

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

PROGRESS REPORT ON THE PETITION FOR THE REMOVAL FROM OFFICE OF THE
AUDITOR GENERAL, MR. EDWARD R. O. OUKO, CBS

DIRECTORATE OF COMMITTEE SERVICES
CLERKS CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI



MARCH, 2017

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LIST OF ABBREVIATIONS

MPs	-	Members of Parliament
ICPAK	-	Institute of Certified Public Accountants of Kenya
EACC	-	Ethics and Anti Corruption Commission
DPP	-	Director of Public Prosecutions
OSI	-	Open Systems Integration
IT	-	Information Technology
KENAO	-	Kenya National Audit Office
CS	-	Cabinet Secretary
OAG	-	Office of the Auditor General
PSC	-	Parliamentary Service Commission
AG	-	Auditor General
ISRS	-	International Standards on Related Services
ISQC	-	International Standards on Quality Control
JKUAT	-	Jomo Kenyatta University of Agriculture & Technology
MoU	-	Memorandum of Understanding
DAGCS	-	Deputy Auditor General, Corporate Services
PPOA	-	Public Procurement Oversight Authority
PS	-	Principal Secretary
ACECA	-	Anti – Corruption & Economic Crimes Act, 2003
POCAMLA	-	Proceeds of Crime and Anti Money Laundering Act

CHAIRPERSON'S FOREWORD

On 16th February 2017 the Speaker of the National Assembly conveyed to the House a Petition regarding the removal of Mr. Edward Ouko as the Auditor-General of the Republic of Kenya pursuant to Article-251 (4) of the Constitution and Standing Order 225 (2) (b) as read with Standing Order 230. Upon reporting the petition in the House the Speaker pursuant to Standing Order 230 (3) and (4) committed it to the Departmental Committee on Finance, Planning and Trade for investigation. The Committee was to report to the House within fourteen (14) days on whether the petition discloses a ground for removal under Article 251(4) of the Constitution.

The Petition was signed by one Mr. Emmanuel Mwagambo Mwagonah and dated 13th February 2017 stating that the Auditor-General is in serious violation of the Constitution and several other laws of the Republic of Kenya. The petitioner averred, *inter alia*, that the Auditor-General had violated Articles 254(1), 201(d) and 73(2)(b) of the Constitution.

The petitioner prayed that the National Assembly interrogates the grounds in the Petition with a view of recommending to his Excellency the President to constitute a Tribunal to investigate the issues raised against Mr. Edward Ouko and determination thereof.

The Committee upon being seized of the petition and in conformity with Article 118 of the Constitution and the Petitions to Parliament (Procedure) Act, 2012 through the Office of the Clerk of the National Assembly, placed an advertisement on both the Standard and the Daily Nation Newspapers of 17th February 2017 calling for memoranda from the general public on the issues raised in the petition.

The Committee held nine (9) sittings in consideration of the petition. It also received written memoranda or submissions from various individuals. On realizing that the Committee would not be able to conclude its work within the fourteen days provided for under Standing Order 230(4), the Committee, on 1st of March 2017, sought and was granted an extension of 21 days within which to present its report to the House with effect from 2nd of March 2017. By 13th March 2017, the Committee had received representation from Mr. Emmanuel Mwagambo (the petitioner), Mr. Edward Ouko (the Auditor-General), the National Integrity Alliance, the Institute of Certified Public Accountants (ICPAK), Mr. Benjamin Ndolo, the Ethics and Anti-Corruption Commission (EACC), the Director of Public Prosecutions (DPP). The Committee had also received written submissions or briefs from the Clerk of the National Assembly, the Chief of Staff and Head of Public Service, Mr. Joseph Kinyua, and Baker Tilly Merali's Limited.

The Committee was scheduled to take evidence from the following persons in the week commencing 13th March 2017:-

1. Baker Tilly Merali's Limited;
2. The Kenya Human Rights Commission;
3. Mr. James Ochieng Oduol;
4. Seltar Crafts Ltd;
5. Baywood Holdings Limited;
6. Ms. Agnes C. Mita (Deputy Auditor-General – Corporate Services);
7. Mr. Philip Owiti (Head of Human Resource Department at the OAG);
8. Mr. Stephen Kinuthia (Deputy Auditor-General);
9. Director General of the PPOA
10. Management of JKUATES;
11. Chief finance officer at the OAG;
12. Open Systems Integration (OSI) Kenya;
13. Mr. Emmanuel Mwangambo Mwagonah (Petitioner); and
14. Mr. Edward Ouko (Auditor-General)

On Tuesday 14th March 2017, the Director of Litigation and Compliance, Mr. Antony Njoroge brought to the attention of the Committee the fact that on 13th March 2017, the High Court had issued conservatory orders restraining the Committee from further proceeding with the petition pending the hearing and determination of a case filed by Mr. Okiya Omtatah Okoiti, *High Court Petition No. 62 of 2017 Okiya Omtatah Okoiti V National Assembly of Kenya & 3 others*.

The Committee was informed that Mr. Omtatah had contended that the matters raised in the petition had been addressed by the competent offices mandated in law to investigate the matter and therefore by considering the petition, the National Assembly was usurping the powers of these agencies. The Order that was issued by Honourable Justice E. Chacha Mwita restrained the Committee from further proceeding with the petition and the National Assembly from acting on any recommendation made by the Committee pending the hearing and determination of the case. The matter will be heard on 10th April 2017.

The Director of Litigation and Compliance further informed the Committee of another court order that was issued on 14th March 2017 by Honourable Justice George Odunga granting similar conservatory orders in a second case filed by Mr. Edward Ouko himself, *Judicial review Application No. 108 of 2017 Edward Ouko v National Assembly of Kenya & 4 others*.

The Committee deliberated on the issues of the conservatory orders issued by the High Court and resolved to suspend all scheduled meetings relating to the petition. The Committee also resolved to seek the Speaker's direction or guidance on the matter. On 21st March 2017, through a Communication, the Speaker directed the Committee to suspend its investigation on the petition seeking the removal from office of Mr. Edward Ouko, the Auditor-General. He further directed the Committee to submit a progress report to the House within seven (7) days, detailing the status of the petition as at 13th March 2017 for consideration by the House in accordance with the Standing Orders.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this progress Report possible.

The Committee also extends its appreciation to all those who responded to its request for information and those who appeared before it to adduce evidence.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Finance, Planning & Trade to present this Progress Report to the House.

Hon. Benjamin Langat, CBS, M.P.

EXECUTIVE SUMMARY

Receipt and committal of the petition

The Petition seeking the removal of the Auditor-General from office was lodged by Mr. Emmanuel Mwangambo Mwagonah, an Advocate of the High Court of Kenya and received by the Clerk of the National Assembly on 14th February 2017. On 16th February 2017, through a communication from the Chair, the Speaker referred the petition to the Departmental Committee on Finance, Planning & Trade for consideration and reporting to the House pursuant to the provisions of Standing Order 230(3).

Subject of the petition

The petitioner averred that the Auditor-General, Mr. Edward Ouko, was in serious violation of the Constitution and other legislation. The petitioner contended that the Auditor-General had, *inter alia*, violated the following provisions of the Constitution:

- i. Article 254 (1) by failing to submit reports to the President and to Parliament;
- ii. Article 201 (d) regarding prudent and responsible use of public funds by allegedly failing to prevent wastage of public funds; and
- iii. Article 73 (2) (b) by ignoring merit and the approved scheme of service in the recruitment and promotion of employees in the office of the Auditor-General.

The petitioner further contended that Mr. Edward Ouko had violated the Public Procurement and Asset Disposal Act, 2005 while procuring the Audit Vault Software from Open Systems Integration (OSI) Kenya and services for the partitioning of his office. The petitioner further contended that the Auditor-General had violated the Public Audit Act, 2015 by hiring officers without advice from the Audit Advisory Board and in the engagement of external auditors to review his office's IT systems when the same firm had been contracted by Parliament to audit the Office of the Auditor General. The Auditor-General had also violated the Leadership and Integrity Act, 2012 by failing to avoid being in a position of conflict of interest.

The petitioner prayed that the National Assembly interrogates the grounds in the Petition with a view of recommending to his Excellency the President to constitute a tribunal to investigate the allegations against Mr. Edward Ouko and determination thereof.

Part one of the Report deals with the composition and mandate of the Committee.

Part two of the Report deals with the background of the report in terms of establishment of the Office of the Auditor-General under Article 229 of the Constitution, the legal provisions that the petitioner relied on in his petition; and the gist of the petition.

Part three of the Report deals with evidence adduced by various witnesses. In this part, the Committee had representation from ten (10) persons key among them being the petitioner, the Auditor-General, the DPP and the Deputy CEO of the Ethics and Anti-Corruption Commission.

Part four of the report provides a conclusion of the Report indicating that the petition is still pending before the Committee and prays that the court will expedite and conclude hearings to allow the National Assembly to play its Constitutional role in consideration of the petition.

The Committee, following guidance and direction by the Speaker resolved to suspend its consideration of the petition pending the outcome of an appeal lodged by the National Assembly on the conservatory orders issued by the High Court.

PART ONE

1.1 Mandate of the Committee

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental Committees of the National Assembly established under SO 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee exercises oversight over the following Government Ministries and Departments:

1. The National Treasury.
2. Ministry of Tourism.
3. Ministry of Devolution & Planning.
4. Ministry of Industry, Trade & Cooperatives.
5. The Controller of Budget.
6. The Commission on Revenue Allocation.
7. The Salaries and Remuneration Commission.

1.2 Committee Membership

The committee comprises of the following members:-

Chairperson	The Hon. Benjamin Langat, MP
Vice Chairperson	The Hon. Nelson Gaichuhie, MP
	The Hon. Dr. Oburu Oginga, MP
	The Hon. Jimmy Nuru Angwenyi, MP
	The Hon. Eng. Shadrack Manga, MP
	The Hon. Ahmed Shakeel Shabbir, MP
	The Hon. Sammy Koech, MP
	The Hon. Sammy Mwaita, MP
	The Hon. Tiras N. Ngahu, MP
	The Hon. Hezron Awiti, MP
	The Hon. Abdullswamad Sheriff, MP
	The Hon. Abdul Rahim Dawood, MP
	The Hon. Alfred W. Sambu, MP
	The Hon. Anyanga Andrew Toboso, MP
	The Hon. Daniel E. Nanok, MP
	The Hon. Dennis Waweru, MP
	The Hon. Joash Olum, MP
	The Hon. Jones M Mlolwa, MP
	The Hon. Joseph Limo, MP
	The Hon. Kirwa Stephen Bitok, MP
	The Hon. Lati Lelelit, MP
	The Hon. Mary Emase, MP
	The Hon. Ogendo Rose Nyamunga, MP
	The Hon. Patrick Makau King'ola, MP
	The Hon. Ronald Tonui, MP
	The Hon. Sakaja Johnson, MP
	The Hon. Sakwa John Bunyasi, MP
	The Hon. Sumra Irshadali, MP

1.3 Committee Secretariat

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Principal Legal Counsel 1	Denis Abisai
Legal Counsel II	Emma Essendi
Research Officer III	Erick Osoi
Research Officer III	Sharon Rotino

PART TWO

2.0 BACKGROUND INFORMATION

2.1 Office of the Auditor-General (OAG)

The Office of the Auditor-General is one of the independent offices established under Article 229 of the Constitution and section 4 of the Public Audit Act, 2015. The office comprises of the Auditor-General as its statutory head and all other staff appointed by the Auditor-General.

Over and above the functions of the Auditor-General as itemized under Article 229 of the Constitution and section 7 of the Public Audit Act, 2015, the Auditor General is obligated under Article 254 (1) to submit a report to the President and to Parliament as soon as practicable after the end of each financial year.

Section 25 of the Public Audit Act of 2015 establishes the Audit Advisory Board that has been assigned functions under section 27. Some of the functions of the Board are inter alia, to advise the Auditor-General in the recruitment of the senior managers into the Office of the Auditor-General.

2.2 Provisions on the removal from office of the holder of an Independent office

Removal from office of the holder of an Independent office is provided for under Article 251 of the Constitution. The provision states that:-

(1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for –

- (a) Serious violation of this Constitution or any other law, including a contravention of Chapter Six;*
- (b) Gross misconduct, whether in the performance of the member's or the office holder's functions or otherwise;*
- (c) Physical or mental incapacity to perform functions of office;*
- (d) Incompetence; or*

- (e) *Bankruptcy*
- (2) *A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.*
- (3) *The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.*
- (4) *On receiving a petition under clause (3), the President –*
- (a) *May suspend the member or the office holder pending the outcome of the complaint; and*
- (b) *Shall appoint a tribunal in accordance with clause (5).*
- (5) *The tribunal shall consist of–*
- (a) *A person who holds or has held office as a judge of a superior court, who shall be the chairperson;*
- (b) *At least two persons who are qualified to be appointed as High Court judges; and*
- (c) *One other member who is qualified to assess the facts in respect of the particular ground for removal.*
- (6) *The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.*
- (7) *A person suspended under this Article is entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.*

2.3 The Petition

Article 119(1) of the Constitution provides that “*Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation*”. Further Article 151 (2) of the Constitution states that “*A person desiring the removal of a member of a commission or of a holder of an independent office on any ground*

specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground”. The Public Petition (**Annex 2**) on removal of Mr. Edward Ouko from office as the Auditor-General was submitted by Mr. Emmanuel Mwangambo Mwagonah and presented to the House by the Speaker of the National Assembly on 16th February 2017 pursuant to Article 254 of the Constitution and Standing Order No. 230. The petition was referred to the Departmental Committee on Finance, Planning & Trade for consideration and reporting to the House within fourteen days.

In summary, the petitioner wished to draw the attention of the House that Mr. Edward Ouko, the Auditor-General, had seriously violated the Constitution and other legislation. The petitioner contends that the Auditor-General has, inter alia, violated the following provisions of the Constitution:

- i. Article 254 (1) by failing to submit reports to the President and to Parliament;
- ii. Article 201 (d) regarding prudent and responsible use of public funds by allegedly failing to prevent wastage of public funds; and
- iii. Article 73 (2) (b) by ignoring merit and the approved scheme of service in the recruitment and promotion of employees in the office of the Auditor-General.

The petitioner further contends that Mr. Edward Ouko had violated the following laws:

- the Public Procurement and Asset Disposal Act, 2005 in procuring the Audit Vault Software from Open Systems Integration (OSI) Kenya and in procuring of partitioning services for his office;
- the Public Audit Act, 2015 by hiring officers without any advise from the Audit Advisory Board and in the engagement of external auditors to review his office’s IT systems when the same firm had been contracted by the National Assembly to audit his office;
- the Leadership and Integrity Act, 2012 on recruitment of staff and in the procurement of Audit Vault Software and conflict of interest in engagement of external auditors.

The petitioner prayed that:-

- (i) The National Assembly resolves that the Petition discloses grounds for removal of the Auditor-General as provided for under Article 251(1) of the Constitution of Kenya; and

- (ii) The National Assembly recommends to H.E. the President the appointment of a tribunal to investigate the Auditor-General in accordance with the provisions of Article 251 of the Constitution.

2.4 Provisions of the law that the petitioner relies on

2.4.1 Constitutional Provisions

1. Article 251 (1) of the Constitution which provides that the holder of an independent office may be removed from office only for serious violation of the Constitution or any other law including a contravention of Chapter Six of the Constitution, gross misconduct, physical or mental incapacity, incompetence or bankruptcy;
2. Article 254 (1) of the Constitution which provides that as soon as practicable after the end of each financial year, each commission, and **each holder of an independent office**, shall submit a report to the President and to Parliament;
3. Article 232 (1) (h) as read with Article 232 (2) of the Constitution which provides that the values and principles of public service which include representation of Kenya's diverse communities shall apply to public service in all state organs in both levels of government;
4. Article 201 (d) of the Constitution which provides that public money shall be used in a prudent and responsible way; and
5. Article 73(2)(b) of Chapter Six of the Constitution which provides that the guiding principles of leadership and integrity include "*objectivity and impartiality in decision making and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices.*

2.4.2 Acts of Parliament

I. Public Procurement and Disposal Act, 2005

1. Section 29 of the Public Procurement and Disposal Act, 2005 provides the circumstances under which an alternative procurement method may be chosen. Subsection (3) allows the procuring entity to proceed only if there is a written approval from its tender committee.
2. Section 74 of the Public Procurement and Disposal Act, 2005 which provides that when undertaking a direct procurement, it must have been established that there is an urgency

to procure, there are no alternatives or substitutes to supply the service, and because of the urgency the other alternatives are impractical.

3. Section 54 (2) of the Public Procurement and Disposal Act, 2005 which provides that if the estimated value of the goods, works or services being procured is equal to, or more than the prescribed threshold for national advertising, the procuring entity shall advertise, at least twice in a newspaper of general nationwide circulation which has been regularly published for at least two years before the date of issue of the advertisement, and on its website in instances where the procuring entity has a website, and the advertisement shall also be posted at any conspicuous place reserved for this purpose in the premises of the procuring entity as certified by the head of the procurement unit.

II. The Public Audit Act of 2015

4. Sections 25 and 27 of the Public Audit Act, 2015 respectively establish the Audit Advisory Board and assigns it functions as advising the Auditor-General in the exercise of his powers and performance of his mandate especially on matters related to recruitment of senior managers into the Office of the Auditor-General.
5. Section 61 (1) (d) of the Public Audit Act, 2015 makes it an offence for an officer of the office of the Auditor-General to fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under the Public Audit Act, 2015.

III. The Leadership and Integrity Act, 2012

6. Section 16 of the Leadership of Integrity Act, 2012 on conflict of interest provides as follows:
 - (1) *A State officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.*
 - (2) *Without limiting the generality of subsection (1), a State officer or a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having*

that interest would result in a conflict of the State officer's or public officer's personal interests and the officer's official duties.

(3) A State officer or a public officer whose personal interests conflict with their official duties shall declare the personal interests to the public entity or the Commission.

IV. Public Officer Ethics Act, 2003

7. Section 15 (1) of the Public Officer Ethics Act, 2003 provides that *“a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated”*.

