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Paper laid on the Table of the House by Hon. Adan Kinyan, Chair of P.C. on Thursday, 8th June 2017 (Afternoon)

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- FIFTH SESSION

Directorate of Committee Services

THE PUBLIC INVESTMENTS COMMITTEE

REPORT ON THE PETITION BY THE HON. PROSTUS AKUJA, MEMBER OF PARLIAMENT FOR LOIMA CONSTITUENCY ON BEHALF OF THE RESIDENTS OF TURKANA COUNTY REGARDING ALLEGATIONS OF FINANCIAL MISCONDUCT BY ENG. DANIEL K. BARAZA, FORMER GENERAL MANAGER OF THE NATIONAL IRRIGATION BOARD AND STALLED WORKS ON CAPITAL IRRIGATION PROJECTS IN TURKANA COUNTY

JUNE 2017

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LIST OF ABBREVIATIONS AND ACRONYMS

Ag.	-	Acting
Eng.	-	Engineer
KES	-	Kenya Shillings
NIB	-	National Irrigation Board
PPDA	-	Public Procurement and Disposal Act
PPRA	-	Public Procurement Regulatory Authority
PS	-	Principal Secretary
TC	-	Tender Committee

1.0 PREFACE

1. The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

1.1 Committee Mandate

2. The Committee is mandated to-

- (a) Examine the reports and accounts of the public investments;
- (b) Examine the reports, if any, of the Auditor-General on the public investments;
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

3. The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173–203. The Committee has powers, under Article 125 of the Constitution of Kenya 2010, National Assembly Powers and Privileges Act (Cap. 6), the State Corporations Act, (Cap. 446) and the Public Audit Act, 2003, to summon witnesses, examine them on oath and receive evidence.

1.2 Committee Membership

4. The Committee is comprised of the following Members-

- (i) Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
- (ii) Hon. Anthony Kimani Ichung'wah, MP - Vice Chairperson
- (iii) Hon. Francis Mwanzia Nyenze, EGH, MP
- (iv) Hon. (Dr.) Oburu Oginga, MGH, MP
- (v) Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
- (vi) Hon. Adan Mohammed Nooru, MP
- (vii) Hon. Franklin Mithika Linturi, MP
- (viii) Hon. Atanas Wafula Wamunyinyi, MP
- (ix) Hon. Elias Bare Shill, MP

- (x) Hon. Sammy Silas Komen Mwaita, MP
- (xi) Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
- (xii) Hon. John Olago Aluoch, MP
- (xiii) Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
- (xiv) Hon. (Eng.) John Kiragu, MP
- (xv) Hon. (Eng.) Stephen Ngare, MP
- (xvi) Hon. Abdullswamad Sheriff Nassir, MP
- (xvii) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (xviii) Hon. Bernard Munywoki Kitungi, MP
- (xix) Hon. Cornelly Serem, MP
- (xx) Hon. Dorcas Kedogo, MP
- (xxi) Hon. Irungu Kang'ata, MP
- (xxii) Hon. Johana Kipyegon Ng'eno, MP
- (xxiii) Hon. John Muchiri Nyaga, MP
- (xxiv) Hon. John Ogutu Omondi, MP
- (xxv) Hon. Korei Ole Lemein, MP
- (xxvi) Hon. Mary Sally Keraa, MP
- (xxvii) Hon. Onesmus Muthomi Njuki, MP

1.3 Committee Secretariat

5. The Committee Secretariat comprises the following officers: -

- (i) Ms. Susan Maritim - First Clerk Assistant
- (ii) Mr. Philip Lekarkar - Third Clerk Assistant
- (iii) Mr. Mohamed Boru - Third Clerk Assistant
- (iv) Ms. Clarah Kimeli - Legal Counsel I
- (v) Mr. Charles Atamba - Research Assistant III
- (vi) Mr. Nimrod Ochieng - Audio Officer

1.4 Committal of the Petition

6. Pursuant to Standing Order 220 and Section 4(1b) of the Petition to Parliament (Procedure) Act CAP 7C, the Hon. Protus Akuja Member of Parliament for Loima Constituency, on 26th April, 2016 presented a public petition to the House on behalf of Turkana County residents.
7. The Petition was referred to the Public Investments Committee pursuant to Standing Order 227 for consideration. (ANNEX 1)
8. The petitioners sought the House's intervention on alleged financial impropriety by Eng. Daniel K. Baraza, HSC the former General Manager of the National Irrigation Board (NIB). Specifically, the Petitioners prayed that the National Assembly through the Committee —
 - (i) *Investigates the activities of the National Irrigation Board in Turkana County, particularly the conduct of Eng. Daniel K. Baraza, HSC for the unwillingness to address the alleged financial imprudence, financial impropriety and allocation of resources to non-existent projects;*
 - (ii) *Investigates the circumstances behind the abandonment of works by contractors on the stalled irrigation projects in Turkana County and neighbouring regions and when works on the said projects shall resume;*
 - (iii) *Recommends a special audit of the capital projects undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money;*
 - (iv) *Recommends appropriate disciplinary action for imprudence by the General Manager and other persons, including contractors culpable of financial impropriety aimed at defrauding the government; and*
 - (v) *Makes any other and/or direction that it deems fit in the circumstances of the case.*

The Committee immediately embarked on considering on Petition by inviting the relevant witnesses to present their evidence before it.

1.5 Committee Proceedings

9. In considering the Petition, the Committee held a total of seven (7) sittings in which it closely received oral and written submissions and examined evidence from the following witnesses -
- i. Hon. Protus Akujah, MP, the Petitioner,
 - ii. Eng. Daniel K. Baraza, former General Manager, NIB;
 - iii. Hon. Eugene Wamalwa, Cabinet Secretary, Ministry of Water and Irrigation;
 - iv. Mr. Gitonga Mugambi, Ag. General Manager, NIB; and
 - v. Mr. Maurice Juma, Director-General, Public Procurement Regulatory Authority
10. The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations/findings and recommendations as outlined in the Report and can be obtained in the Parliament Library.

COMMITTEE GENERAL OBSERVATIONS

This section provides for the summary of the Committee's Observations on the Petition as hereunder –

- (i) **THAT, the allegations raised in the Petition touched on financial misconduct by Eng. Daniel K. Baraza who was the General Manager of the National Irrigation Board at the time of filing the petition and failure to adhere to the public procurement procedures in implementation of irrigation projects in Turkana County;**
- (ii) **THAT, Eng. Daniel K. Baraza was suspended by the former Board on 21st April 2016, but he opted for terminal leave, three months into his retirement. Mr. Mugambi Gitonga was, henceforth, appointed as the Ag. General Manager, NIB;**
- (iii) **THAT, Eng. Daniel K. Baraza denied allegations of his unavailability to meet Members of Parliament from Turkana County and financial misconduct and procurement irregularities in procuring for civil works for the various projects in Turkana County;**
- (iv) **THAT, the petitioners failed to provide substantive evidence of abandonment of projects and financial misconduct on the part of Eng. Daniel K. Baraza, former General Manager at the National Irrigation Board;**

- (v) **THAT, there is an ongoing financial audit of the Board's operations by the Auditor General;**
- (vi) **THAT, the Public Procurement and Regulatory Authority also conducted a site visit to five (5) irrigation projects in Turkana County and established that the projects were in various stages of implementation including Katilu Irrigation Scheme which is operational, and not abandoned as alleged by the Petitioners;**
- (vii) **THAT, Eng. Robinson Gaita and Eng. Wilfred Onchoke, Directors representing Principal Secretary, State Department of Water and State Department of Water, respectively, ought to have been vigilant and report any malpractice or financial misconduct to their respective Accounting Officers; and**
- (viii) **THAT, there was no evidence of a feasibility study undertaken before commencement of the projects by the Board in Turkana County.**

COMMITTEE RECOMMENDATIONS

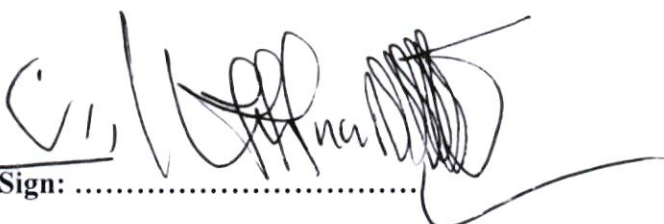
In response to the prayers sought by the Petitioners, the Committee recommends: -

- (i) **THAT, the Auditor General undertakes a performance audit on the capital works on ALL irrigation projects undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money. *The Auditor General to submit the said Report to the National Assembly within six (6) months of the adoption of this Report;***
- (ii) **THAT, Turkana being a drought-prone County, all irrigation projects should be properly planned, designed and supervised so as to enhance food security.**
- (iii) **THAT, the National Irrigation Board ensures that all future capital projects undertaken by the Board should be based on bankable feasibility study reports before commencement of the projects to ensure there is value for money;**
- (iv) **THAT, the Board hastens the completion of the various ongoing irrigation projects in Turkana County to enable the residents benefit from them;**

- (v) THAT, Directors representing their respective Principal Secretaries in various Boards of state corporations should ensure that they submit regular reports to their respective Principal Secretaries on the operations of the Boards in which they sit in; and
- (vi) THAT, the Board should in the spirit of public participation, engage the residents and elected leaders of Turkana County in project identification and implementation and constantly brief them on the implementation progress including challenges faced.

1.6 Acknowledgement

- 11. The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation in fulfilment of its mandate. The Committee is also grateful to all the witnesses and government agencies who adduced evidence before it. Further, the Committee is grateful to the staff of the National Assembly, Office of the Auditor-General, the Inspectorate of State Corporations and the National Treasury for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.
- 12. On behalf of the Members of the Public Investments Committee, I beg to table the Report on the petition by the Member for Loima Constituency, the Hon. Protus Akuja, on behalf of the residents of Turkana County regarding alleged financial impropriety by the former General Manager of the National Irrigation Board, Mr. Daniel K. Baraza, pursuant to Standing Order 227.


Sign:

Date: 04-05-2017

HON. ADAN KEYNAN, CBS, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

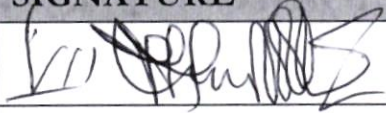
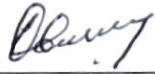


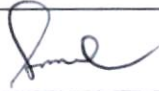

PUBLIC INVESTMENTS COMMITTEE

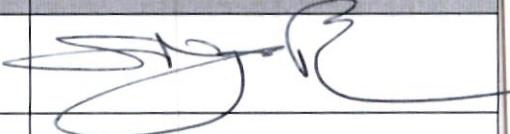


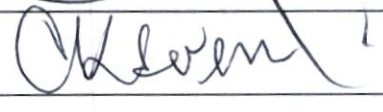


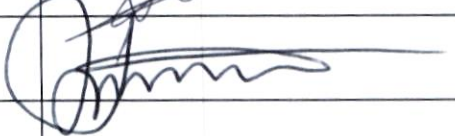

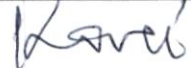
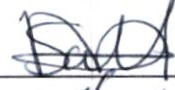

ADOPTION LIST

REPORT ON THE PETITION BY RESIDENTS OF TURKANA COUNTY REGARDING ALLEGED FINANCIAL IMPROPRIETY BY ENG. DANIEL BARAZA, FORMER GENERAL MANAGER OF THE NATIONAL IRRIGATION BOARD

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 4TH MAY, 2017

	NAME	SIGNATURE
1.	Hon. Adan Wehliye Keynan, CBS, MP	
2.	Hon. Anthony Kimani Ichung'wah, MP	
3.	Hon. Francis Mwanzia Nyenze, EGH, MP	
4.	Hon. (Dr.) Oburu Oginga, MGH, MP	
5.	Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP	
6.	Hon. Adan Mohammed Nooru, MP	
7.	Hon. Franklin Linturi Mithika, MP	
8.	Hon. Athanas Wafula Wamunyinyi, MP	
9.	Hon. Elias Bare Shill, MP	
10.	Hon. Sammy Silas Komen Mwaita, MP	
11.	Hon. John Olago Aluoch, MP	
12.	Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP	
13.	Hon. (Eng.) John Kiragu, MP	

	NAME	SIGNATURE
14.	Hon. (Eng.) Stephen Ngare, MP	
15.	Hon. Abdullswamad Sheriff Nassir, MP	
16.	Hon. Beatrice Nkatha Nyaga, HSC, MP	
17.	Hon. Bernard Munywoki Kitungi, MP	
18.	Hon. Chrisanthus Wamalwa, CBS, MP	
19.	Hon. Cornelly Serem, MP	
20.	Hon. Dorcas Kedogo, MP	
21.	Hon. Irungu Kang'ata, MP	
22.	Hon. Johana Kipyegon Ng'eno, MP	
23.	Hon. John Muchiri Nyaga, HSC, MP	
24.	Hon. John Ogutu Omondi, MP	
25.	Hon. Korei Ole Lemein, MP	
26.	Hon. Mary Sally Keraa, MP	
27.	Hon. Onesmus Muthomi Njuki, MP	

2.0 BACKGROUND INFORMATION ON THE NATIONAL IRRIGATION BOARD

2.1 Establishment of the National Irrigation Board

13. The National Irrigation Board (NIB) was established and incorporated in 1966 as a State Corporation through the Irrigation Act, Cap 347 of the Laws of Kenya. The object of the Act is “to provide for the development, control and improvement of irrigation schemes, for purposes incidental thereto and connected therewith”.

2.2 Functions and Powers of the National Irrigation Board

14. The NIB is responsible for the development, control and improvement of national irrigation schemes in Kenya. This includes -
- a) conducting research and investigation into the establishment of national irrigation schemes;
 - b) in conjunction with the Water Resources Authority established under the Water Act (Cap. 372), formulating and being responsible for the execution of, policy in relation to national irrigation schemes;
 - c) in consultation with the Minister and the Minister for the time being responsible for finance, raise funds for the development of national irrigation schemes;
 - d) co-ordinating and planning settlement on national irrigation schemes;
 - e) designing, constructing, supervising and administering national irrigation schemes;
 - f) determining the number of settlers to be accommodated in a national irrigation scheme;
 - g) providing land in national irrigation schemes for public purposes;
 - h) promoting the marketing of crops and produce grown or produced on national irrigation schemes and to liaise with organizations responsible for the marketing of agricultural produce;
 - i) providing, either by itself or by agreement with other persons, for the processing of agricultural produce grown or produced on national irrigation schemes; and
 - j) awarding scholarships and bursaries for the study of irrigation (both in Kenya and elsewhere) or any other subject which the Board considers to be of benefit to the Board.

2.3 Operations of the National Irrigations Board

15. The NIB manages seven (7) national irrigation schemes and stations with four operational research stations. The NIB also manages two rice mills namely, Mwea Rice Mills (MRM) and Western Kenya Rice Mills (WCRM).
16. Under the expanded National Irrigation Programme, the NIB is undertaking new developments as well as rehabilitation of 169 irrigation projects spread across the country. The NIB is also spearheading the implementation of Galana/Kulalu Food Security Project in Tana River and Kilifi Counties. This is a national economic programme aimed at putting one million acres of land under irrigated agriculture within five (5) years, hence increasing food security in the country.
17. The GM of the NIB is appointed pursuant to Section 11 of the Irrigation Act by the Board of Directors, subject to the approval of the Minister responsible for matters of national irrigation and is responsible for, among others, controlling and supervising the acts of all officers, servants and agents of the Board in the matters of executive administration in the whole field of irrigation and in all matters concerning the accounts and records of the Board.

3.0 CONSIDERATION OF THE PETITION

18. On 26th April, 2016, the Member of Parliament for Loima Constituency, Hon. Protus Akuja in line with Section 4(1b) of the Petitions to Parliament (Procedure) Act, 2012 presented a Public Petition to the House on behalf of Turkana County residents. The Petition was referred to the Public Investments Committee pursuant to Standing Order 227 for consideration.
19. The Petitioners sought the House's intervention on alleged financial misconduct by the former General Manager of the National Irrigation Board, Eng. Daniel K. Baraza, HSC.
20. The Petitioners drew the attention of the House to the following -
 - (i) **THAT**, Article 201 (d) of the Constitution underscores financial probity, accountability and transparency as cardinal principles of management of public resources by providing that public money shall be used in a prudent and responsible way;

- (ii) **THAT**, the National Irrigation Board has been responsible for facilitating irrigation projects with a view to empower communities in arid and semi-arid (ASAL) regions of the country, including Turkana County;
- (iii) **THAT**, the allocation and management of funds for irrigation projects in the region by the Board has been characterized by massive impropriety, thereby causing many projects to stall for years;
- (iv) **THAT**, in other instances, resources have been allocated to non-existent projects, a case in mind being the Katilu Drip Irrigation Project, for which colossal amounts of money was paid to contractors, yet there is no such project on the ground;
- (v) **THAT**, the General Manager has been grossly violating the procurement procedures set out in the Public Finance Management Act, 2012 and the Procurement and Assets Disposal Act (2005) when implementing irrigation projects in the county;
- (vi) **THAT**, efforts by the Petitioners and area Legislators to engage the General Manager to address these concerns have been met with defiance, casting possibilities that he could be complicit to the impropriety intended to defraud the government of public resources and deny residents of the intended benefits from the stalled irrigation projects; and
- (vii) **THAT**, the matter raised in the Petition is not pending before any tribunal or court of law.

21. The Petitioners requested Parliament to-

- (i) Investigate the activities of the National Irrigation Board in Turkana County, particularly the conduct of Eng. Daniel K. Baraza for the unwillingness to address financial imprudence, financial impropriety and allocation of resources to non-existent projects;
- (ii) Investigate the circumstances behind abandonment of works by contractors on the stalled projects in Turkana County and neighbouring regions and when the works would resume;
- (iii) Recommend a special audit of the capital works undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money;
- (iv) Recommend appropriate disciplinary action for financial imprudence by the General Manager and other persons, including contractors culpable of financial impropriety aimed at defrauding the government; and

- (v) Make any other order and/or direction that it deems fit in the circumstances of the case.
22. The Committee immediately proceeded to consider the matter by inviting the relevant witnesses to present their evidence before it. The witness submissions are captured in Section 4.0 below.

4.0 SUBMISSIONS BY WITNESSES

Introduction

23. This section contains evidence submitted both orally and in writing by key witnesses invited to adduce evidence before the Committee. Committee Observations on each of the witness submission is also recorded.
24. The Public Investments Committee, as mandated by Standing Order 206 commenced sittings to consider the petition on 9th May, 2016 and received oral and written submissions from the following –
- i. Eng. Raphael Ogendo, Ag. General Manager, NIB;
 - ii. Hon. Protus Akujah, Member for Loima Constituency;
 - iii. Eng. Daniel K. Baraza, former General Manager, NIB; and
 - iv. Hon. Eugene Wamalwa, Cabinet Secretary, Ministry of Water and Irrigation;
25. The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations/findings and recommendations as outlined in the Report and can be obtained in the Parliament Library.

4.1 SUBMISSIONS BY HON. PROTUS AKUJAH ON BEHALF OF THE PETITIONERS

Hon. Protus Akujah, Member of Parliament for Loima Constituency appeared before the Committee on 27th September, 2016 to adduce evidence on his Petition before the Committee on behalf of the concerned residents of Turkana County on alleged financial impropriety by the General Manager (NIB) Eng. Daniel K. Baraza in Turkana County.

26. Hon. Akuja reiterated the issues captured in the Petition.

Committee Observation

The Committee observed that the Petition as presented to the Committee does not contain specific allegation on financial impropriety. The Petitioners should have demonstrated particular projects that were abandoned and the nature of financial misappropriation.

