance</b>	<b><u>5,567,643.10</u></b>	<b><u>9,586,237.10</u></b>