V. The National Cohesion and Integrity Act, 2008

8. Section 7 of the National Cohesion and Integrity Act, 2008 which provides that *“Appointments in public establishment shall seek to represent the diversity of the people of Kenya in the employment of staff”*.

PART THREE

3.0 SUBMISSIONS AND EVIDENCE

This part deals with the evidence received by the Committee as at 13th March 2017. It contains evidence from the witnesses who responded to the Committee's advertisement in the local dailies of 17th February 2017 and those that had been specifically invited by the Committee by virtue of their offices or having been mentioned in the petition.

3.1 Evidence from the Petitioner, Mr. Emmanuel Mwangambo Mwagonah

On Tuesday 28th February 2017, Mr. Mwangambo appeared before the Committee to provide a detailed brief of his petition to the National Assembly praying for the removal from office of the Auditor-General, Mr. Edward Ouko. The proceedings of that meeting together with his additional memorandum submitted separately (**Annex 3**) are itemized below.

Mr. Mwagonah submitted that the Auditor-General, Mr. Edward Ouko, should be removed from office on the following grounds:-

1. Failure to submit reports to the President and Parliament

- a) The Auditor-General had violated the provisions of Article 254 (1) of the Constitution which provides that "*as soon as practicable at the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament*" by not submitting annual reports to the President and Parliament since his appointment in August 2011. The submission of this report would enable the National Assembly to properly exercise its mandate as per Article 95(5).
- b) Despite the fact that the Constitution does not define what amounts to a practicable time, the report under Article 254 (1) of the Constitution is to be submitted at the end of the financial year but before the end of the subsequent financial year.
- c) Failure to submit this report is against section 7(1)(f) of the Public Audit Act which provides that:

In addition to the functions and responsibilities of the Auditor-General as set out in Article 229 of the Constitution, the Auditor-General shall-

(f) Shall provide any other reports as may be required under Article 254 of the Constitution.

d) Evidence of this violation can be corroborated by the Clerk of the National Assembly and the absence of the reports in the Kenya Gazette as required by Article 254 (3) of the Constitution which provides that: “every report required from a commission or holder of an independent office under this Article shall be published and publicized”.

2. Conflict of interest in assigning external auditors extra work

(Engagement of the PSC appointed Auditor to review OAG internal controls systems)

a) The Auditor-General contracted Baker Tilly Merali’s to review his office’s internal systems controls when the Parliamentary Service Commission had already contracted the same firm as the external auditors of OAG pursuant to Article 226(4) of the Constitution. Ordinarily, this audit should have formed part of the external audit assignment. The external auditor was paid seven million two hundred thousand Kenyan Shillings (Kshs. 7,200,000.00). This compensation was more than three times the amount that he should have been paid for the job.

b) The firm both acted as the external and internal auditors while undertaking a consultancy within the office of the Auditor-General. The Auditor-General failed to disclose the obvious conflict of interest contrary to section 61 (1) (d) of the Public Audit Act, which provides that –

Any officer of the office of the Auditor General commits an offence if that officer-

(d) Fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act;;

c) The Auditor General in addition to failing or neglecting to declare the potential conflict of interest, single sourced the said firm and thereby flouted the provisions of the Public Procurement and Asset Disposal Act, 2005.

d) Further, the Auditor-General engaged the same firm together with ICPAK to undertake a project called “Project for Framework for Partnership of KENAO with Audit Firms in Kenya.” The output of the engagement was purely for the consumption by the Auditor-

General. This is corroborated in a publication of the Auditor-General, Kenya, July 2015 – February 2016, Page 7.

3. Wastage of public funds contrary to Article 201 (d) of the Constitution

I. Accumulating high telephone and internet costs

- a) That the Auditor-General contrary to the provisions of Article 201 (d) of the Constitution and section 15 of the Public Officer Ethics Act, 2003 wasted and abused the public resources allocated to his office without the tax payers getting value for money. The resources from the public coffers always fund his many private travels and he is forced to remotely run the OAG. This resulted in bloated telephone and internet costs amounting to a sum of Kshs. 1,000,000 for his ipad in 2014.

Section 15 (1) of the Public Officer Ethics Act, 2003 provides that- *“a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated”*.

II. Allocating official vehicles for private use by immediate family members.

- b) The Auditor-General further wasted public resources entrusted to his care by irregularly appropriating the five vehicles attached to his office for personal use by his immediate family members without following the appropriate procedure and therefore easily abused. One vehicle is allocated to his wife and another one to the daughter. These vehicles include two Mercedes Benz, one Toyota Land cruiser VX, one Volkswagen Passat and one Nissan Patrol. All the above vehicles have private number plates.

III. Procurement of regional offices in Mombasa

- c) The Auditor-General in contravention of Article 201 (d) of the Constitution used public funds allocated for running his office to procure offices at Mombasa which were never utilized. The Auditor-General procured and paid for leased space for regional offices in Mombasa for a period of over one year which were never occupied or used in any way by the office. A total of Kshs. 10, 000, 000.00 was paid to Baywood Holdings Limited as consideration for the lease over the period the premises were held.

IV. Contracting design consultant to partition Head Office

- d) The Auditor General in 2012 contracted a firm, BayWood Holdings Limited, to partition KENAO head offices. The firm was paid Kshs. 25,000,000 to partition the head office which work was never done. The Auditor-General contravened Article 201 (d) of the Constitution by failing or neglecting to ensure the efficient use of public funds since the work for which the design consultant were contracted was never done.

4. Irregular procurement of Audit Vault Software

- a) In contravention of Article 201 (d) of the Constitution, the Auditor General personally authorized the payment of Kshs. 100,675,680 for the purchase of the Audit Vault Software on 18th October, 2013 prior to installation of the software and after all the officers in the command chain refused to approve the voucher on grounds of insufficient procurement documentation. The Audit Vault Software was procured to store all the IFMIS transactions undertaken by the ministries and provide a good audit trail for the Auditor-General. According to the letter by the Principal Secretary of Treasury to the Ethics and Anti-Corruption Commission, the value of the Audit Software was estimated to be Kshs.18,000,000.
- b) The Auditor-General has continued to incur extra costs in the form of license fee on the Audit Vault Software although it has never been put into proper use.
- c) Contrary to sections 29 and 74 of the Public Procurement and Asset Disposal Act, 2005, the Audit Vault Software was irregularly single sourced from OSI Kenya Limited based on misleading information that it was the only ORACLE partner in Kenya who had capacity to supply and implement the Audit Vault Software.
- d) At the time of payment for the Audit Vault Software, the Auditor-General did not have a written contract with M/s Open Systems Integration (OSI) Kenya contrary to sections 75 & 135 of the Public Procurement and Asset Disposal Act, 2005. The Auditor General as the accounting officer, pursuant to Article 226 of the Constitution, failed to ensure that prior to the approval of the payment of the audit vault software the contract met all the requirements of the law.

- e) The Auditor General as the accounting officer failed to ensure that public money was applied lawfully and in an effective manner contrary to Article 226 (5) of the Constitution which provides that - *“if the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”*.
- f) The EACC investigated the matter, prepared a report and forwarded it to the DPP for prosecution on 16th December 2016 because of the inflated cost of the Audit Vault Software and flouting of sections 29 & 74 of the Public Procurement and Disposal Act, 2005 and regulation 10 of the Public Procurement and Disposal Regulations of 2006.

5. Irregular procurement of Jomo Kenyatta University Limited

- a) The Auditor-General in contravention of section 74 of the Public Procurement and Disposal Act, 2005 irregularly single sourced Jomo Kenyatta University Enterprises Limited to review the office IT systems at an approximate cost of Kshs. 120,000,000.
- b) This contract was greatly inflated against the provisions of section 54 of the Public Procurement and Asset Disposal Act, 2005 which provides that *“standard goods, services and works with known market prices shall be procured at the prevailing market price”*.

6. Irregular recruitment of staff.

A. Employment of persons from one ethnic community

- a) Contrary to Articles 73(2)(b), 232(1)(h) and 232(2) of the Constitution, the Auditor-General jointly with the Director Human Resource, have ignored the approved schemes of service with recruitment being defined by the Auditor-General and skewed towards one community as opposed to getting advice from the Audit Advisory Committee established under section 27 of the Public Audit Act, 2015. The staff employed comprise largely of members from one geographical region in contravention of section 7 of the National Cohesion and Integration Act, 2008 which provides that *“appointments in public*

establishments shall seek to represent the diversity of the people of Kenya in the employment of staff”.

B. Irregular employment of Mr. Fred Odhiambo

- b) The Auditor-General recruited, Mr. Fred Odhiambo, the son of a close friend and earmarked him for forensics, performance and other specialized audits even though he did not have formal training. The Kenya National Audit Commission was not involved in his recruitment and neither was the Scheme of Service observed. Up to date he has not satisfied the key requirements to be a Director as defined in the Scheme of Service. This is a clear violation of Articles 73 (2)(b), 232(1) (h) and 232(2) of the Constitution.

3.2 Evidence from the Chief of Staff and Head of Public Service

The Committee wrote to the Chief of Staff and Head of Public Service seeking to establish the nature of reports contemplated under Article 254(1) of the Constitution and whether the Presidency had received such reports from the Auditor-General as contemplated in the Constitution. Through his letter Ref. No. OP.CAB/14/31A and dated 23rd February 2017, the Chief of Staff and Head of Public Service, Mr. Joseph Kinyua, EGH, forwarded his brief to the Committee. In his brief (**Annex 4**) he asserted the following:

1. That the reports contemplated under Article 254(1) and section 7(1)(f) of the Public Audit Act, 2015 are the annual reports of the activities, and operations, which the Auditor-General would have undertaken during the year with the objective of fulfilling his mandate. Without limiting the scope, the report would be expected to include a background of the Office of the Auditor-General, key milestones achieved in the period, challenges encountered and lastly the way forward.
2. That although the legal requirement for reporting to the President by the Auditor-General as a holder of an independent office is amply clear, records at the Executive Office of the President does not show the Auditor-General as having ever submitted any such reports to the President.

3. That Mr. Edward Ouko, CBS was appointed to office in August 2011 pursuant to Article 229 (1) of the Constitution. This means that the current Auditor-General has been in office for about five and half years.

3.3 Evidence from the Clerk of the National Assembly

The Committee wrote to the office of the Clerk of the National Assembly seeking to establish whether or not the Auditor General had submitted the reports contemplated under Article 254 (1) of the Constitution and on the hiring of an external auditor by the National Assembly to audit the accounts of the Auditor-General. Through his memoranda to the Committee dated 28th February 2017 and 3rd March 2017 (**Annex 5**), the Clerk of the National Assembly presented the following to the Committee regarding the petition:

A. Reporting to the Parliament

1. While the Auditor-General has regularly been presenting audit reports of other institutions pursuant to Article 229 of the Constitution, a perusal of National Assembly records indicates that the Office of the Auditor-General has not presented any report on his office to Parliament as required under Article 254 (1) of the Constitution.
2. When such reports are received, they are tabled in the House and recorded in the Votes and proceedings.
3. A responsible Commission or a holder of an independent office would also put the report on the Commission or the Office website in furtherance of Article 254 (3) of the Constitution, which provides that the report shall be published and publicized.

B. External audit by Baker Tilly Merali's Limited

4. On 26th June 2013, the Parliamentary Service Commission contracted Baker Tilly Merali's to carry out the annual audits of the Office of the Auditor-General for the years 2012 to 2017 as stipulated under Article 226 (4) of the Constitution of Kenya.
5. The National Assembly pursuant to Article 226 (4) of the Constitution and by a resolution passed on Wednesday 9th January 2013 approved the appointment of M/s

Baker Tilly Merali's to audit and report on the accounts of the Auditor-General for the years 2012/2013, 2013/2014 and 2014/2015.

6. The National Assembly, had undertaken to pay the auditors, fees as follows:
 - 1st Year (2012/2013): **Kshs. 5,524,920** -inclusive of disbursements of the sum of Kenya shillings three hundred and twenty thousand only (Kshs. 320,000);
 - 2nd year (2013/2014): **Kshs. 5,801,166** – all inclusive; and
 - 3rd Year (2014/2015): **Kshs. 6,077,412**- all inclusive
7. The auditors were expected to provide reasonable assurance to tax payers that monies appropriated by Parliament and disbursed to the Office of the Auditor-General had been applied for the purposes which they were so appropriated and that the expenditure conformed to the authority that governed it.

3.4 Evidence from the Auditor-General

On 28th February 2017, the Auditor-General, Mr. Edward Ouko, accompanied by Dr. Otiende Amollo (his legal counsel) appeared before the Committee to respond to the allegations leveled against him in the petition. In his brief and through further correspondences on the matter (**Annex 6**), the Auditor-General raised preliminary objections with the manner in which the petition had allegedly been fast tracked by the National Assembly and that the petition ought to have been dismissed. A summary of his submission to the Committee is itemized below:

1. In response to paragraphs 2,3,4 and 5 on Auditor-General's failure to submit reports to both the President and Parliament, the Auditor-General has duly submitted financial reports to the National Assembly and states as below:
 - i) There is no obligation on the Office of the Auditor-General (OAG) to submit an Audit Report to the President.
 - ii) In accordance with Article 229 (7) of the Constitution, the Auditor-General has dutifully submitted all Audit Reports to Parliament as mandated.

iii) The Report contemplated by Article 254 (1) of the Constitution is not the Audit Report but is a report containing Financial Accounts of OAG.

In accordance with Article 226 (4) of the Constitution, the National Assembly duly appointed Baker Tilly Merali's (BTM) to audit the OAG, which reports were duly submitted to the National Assembly for the FYs 2011/2012, 2012/2013 and 2013/2014. The National Assembly has not appointed an auditor to audit OAG for the subsequent years.

2. In response to paragraphs 6, 28, 29, 30, 31, 33 & 34 regarding the extra work the OAG gave to BTM, the Auditor-General informed the Committee as follows:
 - The work of Review of Internal Control Systems of the Office of the Auditor-General was not part of the scope of audit by BTM.
 - There was no conflict of interest to the extent that BTM was requested to review the Internal Control Systems of OAG.
 - Out of caution, the Auditor General sought approval of the National Assembly to engage BTM in the assigned task and an approval was granted vide correspondences referenced **No. C. 806/Vol. 11/35 and KNA 2/4(443)**.
3. In response to paragraph 7 of the Petition on the alleged many private foreign trips and huge telephone bills at the expense of the taxpayer's money, the Auditor-General is a stranger to the allegations on the issue contained therein. The Auditor-General confirmed not having made any private trips at taxpayer's expense nor wasted public funds.
4. In response to paragraph 8 on the alleged misuse of OAG vehicles, the Auditor-General is allocated two (2) vehicles only. All other vehicles are pool vehicles under the control of the Transport Manager.
5. In response to paragraph 9 on the lease of Mombasa offices, the Auditor General averred that procurement of leases and termination and related matters are handled by the Deputy Auditor-General, Corporate services (DAG CS) and the Procurement Department. The Auditor-General was therefore a stranger to this allegation.
6. In response to paragraphs 10 and 26 on the alleged irregular payment for the design and partitioning KENAO, the DAG CS and the Procurement Department and not the Respondent handle procurements. The contract was terminated on the basis of the advice given by Ms. Agnes Mita, DAG CS by a letter dated August 20th 2014 to Shelter Craft

Limited. By terminating the contract, taxpayers' money was saved as Treasury allocated resources for purchase of land and construction of OAG offices.

7. In response to paragraphs 11, 12, 16, 17, 18, 19, 20, 21, 22 and 23 on the alleged irregular procurement of Audit Vault Software, the Auditor-General responded as follows:
- i) The issue of procurement of the Audit Vault Software has been under investigation for 32 months from 13th June 2014. The matter came to conclusion on 3rd February 2017 after detailed consideration by the Director of Public Prosecution through his letter of even date personally signed by the DPP.
 - ii) In exercise of his exclusive constitutional powers, the Director of Public Prosecution concluded that there was no wrong doing by the Respondent in respect of all counts.
 - iii) Considering the provisions of Articles 47, 50 (1), 157 (6) (b), (10) and (11) of the Constitution, as read with Standing Order Numbers 89 (2) and (3) and 223 (f) and (g), the Auditor-General respectfully submitted that it was not open to National Assembly to initiate a similar parallel inquiry as that not only amounted to a review of the decision of the DPP contrary to the Constitution but also exposed the Auditor-General to double jeopardy contrary to Article 47 of the Constitution and The Fair Administrative Action Act, 2015.
 - iv) All documents related to the issue were submitted to the relevant investigative agencies and remain in their custody to date.
8. In response to paragraphs 13, 14, 15 and 36, on the alleged irregular recruitment, he stated that the DAG-CS through the Human Resource Department handles recruitment and employment within the Office of the Auditor-General. Any and all questions on propriety of any employment cannot be directed to the Auditor-General. He was however aware that the office had observed diversity and incorporated 23 tribes in its 1,273 employment workforce. Of this, the highest representation was of Kikuyu extraction at 408 representing 32.05% of the total workforce as shown in the table below.

S/NO	ETHNICITY	STATISTICS AS AT FEB. 2017	
		NO. OF STAFF	% OF WORKFORCE
1	Boran	1	0.08

2	Burji	3	0.24
3	Embu	28	2.20
4	Gabra	18	1.41
5	Gureeh	1	0.08
6	Kalenjin	55	4.32
7	Kamba	130	10.21
8	Kikuyu	408	32.05
9	Kisii	123	9.66
10	Kuria	1	0.08
11	Luhya	127	9.98
12	Luo	259	20.35
13	Maasai	7	0.55
14	Meru	56	4.40
15	Mijikenda	18	1.41
16	Taita	10	0.79
17	Ogaden	1	0.08
18	Orma	1	0.08
19	Pokot	4	0.31
20	Samburu	1	0.08
21	Somali	8	0.63
22	Teso	3	0.24
23	Suba	9	0.71
24	Secondment	1	0.08
	Total	1273	100.00

9. In response to paragraphs 24 and 25, Mr. Ouko stated as follows:

- a) Procurement of services falls under DAG CS and the Procurement Department.
- b) To the best of his knowledge, the engagement of JKUAT was a government to government procurement fully acceptable and lawful under section 4 (2) (c) of the Public Procurement and Disposal Act, 2005.