4.2 SUBMISSIONS BY HON. EUGENE WAMALWA, CABINET SECRETARY FOR WATER & IRRIGATION

Hon. Eugene Wamalwa, the Cabinet Secretary for Water and Irrigation accompanied by Mr. Patrick Nduati, Principal Secretary for Irrigation; Mr. Gitonga Mugambi, Acting General Manager - National Irrigation Board; Eng. Robinson Gaita, Director of Irrigation in the Ministry of Water and Irrigation; Mr. Bob Muathe, Advisor to the CS and Ms. Jecinter Hezron, Personal Assistant to the PS, appeared before the Committee on 29th September, 2016 to adduce evidence on the allegations contained in the Petition.

The Cabinet Secretary submitted THAT— (ANNEX 2)

Circumstances surrounding dismissal of the former General Manager, Eng. Daniel K. Baraza and the subsequent court case touching on his dismissal

27. The matter came to his attention on 21st April, 2016 that a Special Board Meeting of the National Irrigation Board had been held earlier on that day, during which the General Manager, Eng. Baraza was suspended. He later received a copy of the Minutes of the Special Board Meeting which recorded the resolution, among others, *“to suspend the General Manager, Eng. Daniel K. Baraza; Deputy General Manager, Finance and Strategy, Ms. Mary Chomba; and Procurement and Supplies Manager, Mr. Boaz Akello, for a period of six (6) months with immediate effect pending investigations”*.
28. He obtained a copy of the Notice convening the Meeting, which stated that it was to be an Ordinary Board Meeting and not a Special Board Meeting. He also obtained a copy of the Agenda proposed for the Meeting under notice and disciplinary action was not part of it.
29. It was not clear to him the circumstances under which the Ordinary Board Meeting became a Special Board Meeting. Secondly, the serious accusations made against the officers did not appear to be specific or particularized. Every person has a right to fair administrative action and casting blanket accusations against Public Officers, without due regard to the principles

of natural justice, is unlawful. He communicated the concerns to the Board on 25th April, 2016 and directed the Board to investigate any allegations made against the concerned Officers and also reiterated Ministry's policy of zero tolerance to corruption. He made it clear to the Board that all allegations of corruption should be thoroughly investigated and dealt with firmly in accordance with the law and in the meantime, the concerned Officers should continue with their normal duties.

30. His actions for reconstitution of the Board were guided by Section 13 of the Irrigation Act, Cap 347 which states that "*in the exercise of its powers and the performance of its functions under the Act, the Board shall act in accordance with any general or specific directions that may be given to it by the Minister*". He re-stated his position on 26th April, 2016 and advised the Board that it risks being dissolved if it fails to abide with the directions he had given. These, then, were the circumstances and actions surrounding the suspension of Eng. Daniel K. Baraza.

Reasons for reconstitution of the Board, and whether this action is related to issues raised in the Petition before the Committee

31. He was informed that Eng. Daniel K. Baraza had sued the Board regarding his suspension, a matter which he later withdrew from the courts. However, Eng. Baraza did communicate to the Cabinet Secretary of his decision to proceed on early retirement from Public Service in a letter dated 3rd May, 2016. It was increasingly evident that there was a standoff between the Board and the Management, which resulted in a state of paralysis in the Board, thereby affecting operations of the Institution. This was a state of affairs that could not be allowed to continue. This was the likely reason that led H.E. the President to reconstitute the Board through Gazette Notices Nos. 4421 and 4422 of 17th June, 2016.
32. The court case that involved him as the Cabinet Secretary in the matter was in regard to Notice of a Motion dated 23rd May, 2016 and filed in the High Court on behalf of a Mr. Felix Kiprono Matagei. The main point was that him, the 3rd respondent in the matter, and in his capacity as the Cabinet Secretary for Water and Irrigation, made an illegal decision to disband the Board of Directors of the National Irrigation Board.

33. Mr. Matagei withdrew the court case on 18th July 2016 because the matter had been overtaken by events.

Measures taken by the Ministry to address the issues raised by the Petitioners and to ensure prudent use of resources by the Board's Management and adherence to Public Financial Management Act and the Public Procurement and Disposal Act.

34. The Ministry and the new Board is following up on the issues raised by the Petitioners including following up on his earlier directive with regard to thorough investigations by the Kenya National Audit Office and the Ethics and Anti-Corruption Commission. Upon receiving the resulting report from this Institution, he would act on their recommendations and share with the Committee the findings and his actions.

35. Most senior officers at the National Irrigation Board are serving in acting capacities in the Board; however, the positions would be substantively filled through a competitive recruitment process.

Committee Observations

The Committee observed that: -

- (i) There is an ongoing audit by the Auditor General and investigations by the Ethics and Anti-Corruption Commission into the alleged malpractices at the National Irrigation Board.
- (ii) Eng. Baraza was suspended by the former Board of Directors on 21st April 2016 but he opted for terminal leave three months into his retirement on 3rd May, 2016, and Mr. Gitonga Mugambi appointed the Ag. General Manager.
- (iii) His Excellency the President of the Republic of Kenya reconstituted the National Irrigation Board through Gazette Notices Nos. 4421 and 4422 of 17th June, 2016.

4.3 SUBMISSIONS BY PUBLIC PROCUREMENT REGULATORY AUTHORITY

Mr. Maurice Juma, the Director General of the Public Procurement Regulatory Authority appeared before the Committee on 27th October, 2016 to adduce evidence on the Petition before the Committee.

He submitted THAT –

36. On 26th September, 2016, NIB submitted to the Authority copies of relevant documents for the following Projects:

- (i) *Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012;*
- (ii) *Tender for construction works of the Kalemnyang' Irrigation Development Project, Phase I and Phase II, NIB/T/112/2011-2012 AND NIB/T/036/2013-2014 respectively;*
- (iii) *Proposed detailed design, supply of materials, Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation Development Project, Turkana County, Kenya, NIB/T/005/2011-2012;*
- (iv) *Tender for construction works for the Kabulokor Irrigation Project, Turkana County NIB/T/070/2011-2012;*
- (v) *Tender for construction works of the Morulem Irrigation Scheme Development Project, Turkana County, Phase I and Phase II, NIB/T/049/2012-2013 and NIB/T/037/2013-2014 respectively;*
- (vi) *Tender for construction works of Loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;*
- (vii) *Tender for construction works of the Kolyoro Irrigation Scheme Development Project, Turkana County, NIB/T/038/2012-2013;*
- (viii) *Tender for construction works of the Turkwel Irrigation Scheme Development Project, Turkana County, NIB/T/109/2012-2013;*
- (ix) *Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County, NIB/T/124/2012-2013;*
- (x) *Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-201;*
- (xi) *Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014;*

- (xii) *Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014; and*
- (xiii) *Tender for construction work of Lokipelot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.*

37. On 12th October, 2016 NIB further submitted another set of documents which included:

- (i) *Invitation notice for tender No. NIB/T/039/2012-2013;*
- (ii) *Purchase requisition for tender No. NIB/T/124/2012-2013;*
- (iii) *Certified copy of tender for the successful bidder for tender No. NIB/T/049/2012-2013;*
- (iv) *Purchase requisition for tender No. NIB/T/109/2012-2013;*
- (v) *Invitation notice for tender No. NIB/T/114/2013-2014;*
- (vi) *Purchase requisition for tender No. NIB/T/005/2011-2012;*
- (vii) *Purchase requisition for tender No. NIB/T/112/2011-2012;*
- (viii) *Certified copy of Tender for the successful bidder for tender No. NIB/T/112/2011-2012;*
- (ix) *Summary of the current status of the Projects; and*
- (x) *Inspection reports, payment vouchers, completion certificates, handing over reports and defect liability certificates for various projects.*

38. The complete set of tender documents that processed the tender for Elelea and Lokubae including Inspection reports, payment vouchers, completion certificate handing over reports and defect liability certificate were not availed.

39. PPOA reviewed the available documents for the above projects and noted the following:
(ANNEX 3)

4.3.1 Nadapal Irrigation Project, Turkana County

Tender No.:	NIB/T/071/2011-2012
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Project Description	Tender for construction works of the Nadapal Irrigation Project, Turkana County
Procurement Method:	Open National Tender
Contractor:	M/s Toshe Construction & Engineering Ltd
Contract Sum:	KES 63, 983, 393.00

PPRA Observations

40. NIB used standard bid documents. However, the evaluation criteria provided were not objective and there was no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006.
41. The evaluation committee introduced evaluation criteria which were not provided in the bid document, which is against section 66 (2) of the Public Procurement and Disposal Act, 2005.
42. M/s Jomat Construction Ltd had not attached Certificate of Incorporation and the Evaluation Committee noted the same. He was, however, declared responsive, which was against the requirement of the mandatory requirements used by the Committee.
43. The technical evaluation criterion was not applied uniformly. M/s Toshe Construction and Engineering Ltd, whose bid was declared adequate under technical requirement, had not provided details of ownership or lease agreement for 2 No. dewatering pumps and 1 concrete mixer, which were mandatory. However, the same criterion was used to disqualify other bidders who had not attached similar information, like Kibinico Enterprises Ltd and Machine Centre Ltd.

4.3.2 Kalemnyang' Irrigation Scheme Project (Phase I), Turkana County

Tender No.:	NIB/T/112/2011-2012
Project Description	Tender for Construction Works of the Kalemnyang' Irrigation Scheme Project (Phase I)
Procurement Method:	Restricted Tender
Contractor:	M/s Yellow House Ltd

Contract Sum:	KES 92, 990,077.40
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PPRA Observations

44. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria, as required under Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation requirement had no scoring criteria.
45. The mandatory evaluation criteria were not applied uniformly. M/s Nakuru Express Supplies and Services Ltd had not attached Certificate of Registration, yet it was declared responsive. Also M/s Rotalink Engineering Company Ltd. had not met the mandatory requirement, as it did not provide a valid trading license yet it was also declared responsive.
46. None of the three bidders, who passed preliminary requirements, met the detailed technical requirement; all the three had at least one "NOT OK" and therefore objectively, they would not have qualified to proceed to next stage. As per the Evaluation Committee summary, all the bidders did not meet the requirements. However, the Committee declared 2 bidders (Rotalink Engineering Company Limited and Yellow House Ltd) responsive and proceeded to the next stage. The Committee, in their Minutes, focused on only using two criteria out of the four i.e. experience in similar work for the last ten years and financial capacity to deliver the works.

4.3.3 Kalemnyang' Irrigation Scheme Development Project (Phase II), Turkana County

Tender No.:	NIB/T/036/2013-2014
Project Description:	Tender for construction works of the Kalemnyang' Irrigation Scheme Development Project, Phase II
Procurement Method:	Open National Tender
Contractor:	M/s Lumbe Agencies Ltd
Original Contract Sum:	KES 43, 635,955.00.
Revised contract sum:	KES 54, 269, 168.00

PPRA Observations

47. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria, as required under Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
48. The bid for M/s Lumbe Agencies Ltd was declared responsive yet the bid security provided was not valid for 150 days from the date of closing, as required by clause 13.3 under Instruction to Tenderers. The bid was valid up to 4th March, 2014, whereas the validity required, was for up to 19th March, 2014. This evaluation criterion was not applied uniformly.
49. The subjective technical evaluation criteria were not applied uniformly. For example, under qualification of key personnel M/s Nakims Merchants and Contractors Limited, is said to have “partially met the set condition” and given a *Pass*; on the other hand, under list of available essential equipment M/s Mbiwa Construction Company Limited is said to have “partially met the set conditions” and given a *fail*.
50. Whereas 16 unsuccessful bidders’ letters of notification were sent on 24th January 2014, the regret letter for M/s Balcha Water Drilling & Construction Co. Ltd., was sent on 28th September, 2013, even before the closing /opening of the tender, which was on 15th October, 2013.
51. The Re-evaluation Report from the Evaluation Committee after the TC declined to award the tender were not availed.
52. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

4.3.4 Katilu Irrigation Project, Turkana County

Tender No.	NIB/T/005/2011-2012
Project Description:	Tender for construction works of the Katilu Irrigation Project, Turkana County
Procurement Method	Request for Proposal
Contractor	Appropriate Development Consultants Limited (ADCL)

Contract Sum	KES 61,429,691.71
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PPRA Observations

53. NIB directly invited request for proposals (RFP) instead of advertising the Expression of Interest (EOI), and then invite proposal from qualified persons, as required under section 80 and 81 of the Act.
54. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 13th February, 2012.

4.3.5 Kabulokor Irrigation Project, Turkana County

Tender No.:	NIB/T/070/2011-2012
Project Description:	Tender for construction works for the Kabulokor Irrigation Project, Turkana County
Procurement Method:	Open National tender
Contractor:	M/s Lumbe Agencies Limited
Contract Sum:	KES 59, 169, 863.12

PPRA Observations

55. The tender was opened by one member, Mr. Stephen Apome, the other three members were absent with apologies. This is contrary to Section 60(1) (a) of the Act which requires that the committee to have at least three members.
56. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria, as required by Section 66 (2) of the Act and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
57. The Evaluation Committee made recommendation for award to M/s Lumbe Agencies at the corrected figure of KES 59,795,727.37. However, the tender committee approved the award of the contract at the original price of KES 59, 169,863.12. The award of the tender at original price by TC saved NIB KES 625, 864.25, though it was contrary to provision of Regulation

11 (2) (a) of the Regulations which bars the TC from modifying any submission with respect to the recommendations for a contract award or in any other respect.

4.3.6 Morulem Irrigation Scheme Development Project (Phase I), Turkana County

Tender No.:	NIB/T/049/2011-2012
Project Description:	Tender for construction works of the Morulem Irrigation Scheme Development Project (Phase I), Turkana County,
Procurement Method:	Open National Tender
Contractor:	Nyana Engineering Company Limited
Contract Sum:	KES 58,024,199.00

PPRA Observations

58. The TC revised the estimated cost in the procurement plan for the project, which was KES 20,000,000.00 to KES56, 723,007.00; however the procurement plan was not amended.
59. Whereas the technical evaluation shows that Machine Centre Ltd. obtained a fail, he was ranked among the three bidders who passed the technical evaluation stage.
60. Whereas NIB used a standard bid document, the evaluation criteria provided, were not objective and there were no preliminary, technical and evaluation criteria, as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.

4.3.7 Morulem Irrigation Scheme development Project (Phase II), Turkana County

Tender No.:	NIB/T/037/2013-2014
Project Description:	Tender for construction works of the Morulem Irrigation Scheme Development Project (Phase II), Turkana County
Procurement Method:	Open National Tender
Contractor:	M/S Toddy Civil Engineering Co. Ltd

Contract Sum:	KES 47, 576, 870.00
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PPRA Observations

- 61. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- 62. The bid for Katulani Building Contractors was declared responsive in the preliminary evaluation yet his confidential business questionnaire form was not filled, which was a mandatory requirement.
- 63. There is no proof that the tender committee’s instructions to defer and refer to the evaluation committee were taken into account since the re-evaluation report was not availed and the award done as previously recommended in the first evaluation report.

4.3.8 Loborot Irrigation Scheme Development Project, Turkana County

Tender No.	NIB/T/039/2012-2013
Project Description:	Tender for construction work of Loborot Irrigation Scheme Development Project, Turkana County
Procurement Method:	Restricted Tender
Contractor:	M/s Machine Centre Limited
Contract Sum:	KES 64, 593, 955.80

PPRA Observations

- 64. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- 65. The Evaluation Committee evaluated 6 bids against the 5 bids received, as recorded in the tender opening minutes. The extra bid document was for M/s. Yellow House Ltd.

66. After the correction of the arithmetical error, notice of the correction was not given to the person who submitted the tender, contrary to provisions of Section 63(2) of the Act.
67. There is no evidence to show that a pre-contract meeting was convened as provided for in the notification for tender award dated 10th December 2012.

4.3.9 Kolyoro Irrigation Scheme development Project, Turkana County

Tender No.:	NIB/T/038/2012-2013
Project Description:	Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County
Procurement Method	Restricted Tender
Contractor	M/s Lumbe Agencies Ltd
Contract Sum	KES 64, 719, 250.00

PPRA Observations

68. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria and or the minimum technical requirement was not explicitly provided.
69. The tender opening was done by two members against the minimum quorum of at least three people as required under section 60 (1) (a) of the Act which requires that the committee to have at least three members.

4.3.10 Turkwel Irrigation Scheme Development Project, Turkana County

Tender No.	NIB/T/109/2012-2013
Project Description:	Tender for construction works of the Turkwel Irrigation Scheme development Project, Turkana County
Procurement Method	Restricted Tender

Contractor	M/s Tosha at General Construction Limited
Contract Sum	KES 70, 854, 410.00

PPRA Observations

70. The threshold for use of restricted under the First Schedule of the Regulations is a maximum of 20,000,000.00 against the budgeted estimate of KES 70,000,000.00 indicated in the procurement plan.
71. The preliminary evaluation indicated that the bid for M/s Rotalink Engineering Company Ltd was valid for 120 days against what was recorded in the tender opening document; that his bid was valid up to 17th November, 2013 which totals to 154 days. He was unfairly disqualified since the bid of the successful bidder M/s Tosha At General Construction Ltd was also indicated to expire on 17th November, 2013 and his bid was declared responsive.
72. Evaluation criteria were not applied uniformly since the two bidders who were responsive failed to meet the requirement of at least two criteria under technical evaluation but were said to be responsive. M/s Machine Centre Ltd failed under financial capacity and work programme while M/s Tosha At General Construction Ltd failed under qualification of key personnel and work programme. Thereafter the evaluation committee noted “M/s Tosha At General Construction Ltd and M/s Machine Centre Ltd had not materially deviated from the set conditions and therefore qualified to the next stage”.

4.3.11 Nadoto Irrigation Scheme Development Project, Turkana County

Tender No.:	NIB/T/124/2012-2013
Project Description:	Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County
Procurement Method	Restricted Tender
Contractor	Nyana Engineering Company Limited
Contract Sum	KES 79, 974, 700.49

PPRA Observations

73. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there was no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
74. The tender sum of the successful bidder M/s Nyana Engineering Company Limited of KES 79,974,700.49 had an error, of which if it was corrected it would have resulted to an increase in his tender price to KES 79,977,299.53. Correction of error was not done and instead the bidder was awarded the tender at his quoted price.
75. The Minutes of the TC meeting that awarded the tender were incomplete, hence PPRA could not ascertain whether award of tender was done as recommended by evaluation committee.

4.3.12 Naoros Irrigation Development Scheme Project, Turkana County

Tender No.:	NIB/T/112/2012-2013
Project Description:	Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County
Procurement Method:	Restricted tendering
Contractor:	M/s Hanamal Construction
Original Contract Sum:	KES 73, 573, 793.00
Revised Contract Sum	KES 77, 669, 146.00

PPRA Observations

76. The tender committee meeting of 3rd May, 2016 that awarded the tender did not have a quorum to adjudicate the award as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

4.3.13 Naremit Irrigation Scheme Development Project, Turkana County

Tender No.:	NIB/T/035/2013-2014
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Project Description:	Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County
Procurement Method:	Open National Tender
Contractor:	M/s Nakuru Machinery Services Ltd
Contract Sum:	KES 48, 356, 440.00

PPRA Observations

77. The bid bond for M/s Novatech was expected to be valid for 150 days but the bid security it submitted was valid for 135 days. However, the evaluation committee declared it responsive. Further the bid security for M/s Three Star Contractors was said to be 150 days yet it was 141 days valid, since it was to expire on 3rd March, 2014. However, his bid was declared responsive against the criteria.
78. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there was no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria.
79. The re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
80. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

4.3.14 Loborot and Nakamane Irrigation Schemes, Turkana County

Tender No.:	NIB/T/038/2013-2014
Project Description:	Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County
Procurement Method:	Open National Tender

Contractor:	M/s Machine Centre Ltd
Contract Sum:	KES 49, 720, 000.00

PPRA Observations

- 81.** Whereas the tender opening register and tender opening minutes indicate that M/s Cherangani Hills did not provide a bid bond, during evaluation its indicated that he had a bid bond from Consolidated Bank of KES 1, 074, 392 valid for 30 days
- 82.** M/S Dynocarp Logistics Ltd was declared responsive, whereas he had not provided the Power of Attorney. This criterion was used to disqualify other bidders like M/s Bellagio Construction Ltd, M/s Dynamic General Construction and M/s Institute of Applied Technology.
- 83.** Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there was no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation parameters had no scoring criteria.
- 84.** The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- 85.** The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.
- 86.** As per the contract the successful bidder (M/s Machine Centre Ltd) failed to submit a performance bond as demanded in the letter of award. Further, NIB went ahead to sign a contract and yet there was no performance bond.