- c) Insofar as the Petitioner refers to paragraph 23 of the Petition concerning the Audit Vault Software, the response to paragraph 18 hereinabove, has sufficiently addressed the concerns with regards to the Audit Vault Software.
10. In response to paragraph 27 on recruitment of senior managers at the OAG without an advisory from the Audit Advisory Board, Mr. Ouko stated as follows:
- i) Article 252 (1) (c) of the Constitution empowers the Office of the Auditor-General to recruit its own staff. However, sections 16 and 25 of the Public Audit Act, 2015 appear to restrict that discretion.
 - ii) In *High Court Petition 388 of 2016 Transparency International (TI Kenya) versus the Attorney-General and the Auditor-General*, a person successfully petitioned the High Court which issued interim orders suspending the aforesaid provision of the Act.
 - iii) The lawful position that subsists therefore is that nothing stops the office from recruiting staff in accordance with Article 252 (1) (c) of the Constitution.
11. In response to paragraph 35 on procurement of the services of OSI Kenya, Mr. Ouko stated as follows:
- i) He was **NOT AWARE** of any money paid by OSI (K) to any entity.
 - ii) He was not aware of any company called Westcon Africa UK and is not associated with any such firm.
 - iii) He did not know a Mr. Ochieng Odoul nor has any such person acted on his behalf as alleged.
 - iv) He had not benefitted from award of contract to OSI (K) as is alleged or at all.
 - v) Through a separate legal process, he has sought appropriate remedies in law against **Mr Emmanuel Mwangambo Mwagonah** for his malicious, false and reckless utterances.
12. In response to paragraph 37, Mr. Ouko noted the concession by the Petitioner that all the matters raised have been subject of investigation by the Ethics & Anti-Corruption Commission (EACC), an Independent Constitutional Commission and subject to the final decision by the Director of Public Prosecutions. Paragraph 37 is therefore, a clear concession of abuse of the legal process, demonstrates inadmissibility of the Petition and admits to undermining the interest of administration of justice as expressly contemplated by Article 157(11) of the Constitution.

13. Mr. Ouko prayed that the Petition be dismissed, the inquiry terminated forthwith and the Petitioner be appropriately punished for swearing a false affidavit and for conspiracy to defeat the administration of justice and wilful misrepresentation to this August House.

3.5 Evidence from the National Integrity Alliance

On 1st March 2017, Mr. Irungu Houghton and Mr. Samuel Kimeu of the National Integrity Alliance appeared before the Committee following a request placed in the local dailies seeking memoranda or submissions on the petition. They submitted the following regarding the petition:

1. The petitioner's claims were not substantiated on several counts and were vexatious. This was evident when the petitioner appeared before the Committee on 28th February 2017 as he did not produce any evidence to corroborate his allegations.
2. The Petition falls short of constitutional and legal standards regulating fair administrative justice and the removal of independent office holders. It is against Article 47 of the Constitution on fair administration of justice, the Petitions to Parliament (Procedure) Act, 2012 and the Fair Administrative Actions Act, 2015.
3. It is not clear who the petitioner is going by Mr. Mwangambo's own admission that he was acting on behalf of a client when he appeared before the Committee. This is contrary to section 3(1) of the Petitions to Parliament (Procedure) Act, 2012.
4. It seeks to disable a constitutionally mandated oversight office vital for upholding integrity and the fight against corruption. EACC is one of the other offices that have faced similar attacks in the past.
5. Mr. Ouko had been cleared by the DPP of all the allegations related to procurement and abuse of office. The DPP is on record expressing his concerns on political pressure being exerted on his office to charge Mr. Ouko. The Committee and by extension Parliament should work to protect the OAG from unwarranted attacks.
6. The Petition should be dismissed since it falls short of the evidence and legal standards set out in Article 251 of the Constitution.

3.6 Evidence from Mr. Benjamin Wambua Ndolo

Through his written memorandum to the Committee dated 20th February 2017 and subsequent appearance before the Committee on Wednesday 1st March 2017, Mr. Wambua opposed the petition highlighting the following:

1. The holder of the Office of Auditor General is appointed by Parliament before deployment.
2. The petition against Mr. Edward Ouko was done in bad faith considering that there have been much more pronounced cases of corruption that have been reported without anybody presenting a similar petition to Parliament.
3. The issue of skewed appointment on ethnic basis is not an issue confined to the office of the Auditor-General but is an issue audited and reported widely by the National Cohesion Integration Commission (NCIC), which found the Executive arm of government to be the biggest culprit in this anomaly. At any rate, most of the top echelon employees at OAG are staff that Mr. Ouko found there when he joined 5 years ago.
4. The Office of the Director of Public Prosecutions (ODPP) is the constitutional body mandated to bring charges against any person to a court of law. The DPP is on record acknowledging a strange urgency and interference with the matter of the Auditor-General by an 'unseen hand'. The ODPP finding no evidence and no grounds cleared Mr Ouko and Parliament cannot establish a quasi-judicial exercise to 'plough in vain' as this would tantamount to a witch hunt of a most personal and obnoxious nature.
5. The government has procedures to surcharge Mr. Ouko if he is found to have accrued telephone calls amounting to a million shillings.
6. The OAG has not yet established the Audit Advisory Board since the said law is before court where it was challenged for alleged unconstitutionality and therefore to deliberate on it would be *sub judice*
7. Unlike other constitutional office holders, Mr. Ouko has no chase cars.

8. The Public Service Commission is mandated to appoint and deploy staff within the office of the Auditor-General as per the Public Audit Act of 2015 and not the Auditor-General.
9. That from the outset, much of the contents of the petition by Mr Mwagonah seem driven by malice. The source of his information points to illegal leaks from inside the institution, an indication of internal conflict.
10. Mr. Edward Ouko's predecessor, Mr. Antony Gatumbu, who left in 2011 went to work in the Office of the President, an arm of the Executive.
11. Mr. Wambua finally prayed that the National Assembly dismisses the petition and commended the Auditor-General for performing his work diligently.

3.7 Evidence from ICPAK

On 1st March 2017, the Vice Chairman of ICPAK Mr. Julius Mwatu, accompanied by Messrs Fredrick Riaga, John Ndanyi, Geoffrey Malombe, Samuel Okelo, and Tom Nyangare appeared before the Committee to make a presentation on the issues raised in the petition. In his brief (**Annex 7**), Mr. Mwatu informed the Committee as follows:

1. ICPAK was interested in the petition because:
 - (i) ICPAK is mandated by the Accountants Act, 2008 to regulate the accountancy profession in Kenya. It is imperative to note that the Petition points out matters that touch on the mandate of the Institute, in particular, matters related to conflict of interests and threats to independence of the Auditor-General;
 - (ii) ICPAK partnered with KENAO in the implementation of the "Framework for Partnership with KENAO on Audit of Public Sector and Donor Funded Projects by Audit firms in Kenya" project.
2. Response to matters raised on paragraphs 6, 28,29,30,31 & 32 of the petition on extra work given to BTM.
 - a) It is within professional norms for a firm to be engaged by the same client for assurance (financial audit) services and other non-assurance (business advisory)

services. In such a situation, both the auditee and the auditor are professionally obligated to put in place safeguards against threats to their independence by giving or accepting any assurance services. However, the duty of care is weighed more on the part of the auditor.

- b) There is no law prohibiting an auditee from giving his external auditor extra work.
 - c) Code of Ethics 290 of the Code of Ethics for Professional Accountants as issued by the International Ethics Standards Board of Accountants (IESBA) and adopted by the Institute, requires that in assurance engagements that firms be independent of assurance clients. It further states that before providing a non-assurance (consultancy or advisory) service to an assurance (audit) client, the firm should determine whether providing such a service would create threats to its independence. If a threat is created that cannot be reduced to an acceptable level even by applying appropriate safeguards the non-assurance service should not be provided.
 - d) Evidence from M/s. Baker Tilly Merali (BTM) shows that they employed adequate safeguards while undertaking the audit assignment given by the National Assembly and the extra work given by the OAG. The safeguards are as follows:
 - i. The auditor required of the client (Office of the Auditor General) to obtain a no objection clearance from Parliament ahead of accepting appointment. This was duly done.
 - ii. The auditor (BTM) has in accordance with Code of Ethics 290, demonstrated to the satisfaction of the Institute that the firm took the necessary steps to manage threats to its independence by having separate and distinct teams undertaking the two assignments independently.
3. Statement of facts regarding the “Framework for Partnership of KENAO with the Audit Firms in Kenya” project.
- THAT on 18th March 2013, ICPAK acting independently submitted a proposal to World Bank to fund activities in strengthening the practice of accountancy in Kenya.

- THAT on 27th January 2014, the World Bank Director approved the Institutional Development Fund as a grant to ICPAK amounting to USD 68,000.
 - THAT a number of contracts and purchase of goods and services were captured in the contract.
 - THAT prior to the award of the grant, World Bank reviewed ICPAK policies and processes to ensure their adequacy and safeguards.
 - THAT in line with World Bank Procurement Guidelines and ICPAK Procurement Policies, ICPAK advertised an open international tender where eight firms responded with BTM being among them.
 - THAT in accordance with Consultant Qualification for Services (CQS) for the World Bank, ICPAK processed the bids and awarded the contract No. 8 to Baker Tilly Merali to **develop a framework for improving the quality of audit among small and medium sized audit firms for audit of the public sector and donor projects.**
 - THAT in discharging its mandate BTM had interface with the Office of the Auditor-General's Office as well as other stakeholders in the donor funded projects.
 - THAT BTM developed and trained firms selected by ICPAK on how to audit on behalf of the Auditor-General and Donors.
 - THAT upon hand over, a framework was developed to guide the partnership between ICPAK and the Auditor-General in relation to audit work.
 - THAT ICPAK has signed a number of frameworks and MOUs with Government and Non-Government Institutions and hence there is nothing untoward in the framework with the Office of OAG.
 - THAT the World Bank has had country missions and received reports from Institutional Auditors and all contracts including contract no. 8 have been cleared.
4. Finally ICPAK prayed that the Committee considers the matter objectively by allowing the respondent fair administration action as provided for under Article 47 of the Constitution and requiring the petitioner to substantiate all the allegations. The committee should then evaluate the evidence adduced and return a verdict that would serve to strengthen the voice

of accountability and also embolden Parliament as the advocate of constitutionalism of last resort.

3.8 Evidence from Baker Tilly Merali's

Through his written memorandum to the Committee dated 21st February 2017, Mr. Madhav Bhandari, Partner at Baker Tilly Merali's Certified Public Accountants, responded to the allegations against his company in the petition as follows (**Annex 8**):

- 1) That on 6th June 2013, the Parliamentary Service Commission awarded Baker Tilly Merali's a contract to Audit the Office of the Auditor-General for the years ended 30th June 2012, 30th June 2013 and 30th June 2014.
- 2) That the allegations in paragraphs 4 and 5 of the petition accusing the Auditor-General (AG) of violating Article 254 (1) of the Constitution are inaccurate and incorrect. On 25th March 2014, the Auditor General asked for a quote for specific controls review agreed upon procedures assignment.
- 3) That the allegations in paragraphs 6 and 29 that the Auditor-General assigned Baker Tilly Merali's an extra work to review internal control systems when the company had been contracted by the Parliamentary Service Commission (PSC) as external auditors of the OAG is inaccurate and incorrect on the following reasons:
 - a) Scope of Service – External Financial Audit
The audit was intended to provide reasonable assurance to tax payers that monies of OAG have been applied to the purposes for which they were appropriated and that the expenditure conforms to the authority that governs it. The appointed firm will conduct audits in accordance with the Generally Applied Standards on Auditing.
 - b) The contract from PSC 3.2.2 allowed consultancy services.
 - c) They attached an e-mail dated 24th March 2014 from the firm to OAG requesting for confirmation and no-objection from Parliament to allow the firm to perform the system review.

- d) A letter on behalf of the Clerk of the National Assembly dated 2nd April 2014, gave a no objection to hiring of the firm's services for the system review.
- 4) Paragraph 6 of the petition is incorrect as the OAG assigned the firm the systems work after seeking and obtaining Parliamentary approval and no objection as the systems review scope was outside the original financial audit scope. Furthermore, the systems review requested the firm to review current processes and allegations in 2014 whilst the firm's financial audit was based on historical transactions for the period ended June 2012 and June 2013.
- 5) Paragraph 30 of the petition that alleges that the firm accepted extra assignment from the Office of the Auditor-General before conclusion of the first year audit engagement from the PSC is incorrect and inaccurate as the first year audit was already closed on 21st January 2014.
- 6) Paragraphs 31, 32 and 33 of the petition on the scope of audit are incorrect as the level of details required in the systems review was not part of the external audit process. The systems review scope required assessments of specific allegations made on the OAG and included detailed review of its Public Procurement Compliance, Anti-fraud policies, Ethics Committees and IT systems.
- 7) Baker Tilly Merali's was selected by an evaluation of tender by the World Bank and was not awarded any assignment by OAG. The OAG did not engage the firm to undertake a project called 'Project for the Framework for Partnership of KENAO with Audit Firms in Kenya'. The World Bank competitively selected the firm with ICPAK appointed the implementing agent of this project. The OAG was not involved.

3.9 Evidence from Ethics and Anti-Corruption Commission (EACC)

Through his written memorandum to the Committee dated 28th February 2017 (Annex 9), and subsequent appearance before the Committee by the Deputy CEO of the EACC on 9th March 2017, the Committee was briefed as follows:

a) Irregular purchase of the Audit Vault software

1. It was established that the Audit Vault Software was purchased at a cost of Kshs.100M from OSI Kenya despite it not being in the procurement plan. It was single sourced based on misleading recommendation by the Tender Committee that OSI Kenya was the only accredited Partner of Oracle in the region, yet there were other suppliers.
2. The Tender Committee was not involved in the award of the tender. The matter was not resubmitted to the committee following negotiations between OSI and the Office of the Auditor-General.
3. There was no notification of award given to OSI for the award of the tender since the matter was never resubmitted to the Tender Committee who would have awarded the tender and issued the notification and consequently there was no acceptance of the award.
4. The LPO had been issued to OSI Kenya on 14th August 2013 even before the payment voucher was prepared, authorized and approved. The Auditor-General approved the payment on 18th October 2013 after the authorized officer refused to sign.
5. OSI Kenya signed the contract on 10th October, 2013 while the Auditor-General signed the contract 22nd October 2013 way after the LPO had been issued and payment voucher prepared.
6. Full payment (100%) was effected before the supply of goods and without adequate documentation. This was done in spite of reservations registered by the senior manager audit that the interest of the OAG had not been safeguarded.
7. The Audit trail of the proceeds of Kshs. 100.6M to OSI Kenya reveal that the money went through an intricate web with final destination being third parties including officers/ or their associates within the Office of the Auditor-General as follows:-
 - i) The money that went to OSI Kenya (KCB account), Kshs. 48,420,500 went to OSI Kenya KCB account out of which USD 361,300.25 was transferred to Westcon Africa UK.
 - ii) Njuguna & Partners Advocates received Kshs. 36,089,966 from the OSI Kenya KCB account which was subsequently distributed to Mr. Stephen Ndundu (**Kshs.**

- 446,000), Carmaster (Kshs. 1.7M for purchase of car to Mr. Kinuthia's daughter), Enkei Holdings Ltd (Kshs. 13M for purchase of land), Genesis Golden Textile (Kshs. 1.8M), Newton (Kshs. 3.5M for purchase of land), Amolo & Gachoka Advocates (Kshs. 7.9M, and Faida Investment (Nanazi) (Kshs. 10M).
- iii) Kiplangat & Partners Associates (directors of OSI) received Kshs. 2, 536,750.
 - iv) Kshs. 3,400,000 was used to purchase a car for a director of OSI Kenya, Mr. Shem Mwangi.
8. The accounts of OSI Kenya had negligible amounts prior to the money for the audit vault were paid.
 9. The procurement of the audit vault was undertaken without it being included in the procurement plan.
 10. The choice of procurement method was flawed. The information given to the tender committee that only OSI Kenya was the only accredited partner of ORACLE in the region was misleading.
 11. Upon conclusion of investigations, the file was forwarded to the DPP with a recommendation to charge Mr. Edward Ouko, Mr. Stephen Kinuthia, Mr. Justus Ongera, Mr. Charles Gichohi, Ms. Annette Mwangi, Mr. Shem Mwangi, Mr. Ephantus Kairu, Mr. Sylvester Kiplangat and OSI Kenya Limited. There are justifiable reasons to charge Mr. Edward Ouko since he is the one who signed the payment voucher of an irregular procurement.
 12. The recommended charges subject to the concurrence of the DPP were:-
 - i) Abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.
 - ii) Engaging in a project without prior planning contrary to section 45 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.
 - iii) Wilful failure to comply with the law relating to procurement contrary to section 45 (2) (b) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.
 - iv) Dealing with suspect property contrary to section 47 (1) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

- v) Acquisition of proceeds of crime contrary to section 4 as read with section 16 (1) (a) of the Proceeds of Crime and Anti-Money Laundering Act, 2009.
- vi) Knowingly deceiving principal contrary to section 41 (2) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.
- vii) Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

13. By letter dated 3rd February 2017, the DPP returned the file to EACC to cover further areas. Therefore, investigations are still ongoing.

b) Irregular award of tender for IFMIS Effectiveness Review Audit to JKUATES

Investigations on the following specific issues with regard to alleged irregular award of tender to JKUATES are at the tail end:-

- i) Jomo Kenyatta University of Agriculture and Technology Enterprises Limited (JKUATES) subcontracted a Dubai based firm called Great Sands Consulting without following the procurement laws.
- ii) JKUATES is an auditee of the Office of the Auditor-General and not in audit business.
- iii) The cost of the audit was approximately was approximately Kshs. 100 million but what was paid was over Kshs. 160 million, more than 50% of the cost.
- iv) Although work begun in early 2014 no report of the audit has been issued to Parliament to date.
- v) The procurement of the audit was not budgeted for by the Office of the Auditor-General.

c) Other matters

Other matters under investigation are:-

- i) Allegations of unethical conduct by officers at the Office of the Auditor-General through irregular recruitment of staff particularly staff in the supply chain management unit.
- ii) Allegations of conflict of interest and misappropriation of funds at the office of the Auditor General in respect of hiring of the services of Ms. Baker Tilly Meralli's audit firm to undertake a consultancy job for evaluation of internal controls.

3.10 Evidence from the Director of Public Prosecutions (DPP)

Through his written memorandum to the Committee dated 23rd February 2017 (**Annex 10**), and his subsequent appearance before the Committee on 9th March 2017, the Director of Public Prosecutions, Mr. Keriako Tobiko, informed the Committee as follows:

1. On 3rd January 2017, he received file No. **EACC/F1/INQ/62/2015** from the EACC on the alleged irregular procurement of the Audit Vault Software by the Office of the Auditor-General.
2. EACC's investigations were triggered by a letter from the PS National Treasury dated 8th April 2014 forwarding anonymous complaints raising several allegations against the Office of the Auditor-General.
3. In the report, EACC recommended prosecution of Mr. Edward Ouko (Auditor-General), Mr. Stephen Kinuthia (Deputy Auditor-General Corporate Services), Mr. Justus Ongera, Mr. Charles Gichohi of OSI Kenya, Ms. Annette Mwangi, Mr. Sylvester Kiplagat, Mr. Ephantus Kairu, and Mr. Charles Mwaduna.
4. Upon analysis of the evidence in the file, the DPP found and concluded as follows:
 - i) The charge of abuse of office recommended by the EACC against Mr. Edward Ouko was not supported by evidence in the file.
 - ii) The charge of engaging in a project without prior planning recommended by EACC against Mr. Edward Ouko was not supported by evidence in the file.
 - iii) The charge of wilful failure to comply with the procurement laws recommended by EACC against Mr. Edward Ouko was not supported by evidence in the file.
 - iv) The charge of abuse of office recommended by EACC against Mr. Stephen Kinuthia was not supported by evidence in the file.
 - v) The charge of wilful failure to comply with the procurement laws recommended by EACC against Mr. Stephen Kinuthia and Mr. Justus Ongera was not supported by evidence in the file.
 - vi) There was sufficient evidence to charge Mr. Stephen Kinuthia (Deputy Auditor-General Corporate Services) with the following:
 - a) Dealing with suspect property (that is, receipt of Kshs.27 million, from proceeds of acquisition of Audit Vault from OSI Kenya Ltd at the cost of Kshs. 100 million)

- contrary to section 47 as read with section 48 of Anti-Corruption and Economic Crimes Act, 2003 (ACECA).
- b) Deceiving principal contrary to section 41 of ACECA.
 - c) Conflict of interest contrary to section 42 (3) of ACECA.
 - d) Engaging in corrupt practice contrary to section 40 of the Public Procurement and Asset Disposal Act, 2005 (PPADA).
 - e) Collusion contrary to section 42 (1) (c) of PPADA.
 - f) Corruptly giving a benefit (that is, Kshs. 500,000) to Charles Gichohi, (sales executive of Oracle) contrary to section 39 (3) (b) of ACECA.
 - g) Acquisition of proceeds of crime (Kshs. 27 million) contrary to section 16 of the Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA).
- vii) There was sufficient evidence to charge Mr. Charles Gichohi (sales executive Oracle Kenya), with acquisition of proceeds of crime (Kshs. 500,000), contrary to section 16 of POCAMLA.
- viii) There was sufficient evidence to charge Ms. Annette Mwangi (Manager Information Technology Audit-OAG and Mr. Justus Ongera (Director Information, Communication Technology-OAG), with the offence of deceiving principal contrary to section 41 of ACECA.
- ix) There was evidence to jointly charge Mr. Stephen Kinuthia (DAG-CS) Mr. Maina Shem Kamau (Managing Director OSI Kenya Limited), Mr. Ephantus Kairu (Director OSI Kenya Limited), Mr. Sylvester Kiplagat (Director OSI Kenya Limited), Mr. Charles Gichohi (Sales Executive Oracle Kenya), OSI Kenya Ltd, Ms. Annette Mwangi (Manager Information Technology Audit-OAG), Mr. Justus Ongera, Mr. Charles Mwaduna and Mars Technology limited with conspiracy to commit an economic crime contrary to section 47A(3) of ACECA.
- x) There was sufficient evidence to charge Mr. Charles Mwaduna with acquisition of proceeds of crime (Kshs. 7,900,000 from OSI Kenya Ltd), contrary to section 16 of POCAMLA.
- xi) There was sufficient evidence to charge OSI Kenya Ltd, Mars Technology Associates Ltd, Finsolt TCS Ltd, Enkai Holding Ltd, Nanazi Investment LTD, Kenya Milk Farmers

Investment Ltd and their respective directors with the offence of money laundering contrary to section 3 of POCAMLA

5. The DPP therefore directed prosecutions to ensue accordingly. He also directed that copies of the duplicate inquiry file be forwarded to the Asset Recovery Agency (ARA) and Kenya Revenue Authority (KRA) for appropriate Action in terms of their respective legal mandates.
6. The DPP's decision not to charge Mr. Edward Ouko was made pursuant to the Constitutional mandate of the Office (Article 157 of the Constitution) and based on the DPP's independent and careful assessment of the evidence in the file and the law governing the making of a decision to prosecute or not.
7. Since making the above directions, there have been four suits against the DPP challenging on his decision not to charge Mr. Edward Ouko. However, in the event there is new evidence to warrant prosecution of more persons, the DPP will act accordingly.

PART FOUR

4.0 CONCLUSION

On 14th March, 2017, the Chairperson of the Committee pursuant to Standing Order 83 of the National Assembly Standing Orders sought guidance and direction of the Speaker on the matter of consideration of the petition for the removal of the Auditor-General Mr. Edward Ouko from office in light of the conservatory orders issued by the High Court on 13th March, 2017 restraining the Committee from further proceeding with the petition pending the hearing and determination of a case filed by one Mr. Okiya Omtatah Okoiti *High Court Petition No. 62 of 2017 Okiya Omtatah Okoiti v National Assembly of Kenya & 3 Others*.

The Speaker of the National Assembly on 21st March, 2017 issued a communication (**annex 12**) with regard to the guidance sought by the Chairperson of the Committee. The Speaker among others directed that the Committee:-

- i) continues with its suspension of the investigation on the specific grounds alleged by Mr. Emmanuel Mwagonah in his Petition to the National Assembly seeking removal of Mr. Edward Ouko from office of the Auditor-General.
- ii) submits a Progress Report to the House, within seven (7) days, detailing the status of the Petition as at 13th March, 2017 for consideration by the House in accordance with the Standing Orders.

By the time of suspending its sittings, the Committee had had fourteen (14) witnesses scheduled to give evidence. The conservatory orders by the High Court therefore prematurely curtailed efforts by the Committee to consider the prayers sought in the petition and ascertain whether the alleged facts in the petition disclose grounds for removal of the Auditor-General from office pursuant to Article 251 of the Constitution.

The Committee is hopeful that the matters in Court will be expedited and judiciously concluded to allow the National Assembly to play its constitutional role in consideration of the petition. The Committee will abide by the Speaker's directive as contained in the aforementioned communication and will await the outcome of the Appeal by Parliament before concluding its investigation of the petition and production of a report for consideration by the House in accordance with provisions of the Standing Orders.

Signed: 

Date: 29th March 2017

(THE HON. NELSON GAICHUHIE, M.P.)
VICE CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 21ST FEBRUARY, 2017 IN
COMMITTEE ROOM, 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT
BUILDINGS AT 10.00AM

PRESENT

1. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Joseph Limo, MP
4. Hon. Hezron Bolo Awiti, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Shakeel Shabbir, MP
7. Hon. Dr. Oburu Oginga, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Lati Lelelit, MP
10. Hon. Mary Emase, MP
11. Hon. Patrick Makau King'ola, MP
12. Hon. Ronald Tonui, MP
13. Hon. Anyanga Andrew Toboso, MP
14. Hon. Jones Mlolwa, MP

APOLOGIES

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Daniel Epuyo Nanok, MP
4. Hon. Kirwa Stephen Bitok, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Sumra Irshadali, MP
8. Hon. Alfred Sambu, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Dennis Waweru, MP
11. Hon. Sammy Koech, MP
12. Hon. Sakaja Johnson, MP
13. Hon. Joash Olum, MP
14. Hon. Tiras Ngahu, MP

INATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Ms. Emma Essendi | - | Legal Counsel |
| 5. Mr. Yakubu Ahmed | - | Media Relations Officer |

Hon. Bonface Kinoti Gatobu, MP

MIN.NO. DCF/ 030/2017: PRELIMINARIES

The Vice- Chairperson called the meeting to order at 10 30am and prayed. After introducing the agenda of the day, he excused himself to from the meeting and appointed Hon Joseph Limo to chair the meeting.

MIN.NO. DCF/031 /2017: CONSIDERATION OF THE PUBLIC PETITION ON REMOVAL OF AUDITOR GENERAL, MR EDWARD OUKO FROM OFFICE BY MR EMMANUEL MWAGAMBO MWAGONAH

After going through the petition, the secretariat gave the following update regarding consideration of the petition:

1. Pursuant to Standing Order 230, the Committee had only 14 days to consider the petition starting from 16th February 2017
2. An advert had been placed in the local dailies on 17th February 2017 calling for memoranda from the public. The Deadline for submission of the same was 24th February 2017 at 5:00pm.
3. The Petitioner, Auditor General, Chief of Staff, and Clerk of the National Assembly had already been invited to appear before the Committee and respond to specific issues rased in the petition that could be touching on their respective mandates.
4. More witness maybe invited depending on the contents of the memoranda the Committee receives from the public

The Committee undertook to objectively consider the petition and asked the Secretariat to request both the EACC and the DPP to share with the Committee their findings on the issues that they investigated that may have been raised in the petition.

MIN.NO. DCF/032/2017: THE LEGAL BRIEF ON THE PETITION ON IRREGULAR TRANSFER OF MUIRI COFFEE ESTATE BY KENYA COMMERCIAL BANK

The Legal Counsel to the Committee advised as follows:

a) Contents of the Consent Decree

The Committee was informed that the decree referred to both the properties in Nyandarua and Kiambu. This was inferred from the Amended Plaintiff in which the debtors and guarantor were suing Kenya Commercial Bank and they listed both properties in the suit.

b) Whether the charge provided for interest on the Principal

The Committee was informed that according to the Charge signed by the guarantor, his obligation to the debt was limited to the sum of Kshs. 7 million. The guarantor was, however, also to settle other charges including interest on the principal amount. The limit of Kshs. 7 million thus only referred to the principal sum and was not a limit on the other charges.

c) Whether KCB acted legal in selling the property

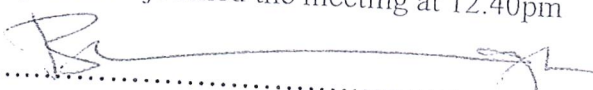
The matter has been litigated since 1992 in which 18 suits have been heard and determined in favour of KCB.

MIN.NO. DCF/033/2017: CONSIDERATION OF INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION (AMENDMENT) BILL, 2016 BY HON. KINOTI GATOBU, MP

The Hon. Boniface Kinoti Gatobu, MP appeared before the Committee to enquire on the status of his legislative proposal before the Committee. Considering that the Committee had not received comments from the implementing Ministry and the AG, it was resolved that the matter be considered when the Committee would have had comments from AG and the Ministry of Industrialization. The Committee needs to know whether there is going to be a duplication of roles between the entity being proposed in the Bill and the work KIE is doing currently before making a decision.

MIN.NO. DCF/034/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 12.40pm

Signed.....

Chairperson

Date.....

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MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 23RD FEBRUARY, 2017 IN
COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10.00AM

PRESENT

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Jimmy Nuru Angwenyi, MP | | |
| 5. Hon. Eng. Shadrack Manga, MP | | |
| 6. Hon. Shakeel Shabbir, MP | | |
| 7. Hon. Joseph Limo, MP | | |
| 8. Hon. Hezron Bolo Awiti, MP | | |
| 9. Hon. Abdullswamad Shariff, MP | | |
| 10. Hon. Lati Lelelit, MP | | |
| 11. Hon. Mary Emase, MP | | |
| 12. Hon. Ronald Tonui, MP | | |
| 13. Hon. Anyanga Andrew Toboso, MP | | |
| 14. Hon. Jones Mlolwa, MP | | |
| 15. Hon. Kirwa Stephen Bitok, MP | | |
| 16. Hon. Sakwa John Bunyasi, MP | | |
| 17. Hon. Abdul Rahim Dawood, MP | | |
| 18. Hon. Sammy Koech, MP | | |
| 19. Hon. Sakaja Johnson, MP | | |
| 20. Hon. Joash Olum, MP | | |
| 21. Hon. Tiras Ngahu, MP | | |

(1)

APOLOGIES

1. Hon. Daniel Epuyo Nanok, MP
2. Hon. Ogendo Rose Nyamunga, MP
3. Hon. Patrick Makau King'ola, MP
4. Hon. Sumra Irshadali, MP
5. Hon. Alfred Sambu, MP
6. Hon. Sammy Mwaita, MP
7. Hon. Dennis Waweru, MP

SECRETARIAT

- | | | |
|--------------------------|---|---------------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 5. Ms. Emma Essendi | - | Legal Counsel II |
| 6. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 7. Mr. Sharon Roticho | - | Research Officer |
| 8. Ms. Rose Njuki | - | Sergeant Officer |
| 9. Ms. Catherine Mukunyi | - | Sergeant At arms |

MIN.NO. DCF/ 035/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10 30am followed by a word of prayer from Hon. Tiras Ngahu, MP. He then introduced the agenda of the day as "Meeting with Mr. Emmanuel Mwagomba Mwagonah to consider his petition on removal of the Auditor General from Office"

MIN.NO. DCF/036 /2017: MEETING THE PETITIONER MR. EMMANUEL MWAGOMBA MWAGONAH TO CONSIDER A PUBLIC PETITION ON REMOVAL FROM OFFICE OF THE AUDITOR GENERAL, MR EDWARD OUKO

The petitioner was scheduled to appear before the Committee on Tuesday 23rd February 2017 at 10:00am to substantiate all the allegations in the petition. However, he did not attend the meeting citing insecurity on his family and his person through his letter to the Committee dated 22nd February 2017 and received by the Committee on Tuesday 23rd February 2017 at 10:00am. In his letter, he made the following requests to the National Assembly:

- a Protection be given to his family and himself.
- b He be allowed to send a written memorandum backed with the necessary evidence as opposed to appearing before the Committee.
- c In the event he must attend, then the proceedings be conducted in camera and away from the public and press glare.

After consideration of the letter, the Committee resolved as follows:

1. Request the Speaker of the National Assembly to request the Inspector General to provide security to the petitioner and his family as requested.

2. Re-invite the petitioner for its meeting on Tuesday 28th February 2017 at 9:00am. Objectivity can only be achieved by cross-examining the petitioner on all the allegations leveled against the Auditor-General.
3. The petitioner is at liberty to send an advance written memorandum with supporting documents for consideration by the Committee before he appears.
4. The Committee can only meet all the other witnesses scheduled for the morning of Tuesday 28th February 2017 after it has met the petitioner. Therefore the Clerk of the National Assembly, the Auditor General and the Chief of staff and Head of public Service's appearance before the Committee be rescheduled to the afternoon of Tuesday 28th February 2017.

MIN.NO. DCF/037/2017: ANY OTHER BUSINESS

Under this agenda the following issues were raised:

1. The Chairperson informed the Committee that the portfolio Committee on Finance and Economic Development from the Parliament of the Republic of Zimbabwe had requested to have a consultative meeting with the Committee between 12th – 19th March, 2017 and later have dinner together. The Committee considered and accepted the requested.
2. The Committee considered and accepted the invitation by the Kenya Airways for a lunch meeting with the Chairman of KQ on Thursday 2nd March, 2017 at 12.00 (noon) to 2.00pm at intercontinental Hotel. Members were urged to attend.
3. The Committee further considered and accepted the invitation by the Ministry of lands and Physical Planning to attend a launch of the National Spatial Plan (NSP) on 1st March, 2017 AT Kenyatta International Convention Centre (KICC) starting at 8.00am.

MIN.NO. DCF/038/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 12.35pm

Signed.......... Date 23-2-2017

Chairperson

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**MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 28TH FEBRUARY, 2017 IN
COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 10.00AM**

PRESENT

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Jimmy Nuru Angwenyi, MP | | |
| 5. Hon. Shakeel Shabbir, MP | | |
| 6. Hon. Joseph Limo, MP | | |
| 7. Hon. Daniel Epuyo Nanok, MP | | |
| 8. Hon. Ogendo Rose Nyamunga, MP | | |
| 9. Hon. Patrick Makau King'ola, MP | | |
| 10. Hon. Abdullswamad Shariff, MP | | |
| 11. Hon. Lati Lelelit, MP | | |
| 12. Hon. Mary Emase, MP | | |
| 13. Hon. Ronald Tonui, MP | | |
| 14. Hon. Anyanga Andrew Toboso, MP | | |
| 15. Hon. Kirwa Stephen Bitok, MP | | |
| 16. Hon. Abdul Rahim Dawood, MP | | |
| 17. Hon. Sammy Koech, MP | | |
| 18. Hon. Sakaja Johnson, MP | | |
| 19. Hon. Joash Olum, MP | | |
| 20. Hon. Tiras Ngahu, MP | | |
| 21. Hon. Sumra Irshadali, MP | | |
| 22. Hon. Sammy Mwaita, MP | | |
| 23. Hon. Dennis Waweru, MP | | |
| 24. Hon. Sakwa John Bunyasi, MP | | |

(15)

APOLOGIES

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Alfred Sambu, MP
3. Hon. Jones Mlolwa, MP
4. Hon. Hezron Bolo Awiti, MP

INATTENDANCE

Committee Secretariat

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant |
| 2. Mr. Dennis Abisae | - | Principal Legal Counsel |
| 3. Mr. Evans Oanda | - | First Clerk Assistant |

- | | | |
|---------------------------|---|-------------------------|
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 6. Ms. Emma Essendi | - | Legal Counsel |
| 7. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 8. Mr. Eric Ososi | - | Research Officer |
| 9. Ms. Rose Njuki | - | Sergeant At arms |
| 10. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 11. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon. Fredrick Outa, MP
2. Hon. Tom. J. Kajwang', MP

3. Hon. Stephen Mutinda Mule,MP
4. Hon. Dalmas Otieno, MP
5. Hon. Opiyo Wandayi,MP
6. Hon. Florence Mwikali, MP
7. Hon. Dr. James Nyikal,MP
8. Hon. Timothy Bosire, MP
9. Hon. Francis Nyenze, MP
10. Hon. Abdikadir Aden, MP
11. Hon. Jakoyo Midiwo, MP
12. Hon. Stephen Mule, MP
13. Hon. Dr. Chris Wamalwa, MP
14. Hon. Nicolas Gumbo, MP

Petitioner

1. Mr. Emmanuel Mwangomba Mwagonah

Public

Mr. Edward Ouko, Dr. Otiende Amolo, Officers from the Office of the Auditor General and the media.