4.3.15 Lokipetot Irrigation Scheme Development Project, Turkana County

Tender No.:	NIB/T/114/2013-2014
Project Description:	Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County
Procurement Method:	Restricted tendering
Contractor:	M/s Turkana Salama Enterprises Limited
Contract Sum:	KES 59, 826, 117.00

PPRA Observations

87. The threshold for use of restricted under the First Schedule of the PPDR, 2006 is a maximum of 20,000,000.00 against the budgeted estimate of KES 70,000,000.00 indicated in the procurement plan.
88. Whereas the TC approved 12 prequalified contractors to be invited, the invitation letter to bid was sent to 10 contractors. M/s. Lumbe Agencies Ltd and Kerman Contractors were not invited.

4.3.16 PPRA PROJECT SITE VISITS

89. In order to gather adequate evidence to substantiate the allegations, the Authority resolved to conduct a project site visit. Based on the limited timeline and resource constraints, the Authority sampled some of the projects to be visited.
90. In order to make an informed decision to guide the sampling; the status of all the projects was used to categorize the projects into the following:

Category 1: Petitioners singled out the Project in the Petition

91. Proposed detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

This project was selected.

Category 2: Incomplete Projects

92. They included:

- (i) Tender for construction works of the Kalemnyang' Irrigation Development Project, Phase II NIB/T/036/2013-2014 respectively;
- (ii) Tender for construction works of the Morulem Irrigation Scheme Development Project, Turkana County, Phase II, NIB/T/037/2013-2014 respectively;
- (iii) Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014; and
- (iv) Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

Selected Project: Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

Category 3: Complete but not in Operation

93. They included:

- (i) Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012;
- (ii) Tender for construction work of Lobotot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
- (iii) Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013;
- (iv) Tender for construction works of the Turkwel Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013;
- (v) Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013; and

- (vi) Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

Selected Projects: Tender for construction work of Loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013 and Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.

Category 4: Complete and in Operation

94. They included:

- (i) Tender for construction works of the Kalemnyang' Irrigation Development Project, Phase I NIB/T/112/2011-2012;
- (ii) Tender for construction works for the Kabulokor Irrigation Project, Turkana County NIB/T/070/2011-2012;
- (iii) Tender for construction works of the Morulem Irrigation Scheme Development Project, Turkana County, Phase I NIB/T/049/2012-2013; and
- (iv) Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County, NIB/T/124/2012-2013.

Selected Projects: Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

Consolidated Sample

95. The Authority therefore sampled the following projects:

- (i) Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012;
- (ii) Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014;

- (iii) Tender for construction work of Loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
- (iv) Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County, NIB/T/124/2012-2013;
- (v) Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012; and
- (vi) Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

96. The Authority appointed three (3) Officers to conduct project site audit of the projects between 17th and 21st October, 2016.

97. A summary of the status of the sampled project after the visit is as shown below:

	Sampled Project	Project Status & Observations
1)	Nadapal Project	<p>1. The contractor executed the work and upon completion it was handed over to farmers. The Scheme has a management committee selected amongst farmers. The project is in operation and PPRA found farmers preparing the land and others had already planted.</p> <p>2. However, farmers are experiencing some challenges such as:</p> <ul style="list-style-type: none"> a) Heavy flooding that destroys the crops since the floods meander and use other entry point to the Scheme where there is no flood protection. b) Siltation and blockage of the water canals c) River Turkwel, which is the source of the water for the scheme is very wide and its course keeps on diverting which may result in water not getting into the Scheme through the

	Sampled Project	Project Status & Observations
		main canal. Every time the river changes the course, farmers are forced to dig canal manually in order to reach the water.
2)	Lokipetot Project	<ol style="list-style-type: none"> 1. The project is not complete and the contractor is still on site, the completion level is approximately 80%, bush clearing is a major problem which is caused by '<i>Mathenge</i>' that grows and spreads out very fast. 2. NIB have not paid the Contractor for two already raised interim certificates and this has delayed the completion of the project.
3)	Loborot Project	<ol style="list-style-type: none"> 1. The Contractor executed the contract for the works and upon completion, the Project was handed over to farmers. Farmers cultivated for three seasons, thereafter the flood blocked the main canal and it is therefore non-operational for close to one year. 2. Major challenges are: <ol style="list-style-type: none"> a) Blockage of canals through siltation, hence no water flowing into the Scheme; b) Floods that washed away the crops and caused blockage of canals; c) Flood protection gabions were destroyed (washed away) by floods; d) Road bridge crossing was destroyed by floods; e) The Turkwel river is encroaching the Scheme and part of the fence is inside the river;

	Sampled Project	Project Status & Observations
		f) The quality of work is poor since the walls of the canals are not plastered and can wear off very easily (poor workmanship).
4)	<i>Katilu Project</i>	<ol style="list-style-type: none"> 1. Initially Katilu Irrigation Scheme was the work of Food and Agricultural Organization (FAO) who provided capital cost and technical personnel, later FAO withdrew. It was later taken over by Norwin Agency for Development Corporation (NORAD) through the Ministry of Agriculture in 1982, they also withdrew. The initial acre rage under FAO and NORAD was 500 Acres. 2. NIB later came and rehabilitated the Scheme and it became operational. Further they expanded the acreage from 500 to 2000 Acres. 3. NIB also have full time employees to manage the scheme. 4. In conjunction with the County Government they also provided machinery to assist the farmers to till the land and dredging the canal after siltation. This has helped to make the project operational throughout the year. 5. The total size of the acre rage that is operational is 1600 Acres. 6. The system of irrigation used by farmers is furrow Irrigation. 7. Farmers have started to undertake diversification by introducing a variety of crops such as bananas, butternuts, tomatoes, pawpaws, spinach and <i>sukuma wiki</i>, <i>dhania</i> among others in addition to the previous crops i.e. maize, rice and barley. The audit team found farmers harvesting the produce for the market.

	Sampled Project	Project Status & Observations
		<p>8. In the financial year 2011/2012, NIB intended to expand the project and invited tenders for design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, Tender No. NIB/T/005/2011-2012.</p> <p>9. The contractor M/s Appropriate Development Consultants Limited (ADCL) was awarded the tender for the Drip irrigation system at a tender sum of KES 61,429,691.71 on 50 acres.</p> <p>10. The contractors did most of the work which included bush clearing, fencing, building the foundation base for the tanks, supplied drip pipes, pumps and 15 tanks of 10, 000 litres.</p> <p>11. The contractor applied for variation which NIB did not honour and the contractor withdrew from site. The contract was not fully implemented but farmers who were to be allocated the land upon completion are farming the land using water from the other part of the Scheme.</p> <p>12. The major challenge in this scheme is ‘<i>Mathenge</i>’ a weed that grows and spreads very fast and blocks the secondary canals.</p>
5)	<i>Nadoto Project</i>	<p>1. The contractor executed the work as per the contract and upon completion of the project it was handed over to farmers who selected management committee for the Scheme.</p> <p>2. Farmers have been planting and even in the last season they harvested maize. PPRA found farmers clearing the ‘<i>mathenge</i>’ shrubs to prepare for the next season.</p> <p>3. The scheme has a good canal, but flooding hinders consistent flow of water to the farm which if alleviated it can increase food production.</p>

	Sampled Project	Project Status & Observations
		<p>4. Farmers are experiencing the following challenges:</p> <ul style="list-style-type: none"> a) Flooding and siltation leading to blockage of the main canal b) Water intake has been blocked by floods c) ‘<i>Mathenge</i>’ shrubs have spread in the land under irrigation resulting to thick bushes.
6)	Naoros Project	<ul style="list-style-type: none"> 1. The Project was not fully completed since all secondary canal structures were not done. However, farmers tilled approximately 10 acres and harvested during the last season. 2. The flooding made it impossible to till the major part of the land within the Scheme and especially at the main canal since thick bush of ‘<i>mathenge</i>’ shrub sprouted and grew to become big trees. 3. Farmers have tried to manually clear the bush but they have inadequate tools to clear the bush. This makes their effort to become unfruitful since by the time they are halfway to reach the main canal <i>Mathenge</i> shrub that were initially cleared have sprouted back. 4. Farmers are experiencing some challenges such as: <ul style="list-style-type: none"> a) Heavy flooding that blocked the intake at the main canal and destroyed the crops; b) Flood protection gabions were destroyed by floods which led to water getting into the Scheme; c) “<i>Mathenge</i>” shrubs have infested the Scheme and clearing of the same is difficult since farmers have inadequate,

	Sampled Project	Project Status & Observations
		ineffective farm tools and equipment to facilitate bush clearing.

Committee Observation

The Committee observed that PPRA found NIB in breach of Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006 (the Regulations) in the procurement process of several projects under implementation by the National Irrigation Board in Turkana County.

4.4 SUBMISSIONS BY ENG. DANIEL K. BARAZA, FORMER GENERAL MANAGER, NIB

Eng. Daniel K. Baraza the former General Manager of the National Irrigation Board accompanied by his Advocate Mr. Simon Namada appeared before the Committee on 27th September, 2016 and 1st December, 2016 to adduce evidence on the Petition.

Eng. Daniel K. Baraza responded to the allegations contained in the Petition as follows: **(ANNEX 4)**

THAT

98. The National Irrigation Board operates under the Irrigation Act CAP 347 of the laws of Kenya read together with the State Corporations Act 446. As required by the Public Audit Act 2003 (Section 14), the Board has during his tenure presented all its records to the Auditor General for auditing purposes. The Auditor General prepared reports that were presented to Parliament.
99. The Board operated within its approved budget and was transparent and accountable in all its dealings and that no funds were allocated to non-existent projects.

100. In the last five years, National Irrigation Board commenced construction of 13 irrigation projects in Turkana. These were procured using accepted methods of procurement. Ten of these projects have been successfully completed, two are ongoing and one project was abandoned.
101. The Public Procurement and Disposal Act, 2005 required that documents should be kept safe for at least 6 years. Owing to the number of documents received by the Board, all NIB stores were full. The Board was forced to purchase containers, which are now almost full, to keep documents. Therefore, retrieving old documents is not easy.
102. In all procurements, standard bid documents were used. Specifically, the Board followed the procurement law in all its procurement of goods and services.
103. Procurement plans were prepared every financial year, a fact that has not been disputed by PPRA. These plans were at times revised as circumstances demanded.
104. No public funds were lost in the entire procurement process. If anything, one of the observations by PPRA is that the Board Tender Committee did not correct the tender price upwards for some of the projects.
105. During the discussions on project design, the beneficiaries at times extended the projects components beyond what had been planned.
106. Irrigation projects are like sewerage projects; complex, specialized and cannot be undertaken by any contractor or consultant who has no adequate experience. However, considerable experience has now been built up in the country.

Allegation of massive impropriety in the allocation and management of funds for irrigation projects in Turkana County which caused many projects to stall for years

107. During the time he was the General Manger of the Board, the Board commenced implementation of sixteen (16) projects in Turkana County as follows: - Lokipetot, Kolyoro, Lobot, Naremit, Kalemnyang Phase I & II, Turkwel, Kolyoro, Morolem Phase I & II, Nakamane, Kabulkor, Katilu, Nadapal, Nadoto, Eleleya, Naoros and Lokobae. Of the sixteen projects, only three (3) projects are not complete, two of them are under implementation.
108. The only project that has stalled is the Katilu Drip Irrigation Project and this is due to the disagreement between the engineers and the contractor on technical issues. The issue could

not be settled amicably, leaving termination of the contract as the only solution. Therefore, it's not true that many projects have stalled for years as alleged.

109. As concerns the issue of impropriety, the approved procurement method in accordance with the then existing laws was used in the procurement of all services in the stated projects. The Board was transparent in procurement.
110. Eng. Baraza visited and inspected some of the projects. The engineers supervising either directly or carrying out supervision were all competent personnel.
111. He denied knowledge of any impropriety in implementation of the projects.

Circumstances behind abandonment of works by contractors on the stalled irrigation projects in Turkana County during his tenure

112. Only one (1) project has stalled and that is Katilu Drip Irrigation Project. The implementation stalled as a result of a dispute in the payment of certain items and the construction of some aspects of the works that the contractor was objecting to. The engineer in charge could not approve some payments as requested by the contractor, thus occasioning a dispute.
113. When the issue was brought to his attention, he approved the termination of the contract in accordance with the provisions of the contract.
114. The project required the winning bidder to design, implement and train people and also plant and maintain crop for one season. Therefore, the contractor is presumed to have understood the site and required works before quoting a price. Failure to undertake any of the above would amount to breach of the contract prices.

Allegation of allocation of resources to non-existent projects, for instance Katilu Irrigation for which colossal amount of money was paid to contractors yet there is no such project on the ground

115. It is not true Katilu Drip Irrigation project does not exist. A dispute arose over the implementation of the project which led to its termination before completion. A new contractor was to be procured to complete the remaining works.
116. The works that were left out were: -
 - (i) Pump installation,

- (ii) Installation of elevated tanks
- (iii) Construction of drainage works
- (iv) Land preparation and planting of crops for one season
- (v) Training of staff in use of drip irrigation technology

Allegation of his unavailability to engage the Petitioners and Turkana County legislators to address their concerns on implementation of projects in the County

117. The projects were identified by the beneficiaries directly or through the County office.
118. While in office he met most of the elected leaders including the Members of Parliament from the County personally and at times accompanied by the supervising engineers.
119. In a number of these meetings most of the issues pertaining to the projects were resolved, however at times, not all requests from the leaders were granted. This was due to the fact that there were no adequate resources for the requests. At no time did he deny audience to a Member of Parliament or scheme beneficiary.

Circumstances leading to the exit of Eng. Daniel K. Baraza from office

120. Eng. Baraza was suspended from the Board on allegations of corruption but was later reinstated by the court. He, however, opted for terminal leave of 3 months pending retirement.

Response to PPRA Report on Turkana Projects

In response to PPRA's report on the matter, Eng. Baraza responded as follows:

121. On **Nadapal Irrigation Project**, no observation that touches on the office of the Accounting Officer was directly made. NIB has filed adequate responses on the observation as raised by PPRA.
122. On **Kalemnyang' Irrigation Scheme Development Project (Phase I)**, no observation that touches on the office of the Accounting Officer was directly made. NIB has filed adequate responses on the observation as raised by PPRA.

123. On **Kalemnyang' Irrigation Scheme Development Project (Phase II)**, the Tender Committee that deliberated on the matter and awarded the contract met on 28th November, 2013. The Tender Committee that met on 18th November did not make any awards.
124. On **Katilu Irrigation Development Project**, PPRA observed that NIB advertised for request for proposals instead of expression of interest (EOI) first as required by Section 80 and 81 of the Act. On the contrary, Section 29 (3) and Section 76 allow for such procurement provided the Tender Committee has approved.
125. On **Kabulukor Irrigation Scheme Development Project**, two of the originally appointed members who were to open the tender were away with apologies but they were replaced in writing. The tender was opened by (3) three members.
126. On **Morulem Irrigation Scheme Development Project**, the Tender Committee revised the estimated cost in the procurement plan for the project from KES 20,000,000 to KES 56,723,007. On 31st August, 2011, the procurement plan was revised and the cost of the project put at KES 60,000,000.
127. In addition, the re-evaluation report has been made available to PPRA and to the Committee by NIB. The Tender Committee referring the evaluation back to the evaluation committee did not imply that the recommendation of the earlier evaluation had to change.
128. On **Loborot Irrigation Scheme Development Project** No observation that touches on the office of the Accounting Officer was directly made. NIB has filed adequate responses on the observation as raised by PPRA.
129. On **Kolyoro Irrigation Scheme Development Project**, the third member of the Tender Committee was replaced in writing and the minutes of the tender opening was signed by three members
130. On **Turkwel Irrigation Scheme Development Project**, as explained earlier, irrigation works are complex and specialized. As such, the Tender Committee approved restricted tendering under section 73 (2) (a)
131. On **Nadoto Irrigation Scheme Development Project**, no observation that touches on the office of the Accounting Officer was directly made. NIB has filed adequate responses on the observation as raised by PPRA.

- 132. On Naoros Irrigation Scheme Development Project**, Eng. Baraza requested the secretary to the Tender Committee to clarify with PPRA on the required membership of a well constituted tender committee. After clarification, the quorum requirement was upheld in all meetings.
- 133. On Naremit Irrigation Scheme Development Project**, the awards were made by the Tender Committee on 28th November, 2013 which was properly constituted.
- 134. On Loborot and Nakamane Irrigation Schemes**, the awards were made by the Tender Committee on 28th November, 2013 which was properly constituted.
- 135. On Lokipelot Irrigation Scheme Development Project**, as observed earlier, irrigation works are complex and specialized. As such, the Tender Committee approved restricted tendering under section 73 (2) (a). This approval enabled use of pre-qualified contractors.

Committee Observations and Findings

The Committee observed that: -

- (i) The allegations raised in the Petition were against Eng. Daniel K. Baraza who was the General Manager of National Irrigation Board at the time of filing the Petition. He had been suspended by the Board of Directors but he opted for retirement while still on suspension.
- (ii) Eng. Baraza denied allegations of his unavailability to meet Members of Parliament from Turkana County or residents of the County, as alleged by the Petitioners.
- (iii) He also denied allegations of financial impropriety and procurement irregularities in procuring service providers for the various projects in Turkana County.

4.5 SUBMISSIONS BY MR. GITONGA MUGAMBI, ACTING GENERAL MANAGER, NIB

Mr. Gitonga Mugambi, the Ag. General Manager of the National Irrigation Board accompanied by Eng. Raphael Ogendo (Deputy General Manager), Eng. Vincent Kibuti (Chief Officer, Planning), Mr. Dennis Aroka (Company Secretary), Eng. Mwangi Thuita (Chief Engineer, Planning), Mr. Kisaka Sakari (Chief Officer, Finance) and Eng. Charles

Muasya (Irrigation Engineer) appeared before the Committee on 6th September 2016 and 24th November, 2016 to adduce evidence on the Petition before the Committee.

He submitted THAT –

Management Changes

- 136.** The former General Manager, Eng. Daniel K. Baraza, was suspended by the Board and opted for early retirement while on suspension. Eng. Raphael Ogendo was then appointed as the General Manager in an acting capacity in April 2016.
- 137.** The Cabinet Secretary for Water and Irrigation subsequently suspended the Board of the National Irrigation Board for un-procedurally suspending Eng. Daniel K. Baraza. A new Board was appointed by the Cabinet Secretary and which went ahead to appoint Mr. Gitonga Mugambi as the current Ag. General Manager.

Turkana County Irrigation Projects

- 138.** The National Irrigation Board operates under the Irrigation Act CAP 347 of the laws of Kenya read together with the State Corporations Act 446.
- 139.** The Board has maintained transparency and accountability in management of the public resources while providing irrigation development and management services to the citizenry.
- 140.** NIB, in its efforts to demonstrate accountability and transparency, has been operating within the approved budgets prepared according to the provisions of both section 11 and 12 of the State Corporations Act cap 446 of the Laws of Kenya and preparing the financial statements which are presented for audit to the Kenya National Audit in accordance with section 22 of the irrigation Act, Cap 347 of the Laws of Kenya.
- 141.** As such, the National Irrigation Board provided copies of its 2011/2012, 2012/ 2013, 2013/2014 and 2014/2015 audit certificates and budgets for consideration to Parliament.
- 142.** The National Irrigation Board is mandated under Section 15 of the Irrigation Act to develop, control and improve national irrigation schemes in Kenya. It is in fulfilment of this mandate that the Board has been implementing public and community irrigation projects in Turkana

County among others in the arid and semi-arid (ASAL) regions in Kenya in a bid to empower communities.

143. The Board has completed implementing 84 projects and currently 27 projects are under construction in ASAL regions and are expected to be completed by December 2016.
144. In the last five years, NIB has initiated 13 irrigation projects in Turkana County namely Kabulokor, Kalemnyang, Kolyoro, Lobot, Nadopal, Nadoto, Naoros, Morulem, Turkwel, Nakamane, Naremit, Lokipelot, Katilu drip irrigation projects.
145. Out of these, 3 projects namely Naremit, Lokipelot, Katilu Drip Irrigation Projects are ongoing while the rest have been successfully implemented. The projects have been implemented within the set contract guidelines as detailed in the supporting documents.
146. The ongoing projects are still within the contract period except Katilu Drip Irrigation Project whose delay is because of disagreement over false claims forwarded by the contractor for work not done, flooding of site and lack of cooperation from the contractor.
147. Due to threats from the contractor to proceed to court for payments despite the inadequate progress of work, the Board engaged the contractor for an amicable solution. This has not borne fruits so far and NIB has opted for the final option of initiating termination of the contract in accordance with Clause 63.1 on conditions of the contract (FIDIC 1987 Revised in 1992).
148. The installation of drip system at Katilu Irrigation Scheme was initiated with the overall goal of introducing modern technology of farming and efficient water application owing to the scarcity of water in the Turkana County. The project exists and its implementation is ongoing albeit slow.
149. The project was awarded to Appropriate Development Consultants Ltd after a competitive bidding amongst prequalified contractors at a tender sum of KES 61,429,691.71 (inclusive of taxes). The procurement followed the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations, 2006. To date, the Contractor has been paid KES 44,370,808.54 against certified works.

150. The Board has been adhering to the procurement law in procuring of goods, services and works. In the procurement of irrigation projects, all the provisions of the Procurement Act and Regulation have been followed as can be attested to by the detailed procurement reports of the projects.
151. NIB has continuously engaged the project beneficiaries during implementation where they have participated in project site meetings as demonstrated in the supporting documents. In addition, NIB took part in a meeting convened by the Principal Secretary, State Department of Irrigation with leaders from Turkana County. So far there is no evidence of any official request by either the petitioners or the area legislators to the National Irrigation Board or its officers requesting for an audience on these projects that has been received and not acted upon. However, the Board is open to consultations, since it is a public office and welcomes consultations.

5.0 COMMITTEE GENERAL OBSERVATIONS AND FINDINGS

From the oral and written evidence submitted, the Committee made the following observations and findings-

- (i) **THAT**, the allegations raised in the Petition touched on financial misconduct by Eng. Daniel K. Baraza who was the General Manager of the National Irrigation Board at the time of filing the petition and failure to adhere to the public procurement procedures in implementation of irrigation projects in Turkana County;
- (ii) **THAT**, Eng. Daniel K. Baraza was suspended by the former Board on 21st April 2016, but he opted for terminal leave, three months into his retirement. Mr. Mugambi Gitonga was, henceforth, appointed as the Ag. General Manager, NIB;
- (iii) **THAT**, Eng. Daniel K. Baraza denied allegations of his unavailability to meet Members of Parliament from Turkana County and financial misconduct and procurement irregularities in procuring for civil works for the various projects in Turkana County;
- (iv) **THAT**, the petitioners failed to provide substantive evidence of abandonment of projects and financial misconduct on the part of Eng. Daniel K. Baraza, former General Manager at the National Irrigation Board;

- (v) **THAT**, there is an ongoing financial audit of the Board's operations by the Auditor General;
- (vi) **THAT**, the Public Procurement and Regulatory Authority also conducted a site visit to five (5) irrigation projects in Turkana County and established that the projects were in various stages of implementation including Katilu Irrigation Scheme which is operational, and not abandoned as alleged by the Petitioners;
- (vii) **THAT**, Eng. Robinson Gaita and Eng. Wilfred Onchoke, Directors representing Principal Secretary, State Department of Water and State Department of Water, respectively, ought to have been vigilant and report any malpractice or financial misconduct to their respective Accounting Officers; and
- (viii) **THAT**, there was no evidence of a feasibility study undertaken before commencement of the projects by the Board in Turkana County.

6.0 COMMITTEE GENERAL RECOMMENDATIONS

In response to the prayers sought by the Petitioners, the Committee **RECOMMENDS**; -

- (i) **THAT**, the Auditor General undertakes a performance audit on the capital works on **ALL** irrigation projects undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money. *The Auditor General to submit the said Report to the National Assembly within six (6) months of the adoption of this Report;*
- (ii) **THAT**, Turkana being a drought-prone County, all irrigation projects should be properly planned, designed and supervised so as to enhance food security.
- (iii) **THAT**, the National Irrigation Board ensures that all future capital projects undertaken by the Board should be based on bankable feasibility study reports before commencement of the projects to ensure there is value for money;
- (iv) **THAT**, the Board hastens the completion of the various ongoing irrigation projects in Turkana County to enable the residents benefit from them;

- (v) **THAT, Directors representing their respective Principal Secretaries in various Boards of state corporations should ensure that they submit regular reports to their respective Principal Secretaries on the operations of the Boards in which they sit in; and**
- (vi) **THAT, the Board should in the spirit of public participation, engage the residents and elected leaders of Turkana County in project identification and implementation and constantly brief them on the implementation progress including challenges faced.**

ANNEXURES

RECEIVED
27 APR 2016
DIRECTOR COMMITTEE SERVICES
Time: 11:22 am

ANNEX 1


**Directorate of Legislative and
Procedural Services**

MEMO

TO : DIRECTOR, COMMITTEE SERVICES
FROM : PRINCIPAL CLERK ASSISTANT II
DATE : 26TH APRIL 2016
SUBJECT : PUBLIC PETITION

On Tuesday, 26th April 2016, the Member for Loima Constituency, the Hon. Protus Akujah, M.P. presented a Petition on behalf of concerned residents of Turkana County regarding alleged financial impropriety by the General Manager for National Irrigation Board (NIB) in Turkana County, Eng. Daniel Baraza, HSC.

Enclosed herewith, please find the Petitions for your action.


Lucy Wanjohi

Encls. (1)

Cc:

- Clerk of the National Assembly
- Director, Legislative and Procedural Services
- Chairperson, Public Investments Committee (PIC)

Approved
SNA
26/4/16



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FOURTH SESSION

PUBLIC PETITION

**BY CONCERNED RESIDENTS OF TURKANA COUNTY
ON ALLEGED FINANCIAL IMPROPRIETY BY THE GENERAL
MANAGER, NATIONAL IRRIGATION BOARD IN TURKANA COUNTY**

I, the **UNDERSIGNED**, on behalf of concerned residents of Turkana County;

DRAW the attention of the House on the following:

1. **THAT**, Article 201(d) of the Constitution underscores financial probity, accountability and transparency as cardinal principles of management of public resources by providing that public money shall be used in a prudent and responsible way;
2. **THAT**, the National Irrigation Board (NIB) has been responsible for facilitating irrigation projects with a view to empower communities in Arid and Semi-Arid (ASAL) regions of the Country, including Turkana County;
3. **THAT**, the allocation and management of funds for irrigation projects in the region by the Board has been characterized by massive impropriety, thereby causing many projects to stall for years;
4. **THAT**, in other instances, resources have been allocated to non-existent projects, a case in mind being the Katilu Drip Irrigation project for which colossal amounts of money was paid to contractors yet there is no such project on the ground;
5. **THAT**, the General Manager has been seriously violating the procurement procedures set out in the Public Finance Management Act and the Procurement and Asset Disposal Act, 2015 when implementing irrigation projects in the County;
6. **THAT**, efforts by the Petitioners and area legislators to engage the General Manager to address these concerns have been met with defiance, casting possibilities that he could be complicit to the impropriety intended to defraud the government of public resources and deny residents of the intended benefits from the stalled irrigation projects;

**BY CONCERNED RESIDENTS OF TURKANA COUNTY
ON ALLEGED FINANCIAL IMPROPRIETY BY THE GENERAL
MANAGER, NATIONAL IRRIGATION BOARD IN TURKANA COUNTY**

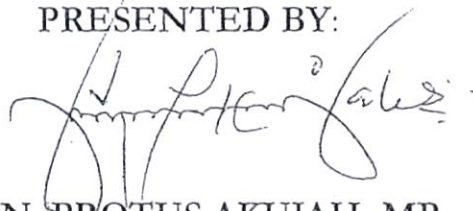
7. **THAT**, the matter raised in this Petition is not pending before any tribunal or court of law;

THEREFORE your humble Petitioners pray that since the issues raised in the Petition touch on imprudent financial investment practices, the National Assembly, through the Public Investments Committee:-

- a) Investigates the activities of the National Irrigation Board in Turkana County, particularly the conduct of Eng. Daniel K. Baraza, HSC for the unwillingness to address the alleged financial imprudence, financial impropriety and allocation of resources to non-existent projects;
- b) Investigates the circumstances behind abandonment of works by contractors on the stalled irrigation projects in Turkana County and neighbouring regions and when works on the said projects shall resume;
- c) Recommends a special audit of the capital projects undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money;
- d) Recommends appropriate disciplinary action for financial imprudence by the General Manager and other persons, including contractors culpable of financial impropriety aimed at defrauding the government; and
- e) Makes any other order and/or direction that it deems fit in the circumstances of the case.

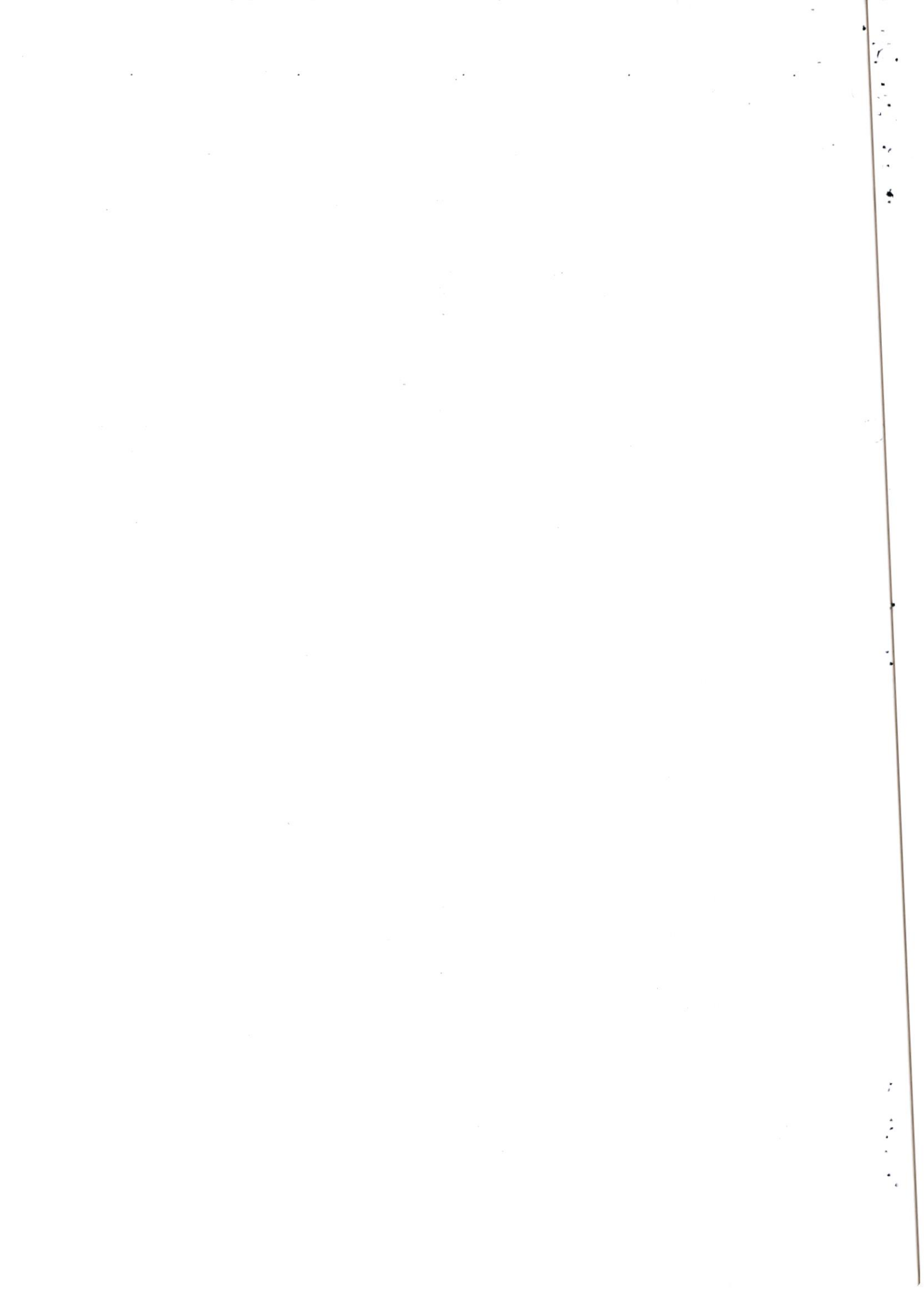
And your **PETITIONERS** will ever pray.

PRESENTED BY:



**HON. PROTUS AKUJAH, MP
MEMBER FOR LOIMA CONSTITUENCY**

DATE: 26/04/2016.....



PUBLIC PROCUREMENT REGULATORY AUTHORITY

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Harambee Avenue
P.O. Box 58535-00200
NAIROBI
KENYA

PPRA/1/02/37 VOL. II (25)

26th October, 2016

The Clerk of the National Assembly
National Assembly
Clerk's Office
Parliament Buildings
NAIROBI

RE: - BRIEF SUMMARY OF NATIONAL IRRIGATION BOARD PROJECTS IN
TURKANA COUNTY

Your letter Ref: KNA/PIC/CORR/2016/147 of 16th September 2016 and our letter Ref: PPRA/1/02/37 VOL. II (13) of 20th September, 2016 refers:

Upon receipt of your letter, we requested National Irrigation Board (NIB) vide our letter Ref. PPRA/1/02/37 VOL. II (14) of 20th September, 2016 to provide us with the under-listed procurement documents for each of the fourteen (14) projects by 26th September, 2016:

1. *Approved procurement plan;*
2. *Procurement requisition;*
3. *Tender invitation notice/letters of invitation to bid;*
4. *Blank bid document that was issued to bidders;*
5. *Original bid document for the successful bidder(s);*
6. *Original tender opening minutes and tender opening registers;*
7. *Original evaluation report (preliminary, technical and financial);*
8. *Minutes of tender committee meeting(s) that awarded the contracts or professional opinion by head of procurement (whichever is applicable);*
9. *Certified copies of letters of notification to successful and unsuccessful bidders; and*
10. *Certified copies of contract agreements*

On 26th September, 2016, NIB submitted to the Authority copies of the above documents for the following projects:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.
2. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase I and Phase II, NIB/T/112/2011-2012 AND NIB/T/036/2013-2014 respectively.
3. Proposed detailed design, supply of materials, Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.
4. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012.
5. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I and Phase II, NIB/T/049/2012-2013 and NIB/T/037/2013-2014 respectively.
6. Tender for construction work of loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013.
7. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013.
8. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013.
9. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.
10. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013
11. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014.
12. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.
13. Tender for construction work of Lokipelot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

On 12th October, 2016 NIB further submitted another set of documents which included:

1. Invitation notice for tender No. NIB/T/039/2012-2013
2. Purchase requisition for tender No. NIB/T/124/2012-2013
3. Certified copy of tender for the successful bidder for tender No. NIB/T/049/2012-2013
4. Purchase requisition for tender No. NIB/T/109/2012-2013
5. Invitation notice for tender No. NIB/T/114/2013-2014
6. Purchase requisition for tender No. NIB/T/005/2011-2012
7. Purchase requisition for tender No. NIB/T/112/2011-2012
8. Certified copy of Tender for the successful bidder for tender No. NIB/T/112/2011-2012
9. Summary of the current status of the Projects
10. Inspection reports, Payment vouchers, completion certificate handing over reports and defect liability certificate for various projects

The complete set of tender documents that processed the tender for Elelea and Lokubae including Inspection reports, Payment vouchers, completion certificate handing over reports and defect liability certificate were not availed.

We reviewed the available documents for the above projects and noted the following:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012

Tender No.	: NIB/T/071/2011-2012
Description	: Tender for construction works of the Nadapal Irrigation Project, Turkana County
Procurement Method	: Open National Tender
Contractor	: M/s Toshe Construction & Engineering Ltd
Contract Sum	: Kshs. 63, 983, 393.00

Observations

- i. NIB used a standard bid documents. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006 (the Regulations).
- ii. The evaluation committee introduced evaluation criteria which were not provided in the bid document which is against section 66 (2) of the Public Procurement and Disposal Act, 2005(the Act).
- iii. M/s Jomat Construction Ltd had not attached Certificate of Incorporation and the evaluation committee noted the same, however he was declared responsive which was against the requirement of the mandatory requirements used by the evaluation committee.
- iv. The technical evaluation criteria was not applied uniformly. M/s Toshe Construction and Engineering Ltd whose bid was declared adequate under technical requirement had not provided details of ownership or lease agreement for 2 No. dewatering pump and 1 Concrete mixer which were mandatory. However the same criteria was used to disqualify other bidders who had not attached similar information like Kibinico Enterprises Ltd Machine Centre Ltd.

2. Tender for construction works of the Kalemnyang' Irrigation Scheme development Project, Phase I, NIB/T/112/2011-2012

Tender No.	: NIB/T/112/2011-2012
Description	: Tender for construction works of the Kalemnyang' Irrigation Scheme Development Project Phase I Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Yellow House Ltd
Contract Sum	: Kshs. 92, 990,077.40.

Observations

- i. Whereas NIB used a standard bid documents, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation requirement had no scoring criteria.
- ii. The mandatory evaluation criteria were not applied uniformly. M/s Nakuru Express Supplies and Services Ltd had not attached Certificate of Registration yet it was declared responsive. Also M/s Rotalink Engineering Company Ltd. had not met the mandatory requirement as it did not provide a valid trading license yet it was also declared responsive.
- iii. None of the three bidders who passed preliminary requirement met the detailed technical requirement, all the three had at least one "Not Ok" and therefore objectively they would not have qualified to proceed to next stage. As per the evaluation committee summary all the bidders did not meet the requirements. However the committee declared 2 bidders (Rotalink Engineering Company Limited and Yellow House Ltd) to be responsive and proceeded to the next stage. The evaluation committee in their minutes focussed on only using two criteria out of the four i.e. experience in similar work for the last ten years and financial capacity to deliver the works.