MIN.NO. DCF/ 039/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10 00am pursuant to Standing Order 185 followed by a prayer from Hon. Tiras Ngahu, MP. He then introduced the agenda of the day as “Meeting with Mr. Emmanuel Mwangomba Mwagonah to consider his petition on removal of the Auditor General from Office”.

MIN.NO. DCF/040 /2017: MEETING THE PETITIONER MR. EMMANUEL

MWAGOMBA MWAGONAH TO CONSIDER HIS PETITION

ON REMOVAL OF AUDITOR GENERAL, MR EDWARD OUKO FROM OFFICE

The Petitioner, Mr. Emmanuel Mwangomba Mwagonah appeared before the Committee and requested that the meeting be held in camera following his earlier claims that his life and that of his family would be exposed to danger if he presented in the full glare of the media. After deliberations, the Committee resolved to that the request to present in camera could only be considered on case-by-case basis. The Petitioner was requested to give a general overview of the petition before coming into specifics. He was further asked to always inform the Chair in case he wanted to an in Camera Session as the meeting progressed.

General grounds for removal

Mr. Mwangambo informed the Committee that he had come across the issues raised in the petition while working for a client who had gone to court to compel the DPP to release his findings on the file forwarded to him by the EACC on the alleged corrupt activities within the Office of the Auditor General. He promised to present all the supporting documents to the Committee IF he obtained a waiver from his client. He however reminded the Committee that it had Constitutional powers to compel production of evidence from any office or person mentioned in the petition.

Mr. Mwangambo submitted the following as the general grounds that warranted removal of Auditor-General from office:

1. Failure to submit reports to Parliament and the President pursuant to Article 254(1) of the Constitution
2. Wastage of Public Funds
3. Irregular appointment of internal auditor
4. Contravention of Chapter six of the Constitution and the Leadership and Integrity Act of 2012
5. Violation of both the Public Audit Act of 2015 and the Public Procurement and Asset Disposal Act of 2005

Specific grounds for removal from office

Mr. Mwagambo submitted the following:

1. Failure to submit Reports to the President and to Parliament (paragraphs 2, 3, 4, & 5 of the petition)

Article 254(1) as read together with Article 229 of the Constitution imposes an obligation at the Auditor General to report to Parliament and the President after every financial year. Mr. Edward Ouko has never complied since his appointment as the Auditor-General.

~~Mr. Mwagambo confirmed to the Committee that this was not part of the matters that had been taken to court.~~

2. Wastage of Public Funds

~~Mr. Mwagambo averred that Mr. Edward Ouko had failed to prevent wastage of public funds as stipulated in Article 201(d) of the Constitution pointing to the following:~~

- i. Wastage of Public Funds through high telephone and internet costs (paragraph 7 of the petition)

The Petitioner indicated that the Auditor General frequently travels out of the country sometimes for reasons that are more private than official, but the expenses are met through public funds. The expenditures cannot be justified, as they have no direct benefit to the Office. He further indicated that in the year 2014, the telephone charges for his iPad line was in excess of Kshs. 1,000,000.00. The amount was not captured as telephone expenditure in the accounting records.

Though Mr. Mwagambo could not substantiate this, he requested the Committee to peruse Mr. Ouko's passport and payment records for the Office of the Auditor General.

- ii. Wastage of public funds through allocation of his official vehicles for use by his private family members (paragraph 8 of the petition)

Mr. Mwangambo submitted that Mr. Ouko has five vehicles attached to his office which are used by his close family members. These vehicles have been given private number plates in mysterious circumstances.

Though the petitioner could not substantiate this, he pointed out that records from the transport manager within the Office of the Auditor-General should be able to corroborate this.

- iii. Wastage of public funds through the procurement of regional offices at Mombasa, which were never used (paragraph 9 of the petition).

Mr. Mwangambo accused the Auditor General of irregularly procuring regional offices in Mombasa from Baywood Holdings Limited for a period of over one year. These offices were never occupied or used in any way by the office. A total of Kshs. 10, 000, 000.00 was paid as consideration for the lease over the period the premises were held.

The petitioner asked the Committee to get documentation of this transaction from Baywood Holdings limited and the Office of the Auditor General.

- iv. Wastage of public funds through contracting design consultants for Kshs 25,000, 000 to partition the head office, work that was never done (paragraphs 10 & 26 of the petition). Mr. Mwangambo informed the Committee the project for partitioning the Head Office was initiated in 2012, the design consultants were contracted and paid twenty five million (Kshs 25,000,000) for the service they did not render.

3. Contravention of Chapter Six of the Constitution on Leadership and Integrity Act

- i. Irregular appointment of an internal auditor to audit the accounts of the Office of the Auditor General (paragraph 28, 29,30,31 and 33 of the petition)

Mr. Mwangambo informed the Committee that In 2012 the National Assembly appointed a professionally qualified firm to audit the accounts of the Office of the Auditor-General and upon commencement of the task, the Auditor-General also assigned the firm other extra work to review internal control systems which ordinarily formed part of the external audit assignment for which the external auditor was paid seven million two hundred

thousand Kenyan Shillings (Kshs. 7,200,000.00). This was single sourcing, inflated figure and conflict of interest.

ii. Irregular recruitment of staff (paragraphs 13,14 &15 of the petition)

Mr. Mwagambo informed the Committee that recruitment process at the Office of the Auditor General has been single handedly influenced by the Auditor general together with the Human Resource in favour of the Luo community. He provided an example of hiring of a forensics and specialist audit as an example of a clearly flawed process.

Mr. Mwagambo finally informed the Committee that evidence on this matter could be obtained from the Human resource department of the OAG and that as the head of the OAG, Mr. Ouko could not delink himself from what was happening in his office.

4. Violation of the Public Procurement and Disposal Act, 2005 (paragraphs 11,12, 16,17)

i. Procurement of the Audit Vault software for Kshs. 100,000,000 while the project was estimated to cost less than Kshs. 18,000,000

Mr. Mwagambo informed the Committee that in 2013, the Auditor-General together with the members of the Executive Committee which consisted among others Mr. Stephen Kinuthia (Deputy Auditor-General, Corporate Services) irregularly approved the Audit Vault Software to be single sourced from Open Systems Integration (OSI) Kenya at a cost of over Kshs 100, 000, 000.00 against the estimated cost of Kshs. 18, 000, 000.00. The software was single sourced on the basis that only OSI Kenya had experience to integrate the software yet there existed other local companies which had experience to install the software.

Mr. Mwagambo contented that the Auditor-General was solely responsible for ensuring that prior to the approval of the payment for the Audit Vault Software to OSI Kenya, the contract met all the requirements of the law. By failing as an accounting officer to ensure that the contract for the installation of the Audit Vault Software adhered to the law, he is individually responsible for the financial impropriety arising out of the transaction. Further, as an accounting officer Mr. Ouko failed to ensure that public money was applied lawfully and in an effective manner.

Mr. Mwangambo reminded the Committee that this matter had been investigated by the EACC and recommended to the DPP to charge Mr. Ouko among other officers

ii. Irregular procurement of Jomo Kenyatta University Enterprise limited

The Petitioner pointed out that the Auditor-General's office irregularly entered into a contract with Jomo Kenyatta University Enterprises Limited to review the office IT systems at an approximate cost of Kshs. 120, 000, 000.00. The firm was also single sourced by the Auditor-General while in full knowledge that they had no capacity to undertake the review and the firm subsequently subcontracted to an Indian firm. Further the contract was greatly inflated.

5. Violation of Public the Public Audit Act, 2015 (paragraph 27 of the petition)

Mr. Mwangambo informed the Committee that despite the suspension of the Audit Advisory Board established under section 25 of the Public Audit Act, the Auditor General hired senior officers into to the office of the Auditor General without advice of the Audit Advisory Board.

Committee Observations

The Committee made the following observations during the meeting:

1. Reports contemplated in Article 254(1) of the Constitution.

There is no clarity of the type and period of reporting of the reports contemplated under Article 254(1) of the Constitution. However, these are not the annual audit reports under Article 229 of the Constitution. They can be construed to mean reports on performance, challenges and means of improvement of the institution/commission/independent office.

Though there is no definition of the expression "as soon as practicable at the end of each financial year", an independent office holder is obligated to submit such reports to the President and Parliament at the end of financial year but not before the end of the subsequent financial year.

There is therefore need for a policy guideline that defines the type, content and period of submission of reports contemplated in Article 254(1) of the Constitution

2. Evidence

The Petitioner had no material evidence to substantiate the issues raised in the petition. The Committee could only determine the merits of the petition if there was material evidence to corroborate the allegations. Culpability of the Auditor General can only be proved if there was a nexus between the alleged vice and himself.

3. Matters that had been investigated by EACC and DPP

The only issues in the petition that it was certain that it had been investigated by the EACC and the DPP were on procurement of Audit Vault Software.

Wayforward

In the Mr. Mwangambo was given up to Wednesday 1st March, 2017 at 12.00(noon) to provide evidence on each of the issues raised in the petition.

MIN.NO. DCF/041/2017: ADJOURNMENT


The Chairperson adjourned the meeting at 2.10pm

Signed.......... Date 23-03-2017.....

(Hon. Benjamin Langat, MP Chairperson)

**MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 28TH FEBRUARY, 2017 IN
COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:00PM**

PRESENT

- | | | | |
|------------------------------------|---|------------------|---|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |  |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson | |
| 3. Hon. Dr. Oburu Oginga, MP | | | |
| 4. Hon. Jimmy Nuru Angwenyi, MP | | | |
| 5. Hon. Shakeel Shabbir, MP | | | |
| 6. Hon. Sammy Mwaita, MP | | | |
| 7. Hon. Ogendo Rose Nyamunga, MP | | | |
| 8. Hon. Joseph Limo, MP | | | |
| 9. Hon. Abdullswamad Shariff, MP | | | |
| 10. Hon. Lati Lelelit, MP | | | |
| 11. Hon. Mary Emase, MP | | | |
| 12. Hon. Ronald Tonui, MP | | | |
| 13. Hon. Anyanga Andrew Toboso, MP | | | |
| 14. Hon. Kirwa Stephen Bitok, MP | | | |
| 15. Hon. Sakwa John Bunyasi, MP | | | |
| 16. Hon. Abdul Rahim Dawood, MP | | | |
| 17. Hon. Sammy Koech, MP | | | |
| 18. Hon. Sakaja Johnson, MP | | | |
| 19. Hon. Joash Olum, MP | | | |
| 20. Hon. Sumra Irshadali, MP | | | |

APOLOGIES

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Jones Mlolwa, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Daniel Epuyo Nanok, MP
5. Hon. Patrick Makau King'ola, MP
6. Hon. Alfred Sambu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Hezron Bolo Awiti, MP

IN-ATTENDANCE

Committee Secretariat

- | | | |
|-------------------------|---|-----------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant I |
| 2. Mr. Evans Oanda | - | First Clerk Assistant |
| 3. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 4. Mr. Fredrick Otieno | - | Third Clerk Assistant |

- | | | |
|---------------------------|---|-------------------------|
| 5. Mr. Dennis Abisai | - | Principal Legal Counsel |
| 6. Ms. Emma Essendi | - | Legal Counsel |
| 7. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 8. Mr. Erick Ososi | - | Research Officer |
| 9. Ms. Rose Njuki | - | Sergeant Officer |
| 10. Ms. Catherine Mukunyi | - | Sergeant At arms |

Friends of the Committee

1. Hon. Dalmas Otieno, MP
2. Hon. (Eng.) Nicholas Gumbo, MP
3. Hon. Fredrick Outa, MP
4. ~~Hon. Thomas Mwadegu, MP~~
5. Hon. T. J. Kajwang', MP
6. Hon. David Gikaria, MP
7. Hon. Dr. Eseli Simiyu, MP

Office of the Auditor-General

- | | | |
|-----------------------------|---|-------------------------------|
| 1. FCPA Edward Ouko, CBS | - | Auditor-General |
| 2. Mr. George Otieno Nashon | - | DDA/OAG |
| 3. Ms. Milcah Ondiek | - | Office of the Auditor General |
| 4. Mr. Justus Ongera | - | Office of the Auditor General |
| 5. Mr. Paul Muthuri | - | Office of the Auditor General |
| 6. Mr. Munyua Ezekiel Njagi | - | Rachier and Amollo Advocates |
| 7. Mr. Wilfred Maribe | - | Office of the Auditor General |
| 8. Dr. Otiende Amolo, | - | Legal Counsel |

Public

Members of the media

MIN.NO. DCF/042/2017: PRELIMINARIES

The Chairperson called the meeting to order at 3:30pm followed by a word of prayer from Hon. Sakaja Johnso, MP. He then introduced the agenda of the day as 'Meeting with FCPA Edward Ouko, CBS to consider the petition on his removal from Office as the Auditor General'.

MIN.NO. DCF/043 /2017: MEETING FCPA EDWARD OUKE, CBS

After introductory remarks, the Auditor-General requested the Committee to allow his legal counsel, Mr. Otiende Amolo, to represent him; a request, which was accepted. Mr. Amolo then proceeded to inform the Committee as follows:

- a) Preliminary observations

- i) Fastracking of this petition by the National Assembly without subjecting it to thorough review was suspect. Ordinarily, having been received by the Clerk of the National Assembly on 14th February, 2017, he had 7 days to confirm admissibility before advising the Speaker whether to refer it to the Committee or not.
- ii) Though Standing Order 230 (1)(b) provides that petitions contemplated under Article 251 of the Constitution may have annexes, the Speaker of the National Assembly erred in admitting a petition of such magnitude without supporting documents. This is against Article 47 and 50 of the Constitution and the Fair Administrative Action Act of 2015.
- iii) While there is only one Petitioner as demonstrated in Paragraph two of the Petitioner's affidavit, there seems to be more than one Petitioner yet they are not disclosed as is required by Standing Order No. 223.
- iv) The petitioner fails to disclose that the matters raised in the petition had been addressed by the Director of Public Prosecutions, and the High Court (High Court petition No.388 of 2016). Therefore the issues raised were subjudice within the meaning of Standing Order 89.
- v) By conceding that the matters raised in the petition had been unsatisfactorily dealt with under paragraph 37 of the petition, the petitioner is seeking an appeal from the National Assembly contrary to Article 157(10) and 249(2)(b) of the Constitution.
- vi) Like other cases the National Assembly had handled before, Safaricom petition, the petition was clearly not admissible based on the above grounds.

b) Procedural improprieties by the petitioner

- i. Contrary to Article 251(a) the petitioner had not alleged any serious violation of the constitution, Gross misconduct, physical or mental incapacity, or incompetence as would invoke the National Assembly's powers of inquiry.
- ii. Contrary to Standing Order No. 223(f), the petitioner had not indicated whether the matters raised had been addressed by a relevant body (the Director of Public Prosecutions).

- iii. Contrary to Standing Order No. 223(g) the petitioner had not indicated whether the matters raised were pending before any court of law, and the particulars thereof.
- iv. Contrary to Standing Order No. 223(i) the petition did not contain the names, addresses, ID Nos, and signature of every petitioner. In paragraph two (2) of attached Affidavit, the deponent swore that he is “one of the petitioners”.
- v. Contrary to Standing Order No. 230(i)(a), the petition did not indicate the precise part of Article 251 of the constitution alleged to have been breached, and the manner in which the same was breached.
- vi. Contrary to Standing Order No. 230(1)(b), the petition does not have documents annexed to it on the basis of which a honourable clerk may review the petition preliminary for merit as envisaged by Standing Order No. 220(3). It is to be noted that Standing Order 230(1) excludes S.O 223(K), thus making inclusion of Affidavits and documents necessary.

c) Improprieties in processing the petition by the National Assembly

- i. Having received the petition on 14th February 2017, the Honourable Clerk immediately transmitted the petition to the Speaker who tabled the same on 16th February 2017. Standing Order No. 220(3) gives the clerk SEVEN DAYS to review the petition to ascertain whether it met requirements of the Standing Orders and the law. This preliminary review was clearly not done.
- ii. Standing Order NO. 89 prohibits admission of, or reference to matters *sub judica*. Standing Order NO. 89(3)(b) includes criminal matters which have been “concluded by verdict and sentence or discontinuance” while Standing Order 89(3)(c) includes civil proceedings pending in court “until proceedings are ended by judgment or discontinuance” To the extent that the Director of Public Prosecutions has pronounced himself with finality on the criminal matters and exonerated Mr. Edward Ouko, and there is a pending High Court Civil matter (HCCC 388/16) in respect of the question of recruitment of staff. These matters are *sub judica* and the speaker should have expunged the relevant paragraphs from the petition or rejected the entire petition *in toto*.