3. Tender for construction works of the Kalemnyang' Irrigation Scheme development Project, Phase II, NIB/T/036/2013-2014

Tender No.	: NIB/T/036/2013-2014
Description	: Tender for construction works of the Kalemnyang' Irrigation Scheme Development Project Phase II Turkana County.
Procurement Method	: Open National Tender
Contractor	: M/s Lumbe Agencies Ltd
Original Contract Sum	: Kshs. 43, 635,955.00.
Revised contract sum	: Kshs. 54, 269, 168.00

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
 - ii. The bid for M/s Lumbe Agencies Ltd was declared responsive yet the bid security provided was not valid for 150 days from the date of closing as required by clause 13.3 under Instruction to Tenderers. The bid was valid up to 4th March, 2014 whereas the validity required was for up to 19th March, 2014. This evaluation criteria was not applied uniformly.
 - iii. The subjective technical evaluation criteria were not applied uniformly. For example under qualification of key personnel M/s Nakims Merchants and Contractors Limited is said to have "partially met the set condition" and given a *Pass*, on the other hand under list of available essential equipment M/s Mbiwa Construction Company Ltd. Is said to have "partially met the set condition" and given a *fail*.
 - iv. Whereas 16 unsuccessful bidders' letters of notification were sent on 24th January 2014, the regret letter for M/s Balcha Water Drilling & Construction Co. Ltd was sent on 28th September 2013 even before the closing /opening of the tender which was on 15th October, 2013.
 - v. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
 - vi. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.
4. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

Tender No.	: NIB/T/005/2011-2012
Description	: Tender for construction works of the Katilu Irrigation Project, Turkana County
Procurement Method	: Request for Proposal
Contractor	: Appropriate Development Consultants Limited (ADCL)
Contract Sum	: Kshs. 61,429,691.71

Observations

- i. NIB directly invited request for proposal (RFP) instead of advertising the Expression of Interest (EOI), and then invite proposal from qualified person as required under section 80 and 81 of the Act.
- ii. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 13th February, 2012.

5. Tender for construction works for the Kabulokor Irrigation Project, Turkana County NIB/T/070/2011-2012.

Tender No. : NIB/T/070/2011-2012
 Description : Tender for Construction Works of the Kabulokor Irrigation Project Turkana County.
 Procurement Method : Open National tender
 Contractor : M/s Lumbe Agencies Limited
 Contract Sum : Kshs. 59, 169, 863.12

Observations

- i. The tender was opened by one member, Mr. Stephen Apome, the other three members were absent with apologies. This is contrary to Section 60(1) (a) of the Act which requires that the committee to have at least three members.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
- iii. The evaluation committee made recommendation for award to M/s Lumbe Agencies at the corrected figure of Kshs. 59,795,727.37. However, the tender committee approved the award of contract at the original price of Kshs. 59, 169,863.12. The award of the tender at original price by TC saved NIB kshs. 625, 864.25, though it was contrary to provision of Regulation 11 (2) (a) of the Regulations which bar the TC from modifying any submission with respect to the recommendations for a contract award or in any other respect.

6. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2011-2012

Tender No. : NIB/T/049/2011-2012
 Description : Construction works of Morulem Irrigation Scheme Rehabilitation Project Phase (I)
 Procurement Method : Open National Tender
 Contractor : Nyana Engineering Company Limited
 Contract Sum : Kshs. 58,024,199.00

Observations

- i. The TC revised the estimated cost in the procurement plan for the project which was Kshs. 20,000,000.00 to Kshs.56, 723,007.00; however the procurement plan was not amended.
- ii. Whereas the technical evaluation shows that Machine Centre Ltd. obtained a fail, he was ranked among the three bidders who passed the technical evaluation stage.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.

7. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/T/037/2013-2014

Tender No.	: NIB/T/037/2013-2014
Description	: Tender for construction works of the Morulem Irrigation Scheme Development Project Phase II, Turkana County
Procurement Method	: Open National Tender
Contractor	: M/S Toddy Civil Engineering Co. Ltd
Contract Sum	: Kshs. 47, 576, 870.00

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The bid for Katulani Building Contractors was declared responsive in the preliminary evaluation yet his confidential business questionnaire form was not filled which was a mandatory requirement.
- iii. There is no proof that the tender committee's instructions to defer and refer to the evaluation committee were taken into account since the re-evaluation report was not availed and the award done as previously recommended in the first evaluation report.

8. Tender for construction work of Loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013.

Tender No.	: NIB/T/039/2012-2013
Description	: Tender for Construction Works of the Loborot Irrigation scheme Development Project Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Machine Centre Limited
Contract Sum	: Kshs. 64, 593, 955.80

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The evaluation committee evaluated 6 bids against the 5 bids received as recorded in the tender opening minutes. The extra bid document was for M/s. Yellow House Ltd.
- iii. After the correction of the arithmetic error, notice of the correction was not given to the person who submitted the tender contrary to provisions of Section 63(2) of the Act.
- iv. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 10th December 2012.

9. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013.

Tender No.	: NIB/T/038/2012-2013
Description	: Tender for construction works of the Kolyoro Irrigation Scheme Development Project Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Lumbe Agencies Ltd
Contract Sum	: Kshs. 64, 719, 250.00.

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria and or the minimum technical requirement was not explicitly provided.
- ii. The tender opening was done by two members against the minimum quorum of at least three people as required under section 60 (1) (a) of the Act which requires that the committee to have at least three members.

10. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013.

Tender No.	: NIB/T/109/2012-2013
Description	: Tender for construction works of the Turkwell Irrigation Scheme Development Project Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Tosha At General Construction Limited
Contract Sum	: Kshs. 70, 854, 410.00.

Observations

- i. The threshold for use of restricted under the First Schedule of the Regulations is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.
- ii. The preliminary evaluation indicated that the bid for M/s Rotalink Engineering Company Ltd was valid for 120 days against what was recorded in the tender opening that his bid was valid up to 17th November, 2013 which totals to 154 days. He was unfairly disqualified since the bid of the successful bidder M/s Tosha At General Construction Ltd was also indicated to expire on 17th November, 2013 but his bid was declared responsive.
- iii. Evaluation criteria were not applied uniformly since the two bidders, who were responsive failed to meet the requirement of at least two criteria under technical evaluation but were said to be responsive. M/s Machine Centre Ltd failed under financial capacity and work programme while M/s Tosha At General Construction Ltd failed under qualification of key personnel and work programme. Thereafter the evaluation committee noted "M/s Tosha At General Construction Ltd and M/s Machine Centre Ltd had not materially deviated from the set conditions and therefore qualified to the next stage".

II. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

Tender No.	: NIB/T/124/2012-2013
Description	: Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County
Procurement Method	: Restricted Tender
Contractor	: Nyana Engineering Company Limited
Contract Sum	: Kshs. 79, 974, 700.49

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The tender sum of the successful bidder M/s Nyana Engineering Company Limited of Kshs. 79,974,700.49 had an error, of which if it was corrected it would have resulted to an increase in his tender price to Kshs. 79,977,299.53. Correction of error was not done and instead the bidder was awarded the tender at his quoted price.
- iii. The minutes of the TC meeting that awarded the tender were incomplete hence we could not ascertain whether award of tender was done as recommended by evaluation committee.

12. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

Tender No.	: NIB/T/112/2012-2013
Description	: Tender for construction works of the Naoros Irrigation Development Schemes Project in Turkana County.
Procurement Method	: Restricted tendering
Contractor	: M/s Hanamal Construction
Original Contract Sum	: Kshs. 73, 573, 793.00.
Revised Contract Sum	: Kshs. 77, 669, 146.00

Observations

- i. The tender committee meeting of 3rd May, 2016 that awarded the tender did not have a quorum to adjudicate the award as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

13. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014.

Tender No. : NIB/T/035/2013-2014
Description : Tender for construction works of Neremit Irrigation Scheme Development Project Turkana County.
Procurement Method : Open National Tender
Contractor : M/s Nakuru Machinery Services Ltd
Contract Sum : Kshs. 48, 356, 440.00.

Observations

- i. The bid bond for M/s Novatech was expected to be valid for 150 days but the bid security it submitted was valid for 135 days. However, the evaluation committee declared it responsive. Further the bid security for M/s Three Star Contractors was said to be 150 days yet it was 141 days valid since it was to expire on 3rd March, 2014. However, his bid was declared responsive against the criteria.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria.
- iii. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- iv. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

14. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

Tender No.	: NIB/T/038/2013-2014
Description	: Tender for construction works of the flood and animal control infrastructure in Loborot and Nakamane Irrigation Schemes in Turkana County.
Procurement Method	: Open National Tender
Contractor	: M/s Machine Centre Ltd
Contract Sum	: Kshs. 49, 720, 000.00.

Observations

- i. Whereas the tender opening register and tender opening minutes indicate that M/s Cherangani Hills did not provide a bid bond, during evaluation its indicated that he had a bid bond from Consolidated Bank of Kshs. 1, 074, 392 valid for 30 days
- ii. M/S Dynocarp Logistics Ltd was declared responsive whereas he had not provided the Power of Attorney. This criteria was used to disqualify other bidders like M/s Bellagio Construction Ltd, M/s Dynamic General Construction and M/s Institute of Applied Technology.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation parameters had no scoring criteria.
- iv. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- v. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.
- vi. As per the contract the successful bidder (M/s Machine Centre Ltd) failed to submit a performance bond as demanded in the letter of award. Further, NIB went ahead to sign a contract and yet there was no performance bond.

15. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

Tender No.	: NIB/T/114/2013-2014
Description	: Tender for construction works of the Lokipetot Irrigation Schemes Development Project in Turkana County.
Procurement Method	: Restricted tendering
Contractor	: M/s Turkana Salama Enterprises Limited
Contract Sum	: Kshs. 59, 826, 117.00.

Observations

- i. The threshold for use of restricted under the First Schedule of the PPDR, 2006 is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.
- ii. Whereas the TC approved 12 prequalified contractors to be invited, the invitation letter to bid was sent to 10 contractors. M/s. Lumbe Agencies Ltd and Kerman Contractors were not invited.

PROJECT SITE VISITS

In order to gather adequate evidence to substantiate the allegations, the Authority was to conduct a project site visit. Based on the limited timeline and resource constraints the Authority sampled some of the projects to be visited.

In order to make an informed decision to guide the sampling; the status of all the projects was used to categorize the projects into the following:

A. CATEGORY ONE: MP HAD MENTIONED THE PROJECT IN THE PETITION

1. Proposed detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

This project was selected.

B. CATEGORY TWO: INCOMPLETE PROJECTS

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase II NIB/T/036/2013-2014 respectively;

2. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/T/037/2013-2014 respectively;
3. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014; and
4. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

We selected: Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

C. CATEGORY THREE: COMPLETE BUT NOT IN OPERATION

They included:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012;
2. Tender for construction work of laborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
3. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013;
4. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013;
5. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013; and
6. Tender for construction works of the flood and animal control infrastructures in Laborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

We selected: Tender for construction work of laborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013 and Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.

D. CATEGORY FOUR: COMPLETE & IN OPERATION

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase I NIB/T/112/2011-2012;
2. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012;
3. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2012-2013; and
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

We selected: Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

CONSOLIDATED SAMPLE

1. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012;
2. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014;
3. Tender for construction work of lolorot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013;
5. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012; and
6. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

The Authority appointed Three (3) Officers to conduct project site Audit of the projects between 17th and 21st October, 2016. A summary of the status of the sampled project after the visit is as below:

1. Nadapal irrigation project:

The contractor executed the work and upon completion it was handed over to farmers. The Scheme has a management committee selected amongst farmers. The project is in operation and we found farmers preparing the land and others had already planted. However, farmers are experiencing some challenges such as:

- a) Heavy flooding that destroys the crops since the floods meander and use other entry point to the Scheme where there are no flood protection.
- b) Siltation and blockage of the water canals
- c) River Turkwel which is the source of the water for the scheme is very wide and its course keeps on diverting which may result on no water getting into the scheme through the main canal. Every time the river change the course farmers are forced to dig canal manually in order to reach the water.

2. Lokipetot irrigation project:

The project is not complete and the contractor is still on site, the completion level is approximately 80%, bush clearing is a major problem which is caused by "Mathenge" that grows and spreads out very fast.

NIB have not paid the Contractor for two already raised interim certificate and this has delayed the completion of the project.

3. Loborot irrigation project:

The contractor executed the contract for the works and upon completion the project was handed over to farmers. Farmers cultivated for three seasons, thereafter the flood blocked the main canal and it is therefore non-operational for close to one year.

- a) Major problems are:
- b) Blockage of canals through siltation hence no water flowing into the Scheme
- c) Floods that washed away the crops and caused blockage of canals
- d) Flood protection Gabions were destroyed (washed away) by floods
- e) Road bridge crossing was destroyed by floods
- f) The Turkwel river is encroaching the Scheme and part of the fence is inside the river
- g) The quality of work is poor since the walls of the canals are not plastered and can wear off very easily (poor workmanship).

4. Katilu irrigation project:

Initially Katilu Irrigation Scheme was the work of Food and Agricultural Organization (FAO) who provided capital cost and technical personnel, later FAO withdrew. It was later taken over by Norwin Agency for Development Corporation (NORAD) through the Ministry of Agriculture in 1982, they also withdrew. The initial acre rage under FAO and NORAD was 500 Acres.

NIB later came and did rehabilitation of the Scheme and it became operational. Further they expanded the acre rage from 500 to 2000 Acres. NIB also have full time employee to manage the scheme. In conjunction with the County Government they also provided machinery to assist the farmers to till the land and dredging the canal after siltation. This has helped to make the project operational throughout the year. The total size of the acre rage that is operational is 1600 Acres. The system of irrigation used by Farmers is furrow Irrigation.

Farmers have started to undertake diversification by introducing a variety of crops such as bananas, butternuts, tomatoes, pawpaws, spinach and sukumawiki, dania among others on top of the previous crop i.e. maize, rice and barley. We found farmers harvesting the produce for the market.

In the financial year 2011/2012 NIB intended to expand the project and they invited tenders for design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, Tender No. NIB/T/005/2011-2012.

The contractor M/s Appropriate Development Consultants Limited (ADCL) was awarded the tender for the Drip irrigation system at a tender sum of Kshs. 61,429,691.71. The size of the Acreage was 50. The contractors did most of the work which include bush clearing, fencing, building the foundation base for the tanks, supplied drip pipes, pumps and 15 tanks of 10, 000 litres. The contractor applied for variation which NIB did not honor and the contractor withdrew from site. The contract was not fully implemented but farmers who were to be allocated the land upon completion are farming the land using water from the other part of the Scheme.

The major problem in this scheme is "Mathenge" a weed that grows and spreads very fast and blocks the secondary canals.

5. Nadoto irrigation project:

The contractor executed the work as per the contract and upon completion of the project it was handed over to farmers who selected management committee for the Scheme. Farmers have been planting and even in the last season they harvested maize. We found farmers clearing the *Mathenge* Shrubs to prepare for the next season. The scheme have good canal, but flooding hinders consistent flow of water to the farm which if alleviated it can increase food production. Farmers are experiencing the following problems:

- a) Flooding and siltation leading to blockage of the main canal
- b) Water intake has been blocked by floods
- c) "Mathenge" shrubs have spread in the land under irrigation resulting to thick bushes.

6. Naoros irrigation project:

The project was not fully completed since all secondary canal structures were not done. However, Farmers approximately tilled 10 acres and harvested during the last season. The flooding made it impossible to till the major part of the land within the Scheme and especially at the main canal since thick bush of *Mathenge* shrub sprouted and grow to become big trees. Farmers have tried to manually clear the bush but they have inadequate tools to clear the bush. This makes their effort to become unfruitful since by the time they are halfway to reach the main canal *Mathenge* shrub that were initially cleared have sprouted back. Farmers are experiencing some challenges such as:

- a) Heavy flooding that blocked the intake at the main canal and destroyed the crops.
- b) Flood protection Gabions were destroyed by floods which led to water getting into the Scheme.
- c) "Mathenge" shrub have infested the Scheme and clearing of the same is difficult since farmers have inadequate, ineffective farm tools and equipment's to facilitate bush clearing.

A comprehensive report on the above projects is herewith attached.

Yours



M. J. O. JUMA (MBS)
DIRECTOR GENERAL

Encl.

COMPREHENSIVE REPORT ON THE 15 NIB IRRIGATION PROJECTS IN TURKANA COUNTY

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012

Tender No.	: NIB/T/071/2011-2012
Description	: Tender for construction works of the Nadapal Irrigation Project, Turkana County
Procurement Method	: Open National Tender
Contractor	: M/s Toshe Construction & Engineering Ltd
Contract Sum	: Kshs. 63, 983, 393.00

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2011/2012. The estimated cost of the works was Kshs. 100, 000, 000.00 million and it was to be procured through Open National Tender. The procurement plan was prepared by the head of procurement unit and approved by the Accounting Officer on 15th July, 2011.
2. A requisition was raised in form of a memo with Deputy General Manager (T) who approved the procurement on 11/01/1012. Further, during the NIB Tender Committee (TC) meeting held on 13th January, 2012; the Smallholder Irrigation Projects Coordinator Eng. R. Kanui presented a procurement requisition to TC for construction works for Nadapal Irrigation Project. The TC approved procurement of the subject works through National Open Tendering and further directed that the invitation for bids be published in the Daily Nation, the Standard, the Star and in the NIB website. The TC minutes that deliberated the approval of the procurement requisition was confirmed on 27th January, 2012.
3. The subject Tender was advertised in three newspapers i.e. Daily Nation, The Standard and The Star Newspapers of 20th January, 2012. The notices provided information relevant for obtaining and submission of tender. The deadline for submission of tender was 14th February, 2012 at 12.00 a.m. NIB issued an addendum in the Daily Nation and The Standard of 8th February, 2012 to extend the deadline for submission to 21st February, 2012.
4. Tender opening committee was appointed on 16th February, 2012 in requirement of the provision of Section 60 (1) of Public Procurement and Disposal Act, 2005(the Act, 2005), it comprised of Vincent Kabuti, Edwin Manyonge, Felix Shiundu and Stephen Apome.

5. Tender was opened on 21st February, 2012 by Mr Stephen Apome. There were other Six (6) in-attendance from NIB during the opening. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, bid bond and form of bid (original and number of copies). The committee also serialized the bid received and signed the tender opening minutes.
6. Eleven (11) bids were received as follows:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Maiguria General Contractors	105, 989, 282.30	Equity Bank, Kshs 1, 977, 802.27 valid up to 21 st July, 2012	1 original and 1 copy
2.	Jomat Construction Limited	54, 971, 585.79	Equity bank, Kshs. 1, 099,432.00 valid up to 23 rd July, 2012	1 original and 3 copies
3.	Enegi Limited	56, 555, 589.00	Family bank, Kshs. 1, 131, 111.78 Valid up to 21 st July, 2012	1 original and 1 copy
4.	Toshe Construction and Engineering Limited	63, 983, 393.00	Chase bank, Kshs. 1,279,668.00 valid up to 20 th July, 2012	1 original and 1 copy
5.	Digital Den Ltd.	130, 303, 454.05	Equity bank, Kshs 2, 606, 069.08 Valid up to 21 st July, 2012	1 original and 3 copies
6.	Kibinico Enterprises Limited	69, 182, 730.32	Equity bank, Kshs. 1, 729 568.30 valid up to 1 st August, 2012	1 original and 3 copies
7.	Yellow House Ltd	71, 878, 875.20	Equity bank, Kshs. 1, 600,000.00 valid up to 21 st July, 2012	1 original and 3 copies
8.	Machine Centre Limited	76, 163, 786.60	Equity bank, Kshs. 1, 600, 000.00 valid up to 21 st July, 2012	1 original and 3 copies
9.	Perma Structural Engineering Company Ltd.	50, 065, 060.70	Equity bank, Kshs. 150, 000 valid up to 150 days from the date of opening.	1 original 1 copy
10.	Makenu Engineering Ltd.	60, 661, 138.50	African Banking Corporation, Kshs. 1, 213, 222.77 valid up to 21 st July, 2012.	1 original and 3 copies
11.	Manyota Limited	71, 294, 128.40	Eco-Bank, Kshs. 1, 426, 000.00 valid up to 21 st July, 2012	1 original and 3 copies

Evaluation

7. Evaluation committee was appointed on 29th February, 2012 in requirement of Regulation 16 (1) of the PPDR, 2006. Evaluation was carried out by the following six (6) members (Felix Shiundu, Edwin Siboe, Nesline Ogwe, Stephen Apome, Mike Obimbo and Jairus Serede). Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.

8. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance and valid trading license. Two bidders (M/s Maiguria General Contractors and Perma Structural Engineering Co. Ltd were declared non-responsive.
9. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification and experience of key personnel, plants and equipment for executing the works, adequacy of the proposed methodology and work schedule and financial capacity. As per the evaluation committee only 2 bidders (M/s Toshe Construction and Engineering Ltd. And Manyota Ltd) who met the technical requirement
10. The evaluation committee conducted financial evaluation by correcting arithmetic errors. No errors noted.
11. The evaluation committee recommended M/s Toshe Construction Engineering Ltd for the award of the tender at his tender sum of Kshs. 63, 983, 393.00 having been the lowest evaluated bidder.

Tender Award and Notification

12. In its meeting held on 10th May, 2012, the tender committee awarded the tender to M/s Toshe Construction & Engineering Ltd at Kshs. 63, 983, 393.00. The TC minutes were confirmed on 16th May, 2012.
13. The successful and unsuccessful bidder were notified vide letter Ref: C/P/197 VOL XXIV (30) of 23rd May, 2012. The successful bidder was expected to furnish NIB with a performance bond equivalent to 5% of the tender sum in form of bank guarantee and submit acceptance within 14 days.
14. M/s Toshe Construction & Engineering Limited made an acceptance to the award on 28th May, 2012. Further he submitted a performance bond from Chase Bank of Kshs. 3. 199, 170.

Contract

15. A pre-contract negotiation meeting was held on 15th June, 2012. The meeting was attended by Francis Njoroge, Richard Kanui, Jairus Serede, Michael Obimbo and Caleb Omoroh (Director Toshe Construction & Engineering Ltd)
16. NIB and Toshe Construction & Engineering Ltd entered into a contract on 11th July, 2012 for the construction works of Nadapal Irrigation Project. The time for completion was six (6) calendar months.

Contract Implementation

17. The contractor has been paid Kshs. 56, 008, 510.00 and there are material on the site worth Kshs. 6, 427, 400.00.
18. Inspection and Acceptance Committee was appointed on 11th July, 2013. An inspection of works was done and the contractor managed to execute 96.3% of the works at a cost of 56, 008, 510.00, this was completed in September 2013 and handed over to the farmers.
19. The defect liability period was to expire on 17th September, 2014 and upon expiry the contractor raised defect liability certificate on 1st December, 2014 and later it was approved project coordinator and resident engineer, this resulted to payment of the retention fee.
20. As per the substantial completion certificate the following works were still outstanding:

Task	Estimated cost
a) Perimeter fence	2, 346, 000.00
b) Floods protection	1, 028, 380.00
c) Land preparation	588, 000.00
21. The project is not in operation since the flood protection bund was destroyed by floods.

Observations

- i. NIB used a standard bid documents. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006 (PPDR, 2006).
- ii. The evaluation committee introduced evaluation criteria which were not provided in the bid document which is against section 66 (2) of the Act, 2005.
- iii. M/s Jomat Construction Ltd had not attached Certificate of Incorporation and the evaluation committee noted the same, however he was declared responsive which was against the requirement of the mandatory requirements used by the evaluation committee.
- iv. The technical evaluation criteria was not applied uniformly. M/s Toshe Construction and Engineering Ltd whose bid was declared adequate under technical requirement had not provided details of ownership or lease agreement for 2 No. dewatering pump and 1 Concrete mixer which were mandatory. However the same criteria was used to disqualify other bidders who had not attached similar information like Kibinico Enterprises Ltd Machine Centre Ltd.

and Makenu Engineering Ltd. Only one bidder (Manyota Ltd.) met all the mandatory requirement under technical evaluation.

2. Tender for construction works of the Kalemnyang' Irrigation Scheme development Project, Phase I, NIB/T/112/2011-2012

Tender No.	: NIB/T/112/2011-2012
Description	: Tender for construction works of the Kalemnyang' Irrigation Scheme Development Project Phase I Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Yellow House Ltd
Contract Sum	: Kshs. 92, 990,077.40.

Background

1. The subject procurement was in the procurement plan for the financial year 2011/2012. It was to be procured through restricted tendering and the estimated cost was 20, 000, 000. The procurement plan was prepared by Head of procurement unit and approved by Head of procuring Entity on 15th July, 2011.
2. Concurrently, the requisition for the subject works was raised with General Manager and Tender Committee. An internal memo dated 4th May, 2012 from Eng. Kanui was raised with General Manager to initiate the procurement of the subject Irrigation project, the General Manger approved it on 08/5/2012. Further, the request for the procurement of the subject works was presented to the TC during its meeting of 7th May, 2012 by the Provincial Irrigation Engineer Eng. Rapahel Ogendo. The TC approved the procurement. Further, TC approved the procurement of the subject work be done through Restricted tendering since it was specialized in nature and therefore the need to engage prequalified contractors. The following firms were approved to be invited to bid for the works:
 - i. Jomikoka Construction- Nakuru
 - ii. Eldimex (K) Ltd-Nakuru
 - iii. Nakuru Express Supplies and Services Ltd.- Nakuru
 - iv. Yellow House Ltd- Thika
 - v. Libex Construction Co. Ltd- Nakuru
 - vi. Crater Enterprises and Supplies Ltd- Nakuru
 - vii. Machine Centre- Nairobi
 - viii. Elton Techno- Eldoret
 - ix. Paa Building- Eldoret
 - x. Grane Construction & Engineering Company-Eldoret
 - xi. Rotalink Engineering Company -Eldoret
 - xii. Waza Rural Services- Eldoret

- xiii. Toshe Construction and Engineering Ltd- Nairobi
- xiv. Dicom Engineering Ltd- Nairobi

The above minutes were confirmed on 10th May, 2012.

3. The invitation letter to tender was sent on 25th May, 2012. The hard copy of the invitation letter was addressed to ten (14) bidders. The invitation letter to tender provided information on how to obtain and submit the tender. The closing date of this tender was 15th June, 2012.
4. Tender opening committee was appointed on 11th June, 2012 in requirement of the provision of Section 60 (1) of PPDA, 2005, it comprised of jairus Serede, evaline Akoth and Stephen Apome.
5. Seven bidders bought tenders but only five bidders returned their bid. Tender opening was done on 15th June, 2012 by two people namely Jairus Serede and Stephen Apome and another in- attendance by the name Stephen Mutinda. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, bid bond and form of bid (original and number of copies).
6. Five (5) bids were received as follows:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Grane Construction & Engineering Company	88,352,002.00	British Insurance Company Limited, Kshs 1,760,000.00 will remain in for up to and including 150days from the date of tender opening.	1 original copy of bid
2.	Paa Building Services	75,433,313.45	AMACO, Kshs. 1,520,000.00 will remain in for up to and including 150days from the date of tender opening.	1 original and 2 copies
3.	Nakuru Express Supplies and Services Ltd	99,415,672.95	Equity bank, Kshs. 1,989,000.00 Valid up to 14 th November, 2012	1 original and 2 copies
4.	Rotalink Engineering Company Limited	101,553,882.65	Barclays bank, Kshs. 1,230,000.00 Valid up to 14 th November, 2012	1 original and 3 copies
5.	Yellow House Ltd	92,990,077.40	Equity bank, Kshs 1,860,000.00 Valid up to 15 th November, 2012	1 original and 3 copies

7. Evaluation committee was appointed on 11th June, 2012 and it comprised of Eng. Raphael Ogendo, Eng. Mwangi Thuita, Willy Katembu and Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.
8. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance and

valid trading license. Two bidders (M/s Grane Construction & Engineering Company and Paa Building Services) were declared non-responsive.

9. The following evaluation criteria were used to conduct broad Technical Evaluation: past experience and performance, qualification and experience of key personnel, proof of ownership or lease of key plants and equipment for executing the works, adequacy of the proposed methodology and work schedule, financial capability and average volume of construction in the last five years. It was either *Ok or Not Ok*. The committee declared 2 bidders (Rotalink Engineering Company Limited and Yellow House Ltd) to be responsive and therefore proceed to next stage.

10. The evaluation committee conducted financial evaluation by just ranking two responsive bids as summarised below.

Bid No.	Bidders Name	Bid price (as opened)	Ranking
4	Rotalink Engineering Company Limited	101, 553, 882.65	2
5	Yellow House Ltd	92, 990, 077.40	1

11. The evaluation committee recommended M/s Yellow House Ltd. for the award of the tender at his tender sum of Kshs. 92, 990, 077.40

Tender Award and Notification

12. The TC meeting of 28th June, 2012 awarded the tender to M/s Yellow House Ltd. at the total quoted price of Kshs. 92, 990, 077.40. Tender committee minutes were confirmed on 11th July, 2012. The Boards PIU was expected to conduct a negotiation. The TC confirmed the fund for the available works was 94Million.

13. Notification of tender award to the successful and unsuccessful bidders was done on 20th July, 2012. The successful bidder was expected to furnish NIB with a performance bond equivalent to 5% and make an acceptance within 14 days. A negotiation was to be held on 24th July, 2012, instead the meeting was held on 26th July, 2012 and they agreed on several thing among them being that the minimum interim certificate to be paid will be 8Million M/s Yellow House Ltd made an acceptance of the award on 23rd July, 2013.

Contract

14. The successful bidder furnished the procuring entity with a performance bond from Equity Bank worth Kshs.4, 649, 503.87

15. NIB and M/s Yellow House Ltd signed a contract on 15th August, 2012. The contract implementation period was 6 calendar Months.

Contract Implementation

16. A total amount of Kshs. 92, 895, 920 has already been paid. A total of five certificate were raised to facilitate the payments, including the retention fee.

17. A completion certificate was issued upon completion of the works on 16th October, 2013. The initial completion date was 14th July, 2013. A defect liability

certificate was raised after expiry of defect liability period on 16th October, 2014. The handing over of the project was done on 20/01/2015

18. The project was completed in December 2013 and handed over to the farmers.
19. An inspection and acceptance committee was appointed on 28th February, 2014 vide letter Ref. NIB/HQ/KI/70. Final Inspection of the project was done on 25th June, 2014 by David Tanui, Thomas Ibo, Tioko Serona, William Mwangi and Peterson Ngujiri. The committee prepared inspection report.
20. The project is in operation.

Observations

- i. Whereas NIB used a standard bid documents, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation requirement had no scoring criteria.
- ii. The mandatory evaluation criteria were not applied uniformly. M/s Nakuru Express Supplies and Services Ltd had not attached Certificate of Registration yet it was declared responsive. Also M/s Rotalink Engineering Company Ltd. had not met the mandatory requirement as it did not provide a valid trading license yet it was also declared responsive.
- iii. None of the three bidders who passed preliminary requirement met the detailed technical requirement, all the three had at least one "Not Ok" and therefore objectively they would not have qualified to proceed to next stage. As per the evaluation committee summary all the bidders did not meet the requirements. However the committee declared 2 bidders (Rotalink Engineering Company Limited and Yellow House Ltd) to be responsive and proceeded to the next stage. The evaluation committee in their minutes focussed on only using two criteria out of the four i.e. experience in similar work for the last ten years and financial capacity to deliver the works.

3. Tender for construction works of the Kalemnyang' Irrigation Scheme development Project, Phase II, NIB/T/036/2013-2014

Tender No.	: NIB/T/036/2013-2014
Description	: Tender for construction works of the Kalemnyang' Irrigation Scheme Development Project Phase II Turkana County.
Procurement Method	: Open National Tender
Contractor	: M/s Lumbe Agencies Ltd
Original Contract	Sum : Kshs. 43, 635,955.00.
Revised contract sum	: Kshs. 54, 269, 168.00

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2013/2014. The estimated cost of the works was Kshs. 60, 000, 000.00 million and the NIB was to procure the subject works through Open National Tender. The procurement plan was prepared by the head of procurement unit and approved by the Accounting Officer on 1st August, 2013.
2. During the NIB Tender Committee (TC) meeting held on 19th September, 2013; Eng. Thuita Mwangi on behalf of expanded National Irrigation Programme presented a request for procurement of construction works for Kalemnyang' Irrigation Scheme development Project Phase II. The TC approved procurement of the subject works through National Open Tendering and further directed that the invitation for bids be published in the Daily Nation, The Standard, and The Star on 20th September, 2013.
3. The subject Tender was advertised in the Daily Nation, of 20th September, 2013. The notices provided information relevant for obtaining and submission of tender. The deadline for submission of tender was 15th October, 2013 at 12.00 a.m. this tender was reserved for citizen contractors.
4. Tender opening committee was appointed on 10th October, 2013 and it comprised of Jairus Serede, Risper Okumbe, Patricia Siele, Michael Obimbo. Tender was opened on 15th October, 2013. There were other Six (6) in-attendance from NIB. The committee prepared tender opening minutes indicating the tenderers names and total tender price. The committee also serialized the bid received.
5. Fifteen (15) bids were received as follows:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Validity OF Bid bond
1.	Trimop Ltd	40, 044, 312.00	Equity Bank, Kshs 400, 444	15 th January, 2014

2.	31 st Century Trading Ltd	39,422,297.00	Chase bank, Kshs. 1,200,000.00	14 th March, 2014
3.	Mbiwa Construction Co. Ltd.	46,898,610.00	KCB, Kshs. 937,796.20	15 th March, 2014
4.	Bellagio Construction Ltd.	45,578,005.00	Family bank, Kshs. 1,000,000	14 th March, 2014
5.	Joba Suppliers and Construction Co. Ltd.	43,950,444.00	Eco bank, Kshs 934,984.60	8 th February, 2014
6.	Dafabotaz Transporters and Construction Co.	40,260,858.00	AMACO, Kshs. 805,217	122 DAYS after tender opening
7.	Landmark Holdings Ltd.	60,959,470.00	Oriental Commercial Bank Kshs. 1,220,000	30 th March, 2014
8.	Doch Co. Ltd.	37,603,698.00	Equity bank, Kshs. 753,000	14 th April, 2014
9.	Balcha Water Drilling and Construction Co. Ltd.	40,260,858.00	AMACO, Kshs. 805,278	122 days after tender opening
10.	Novatech Ltd.	36,595,365.40	COOP Bank Kshs. 800,000	25 th February, 2014
11.	Three Star Contractors	68,199,711.80	Equity Bank, Kshs. 1,000,000	3 rd March, 2014
12.	Jitahidi Construction and Civil Engineering Services	45,541,925.00	Equity bank, Kshs. 910,838.50	15 th March, 2014
13.	Josfirm Engineering & Construction Co. Ltd.	38,961,367.50	Chase Bank Kshs. 800,000	15 th March, 2014
14.	Dynamic General Construction	47,810,367.00	Equity Bank Kshs. 956,207.34	25 th March, 2014
15.	Synchrolite General Contractors Ltd.	41,853,867.00	Equity Bank Kshs. 840,000	7 th April, 2014

Evaluation

6. The Tender Processing Committee was appointed on 24th October, 2013 and it comprised of Eng. Raphael Ogendo, Eng. Michael Thuita, Mr Raphael Mutiso, Eng. Ochieng' Ochiere and Eng. Eliud Gicheru. The Tender Processing Committee evaluated 18 bid against the 15 bids received i.e. the above 15 bids and the following three bids (Wimax Enterprises Ltd, Nakims Merchants & co. Ltd. and Lumbe Agencies Ltd together) which were not recorded in the tender opening minutes but were in captured in the tender opening register.
7. Evaluation was carried out by the following five (5) members (Eng. Raphael Ogendo, Eng. Henry O. Ochiele, Eng. Thuita Mwangi, Eng. Eliud Gicheru and Mr. Raphael Mutiso). Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
8. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, valid trading license and power of Attorney. Twelve (12) bids were declared non-responsive, five bids were responsive while the bid for M/s 31st Century Trading Ltd was not accounted for under preliminary evaluation
9. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification and experience of key personnel, ownership or lease agreement for key plants and equipment for executing the works, financial capacity, annual volume of construction work in the last three years and adequacy of the proposed methodology and work schedule. The broad technical evaluation was either a *pass* or a *fail*. As per the evaluation committee only 2 bidders (Landmark Holdings Ltd. and Lumbe Agencies Ltd) met the technical requirement and proceeded to financial evaluation.
10. The financial evaluation involved conducting correction of arithmetic errors. After the correction of arithmetic errors, the evaluation committee recommended the award of the tender to M/s Lumbe Agencies Ltd at their quoted bid price of Kshs.43, 635,955.00 after emerging the lowest evaluated bidder.

Tender Award and Notification

11. The Tender Committee meeting held on 18th, November 2013, deferred with the recommendation of the evaluation committee to award the tender and directed that the evaluation committee review and provide additional information as listed below:
 - i. The client, value, year, location and major components of the stated works experience

- ii. The requirement that the power of Attorney be witnessed by a commissioner for Oath/Advocate since the requirement was not explicitly stated
- iii. The computation of the financial capacity in form of the available liquid assets and/or credit facility in comparison with the stated requirements
- iv. The computation of average annual volume of construction works in the last three years and comparison with the stated requirements.

Tender committee minutes were confirmed on 28th November, 2013

- 12. The TC meeting of 28th November, 2013 awarded the tender to M/s Lumbe Agencies at the total quoted price of Kshs.43, 635,955.00. Tender committee minutes were confirmed on 5th December 2013. The Boards' appointed negotiation committee was to undertake a pre-contract negotiation with successful bidder.
- 13. Notification of tender award to the successful bidder and to 16 unsuccessful bidders was done on 24th January 2014. The successful bidder made an acceptance of the award on 27th January, 2014.

Contract

- 14. The successful bidder furnished the procuring entity with a performance bond from Equity Bank worth Kshs.2, 181, 800.00
- NIB and M/s Lumbe Agencies Limited signed a contract on 28th February, 2014. The contract implementation period was 12 Months calendar.

Variation

- 15. On 21st November, 2014 a request to amend the contract was submitted to the TC and the subject contract was varied with Kshs. 10, 633, 213.00 hence the contract total value changed from 43, 635, 955.00 to 54, 269, 168.00 equivalent to 24.4% against the required minimum of 25% (10% for goods and services and 15% for works). An addendum to amend the original contract was signed by both parties on 23rd March, 2015.

Contract implementation and status of the project

- 16. A total amount of Kshs. 50, 195, 738.00 has already been paid. Six interim and a final certificate were raised to facilitate the payments, including the retention fee.
- 17. The Inspection and Acceptance Committee was appointed vide letter Ref. GM/G/429 on 22nd August, 2013 and it comprised of David Tanui, Edwin Keitany and John Kinyanjui. The fifth and seventh progress site Inspection report has already been done by a team comprising the representative of NIB; clerk of works; contractor

representative; chairman, Secretary and Treasurer of Kalemnyang Scheme on 21/11/14 and 22/7/2015 respectively. As per the 5th Progress report overall achievement was 89% while as per 7th progress report the overall achievement was at 93%.

18. The construction works is in progress.

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation requirement had no scoring criteria.
- ii. The bid for M/s Lumbe Agencies Ltd was declared responsive yet the bid security provided was not valid for 150 days from the date of closing as required by clause 13.3 under Instruction to Tenderers. The bid was valid up to 4th March, 2014 whereas the validity required was for up to 19th March, 2014. This evaluation criteria was not applied uniformly.
- iii. The subjective technical evaluation criteria were not applied uniformly. For example under qualification of key personnel M/s Nakims Merchants and Contractors Limited is said to have "partially met the set condition" and given a *Pass*; on the other hand under list of available essential equipment M/s Mbiwa Construction Company Ltd. Is said to have "partially met the set condition" and given a *fail*.
- iv. Whereas 16 unsuccessful bidders' letters of notification were sent on 24th January 2014, the regret letter for M/s Balcha Water Drilling & Construction Co. Ltd was sent on 28th September 2013 even before the closing /opening of the tender which was on 15th October, 2013.
- v. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- vi. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the PPDR, 2006. The TC had only four members against the required quorum of five members and Secretary.

4. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

Tender No.	: NIB/T/005/2011-2012
Description	: Tender for construction works of the Katilu Irrigation Project, Turkana County
Procurement Method	: Request for Proposal
Contractor	: Appropriate Development Consultants Limited (ADCL)
Contract Sum	: Kshs. 61,429,691.71

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2011/2012. The estimated cost of the works was Kshs. 250, 000, 000.00 million and the NIB was to procure the works through Open National Tendering. The procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 15th July, 2011.
2. During the NIB Tender Committee (TC) meeting held on 20th July, 2011, Irrigation engineer Mr. Felix Shiundu presented a request for procurement of the design, supply of Materials, Construction/Installation, testing and commissioning of Drip Irrigation system for the Katilu Irrigation Development Project. The TC approved procurement of the subject works through National Competitive Bidding. The minutes were confirmed on 2nd August, 2011:

The invitation for bids in form of Request for Proposal was advertised in The Daily Nation dated 2nd August, 2011. The deadline for submission of bids was 23rd August, 2011. Addendum to extend the closing date to 13th September, 2011 was published in the Daily Nation newspaper and the Standard newspaper of 22nd August, 2011. A pre-bid briefing and site visit was conducted on 10th August 2011.

3. The appointment of tender opening and evaluation committee was done on 13th September, 2011 and it comprised of Vincent Kabuti, Stephen Apome and Felix Shiundu. The Proposal was opened on 13th September, 2011 by three members (Vincent Kabuti, Michael Obimbo and Stephen Apome). One member (Felix Shiundu) was absent with apologies. There were other ten (10) in-attendances during the opening including one from NIB. The committee prepared tender opening minutes indicating the names of the consultancy firm and the proposal documents. The committee also serialized the bid received and signed the tender opening minutes.
4. The summary of opening of technical proposals for the subject tender is as shown in the table below:

	Consultancy Firm	Proposal
1.	Mutahi engineering services company Ltd.	1 original technical proposal document, 5 copies and 1 financial proposal
2.	Funam construction company Ltd.	1 original technical proposal document, 4 copies and 1 financial proposal
3.	Kaptinga Quarry Enterprises	1 original technical proposal document, 5 copies and 1 financial proposal
4.	ADCL(Appropriate Development Consultants Ltd.	1 original technical proposal document, 5 copies and 1 financial proposal
5.	Jain irrigation systems Ltd.	1 original technical proposal document, 5 copies and 1 financial proposal
6.	Tulsi construction Co.Ltd	1 original technical proposal document, 5 copies and 1 financial proposal
7.	Irrico International Ltd	1 original technical proposal document, 4 copies and 1 financial proposal

Evaluation

5. The appointment of opening and evaluation was done on 13th September, 2011 and it comprised of Vincent Kabuti, Stephen Apome and Felix Shiundu. Evaluation of Technical proposal was conducted by three members and the set minimum technical score was 75%. Four firms (ADCL, Mutahi engineering services, Irrico International Ltd and Jain irrigation systems) attained the set minimum score of 75%.
6. The tender committee in its meeting held on 3rd November, 2011 approved the technical evaluation report as presented by the evaluation team and consequently approved the public opening of financial proposals for the four technically qualified firms. The TC minutes were confirmed on 16th November 2011.
7. The opening of the financial proposal was done on 25th November 2011. The formula for determining the financial score was applied and the schedule of the Financial score was as follows:

No.	Consultants name	Total financial proposal (Kshs)	Financial score(SF)
1.	Irrico International Limited	41,979,311.32	100
2.	Jain Irrigation system	46,019,206.20	88.24
3.	Mutahi engineering services	49,911,750.00	81.36

4.	Appropriate Development Consultants Limited	61,429,691.71	66.10
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8. The combined technical and financial scores were as shown in the table below:

No.	Consultants name	Total financial proposal(Kshs)	Combined score(SF)
1.	Irrico International Limited	41,979,311.32	80.00
2.	Jain Irrigation system	46,019,206.20	78.05
3.	Mutahi engineering services	49,911,750.00	76.27
4.	Appropriate Development Consultants Limited	61,429,691.71	81.62

From the above result, Appropriate Development Consultants Limited (ADCL) attained the highest combined technical and financial score.

9. The evaluation team recommended ADCL for the award of the tender at a total cost of Kshs. 61,429,691.71 after emerging the bidder with the highest combined technical and financial score.
10. During its meeting held on 20th December 2011, the tender committee approved the evaluation committee's recommendation for award of the contract to ADCL at a total cost of Kshs. 61,429,691.71, the award was confirmed on 13th January 2012.

Tender Award and Notification

11. The successful and unsuccessful bidders were notified vide letter Ref: C/P/197 VOL. XXI of 30th January, 2012.
12. ADCL accepted the award vide a letter dated 6th February 2012 and submitted a performance guarantee worth Kshs. 3, 077, 300.00 on 2nd March 2012.

Contract

13. A pre-contract negotiation meeting was to be held on 13th February, 2012.
14. NIB and ADCL entered into a contract on 12th March, 2012 for the design, supply of Materials, Construction/Installation, testing and commissioning of Drip Irrigation system for the Katilu Irrigation Development Project, Turkana County at a contract

price of Kshs. 61,429,691.71. The completion period for the contract was 12 calendar months.

Contract implementation and current status

15. An inspection and acceptance committee was appointed on 13th March, 2012 and comprised of David Tanui, Francis Mwangi and John Kinyanjui.
16. The seven (7) certificate raised, has been paid, which amount to Kshs. 44, 370, 808.54. The progress report from the inspection and acceptance committee as of 17th April, 2014 indicated that 80% of the project works is was done.
17. The contractor installed a drip system in 50 Acres of land. The system was destroyed by floods. The drip lines were salvaged and are at contractor's store. The scheme has been invaded by weeds (Mathenge) and the intervention which was to be done by providing machinery support have been put on hold since the roads have dilapidated.

Observations

- i. NIB directly invited request for proposal (RFP) instead of advertising the Expression of Interest (EOI), and then invite proposal from qualified person as required under section 80 and 81 of the Act.
- ii. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 13th February, 2012.

5. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012.

Tender No.	: NIB/T/070/2011-2012
Description	: Tender for Construction Works of the Kabulokor Irrigation Project Turkana County.
Procurement Method	: Open National tender
Contractor	: M/s Lumbe Agencies Limited
Contract Sum	: Kshs. 59, 169, 863.12

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2011/2012. The estimated cost of the works was Kshs. 50, 000, 000.00 million and the NIB was to procure the subject works

through Restricted Tender. The procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 15th July 2011.

2. During the NIB Tender Committee (TC) meeting held on 13th January, 2012, the small irrigation projects coordinator Eng. R. Kanui presented a request for procurement of construction works for Kabulokor Irrigation Project. The cost of works was estimated at Kshs. 58.80 million. The TC approved procurement of the subject works through open tendering and further directed that invitation for bids will be advertised in the local dailies, Daily Nation, The Standard, and the Star as well as NIB'S website. The minutes for Approval were confirmed on 27th January 2012.
3. The Invitation for Bids was advertised in the Daily Nation, the Star Newspaper, the Standard, and The dated 20th January 2012. The deadline for submission of bids was 14th February 2012. An extension of bid submission deadline was advertised in the Daily Nation and the Standard, on 8th February 2012 and the deadline was extended to 21st February 2012.
4. Tender opening committee was appointed on 16th February, 2012 and comprised of Vincent Kabuti, Edwin Manyonge, Felix Shiundu and Stephen Apome. Tender was opened on 21st February, 2012 by Mr. Stephen Apome, six (6) in-attendances from NIB and bidders representative. The committee prepared tender opening minutes indicating the tenderers names and total tender price, bid bond, tender validity and form of bid. The committee also serialized the bids received.
5. The Summary of the 14 bids submitted and opened were as follows:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Validity of Bid bond
1.	Beneda enterprises Ltd	52,609,820.78	Family Bank, Kshs 1,052,196.40, upto and including 30 days after the period of tender validity	1 original and 1 copy of bid
2.	Nakuru Machineries services Ltd.	51,866,799.80	Eco bank, Kshs. 1,141,069.00, upto 19 th July 2012	1 original 3 copies
3.	Maiguria General Contractors	99,258,140.30	Equity bank, Kshs. 1,985,162.81, valid till 21 st July 2012	1 original 1 copy
4.	Perma structural and engineering company Ltd	62,030,824.40	Amaco insurance, Kshs. 1,240,616.00, will remain in force up to 150 days from date of opening	1 original 2 copies
5.	Pacific Company	79,370,755.20	Trans international bank, 1,587,416.00, upto 20 th July 2012	1 original copy of bid
6.	Toshe Contractors Ltd	59,008,356.00	Chase bank, Kshs. 1,180,167.00, until 20 th July 2012	1 original 2 copies

7.	Kibinico enterprises Ltd.	70,006,755.50	Equity Bank Kshs.1750168.90,upto 1 st August 2012	1 original 3 copies
8.	Sensei Ltd	89,891,266.00	Equity bank, Kshs. 1,900,000.00,upto 21 st May 2012	1 original 2 copies
9.	Northern Enterprise Co	61,144,777.32	Equity bank Ltd., Kshs. 1,222,884.00,upto 21 st July 2012	1 original 1 copy
10.	Manyota Limited	66,669,771.52	Eco Bank, Kshs. 1,334,000.00.upto and including 30 days after period of tender validity	1 original 2 copies
11.	Digital Den Ltd	18,869,7762.44	Equity bank,Kshs.3,773,955.25, valid up to 21 st July 2012	1 original 2 copies
12.	Yellow house Limited	68,781,616.75	Equity bank, Kshs. 1,600,000.00,upto 21 st July 2012	1 original 3 copies
13.	Machine centre Limited	70,491,937.45	Eco Bank Kshs. 1,600,000.00,upto 21 st July 2012	1 original 3 copies
14.	Lumbe Agencies Ltd	59,169,863.12	Eco Bank Kshs.1,200,000,till 20 th August 2012	1 original 3 copies

Evaluation

6. Evaluation committee was appointed on 29th February, 2012 and it comprised of Edwin Siboe, Nesline Ogwe, Stephen Apome, Mike Obimbo and Jairus Serede. Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
7. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, and valid trading. Three (3) bids were declared non-responsive for failing to submit bid security valid for a minimum of 150 days; eleven (11) bids were successful under preliminary evaluation and thus proceeded to technical evaluation.
8. The following evaluation criteria were used to conduct Technical Evaluation: past experience and past performance, qualification and experience of key personnel, ownership or evidence of hire for key plants and equipment for executing the works, financial capacity, annual volume of construction work in the last five years and adequacy of the proposed methodology and work schedule. The broad technical evaluation was either a *pass* or a *fail*. As per the evaluation committee 3 bidders (Machine Centre Limited, Manyota Limited, and Lumbe Agencies Limited) met the technical requirement and proceeded to financial evaluation.
9. The financial evaluation involved a correction of arithmetic errors and also comparing tender price against engineers estimate. Tenders which were not within this threshold (+15%) of engineer estimate were considered non responsive during financial evaluation.

The summary of comparison between tender prices against engineers estimate is as tabled below:

No.	Name of firm	Engineers estimate	-15% of the estimate	+15% of the estimate	Opened bid price	Remarks
1.	Manyota Ltd	58,970,230.00	50,124,695.50	67,815,764.50	66,669,771.52	PASS
2.	Machine Centre Ltd	58,970,230.00	50,124,695.50	67,815,764.50	70,491,937.45	FAIL
3.	Lumbe Agencies	58,970,230.00	50,124,695.50	67,815,764.50	59,169,863.12	PASS

After confirmation of the correctness of the figures it was observed that the bids that passed the engineers estimate check had errors in their respective bids. The errors were summarised as shown in the table below:

No.	Name of firm	Opened bid price	Corrected bid price	effect
14.	Lumbe agencies	59,169,863.12	59,795,727.37	+625,864.25
2.	Manyota Ltd	66,669,771.52	66,669,771.52	0

10. M/s Lumbe Agencies whose bid had errors was notified of the correction of error vide letter Ref: C/P/197/VoL. XXIII dated 2nd May, 2012. The evaluation committee recommended the award of the tender to M/s. Lumbe Agencies Limited after emerging the lowest evaluated bidder at his bid price of Kshs.59, 795,727.37.

Tender Award and Notification

11. During the Tender Committee meeting held on 3rd, May 2012, the tender committee approved the award of the tender to Lumbe Agencies Limited at their total read out price of Kshs.59, 169,863.12. The minutes were confirmed on 7th May 2012.
12. Notification of tender award to the successful bidder and to unsuccessful bidders was done on 17th May 2012. The successful bidder made an acceptance of the award on 30th May, 2012 and submitted a performance guarantee on 22nd June 2012.

Contract

13. NIB and M/s. Lumbe Agencies Limited signed a contract on 29th June, 2012. The contract completion period was 8 calendar Months.

Contract implementation and status of the project

14. The total amount paid so far is Kshs. 58, 866, 619.96. This payment was made out of the six certificates that were raised by the contractor.
15. The defect liability certificate was raised on 26th August, 2016 and it was used to claim the retention fund.
16. Inspection and acceptance committee was appointed on 4th July, 2013. The committee comprised of David Tanui, Edwin Keitany and Francis Mwangi. Inspection of the project and handing over was done on 14th August, 2014. The works was expected to be completed on 6th January, 2013 but later extended to 31st July, 2013. As per the completion certificate which was issued on 18th August, 2014 the works were successfully completed.

Observations

- i. The tender was opened by one member, Mr. Stephen Apome, the other three members were absent with apologies. This is contrary to Section 60(1) (a) of the Act, 2005 which requires that the committee to have at least three members.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation requirement had no scoring criteria.
- iii. The evaluation committee made recommendation for award to M/s Lumbe Agencies at the corrected figure of Kshs. 59,795,727.37. However, the tender committee approved the award of contract at the original price of Kshs. 59, 169,863.12. The award of the tender at original price by TC saved NIB kshs. 625, 864.25, though it was contrary to provision of Regulation 11 (2) (a) of the PPDR, 2006 which bar the TC from modifying any submission with respect to the recommendations for a contract award or in any other respect.

6. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2011-2012

Tender No.	: NIB/T/049/2011-2012
Description	: Construction works of Morulem Irrigation Scheme Rehabilitation Project Phase (I)
Procurement Method	: Open National Tender
Contractor	: Nyana Engineering Company Limited
Contract Sum	: Kshs. 58,024,199.00

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2011/2012. The estimated cost of the works was Kshs. 20, 000, 000.00 million and the NIB was to procure the subject works through Open National Tender. The procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 15th July, 2011.
2. During the NIB Tender Committee (TC) meeting held on 29th September, 2011; Irrigation Eng. Mr. Vincent Kabuti presented a request for procurement of tender for construction of Morulem irrigation scheme in Turkana East district to the tender committee and consequently approved. The Estimated cost of the Works was a grand total of Kshs. 56,723,007.00. The minutes that approved the procurement of the subject project were confirmed on 27th October, 2011.
3. It was deliberated that four firms from Turkana East district's and eight firms from NIB'S list of prequalified contractors would be invited
4. Twelve (12) contractors that were proposed and agreed to be invited for bids were as follows:
 - i. Etuko enterprices- Lodwar
 - ii. Kataboi investment Ltd-lodwar
 - iii. Turkana Technical and Building Contractors-Lodwar
 - iv. Bomac construction services-Lodwar
 - v. Lesma Engineering Ltd-Eldoret
 - vi. Rotalink engineering Co.Ltd-Eldoret
 - vii. Toshe Constructions and Engineering Ltd-Nairobi
 - viii. F.N. Services-Nairobi
 - ix. Halkin General Constructions Ltd-Nairobi
 - x. Benma Technical Services-Nairobi/Garsen
 - xi. Archen Company Ltd-Nairobi
 - xii. Abbey Construction Co.Ltd-Nairobi

The firms in No.1-4 were obtained from list of prequalified contractors for Turkana East District while firms in 5-12 are NIB'S prequalified contractors.

5. The Invitation for Bids was advertised in the Daily Nation and The Star Newspaper of 20th January 2012. The deadline for submission of bids was 14th February, 2012.
6. An addendum to extend the closing date was advertised in The Daily Nation and The Standard Newspaper on 8th February, 2012. The deadline was extended to 21st February, 2012.
7. Tender opening committee was appointed on 16th February, 2012 and comprised of Vincent Kabuti, Stephen Apome, Edwin Manyonge and Felix Shiundu. Tender was opened on 21st February, 2012. The committee prepared tender opening minutes indicating the tenderers names and total tender price, bid bond and tender validity. The committee also serialized the bid received.

8. Below is the summary of the 10 bids that were opened:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Validity OF Bid bond
15.	Bomac construction services Ltd	53,264,103.70	African Banking, Kshs 1,065,290.00,upto 21 st July 2012	1 original and 1 copy of bid
16.	Machine centre Ltd.	65,933,688.98	equity bank, Kshs. 1,600,000.00,21 st July 2012	1 original 3 copies
17.	Perma structural and engineering company Ltd	42,963,680.00	Amaco insurance Co. Ltd, Kshs. 859,273.00,up to and including 150 days after tender opening	1 original 1 copy
18.	Enegi Ltd.	49, 510, 970.00	Family bank, Kshs. 990,214.40,until 21 st July 2012	1 original 1 copy
19.	Funam Construction Co. Ltd	67,011,750.63	African banking corporation, Kshs.1,400,000.00,until 20 th July 2012	1 original 1 copy
20.	Maiguria Contractors Ltd	100,439,921.88	Equity bank, Kshs.2,003,597.56,until 20 ^{1st} July 2012	1 original 1 copy
21.	Line enterprises Ltd.	69,125,944.39	Equity Bank Kshs. 1, 600, 000,upto 21 st July 2012	1 original 3 copies
22.	Nyana engineering company Ltd	580,24199.00	Equity bank, Kshs. 1,160,484.00,upto 12 th January 2013	1 original 3 copies
23.	Manyota Ltd	6,610,9513.53	Eco bank Ltd., Kshs. 1,322,200.00,upto 21 st July 2012	1 original 3 copies
24.	Pacific edge Company Limited	63,280,785.50	Transnational Bank Ltd. Kshs. 1,265,616.00.upto 20 th July 2012	1 original copy of bid

Evaluation

9. Evaluation committee was appointed on 29th February, 2012 and comprised of Felix Shiundu, Stephen Apome, Jairus Serede, Edwin Manyonge, Nesline Ogwe and Michael Obimbo. Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
10. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, and valid trading. Four (4) bids were declared non-responsive for failing to submit bid security, six bids were successful under preliminary evaluation and thus proceeded to technical evaluation.
11. The following evaluation criteria were used to conduct Technical Evaluation: past experience of the contractor, qualification and experience of key personnel, ownership or lease agreement for key plants and equipment for executing the works, financial capacity, annual volume of construction work in the last five years and adequacy of the proposed methodology and work schedule. The broad technical evaluation was either a *pass* or a *fail*. As per the evaluation committee 3 bidders (Nyana engineering works, Manyota, and Machine Centre) met the technical requirement and proceeded to financial evaluation.
12. The financial evaluation ranking of bids. The evaluation committee recommended the award of the tender to M/s. Nyana Hills Work Ltd. after emerging the lowest evaluated bidder at his bid price of Kshs.58,024,199.00

Tender Award and Notification

13. During the Tender Committee meeting held on 3rd, May 2012, the tender committee approved the award of the tender to M/s. Nyana engineering company limited at their total price of Kshs.58, 024,199.00. The minutes of award were confirmed on 7th May 2012.
14. Notification of tender award to the successful bidder and to 9 unsuccessful bidders was done on 17th May 2012. The successful was required to furnish a performance bond equivalent to 5% and make acceptance within 14 days. M/s. Nyana engineering company limited made an acceptance of the award on 24th May, 2012.