- iii. Having received the petition, the speaker committed the same to the Committee on Finance, Planning and Trade with instructions to report back within fourteen (14) days from 16th February 2017. This constricted timeline runs contrary to Standing Order No. 227(2) which allows the Committee Sixty (60) calendar days from the time of receiving the prayer.
- iv. In admitting a petition on as serious a question as removal from office of the Auditor General without any supporting documents, the National Assembly clearly breached the fundamental right of knowing the case facing one and the evidence relied on contrary to Articles 10, 35, 47 and 50(i) of the constitution and the provisions of the Fair Administration Action Act. This would set a dangerous precedence for constitutional office holders including the President of the Republic of Kenya.

d) SUBSTANTIVE RESPONSE

1. In response to paragraphs 2,3,4 and 5 on Auditor-General's failure to submit reports to both the President and Parliament, the Auditor General has duly submitted financial reports to the National Assembly and states as below:
 - i) There was no obligation on the Office of the Auditor-General (OAG) to submit an Audit Report to the President.
 - ii) In accordance with Article 229 (7) of the Constitution, the Auditor-General has dutifully submitted all Audit Reports to Parliament as mandated.
 - iii) The Report contemplated by Article 254(1) is not the Audit Report but is a report containing Financial Accounts of OAG.

In accordance with Article 226(4) of the Constitution, The National Assembly duly appointed Baker Tilly Merali's (BTM) to Audit OAG, which reports were duly submitted to the National Assembly for FYs 2011/2012, 2012/2013, 2013/2014. The National Assembly has not appointed an Auditor to audit OAG for the subsequent years.
2. In response to paragraphs 6, 28, 29, 30, 31, 33 & 34 regarding the extra work the OAG gave to BTM, the Auditor-General informed the Committee as follows:

- The work of Review of Internal Control Systems of the Office of the Auditor-General was not part of the Scope of audit by BTM.
 - There was no Conflict of Interest to the extent that BTM was requested to review the Internal Control Systems of OAG.
 - Out of abundant caution, the Auditor General sought approval of the National Assembly to engage BTM in the assigned task and an approval was granted vide correspondences referenced No. C. 806/Vol. 11/35 and KNA 2/4(443)
 - The amount paid to BTM for the extra work of reviewing Internal Control Systems was not KES 7.2M as alleged in the petition. The correct amount will be communicated to the Committee once confirmed.
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3. In response to paragraph 7 of the Petition on the alleged many private foreign trips and huge telephone bills at the expense of the taxpayer's money, the Auditor-General is a stranger to the allegations on the issue contained therein. The Auditor-General confirmed not having made any private trips at taxpayer's expense nor wasted public funds.
4. In response to paragraph 8 on the alleged misuse of OAG vehicles, the Auditor-General is allocated two (2) vehicles only. All other vehicles are pool vehicles under the control of the Transport Manager.
5. In response to paragraph 9 on the lease of Mombasa offices, procurement of leases and termination and related matters are handled by the Deputy Auditor General, Corporate services (DAG CS) and Procurement Department. It is true that the OAG procured for a house in Mombasa but did not use it. The office got accommodated at Bima house which was cheaper. The Auditor General agreed to provide tender documents and payment vouchers in respect of Kshs. 10,000,000.
6. In response to paragraph 10 and 26 on the alleged irregular payment for the design and portioning KENAO, the DAG CS and Procurement Department and not the Respondent handle procurements. The contract was terminated on the basis of the advice given by Ms, Agnes Mita, DAG CS by a letter dated August 20th 2014 to Shelter Craft Limited. By terminating the contract, taxpayers' money was saved as Treasury allocated resources for purchase of land and construction of OAG offices. Further, the Kshs. 25,000,000 was not paid as alleged in the petition, around Kshs. 3,000,000 was paid to the company for the

services that had already been rendered. He promised to provide the relevant tender documents in support of his response.

MIN.NO. DCF/044/2017: COMMITTEE OBSERVATIONS

1. Admissibility of the Petition

The Committee concurred with the Committee's legal counsel that the petition had gone through due process before its eventual referral to the Committee by the Speaker on 16th February 2017 as provided in Standing Order 230 and petition to Parliament (Procedures Act). The Committee further observed that by processing the petition and referral to the Committee within two days of its receipt in the National Assembly indicates efficiency.

The Committee disagreed with the Auditor General that the issues raised in the petition did not meet the threshold for removal of an independent office holder by indicating that a determination will be made on that question after review of the evidence adduced on each allegation.

The Committee further disagreed with the Auditor General on whether the petition ought to have had annexes by confirming that Standing Order 230 provide that such petitions may or not have annexes.

2. On submission of reports to the President and Parliament

The report contemplated in Article 254(1) of the Constitution is not the Audit Report under 229(7) of the Constitution. Though the Auditor General has always submitted reports under 229(7), he has ^{not} provided any under Article 254(1).

3. Appointment of an Internal Auditor

There was need to examine contract details between the OAG and the Baker Tilly Merali's Limited against that one of the National Assembly and the same firm to determine whether there might have been overlaps audit assignments and the amount paid. There might have been a conflict of interest by awarding BTM an extra auditing contract while they were under contract by the National Assembly.

4. Wastage of public funds

There were no supporting documents to corroborate the alleged misuse of public resources on private foreign trips and telephone charges. To clear his name, the Auditor General ought to provide official foreign trips undertaken during his tenure.

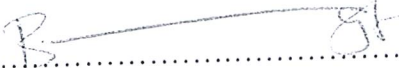
The Office of the Auditor General had planning challenges that may have led to loss of public resources. This was clear in leasing of regional offices in Mombasa that were never occupied because a new office became available in Bima House; entering into a contractual agreement with design consultants to partition KENAO offices only to abandon the project on the grounds that land became available to build new KENAO offices shortly afterwards..

Wayforward

1. It was resolved that the Auditor-General provides the following documents for consideration by the Committee:
 - A list of his official trips during his tenure in office
 - Contract entered while hiring Mombasa regional offices and payment vfor the service
 - Contract entered to design and partition KENAO and payment vouchers for the service
 - Contract entered with Baaker Tilly Merali's Limited for extra audit assignment while and payment vouchers for the service
 - Any other document relevant to the issues raised in the petition
2. The Committee will avail all the documents that it would ^{have} received from the petitioner to the Auditor-General for consideration and response
3. The Committee would reinvite the Auditor-General for a final meeting before it compiles its report. The Auditor-General would be at liberty to bring anybody that may help him address all the issues that the Committee may raise.

MIN.NO. DCF/044/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 08.00pm

Signed.......... Date 23-02-2017.....
Chairperson

MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 1ST MARCH, 2017 IN
COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Jimmy Nuru Angwenyi, MP | | |
| 5. Hon. Shakeel Shabbir, MP | | |
| 6. Hon. Joseph Limo, MP | | |
| 7. Hon. Ogendo Rose Nyamunga, MP | | |
| 8. Hon. Patrick Makau King'ola, MP | | |
| 9. Hon. Mary Emase, MP | | |
| 10. Hon. Anyanga Andrew Toboso, MP | | |
| 11. Hon. Kirwa Stephen Bitok, MP | | |
| 12. Hon. Sakaja Johnson, MP | | |
| 13. Hon. Sumra Irshadali, MP | | |
| 14. Hon. Sakwa John Bunyasi, MP | | |
| 15. Hon. Jones Mlolwa, MP | | |

(12)

APOLOGIES

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Tiras Ngahu, MP
3. Hon. Joash Olum, MP
4. Hon. Lati Lelelit, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Ronald Tonui, MP
7. Hon. Alfred Sambu, MP
8. Hon. Hezron Bolo Awiti, MP
9. Hon. Daniel Epuyo Nanok, MP
10. Hon. Dennis Waweru, MP
11. Hon. Abdul Rahim Dawood, MP
12. Hon. Sammy Koech, MP
13. Hon. Sammy Mwaita, MP

IN- ATTENDANCE

Committee Secretariat

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant |
| 2. Mr. Dennis Abisaye | - | Principal Legal Counsel |

- | | | |
|---------------------------|---|-------------------------|
| 3. Mr. Evans Oanda | - | First Clerk Assistant |
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 6. Ms. Emma Essendi | - | Legal Counsel |
| 7. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 8. Mr. Eric Osoi | - | Research Officer |
| 9. Ms. Rose Njuki | - | Sergeant At arms |
| 10. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 11. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon. Kajwang Otieno, MP
2. Hon. Nicolas Gumbo, MP
3. Hon. Dalmas Otieno, MP
4. Hon. Milly Odhiambo
5. Hon. Junet Mohammed, MP
6. Hon. Sylvance OSele, MP

The National Integrity Alliance

1. Mr. Benjamin Wambua Ndolo
1. Mr. Samuel Kimeu
2. Mr. Titus Gitonga
3. Mr. Kelvin Njihia
4. Mr. Morris Njogu

Institute Of Certified Public Accountant Of Kenya

1. Mr. Julius Mwatu - Vice Chairperson
2. Mr. June Kivinda
3. Mr. Geoffrey Malombe
4. Mr. Tom Nyagare
5. Mr. Samuel Okello
6. Mr. Elias Wakhisi
7. Mr. Fredrick Riaga
8. Mr. John Mudany

PUBLIC

Officers from the Auditor-General's office and the media

MIN.NO. DCF/ 045/2017: PRELIMINARIES

The Chairperson called the meeting to order at 11. 30am followed by a word of prayer from Hon. Nelson Gaichuhie, MP. He then introduced the agenda of the day as "Consideration of

Memoranda from public regarding the petition on removal of the Auditor General from Office". He further requested all present to make a self- introduction.

MIN.NO. DCF/046/2017: MEETING WITH THE NATIONAL INTEGRITY ALLIANCE

Mr. Irungu Noughton appeared before the Committee to make a submission on the petition. He was accompanied by Samuel Kimeu, Titas Gitonga, Kelvin Njihia and Moris Njogu that represented the affiliate parties of the National Integrity Alliance. He opposed to the petition based on the following grounds:

1. The petitioner's claims were not substantiated on several counts and were vexations. This was evident when the petitioner appeared before the Committee on 28th February 2017 as he could produce any evidence to corroborate his allegations.
2. The Petition falls short of constitutional and legal standards regulating fair administrative justices and the removal of independent office holders. It is against Article 47 on fair administration of justice, Petition to Parliament (Procedure) Act and the Fair Administrative Justice Act.
3. It ~~is~~^{was not} clear who the petitioner is going by Mr. Mwangambo's own admission that he was acting on behalf of a client when he appeared before the Committee. This is contrary to Section 3(1) of the Petition to Parliament Act
4. It seeks to disable a constitutionally mandated oversight office vital for upholding integrity and the fight against corruption. EACC is one of the other offices that have faced similar attacks in the past.
5. Mr. Ouko had been cleared by the DPP of all the allegations related to procurement and abuse of office. The DPP is on record expressing his concerns on political being exerted on his office to charge Mr. Ouko. The Committee and by extension Parliament should work to protect the OAG from unwarranted attacks.
6. The Petition should be dismissed since it falls short of the evidence and legal standards set out in Article 251 of the Constitution.

7. The National Integrity Alliance can only support the Petition if the petition met the minimum threshold.

MIN.NO. DCF/047 /2017: MEETING WITH MR. BENJAMIN WAMBUA NDOLO

Mr. Wambua opposed the petition by indicating that:

1. The auditor of the Office of Auditor General is appointed by Parliament before deployment.
- ~~2. The petition against Mr. Edward Ouko was done in bad faith considering that there have~~
been much more pronounced cases of corruption that have been reported without anybody presenting a similar petition to Parliament.
3. The issue of skewed appointment on ethnic basis is not an issue confined to the office of the Auditor but is an issue audited and reported widely by the National Cohesion Integration Commission (NCIC), which found the Executive to be the biggest culprit in this anomaly. At any rate, most of the top echelon employees at OAG are staff that Mr Ouko found there when he joined 5 years ago.
4. The Office of the Director of Public Prosecutions (ODPP) is the constitutional authority mandated to bring charges against any person to a court of law. The DPP is on record acknowledging a strange urgency and interference with the matter of the Auditor-General by an 'unseen hand'. The ODPP finding no evidence and no grounds cleared Mr Ouko and Parliament cannot establish a quasi-judicial exercise to 'plough in vain' as this would tantamount to a witch hunt of a most personal and obnoxious nature.
5. The government has procedures to surcharge Mr. Ouko if he is found to have accrued telephone calls amounting to a million shillings.
6. The Auditor General has not established the Audit Advisory Board since the said law is before court where it was challenged for alleged unconstitutionality and therefore to touch on it in a working sense would be by definition *sub judice*
7. Unlike other constitutional office holders, Mr. Ouko has no chase cars.

8. The public Service Commission is mandated to appoint and deploy staff within the office of the Auditor-General as per the Public Audit Act of 2015 and not the Auditor-General.
9. That on the outset, much of the content of the petition by Mr Mwagonah seems driven by malice. Source of his information points to illegal leaks from inside the institution, part of internal conflict.
10. Mr. Edward Ouko's predecessor, Antony Gatumbu, who left in 2011 headed directly to work in the Office of the President a bastion of the Executive.
11. Mr. Wambua finally prayed that the National Assembly dismisses the petition and commends the Auditor-General for performing his work diligently.

MIN.NO. DCF/048 /2017: MEETING WITH ICPAK

The Vice- chairperson to the Institute of Certified Public Accountants of Kenya, Mr. Julius Mwatu in the company of Board Members Fredrick Riaga, John Ndanyi, Geoffrey Molombe, Samuel Okelo, Tom Nyagare, Jane Kivunda and Elais Wakhisi appeared before the Committee and submitted the following:

1. ICPAK was interested in the petition because of:
 - (i) ICPAK is mandated by the Accountants Act 2008 to regulate the accountancy profession in Kenya. It is imperative to note that the Petition points out matters that touch on the mandate of the Institute, in particular, matters related to conflict of interests and threats to independence of the Auditor General;
 - (ii) ICPAK partnered with KENAO in implementation of the "Framework for Partnership with KENAO on audit of public sector and donor funded by Audit firms in Kenya" project.
2. Response to matters raised on paragraphs 6, 28,29,30,31 & 32 of the petition on extra work given to BTM.
 - a) It is within professional norms for a firm to be engaged by the same client for assurance (financial audit) services and other non-assurance (business advisory)

services. In such a situation, both the auditee and the auditor are professionally obligated to put in place safeguards against threats to their independence by giving or accepting any assurance services. However, the duty of care is weighed more on the part of the auditor.

- b) There is no law prohibiting an auditee from giving his external auditor extra work.
 - c) The Code of Ethics for Professional Accountants Section 290 as issued by the International Ethics Standards Board of Accountants (IESBA) and adopted by the Institute, requires that in assurance engagements that firms be independent of assurance clients. It further states that before providing a non-assurance (consultancy/advisory) service to an assurance (audit) client the firm should determine whether providing such a service would create threats to its independence. If a threat is created that cannot be reduced to an acceptable level even by applying appropriate safeguards the non-assurance service should not be provided.
 - d) Evidence from M/s. Baker Tily Merali's (BTM) show that they employed adequate safeguards while undertaking the audit assignment given by the National Assembly and the extra work given by the OAG. The safeguards are as follows:
 - i. The auditor required of the client (Office of the Auditor General) to obtain a no objection clearance from Parliament ahead of accepting appointment. This was duly done.
 - ii. The auditor (BTM) has in accordance with Code of Ethics 290, demonstrated to the satisfaction of the Institute that the firm took the necessary steps to manage threats to its independence by having separate and distinct teams undertaking the two assignments independently.
3. Statement of facts regarding the "Framework for Partnership of KENAO with the Audit Firms in Kenya" project.
- THAT on 18th March 2013, ICPAK acting independently submitted a proposal to World Bank to fund activities in strengthening the practice of Accountancy in Kenya.

- THAT on 27th January 2014, the World Bank Director approved the Institutional Development Fund as a grant to ICPAK amounting to USD 68,000
 - THAT a number of contracts and purchase of goods of and services were captured in the contract.
 - THAT prior to the award of the grant, World Bank reviewed ICPAK policies and processes to ensure their adequacy and safeguards.
 - THAT in line with WORLD Bank Procurement Guidelines and ICPAK Procurement Policies, ICPAK advertised an open international tender where eight firms responded with BTM among them.
 - THAT in accordance with Consultant Qualification for Services (CQS) of World Bank, ICPAK processed the bids and awarded the contract No. 8 to Baker Tilly Merali to **develop of a framework for improving quality of audit among small and medium sized audit firms for audit of the public sector and donor projects**
 - THAT in discharging its mandate BTM had interface with the Office of the Auditor General's Office as indeed other stakeholders in the donor funded projects
 - THAT BTM developed and trained firms selected by ICPAK on how to audit on behalf of the Auditor General and Audit of Donor Funded Projects
 - THAT upon hand over, a framework was developed to guide the partnership between ICPAK and the Auditor General in relation to audit work.
 - THAT ICPAK has signed a number of frameworks and MOUs with Government and Non-Government Institutions and hence there is nothing untoward in the framework with the Office of OAG
 - THAT world Bank has had country missions and received reports from Institutional Auditors and all contracts including contract no. 8 have been cleared.
4. Finally ICPAK prayed that the Committee considers the matter objectively by allowing the respondent fair administration action as provided for under Article 47 of the Constitution and requiring the petitioner to substantiate all the allegations. The committee should then evaluate the evidence adduced and return a verdict that would serve to strengthen the voice of accountability and also embolden Parliament as the advocate of constitutionalism of last resort.

MIN.NO. DCF/049/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 2.10pm

Signed.......... Date 23-03/2018.....

Chairperson

MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON THURSDAY 2ND MARCH, 2017 IN
COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE PARLIAMENT
BUILDINGS AT 10.00AM

PRESENT

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Jimmy Nuru Angwenyi, MP | | |
| 5. Hon. Shakeel Shabbir, MP | | |
| 6. Hon. Tiras Ngahu, MP | | |
| 7. Hon. Joseph Limo, MP | | |
| 8. Hon. Patrick Makau King'ola, MP | | |
| 9. Hon. Anyanga Andrew Toboso, MP | | |
| 10. Hon. Kirwa Stephen Bitok, MP | | |
| 11. Hon. Sakaja Johnson, MP | | |
| 12. Hon. Sumra Irshadali, MP | | |
| 13. Hon. Sakwa John Bunyasi, MP | | |
| 14. Hon. Jones Mlolwa, MP | | |
| 15. Hon. Lati Lelelit, MP | | |
| 16. Hon. Abdullswamad Shariff, MP | | |
| 17. Hon. Ronald Tonui, MP | | |
| 18. Hon. Hezron Bolo Awiti, MP | | |
| 19. Hon. Sammy Koech, MP | | |
| 20. Hon. Joash Olum, MP | | |

(13)

APOLOGIES

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Ogendo Rose Nyamunga, MP
3. Hon. Mary Emase, MP
4. Hon. Alfred Sambu, MP
5. Hon. Daniel Epuyo Nanok, MP
6. Hon. Dennis Waweru, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Sammy Mwaita, MP

INATTENDANCE

Secretariat

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant |
| 2. Mr. Dennis Abisaye | - | Principal Legal Counsel |
| 3. Mr. Evans Oanda | - | First Clerk Assistant |

- | | | |
|--------------------------|---|-------------------------|
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 6. Ms. Emma Essendi | - | Legal Counsel |
| 7. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 8. Mr. Eric Ososi | - | Research Officer |
| 9. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 10. Mr. Bonface Mugambi | - | Sergeant At arms |
| 11. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon. Dalmas Otieno, MP

~~MIN.NO. DCF/051/2017: PRELIMINARIES~~

The Chairperson called the meeting to order at 10 30am followed by a word of prayer from Hon. Abdullswamad Shariff, MP. He then introduced the agenda of the day as “consideration of the Memorandum from the petitioner regarding removal of the Auditor General from Officer”.

~~MIN.NO. DCF/052/2017: CONSIDERATION OF A PETITION TO REMOVAL MR. EDWARD OUKO FROM OFFICE~~

A. Threshold for removal

The legal counsel reminded members of the speaker’s communication on 22nd October 2015 on the process and threshold to be met in processing special motions regarding removal of the Independent office holders. He reiterated the following:

1. It is a quasi-judicial in nature meaning that courts can comment on the process adopted by the Committee in considering the petition.
2. Though the petitioner did not provide material evidence to substantiate his petition, the Committee was at liberty to either terminate or ask for those documents using its powers under Article 125
3. As to whether the alleged violations of the Constitution and the laws will constitute grounds for removal from office, it is the Committee to determine this. However, the Committee should be cognizant of the court pronouncements on the matter of threshold.

In one of the rulings, it was determined that there must be a nexus between the accused and the alleged violation the contemplated removal.

- 4. Though courts have pronounced themselves on what constituted gross violation of the Constitution, the same courts have also indicated matters of gross violation should be case-specific.

B. Memorandum from the petitioner

After going through the memorandum by the petitioner that and its forwarding letter dated 1st March 2017, the Committee noted that the memorandum lacked evidence. It resolved to proceed consideration of the petition and asked the secretariat to invite the following bodies to testify:

- ✓ Director of Public Prosecutions
- ✓ The Chief Executive/ Secretary Ethics and Anti- Corruption Commission.
- ✓ Baker Tilly Meralis

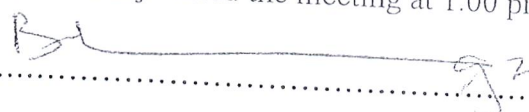
The Committee further asked the Secretariat to request the Clerk of the National Assembly to provide contract details and the amount paid to BTM by the National Assembly while acting as external auditors of BTM.

MIN.NO. DCF/ 053/2017: ANY OTHER BUSINESS

The Chairman reminded the Committee to honour the invitation from the Chairman of Kenya Airways scheduled for 1st March 2017 at 12:00pm. The Committee further resolved to invite the KQ to discuss on the recovery strategy of the airline.

MIN.NO. DCF/054/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 1.00 pm

Signed..... 

Chairperson

Date..... 23-03-2017

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MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON THURSDAY 9TH MARCH, 2017 IN
COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

- | | | |
|-----------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Eng. Shadrack Manga, MP | | |
| 5. Hon. Shakeel Shabbir, MP | | |
| 6. Hon. Ronald Tonui, MP | | |
| 7. Hon. Sammy Koech, MP | | |
| 8. Hon. Sammy Mwaita, MP | | |
| 9. Hon. Lati Lelelit, MP | | |
| 10. Hon. Abdul Rahim Dawood, MP | | |
| 11. Hon. Ogendo Rose Nyamunga, MP | | |

(15)

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Tiras Ngahu, MP
3. Hon. Kirwa Stephen Bitok, MP
4. Hon. Jones Mlolwa, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Joseph Limo, MP
7. Hon. Patrick Makau King'ola, MP
8. Hon. Abdullswamad Shariff, MP
9. Hon. Anyanga Andrew Toboso, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Joash Olum, MP
13. Hon. Mary Emase, MP
14. Hon. Alfred Sambu, MP
15. Hon. Daniel Epuyo Nanok, MP
16. Hon. Dennis Waweru, MP
17. Hon. Hezron Bolo Awiti, MP

IN ATTENDANCE

Committee Secretariat

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Nicholas Emején | - | Principal Clerk Assistant |
| 2. Mr. Dennis Abisac | - | Principal Legal Counsel |
| 3. Mr. Evans Oanda | - | First Clerk Assistant |

- | | | |
|--------------------------|---|-------------------------|
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Ms. Emma Essendi | - | Legal Counsel |
| 6. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 7. Mr. Eric Osoi | - | Research Officer |
| 8. Ms. Rose Njuki | - | Sergeant At arms |
| 9. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 10. Mr. Bonface Mugambi | - | Sergeant At arms |
| 11. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon. Dalmas Otieno, MP
 2. Hon. Chris Wamalwa, MP
-

Ethics And Anti Corruption Commission

1. Mr. Michael Mubea - Deputy Secretary/Chief Executive Officer (EACC)
2. Mr. Abdi Mohammed - Director Investigations (EACC)

Auditor General's Office

1. Mr. George Otieno Nashon
2. Ms. Edith Lubanga
3. Mr. Philip Ondiek
4. Mr. Nick Mureithi

MIN.NO. DCF/ 067/2017: PRELIMINARIES

The Chairperson called the meeting to order at 11. 30am followed by a word of prayer from the Hon. Abdul Rahim Dawood, MP. He then introduced the agenda of the meeting as “**Brief by the Ethics and Anti- Corruption Commission on a petition to remove the Auditor General of Kenya from office**”. He further requested all present to make self-introduction.

MIN.NO. DCF/ 068/2017: BRIEF ON THE STATUS OF INVESTIGATIONS REGARDING OFFICE OF THE AUDITOR GENERAL OF KENYA BY THE ETHICS AND ANTI- CORRUPTION COMMISSION (EACC)

The Deputy Secretary/ Chief Executive Officer (EACC) Mr. Michael Mubea accompanied by the Director Investigation Mr. Abdi Mohammed appeared before the Committee and presented the following on the issues the EACC raised in the petition that the EACC had investigated:

STATUS OF INVESTIGATIONS REGARDING OFFICE OF THE AUDITOR GENERAL

NO	CASE NO	Particulars of Allegations	Status of the file
1.	EA CC/ INQ /62/2 015	<p><i>Allegations that the Office of Auditor General irregularly purchased Audit Vault Software at a cost of Kshs. 100 million against the estimated cost of Kshs. 18 million. There was a further allegation that the software was purchased through direct procurement and the supplier of the software was paid without adequate documentation.</i></p> <p>Findings:</p> <p>The Committee was informed that after the investigations by the EACC established that out of the Kshs 100 million paid by the Auditor General's office for the software to the firm, it was disbursed to other third parties as follows:-</p> <ul style="list-style-type: none"> • OSI Kenya BBC Supplier Kshs. 48,420,500 (from which USD 361,300.25 was sent to Weston 	<p>The Committee was informed that the investigations had been finalized and the files had been forwarded to the Director of Public Prosecutions with recommendations to charge the following:</p> <ol style="list-style-type: none"> 1. Mr. Edward Ouko 2. Mr. Stephen Kinuthia 3. Mr. Justus Ongera 4. Mr. Charles Gichohi 5. Ms. Annette Mwangi 6. Mr. Shem Mwangi 7. Mr. Ephantus Kairu 8. Mr. Sylvester Kiplangat 9. Mr. Charles Mwaduna 10. OSI Kenya Ltd <p>The recommended charges subject to concurrence by the DPP were as follows:-</p> <ol style="list-style-type: none"> 1. Abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economics Crimes Act, 2003 2. Engaging in project without prior planning with Section 45(3) as read with Section 48(1) of the Anti-Corruption and Economics Crimes Act, 2003 3. Willful failure to comply with the law

		<p>Africa UK)</p> <ul style="list-style-type: none"> • Njuguna and Partners Advocates received 36,089,966 • Kiplagat & Valentine(Director OSI) Kshs. 2,536,750 • Purchase of the car for the director of OSI Kenya Mr. Shem Mwangi 3,400,000 	<p>relating to procurement contrary to section 45b (2) (b) as read with Section 48(1) of the Anti- Corruption and Economics Crimes Act,2003</p> <ol style="list-style-type: none"> 4. Dealing with suspect property contrary to section 47(1) as read with Section 48(1) of the Anti- Corruption and Economics Crimes Act,2003 5. Acquisition of proceeds of crime contrary to section 4 as read with section 16(1) (a) of the Proceeds of Crime and Anti-Money Laundering Act.
		<p>Procurement Irregularities</p> <ol style="list-style-type: none"> i) Procurement planning – the procurement for the Audit Vault Software was undertaken without it being included in the procurement plan ii) The choice of procurement method was flawed – the justification that was given to the Tender Committee that OSI Kenya was the only 	<ol style="list-style-type: none"> 6. Knowingly deceiving principal contrary to section 41(2) as read with section 48(1) of the Anti- Corruption and Economics Crimes Act,2003 7. Conspiracy to commit an economic crime contrary to section 47(A (3) as read with section 48(1) of the Anti- Corruption and Economics Crimes Act, 2003. <p>On 3rd February 2017 the DPP returned the file to EACC to cover further areas.</p>

accredited partner of ORACLE in the region was misleading and consequently the Committee approved direct procurement method

iii) **The Award of the tender-** the Tender Committee was not involved in the award of the tender. The matter was never resubmitted to the Committee following negotiations between OSI and the Office of the Auditor General.

iv) **Notification of Award-** investigations done established that notification was given to OSI Kenya for the award of the tender since the matter was never

		<p>resubmitted to the tender Committee</p> <p>v) Signing of the Contract – OSI Kenya Limited signed the contract on 20th October, 2013 whereas the LPO had been</p>	
		<p>issued to OSI Kenya on 14th August, 2013. The payment voucher had already been authorized and approved by all the relevant officer including the Auditor General who was the accounting Officer. He approved the payment voucher on 18th October 2013.</p> <p>vi) Payment – 100% payment was effected before the supply of goods.</p> <p>This was done in spite reservations</p>	

		<p>registered by the senior manager Auditor that the interest of the Auditor General had been safeguarded</p>	
2.	EA CC/ PI/ NQ/ 378/ 2017	<p><i>Allegation that the office of the Auditor General awarded a tender for IFMIS effectiveness review audit irregularly to Jomo Kenyatta University of Agriculture and Technology Enterprise Ltd (JKUATES). The specific issues were:-</i></p> <ul style="list-style-type: none"> i) JKUATES sub-contracted a Dubai based firm called Great Sands consulting without following the procurement laws ii) JKUATES is an auditee of the Office of the Auditor General and not in the audit business iii) The cost of the audit was approximately Kshs. 100 million but what was paid 	

		<p>was over Kshs. 160 million more than 50% of the cost</p> <p>iv) Although the work commenced early 2014 no report of the audit has been issued to parliament to date</p>	
		<p>v) The procurement of the audit was not budgeted by the Office of the Auditor General</p>	
3.		<p>Allegations of unethical conduct by office of the Auditor through irregular recruitment and promotions of staff particularly officers in the supply Chain Management Unit.</p>	<p>The Committee was informed that the investigations are still ongoing</p>
4.		<p>Allegations of conflict of interest and misappropriation of funds at the office of the Auditor General in respect of hiring the services of Ms. Baker Tilly Merali's audit firm to undertake a consultancy job evaluation of internal controls at a cost Kshs. 5,000,000.</p>	<p>The Committee was informed that the investigations are still ongoing</p>

COMMITTEE OBSERVATIONS

There were irregularities in the procurement of Audit Vault Software as follows:

- The LPO was issued on 14th August 2013 before signing the contract (was done on 20th October 2013)
- The Auditor-General himself approved the payment voucher after his juniors had refused to sign.
- It was single sourced based on a misleading information that it ^{was} OSI Kenya limited that had capacity to supply in Kenya
- The value of the software may have been inflated as alleged. EACC valued it at KES 18M.
- There was no notification and acceptance of award
- The proceeds of the purchase of the software were able to be traced and found to have been distributed into some officers working in the OAG i.e Mr. Stephen Kinuthia (DAG-CS).

WAYFORWARD

1. The EACC was asked to provide all the relevant documentation that could be in position of EACC regarding procurement of Audit Vault Software.
2. The Secretariat was asked to invite the following persons in the week commencing 13th March 2017
 - Seltar Crafts Ltd on 15th March 2017
 - Baywood Holdings Limited on 15th March 2017
 - Ms. Agnes C. Mita (Deputy Auditor General –Corporate Services) on 15th March 2017
 - Mr. Philip Owiti (Head of Human Resource Department at the OAG) on 15th March 2015
 - Mr. Stephen Kinuthia (Deputy Auditor General on 15th March 2017
 - Director General of the PPOA on 16th March 2017
 - Management of JKUAT on 16th March 2017

- Chief finance officer at the OAG on 16th March 2017
- Open Systems Integration (OSI) Kenya on 16th March 2017
- The petitioner on 16th March 2017
- Mr. Edward Ouko on 16th March 2017
- KCB
- Director of ICT in the Office of the Auditor-General



MIN.NO. DCF/069/2017: ANY OTHER BUSINESS

The Chairman read the following correspondences:

1. **Letters from Dr. Otiende Amolo** dated 2nd and 7th March 2017 regarding the Committee's consideration of a petition for removal of Auditor-General from office. It was noted that Mr. Otiende believes that the adopted in considering the petition was fundamentally and incurably lawed and could not result in a fair outcome. Mr. Otiende further contended that the petition effluxes since the petitioner failed to substantiate allegations raised in his petition.
After deliberations on the two letters, the Committee noted the comments and asked the legal counsel to reply to the two letters.
2. **A brief from the Chief of Staff and Head of Public Service:** The Chief of Staff and Head of Public Service confirmed that the Auditor-General has never submitted reports contemplated in Article 254(1).
3. **A brief from the Clerk of the National Assembly:** The Clerk of the National Assembly confirmed that the Auditor-General has never submitted reports contemplated in Article 254(1). He further provided a contract agreement between BTM and Parliamentary Service Commission for auditing the Office of the Auditor General for the financial years 2012/13, 2013/14 and 2014/15.
Finally, it was resolved that the Chief of Staff and Head of the Public Service would be invited at an opportune to inform Members whether any of the independent office holders has ever submitted reports contemplated under Article 254(1) and the scope of the said reports.

MIN.NO. DCF/070/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 1. 25 pm

Signed..........date.....

Chairman

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**MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON THURSDAY 9TH MARCH, 2017 IN
COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 2.30PM**

PRESENT

- | | | |
|-----------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Shakeel Shabbir, MP | | |
| 5. Hon. Ronald Tonui, MP | | |
| 6. Hon. Sammy Koech, MP | | |
| 7. Hon. Sammy Mwaita, MP | | |
| 8. Hon. Lati Lelelit, MP | | |
| 9. Hon. Abdul Rahim Dawood, MP | | |
| 10. Hon. Ogendo Rose Nyamunga, MP | | |

(16)

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Kirwa Stephen Bitok, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Sakwa John Bunyasi, MP
7. Hon. Joseph Limo, MP
8. Hon. Patrick Makau King'ola, MP
9. Hon. Abdullswamad Shariff, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Sakaja Johnson, MP
12. Hon. Sumra Irshadali, MP
13. Hon. Joash Olum, MP
14. Hon. Mary Emase, MP
15. Hon. Alfred Sambu, MP
16. Hon. Daniel Epuyo Nanok, MP
17. Hon. Dennis Waweru, MP
18. Hon. Hezron Bolo Awiti, MP

INATTENDANCE

Committee Secretariat

- | | | |
|-------------------------|---|---------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant |
| 2. Mr. Dennis Abisae | - | Principal Legal Counsel |
| 3. Mr. Evans Oanda | - | First Clerk Assistant |
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Ms. Emma Essendi | - | Legal Counsel |
| 6. Mr. Yakubu Ahmed | - | Media Relations Officer |
| 7. Mr. Eric Osoi | - | Research Officer |
| 8. Ms. Rose Njuki | - | Sergeant At arms |

- | | | |
|--------------------------|---|------------------|
| 9. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 10. Mr. Bonface Mugambi | - | Sergeant At arms |
| 11. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon Dalmas Otieno, MP
2. Hon. Kimani Ichungwa, MP
3. Hon. Ben Momanyi, MP

Auditor General's Office

1. Mr. George Otieno Nashon
2. Ms. Edith Lubanga
3. Mr. Philip Ondiek
4. Mr. Nick Mureithi

Office of the Director of Public Prosecutions

- | | | |
|---------------------------|---|------------|
| 1. Mr. Kiriako Tobiko | - | DPP |
| 2. Ms. Dones Odur | - | Deputy DPP |
| 3. Mr. Jacob Ondari | - | Deputy DPP |
| 4. Mr. Nicholas K. Mutuku | - | Deputy DPP |

MIN.NO. DCF/ 071/2017: PRELIMINARIES

The Chairperson called the meeting to order at 2.40pm followed by a word of prayer from the Hon. Dr. Oburu Oginga, MP. He then introduced the agenda and lead the meeting in introductions.

MIN.NO. DCF/ 072/2017: MEETING WITH THE DIRECTOR OF PUBLIC PROSECUTIONS

The Director of Public Prosecution, Mr Kiriako Tibiko accompanied by his three deputies appeared before the Committee to brief it on the issues raised in the petition that the DPP might have dealt with in the past. In his presentation, Mr. Tobiko submitted the following:

1. On 3rd January 2017, he received file No.EACC/F1/INQ/62/2015 from the EACC on the alleged irregular procurement of the Audit Vault Software by the Office of the Auditor-General
2. EACC's investigations were triggered by a letter from the PS National Treasury dated 8th April 2014 forwarding anonymous complaints raising several allegations against the office of the Auditor-General
3. In the report, EACC recommended prosecution of Edward Ouko (Auditor General), Stephen Kinuthia (Deputy Auditor General Corporate Services), Justus Ongera, Charles

Gichobi of OSI Kenya, Annette Mwangi, Sylvester Kiplagat, Ephantus Kairu, and Charles Mwaduna.

4. Upon analysis of the evidence in the file, the DPP found and concluded as follows:
 - a. The charge of abuse of office recommended by the EACC against Edward Ouko was not supported by evidence in the file.
 - b. The charge of engaging in project without prior planning recommended by EACC against Edward Ouko was not supported by evidence in the file.
 - c. The charge of willful failure to comply with the procurement laws recommended by EACC against Edward Ouko was not supported by evidence in the file.
 - d. The charge of abuse of office recommended by EACC against Stephen Kinuthia was not supported by evidence in the file.
 - e. The charge of willful failure to comply with the procurement laws recommended by EACC against Stephen Kinuthia and Justus Ongera was not supported by evidence in the file.
 - f. There was sufficient evidence to charge Stephen Kinuthia (Deputy Auditor-General Corporate Services) with the following:
 - Dealing with suspect property (i.e receipt of Kshs. 27 million, from proceeds of acquisition of Audit Vault from OSI Kenya Ltd at the cost of Kshs 100 million) contrary to section 47 as read with section 48 of ACECA.
 - Deceiving principal contrary to section 41 of ACECA
 - Conflict of interest contrary to section 42(3) of ACECA
 - Engaging in corrupt practice contrary to section 40 of the public procurement and Disposal Act (PPDA)
 - Collusion contrary to section 42(1)(c) of PPDA
 - Corruptly giving a benefit (I.e Kshs 500,000) to Charles Gichobi, (sales executive of Oracle) contrary to section 39 (3)(b) of ECECA
 - Acquisition of proceeds of crime (Kshs 27 million) contrary to section 16 of the Proceeds of Crime and Anti Money Laundering ACT (POCAML A)
 - g. There was sufficient evidence to charge Charles Gichobi (sales executive Oracle Kenya), with acquisition of proceeds of crime (Kshs 500,000), contrary to section 1691(a) of POCAML A.

- h. There was sufficient evidence to charge Annette Mwangi (manager information Technology Audit/OAG and Justus Ongera (Director information, Communication technology/OAG), with the offence of deceiving principal contrary to section 41 of ACECA.
 - i. There was evidence to jointly charge Stephen Kinuthia (DAG-CS) Maina Shem Kamau (Managing Director OSI Kenya Limited), Ephantus Kairu (Director OSI Kenya limited), Sylvester Kiplagat (Director OSI Kenya Limited), Charlies Gachobi (Sales Executive Oracle Kenya), OSI Kenya Ltd, Annette Mwangi (Manager information technology audit/OAG), Justus Ongera, Charles Mwaduna and Mars Technology ltd with conspiracy to commit an economic crime contrary to section 47(A)(3) of ACECA.
 - j. There was sufficient evidence to charge Charles Mwaduna with acquisition of proceeds of crime (Kshs 7,900,000 from OSI Kenya Ltd), contrary to section 16(1)(a) of POCAMALA.
 - k. There was sufficient evidence to charge OSI Kenya Ltd, Mars Technology Associates Ltd, Finsolt TCS ltd, Enkai Holding Ltd, Nanazi Investment LTD, Kenya Milk Farmers Investment Ltd and their respective directors with the offence of money laundering contrary to section 3 of POCAMLA
5. The DPP therefore directed prosecutions to ensue according. He also directed that copies of the duplicate inquiry file be forwarded to the Asset Recovery Agency (ARA) and Kenya Revenue Authority (KRA) for appropriate Action in terms of their respective legal mandates.
 6. The DPP's decision not to charge Edward Ouko was made pursuant to the Constitutional mandate of the Office (Article 157) and based on the DPP's independent and careful assessment of the evidence in the file and the law governing the making of prosecutorial decisions.
 7. Since making the above directions, there have been four suits against the DPP challenging his decision not to charge Edward Ouko. However, in the event there is new evidence to warrant prosecution of more persons, the DPP will act accordingly.

MIN.NO. DCF/073/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 4. 40 pm

Signed..... Date..... 23-03-2017

Chairperson

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESSDAY 14TH MARCH, 2017 IN
COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10.00PM

PRESENT

- | | | |
|----------------------------------|---|------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson |
| 3. Hon. Dr. Oburu Oginga, MP | | |
| 4. Hon. Ronald Tonui, MP | | |
| 5. Hon. Sammy Koech, MP | | |
| 6. Hon. Abdul Rahim Dawood, MP | | |
| 7. Hon. Ogendo Rose Nyamunga, MP | | |
| 8. Hon. Kirwa Stephen Bitok, MP | | |
| 9. Hon. Mary Emase, MP | | |
| 10. Hon. Sakwa John Bunyasi, MP | | |

(17)

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Shakeel Shabbir, MP
4. Hon. Tiras Ngahu, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Joseph Limo, MP
7. Hon. Patrick Makau King'ola, MP
8. Hon. Abdullswamad Shariff, MP
9. Hon. Anyanga Andrew Toboso, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Joash Olum, MP
13. Hon. Alfred Sambu, MP
14. Hon. Daniel Epuyo Nanok, MP
15. Hon. Dennis Waweru, MP
16. Hon. Hezron Bolo Awiti, MP
17. Hon. Sammy Mwaita, MP
18. Hon. Lati Lelelit, MP

INATTENDANCE

Committee Secretariat

- | | | |
|-------------------------|---|-------------------------------------|
| 1. Antony Njoroge | - | Director, Litigation and Compliance |
| 2. Mr. Dennis Abisae | - | Principal Legal Counsel |
| 3. Mr. Evans Oanda | - | First Clerk Assistant |
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Ms. Emma Essendi | - | Legal Counsel |
| 6. Mr. Yakubu Ahmed | - | Media Relations Officer |

- | | | |
|--------------------------|---|------------------|
| 7. Mr. Eric Ososi | - | Research Officer |
| 8. Ms. Catherine Mukunyi | - | Sergeant At arms |
| 9. Mr. Collins Mahamba | - | Audio Officer |

Friends of the Committee

1. Hon Dalmas Otieno,MP

MIN.NO. DCF/ 074/2017: PRELIMINARIES

The Chairperson called the meeting to order at 11:45am followed by a word of prayer from the Hon. Dawood, MP. He then introduced the agenda of the meeting as a continuation of receiving evidence on a petition regarding removal of Auditor-General from office.

MIN.NO. DCF/ 075/2017: BREIF FROM THE DIRECTOR OF LITIGATION & COMPLIANCE

The Director of Litigation and Compliance, Mr. Antony Njoroge informed the Committee that on 13th March 2017, the High Court had issued conservatory orders restraining the Committee from further proceeding with the petition pending the hearing and determination of a case filed by Okiya Omtatah Okoiti against the National Assembly, Speaker of the National Assembly, the Attorney General and Mr. Emmanuel Mwangambo.

Mr. Omtatah argued that a petition to remove the Auditor- General from Office was a mere witch-hunt by individuals seeking to remove the Auditor General from Office for exposing corruption in government. He also contents that the matters raised in the petition had been addressed by competent offices mandated in law to investigate. By considering the petition, the National Assembly will therefore be usurping their powers.

The Order that was issued by Justice E. Chacha Mwita further bars the respondents from acting on any recommendations made by the Committee until the Court determines the petition by Omtatah. The Case will be coming for hearing on 10th of April 2017.

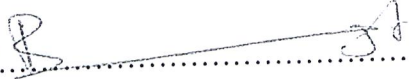
The director further informed the Committee of another court order that was issued on 14th March 2017 by Justice Odunga granting similar conservatory orders. This case was filed by Mr. Edward Ouko and will be heard on 15th May 2017.

Upon deliberation of the matter, the Committee resolved as follows:

1. Suspend all Scheduled meetings relating to the petition as ordered by the Courts
2. Request for directions from the Chair (Speaker of the National Assembly on the following:
 - a) Whether it was proper for the High Court to issue the conservatory orders on 13th March 2017 *suo moto* before hearing the Counsel appearing for the National Assembly and the Speaker of the National Assembly;
 - b) Whether the jurisdiction of the High Court to hear matters under Article 165(3)(d) of the Constitution extends to injuncting the National Assembly from considering whether a petition submitted under Article 251 of the Constitution discloses a ground for the removal of a member of a Constitutional Commission or holder of an independent office;
 - c) Whether the High Court has a mandate to impose conditions on the Parliament when exercising its mandate under Article 125 of the Constitution to call for information or documents from any person;
 - d) Whether the doctrine of separation of powers requires the judiciary to restrain itself from unnecessarily interfering in matters within the mandate of the other arms of government, to wit, the Legislature and the Executive;
 - e) Whether the Senate should be requested to pass the Constitution of Kenya (Amendment) (No.2) Bill, 2015 (sponsored Hon George Peter Kaluma) which was passed by the National Assembly in August 2015 and referred to the Senate;
 - f) Whether the ruling sets a bad precedent and should be appealed against;

MIN.NO. DCF/076/2017: ADJOURNMENT

The Chairperson adjourned the meeting at 12:21 pm

Signed..........Date.....23-09-2017.....

Chairperson

**MINUTES OF THE 20TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 23RD MARCH 2017 IN THE
COMMITTEE ROOM, 4TH FLOOR, PARLIAMENT BUILDINGS AT 11.30AM**

PRESENT

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Shakeel Shabbir, MP
5. Hon. Ronald Tonui, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Kirwa Stephen Bitok, MP

Chairperson
Vice-Chairperson

APOLOGIES

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Sumra Irshadali, MP
4. Hon. Mary Emase, MP
5. Hon. Joash Olum, MP
6. Hon. Alfred Sambu, MP
7. Hon. Tiras Ngahu, MP
8. Hon. Dennis Waweru, MP
9. Hon. Sakaja Johnson, MP
10. Hon. Lati Lelelit, MP
11. Hon. Sammy Mwaita, MP
12. Hon. Joseph Limo, MP
13. Hon. Patrick Makau King'ola, MP
14. Hon. Sakwa John Bunyasi, MP
15. Hon. Hezron Awiti, MP
16. Hon. Sammy Koech, MP
17. Hon. Abdullswamad Shariff, MP
18. Hon. Anyanga Andrew Toboso, MP
19. Hon. Daniel Epuyo Nanok, MP

INATTENDANCE

SECRETARIAT

1. Mr. Nicolus Emejen - Principal Clerk Assistant
2. Mr. Evans Oanda - First Clerk Assistant
3. Mr. Nicodemus Maluki - Third Clerk Assistant
4. Mr. Fredrick Otieno - Third Clerk Assistant
5. Mr. Emma Esendi - Legal Officer

MIN.NO. DCF/077 /2017: PRELIMINARIES

The Chairperson called the meeting to order at 11. 45 am and prayed.

MIN.NO. DCF/078/2016: CONFIRMATION OF MINUTES

The minutes of the previous meetings were confirmed as follows:

1. Minutes of the 85th Sitting held on Tuesday 22nd November , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood MP and Seconded by the Hon. Ronald Tonui, MP.
2. Minutes of the 86th Sitting held on Thursday 24th November , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Rose Nyamunga, MP and Seconded by the Hon. Abdul Rahim Dawood, MP.
3. Minutes of the 87th Sitting held on Tuesday 29th November , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Jones Mlolwa, MP and Seconded by the Hon. Rose Nyamunga, MP.
4. Minutes of the 88th Sitting held on Thursday 1st December, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP.
5. Minutes of the 89th Sitting held on Monday 17th December, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Dr. Oburu Oginga, MP.
6. Minutes of the 90th Sitting held on Thursday 1st December, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP.
7. Minutes of the 1st Sitting held on Thursday 26th January 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP.

8. Minutes of the 2nd Sitting held on Tuesday 31st January 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Kirwa Stephen Bitok, MP.
9. Minutes of the 3rd Sitting held on Thursday 2nd February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Kirwa Stephen Bitok, MP.
10. Minutes of the 4th Sitting held on Thursday 2nd February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Kirwa Stephen Bitok, MP and Seconded by the Hon. Jones Mlolwa, MP.
11. Minutes of the 5th Sitting held on Thursday 7th February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Dr. Oburu Oginga, MP.
12. Minutes of the 6th Sitting held on Tuesday 14th February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Kirwa Stephen Bitok, MP
13. Minutes of the 7th Sitting held on Tuesday 16th February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Kirwa Stephen Bitok, MP and Seconded by the Hon. Shakeel Shabbir, MP
14. Minutes of the 8th Sitting held on Tuesday 21st February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP
15. Minutes of the 9th Sitting held on Thursday 23st February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Kirwa Stephen Bitok, MP and Seconded by the Hon. Shakeel Shabbir, MP
16. Minutes of the 10th Sitting held on Tuesday 28th February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Ronald Tonui, MP
17. Minutes of the 11th Sitting held on Tuesday 28th February 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP

18. Minutes of the 12th Sitting held on Wednesday 1st March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Dr. Oburu Oginga, MP
19. Minutes of the 13th Sitting held on Thursday 2nd March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Kirwa Stephen Bitok, MP and Seconded by the Hon. Ronald Tonui, MP
20. Minutes of the 14th Sitting held on Tuesday 7th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Dr. Oburu Oginga, MP
21. Minutes of the 15th Sitting held on Tuesday 7th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Ronald Tonui, MP
22. Minutes of the 16th Sitting held on Wednesday 8th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Kirwa Stephen Bitok, MP and Seconded by the Hon. Dr. Oburu Oginga, MP
23. Minutes of the 17th Sitting held on Thursday 9th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Dr. Oburu Oginga, MP
24. Minutes of the 18th Sitting held on Thursday 9th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Dr. Oburu Oginga, MP
25. Minutes of the 19th Sitting held on Tuesday 14th March 2017 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Kirwa Stephen Bitok, MP

MIN.NO. DCF/079/2017: MATTERS ARISING

1. Under Min.No.DCF/325/2016 on a petition against EABL, the Committee resolved to consider it at an opportune time.
2. Under Min.No.DCF/330/2016 on the banking crisis, the Committee resolved to consider it at an opportune time.
3. Under Min.No.DCF/007/2017 on a petition regarding Muiri Estate, the Committee resolved to consider it at an opportune time.

MIN.NO. DCF/080 /2017: ANY OTHER BUSINESS

1. Progress report on the matter of removal of the Auditor-General

The Committee deliberated on the Speaker's Communication delivered on 21st March 2017 that directed the Committee to prepare and table a progress report by 29th March 2017. In the end, the Secretariat was asked to prepare the said report for tabling.

2. Processing of bills before the Committee

The Chairman informed the Committee of the following pending Bills before the Committee:

- The Legal Metrology Bill, 2017
- Trade Remedies Bill, 2017
- The Nairobi International Financial Center Bill, 2017

He further informed the Committee of an invitation from the State Department of Trade for a breakfast meeting scheduled for Tuesday 28th March 2017 to discuss the trade remedies Bill and the Legal Metrology Bill. After deliberations, it was resolved that the breakfast meeting be rescheduled to Wednesday 29th March 2017.

Regarding the Nairobi International Financial Centre Bill, the Committee resolved to consider it after the party primaries

MIN.NO. DCF/324 /2016: ADJOURNMENT

The Chairperson adjourned the meeting at 12.05pm

Signed.....
Chairperson

Date.....

**MINUTES OF THE 21ST SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 28TH MARCH 2017 IN THE
NEW DINING ROOM, MAIN PARLIAMENT, PARLIAMENT BUILDINGS AT
11.30AM**

PRESENT

1. Hon. Nelson Gaichuhie, MP Vice-Chairperson
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Shakeel Shabbir, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Kirwa Stephen Bitok, MP
7. Hon. Mary Emase, MP
8. Hon. Lati Lelelit, MP
9. Hon. Daniel Epuyo Nanok, MP
10. Hon. Jones Mlolwa, MP
11. Hon. Ronald Tonui, MP

APOLOGIES

1. Hon. Benjamin Langat, MP Chairperson
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Sumra Irshadali, MP
4. Hon. Joash Olum, MP
5. Hon. Alfred Sambu, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Sammy Mwaita, MP
10. Hon. Joseph Limo, MP
11. Hon. Patrick Makau King'ola, MP
12. Hon. Sakwa John Bunyasi, MP
13. Hon. Hezron Awiti, MP
14. Hon. Sammy Koech, MP
15. Hon. Abdullswamad Shariff, MP
16. Hon. Anyanga Andrew Toboso, MP
17. Hon. Ogendo Rose Nyamunga, MP

INATTENDANCE

SECRETARIAT

1. Mr. Evans Oanda - First Clerk Assistant
2. Mr. Nicodemus Maluki - Third Clerk Assistant

- 3. Mr. Fredrick Otieno - Third Clerk Assistant
- 4. Mr. Emma Esendi - Legal Officer

MIN.NO. DCF/082/2017: PRELIMINARIES

The Vice Chairperson called the meeting to order at 12.00 noon, followed by a prayer from Hon. Daniel Epuyo Nanok, MP.

MIN.NO. DCF/083/2016: CONSIDERATION OF THE DRAFT PROGRESS REPORT ON A PETITION FOR REMOVAL OF THE AUDITOR-GENERAL FROM OFFICE

The Committee considered the draft progress report on a petition for removal of the Auditor-General from office and resolved to table it on Wednesday 29th February 2017 as directed by the Speaker.

MIN.NO. DCF/084 /2017: ANY OTHER BUSINESS

The Committee was requested to attend a breakfast meeting organized by State Department of Trade on Wednesday 29th March 2017 to discuss the Trade Remedies Bill, 2017 and the Legal Metrology Bill, 2017.

MIN.NO. DCF/085 /2016: ADJOURNMENT

The Chairperson adjourned the meeting at 12.45 pm.

Signed.....
Chairperson

Date.....