Contract

15. The successful bidder (Nyana Engineering Company Limited) furnished NIB with a performance security on 11th June, 2012 worth Kshs. 2, 901, 209.95 they later signed a contract on 29th June, 2012. The contract completion period was 4 calendar Months.

Contract implementation and status of the project

16. A total of Kshs 57, 822, 102.60 has been paid for this project. Three number of certificate were raised to claim payment by the contractor.
17. Inspection and Acceptance Committee was appointed on 23rd February, 2012 Inspection of works was done on 22nd November, 2012 and handing over and issuance of completion certificate was done on 23rd September, 2015; defect liability period expired on 30th December, 2013.
18. Construction works completed on May 2013 and it is in operation

Observations

- i. The TC revised the estimated cost in the procurement plan for the project which was Kshs. 20,000,000.00 to Kshs.56, 723,007.00; however the procurement plan was not amended.
- ii. Whereas the technical evaluation shows that Machine Centre Ltd. obtained a fail, he was ranked among the three bidders who passed the technical evaluation stage.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) of the Act, 2005 and Regulation 47, 49 and 50 of the PPDR, 2006.

7. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/I/037/2013-2014

Tender No.	: NIB/I/037/2013-2014
Description	: Tender for construction works of the Morulem Irrigation Scheme Development Project Phase II, Turkana County
Procurement Method	: Open National Tender
Contractor	: M/S Toddy Civil Engineering Co. Ltd
Contract Sum	: Kshs. 47, 576, 870.00

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2013/2014. The estimated cost of the works was Kshs. 45, 000, 000.00 million and the NIB was to procure the works through Open National Tender. The

procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 1st August, 2013.

2. During the NIB Tender Committee (TC) meeting held on 19th September, 2013; Eng. Thuita Mwangi on behalf of Expanded National Irrigation Programme presented a procurement requisition to TC for construction works for Morulem Irrigation scheme development Project. The TC approved procurement of the subject works through National Open Tendering the invitation to tender was to be published in local dailies, the standard, the Star and the Daily Nation on 20th September 2013.
3. The TC minutes that deliberated the approval of the procurement requisition was approved on 4th October, 2013. The tender was reserved for Kenya citizen contractors.
4. The subject Tender was advertised in the Daily Nation dated 20th September, 2013. The notices provided information relevant for obtaining and submission of tender. The deadline for submission of tender was 15th October, 2013 at 12.00 a.m.
5. Tender opening committee was appointed on 10th October, 2013 and comprised of Risper Okumbe, Jairus Serede, Patricia Siele and Michael Obimbo. Tender was opened on 15th October, 2013. The committee prepared tender opening minutes indicating the names of the bidder, total tender amount, bid bond and tender validity. The committee also serialized the bid received and signed the tender opening minutes.
6. Twenty four bids were received as follows:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)
1.	Madrift general merchants ltd	48,565,330.00	consolidated Bank, Kshs 971,306.00 valid up to 10 th December, 2013
2.	Three star contractors	45,334,841.60	Equity bank, Kshs. 1, 000,000.00 valid up to 10 march, 2014
3.	Teriksson Limited	57,030,644.00	chase bank, Kshs. 1, 140, 612.88 Valid up to 15 January, 2014
4.	Trimop Ltd	39,374,588.00	Equity bank, Kshs 393,746.00 valid up to 15 th January, 2014
5.	Tosha At Gen construction Ltd	44,401,764.00	chase bank, Kshs 888,035.00 Valid for 180 days after tender opening
6.	Likifa (K) LTD	43,341,254.00	Kenya commercial bank, Kshs. 867,000.00 valid up to 15 November, 2013
7.	Wimex commodities company Ltd	59,576,132.00	Eco bank, Kshs. 1,322,000.00 valid up to 15 th January, 2014
8.	Nyana Engineering company Limited	36,102,674.52	Equity bank, Kshs. 1, 300, 000.00 valid up to 14 th October, 2014

9.	Toddy Civil Engineering Company Ltd.	54,128,470.00	Bank of Africa, Kshs. 1,100,000.00 valid up to 15 th march 2014
10.	Toshe construction Engineering Ltd.	44,707,795.00	Chase Bank, Kshs. 894,156.00 valid up to 14 th march, 2014
11.	Funan construction Limited	11,966,4887.76	Equity Bank, Kshs. 2,384,700.00 valid up to 15 th March, 2014
12.	Rine General constructors	47,720,200.00	Equity bank,960,000.00,valid up to 11 th April 2014
13.	Jedrom building and civil engineering Ltd	46,771,472.00	No bid bond
14.	Katulani building contractors	102,226,300	Family bank,2,044,526.00,valid upto 13 th march 2014
15.	Bellagio construction Ltd	40,053,750.00	Family bank,1000,000.00,valid up to 14 th march 2014
16.	Rotalink engineering Co. Ltd	44,248,314.00	No bid bond
17.	Aspen construction Ltd	73,250,000.00	Chase bank,1,465,000.00 Valid up to 19 th march 2014
18.	Zonals company Ltd	45,451,274.00	Chase bank,910,000.00,upto 15 th march 2014
19.	Janan construction Co. Ltd	67,922,415.00	No bid bond
20.	Cherangani Hills Ltd	56,381,200.00	Oriental commercial bank,1,127,624.00,up to 14 th November 2013
21.	Kajaja construction Ltd	44,208,296.00	Equity bank,800,000.00 Valid up to 14 th February 2014
22.	Josfirm construction Ltd.	35,428,712.00	Chase bank,800,000.00,upto 15 th march 2014
23.	Namorutunga construction Co. Ltd	38,950,956.00	Equity bank,800,000.00,upto 16 th march 2014
24.	Nakuru machinery services Ltd	43,648,882.00	Equity bank,872,976.00 Valid up to 14 th march 2014

Evaluation

7. Evaluation committee was appointed on 24th October, 2013 and comprised of Eng. Raphael Ogendo, Eng. Henry O. Ochiere, Eng. Thuita Mwangi, Eng. Eliud Gicheru and Mr. Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.
8. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance valid trading license and power of Attorney. Eighteen (18) bidders were declared non-responsive on various grounds. Six (6) bidders were responsive and proceeded to technical evaluation.

9. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification of key personnel, essential equipment for executing the works, adequacy of the proposed methodology, work schedule, average annual volume of construction work in the last 3 years and financial capacity. As per the evaluation committee only 1 bidder (Toddy Civil Engineering Co. Ltd met the technical requirement and proceeded to financial evaluation.
10. The evaluation committee conducted financial evaluation by correcting the arithmetic errors. M/s Toddy Civil Engineering Co. Ltd had quoted Kshs. 54, 128,470.00, his bid was subjected to arithmetic check, and the corrected bid price ended up to be Kshs.47, 576, 870.00. NIB, vide letter Ref. C/P/197 VoL.33 (26) dated 11th November, 2013 informed M/s Toddy Civil Engineering Co. Ltd that his bid was subjected to correction of errors.
11. The evaluation committee recommended Toddy Civil Engineering Co. Ltd for the award of the tender at corrected figure of Kshs. 47,576,870.00
12. On 18th November, 2013 the tender committee deferred the evaluation committee's recommendation for award of the contract to Toddy Civil engineering Co. Ltd subject to an arithmetic correction factor. Further the tender committee advised the evaluation committee to review and or provide additional information on the following:
 - The client, value, year, location and major components of the stated works experience.
 - The requirement that the power of attorney be witnessed by a commissioner for oaths/advocate since the requirement was not explicitly stated.
 - The computation of the financial capacity in form of the available liquid assets and/or credit facilities and comparison with the stated requirement.
 - The computation of average annual volume of construction work in the last three years and comparison with the stated requirement.

Tender Award and Notification

13. On 28th November, 2013 the tender committee approved the evaluation committee's recommendation for award of the contract to the lowest evaluated bidder (Toddy civil engineering and construction Ltd.) at their corrected price of Kshs.47, 576,870.00. The minutes were confirmed on 5th December, 2013.
14. The successful and unsuccessful bidders were notified vide letter Ref: C/P/197 VOL. 34 of 11th December, 2013. The successful bidder was expected to furnish NIB with performance bond equivalent to 5% of tender sum and make an acceptance within 14 days.

Contract

15. A pre-contract negotiation meeting was held on 18th December, 2013. The meeting was attended by 5 (five) members i.e. Gedion Maithya, Loise W Kaiga, Mbuto Fredd, Diskson Ngenoh and Evaline Akoth(two of whom were from Toddy Civil Engineering Co Ltd)
16. Toddy Civil Engineering Company limited accepted the award for the contract on 19th December 2013 and submitted performance security worth Kshs. 2, 378, 850.00 on 20th December 2013.
17. NIB and Toddy Civil Engineering Co. Ltd entered into a contract on 22nd January, 2014 for the construction works of Morulem Irrigation scheme development Project. The time for completion was 12(twelve) calendar months.

Contract implementation and current status

18. A total of Kshs 39, 535, 965.16 has been paid towards this tender. The payment was done upon the contractor raising four certificate.
19. Inspection and Acceptance Committee was appointed on 21st July, 2014, the members were Francis Mwangi, David Tanui and Edwin Keitany. Final Inspection and handing over of the project was done on 28th October, 2015.
20. The construction works is incomplete. Only 80% of the work is complete.

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The bid for Katulani Building Contractors was declared responsive in the preliminary evaluation yet his confidential business questionnaire form was not filled which was a mandatory requirement.
- iii. There is no proof that the tender committee's instructions to defer and refer to the evaluation committee were taken into account since the re-evaluation report was not availed and the award done as previously recommended in the first evaluation report.

8. Tender for construction work of loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013.

Tender No.	: NIB/T/039/2012-2013
Description	: Tender for Construction Works of the Loborot Irrigation scheme Development Project Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Machine Centre Limited
Contract Sum	: Kshs. 64, 593, 955.80

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2012/2013. The estimated cost of the works was Kshs. 60, 000, 000.00 million and the NIB was to procure the subject works through Restricted Tender. The procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 1st August 2012.
2. A requisition was raised in form of a memorandum dated 18th September, 2012 with Deputy General Manager (T) and he approved it for presentation to TC. During the NIB Tender Committee (TC) meeting held on 26th September, 2012, Eng. Raphael Ogendo on behalf of expanded National Irrigation Programme presented a request for procurement of construction works for Loborot Irrigation Scheme development Project. The cost of works was estimated at Kshs. 63, 119,932.38. The minutes were confirmed on 2nd October 2012.
3. NIB vide letter Ref. C/P/197 VOL XXV dated 10th July, 2012 wrote to District Commissioner (DC) requesting a list of prequalified contractors. The DC replied to the said letter on 21st September, 2012 giving a list of 24 prequalified contractors.
4. The TC approved procurement of the subject works through restricted tendering and further directed that ten (10) firms from a list of prequalified contractors be invited to tender for the subject works. They included:
 - i. Lumbe Agencies Limited
 - ii. Joeli Building contractors
 - iii. Machine Centre Limited
 - iv. Yellow House Limited
 - v. Erex contractors Limited
 - vi. Lopii Contractors Limited
 - vii. Sapiri Building Contractors
 - viii. Rotalink Engineering Company Limited
 - ix. Makenu Engineering Company Limited

x. Riang International

5. Bids were invited from the Bidders named above on 23rd October 2012, the deadline for submission of bids was 26th October 2012 which was later extended to 2nd November 2012.
6. Tender opening committee was appointed on 2nd November, 2012 and comprised of Tom Olimba, Felix Shiundu and Michal Obimbo. Tender was opened on 2nd November, 2012 by two members (Felix Shiundu and Michal Obimbo). There were other four in-attendances from NIB. The committee prepared tender opening minutes indicating the tenderers names, total tender price, bid bond, validity and form of bid (1 original and number of copies). The committee also serialized the bid received.
7. The summary of the Five (5) bids that were received are as follows:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Form of bid
1.	Lumbe agencies Ltd.	68,000,271.74	Amaco assurance company, Kshs. 1,360,000, valid for 150 days from the day of opening	1 original
2.	Lopii contractors Limited Ltd.	68,610,910.50	Equity bank, Kshs. 1,376,000.00, valid until 2 nd April 2013	1 original 3 copies
3.	Riang International Ltd.	69,993,802.43	Equity bank, Kshs. 1,400,000.00, valid until 2 nd April 2013	1 original 3 copies
4.	Rotalink engineering Co. Ltd	69,742,553.65	Standard chartered bank, Kshs. 1,394,860.00, valid until 2 nd April 2013	1 original 3 copies
5.	Machine Centre Ltd	64,593,955.80	Equity bank, Kshs. 1,300,000.00, valid until 2 nd April 2013	1 original 3 copies

Evaluation

8. Evaluation committee was appointed on 7th November, 2012 and comprised of Eng. Raphael Ogendo, Eng. Michael M. Thuita, Mr. Kepha Omwega and James Gitahi. Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
9. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, and valid trading license. One (1) bid (Lumbe Agencies) was declared non-responsive, five bids were responsive under preliminary evaluation and proceeded to technical evaluation.

10. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification and experience of key personnel, plants and equipment for executing the works, financial capacity, and adequacy of the proposed methodology and work schedule. The broad technical evaluation was based on a Weighted Average score. As per the evaluation committee only 2 bidders (Riang International Ltd. and Machine Centre Ltd.) were considered responsive to the technical requirement and proceeded to financial evaluation.

11. The financial evaluation involved ranking of the bids as summarised below:

No.	Name of firm	Opened Tender price (Kshs)	Ranking
3	Riang International Ltd	69,993,802.43	2
5	Machine Centre Ltd	64,593,555.80	1

12. The evaluation committee recommended the award of the tender to Machine Centre Limited at his tender price of Kshs 64, 593, 555.80 after emerging the lowest evaluated bidder.

Tender Award and Notification

13. On 30th November, 2012 the tender committee approved the recommendation for award of the contract to Machine Centre Limited at their quoted price of Kshs.64, 526,619.00. Tender committee minutes were confirmed on 6th December, 2012.

14. Notification of tender award to the successful bidder and to five (5) unsuccessful bidders was done on 10th December 2012. The successful bidder made an acceptance for the award of the tender on 14th December 2012 and submitted a performance guarantee on 17th December 2012. A pre contract meeting was to be convened as provided for in the notification for tender award dated 10th December 2012.

Contract

15. NIB and M/s Machine Centre Limited signed a contract for construction works of the Loporot Irrigation Scheme Development Project on 14th January, 2013 at a cost of Kshs. 64, 593,955.80. The contract completion period was 6 calendar months.

Contract implementation and current status

16. A total amount of Kshs. 64, 295, 316.90 has already been paid. Four certificate were raised to facilitate the payments, and the retention fee has also been paid.

17. Inspection and acceptance committee was appointed on 25th January, 2013. A completion certificate was issued upon completion of the works on 16th October, 2013. The initial completion date was 14th July, 2013. A defect liability certificate was raised after expiry of defect liability period on 16th October, 2014. The handing over of the project was done on 20/01/2015
18. The works have been completed, however not in operation because of siltation of the canal which resulted from floods.

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) of the Act, 2005 and Regulation 47, 49 and 50 of the PPDR, 2006.
- ii. The evaluation committee evaluated 6 bids against the 5 bids received as recorded in the tender opening minutes. The extra bid document was for M/s. Yellow House Ltd.
- iii. After the correction of the arithmetic error, notice of the correction was not given to the person who submitted the tender contrary to provisions of Section 63(2) of the Act, 2005.
- iv. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 10th December 2012.

9. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013.

Tender No.	: NIB/T/038/2012-2013
Description	: Tender for construction works of the Kolyoro Irrigation Scheme Development Project Turkana County.
Procurement Method	: Restricted Tender
Contractor	: M/s Lumbe Agencies Ltd
Contract Sum	: Kshs. 64, 719, 250.00.

Background

1. The subject procurement was in the procurement plan for the financial year 2012/2013. It was to be procured through restricted tendering and the estimated cost was 60, 000, 000. The procurement plan was prepared by Head of procurement unit and approved by Head of procuring Entity on 1st August, 2012.

2. The request for the procurement of the subject works was raised with Deputy General Manager (T) via a memo on 18th September, 2012 who approved it for consideration by TC. It was then presented to the TC during its meeting of 26th September, 2012 by the Eng. Raphael Ogendo on behalf of Expanded National Irrigation Programme. The TC approved the procurement. Further, TC approved the procurement of the subject work be done through Restricted tendering since it was specialized in nature and therefore the need to engage prequalified contractors. NIB wrote a letter to District Commissioner Loima District on 10th July, 2012 requesting for the list of prequalified suppliers. NIB used the list of prequalified suppliers prequalified by District Commissioner of Loima District. There were 24 prequalified civil works contractors and the TC approved the following ten (10) firms to be invited to bid for the works:

- i. Lumbe Agencies
- ii. Joeli Building Contractors
- iii. Machine Centre Limited
- iv. Yellow House Ltd
- v. Erex Contractors Ltd
- vi. Lopii Contractors
- vii. Sapiri Building Contractors
- viii. Rotalink Engineering Co. Ltd
- ix. Makenu Engineering Co. Ltd
- x. Riang International

The above minutes were confirmed on 4th October, 2012.

3. The hard copy of invitation letter to tender dated 9th October, 2012 is addressed to ten (10) bidders. The invitation letter to tender provided information on how to obtain and submit the tender. The tender closing date was 26th October, 2012. The tender closing date was extended to 2nd November, 2012 by a letter Ref.: C/P/197 VoL. XXVI(81) dated 23rd, October, 2012
4. Tender opening committee was appointed on 2nd November, 2012 and comprised of Tom Olimba, Felix Shiundu and Michal Obimbo. Tender opening was done on 2nd November, 2012 by two people namely Felix Shiundu and Micahel Obimbo and other four in- attendance. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, bid bond(bank, amount and validity) and form of bid (original and number of copies).
5. Four (4) bids were received as follows:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Machine Centre Ltd	70,168,067.00	Equity Bank, Kshs 1,420,000.00 valid until 5 th April, 2013	1 original copy
2.	Erex Contractors Ltd	56,705,324.00	UAP Insurance, Kshs. 100,000.00 valid for 30 days from the date of opening	1 original copy

3.	Lumbe Agencies Ltd	64,719,250.00	Eco Bank, Kshs. 1,300,000.00 Valid until	1 original and 2 copies
4.	Rotalink Engineering Company Ltd	81,310,534.00	AMACO, Kshs 1,360,000.00 Valid for 150 days	1 original copy

Evaluation

6. Evaluation committee was appointed on 7th November, 2012 and comprised of Eng. Raphael Ogendo, Eng. Michael M. Thuita, Mr. Kepha Omwega and James Gitahi. Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.
7. The preliminary evaluation criteria used were: Physical location, contact address and fully filled confidential business questionnaire, tender security, certificate of incorporation /registration; VAT; tax compliance and valid trading license. Two bidders (M/s Erex Contractors Ltd and Rotalink Engineering Company Ltd) were declared non-responsive.
8. The following evaluation criteria were used to conduct broad Technical Evaluation: past experience and performance, qualification and experience of key personnel, proof of ownership or lease of key plants and equipment for executing the works, adequacy of the proposed methodology and work schedule, and financial capability. The evaluation developed a weighted score for each criteria. M/s Machine Centre Ltd obtained a weighted score of 0.75 while M/s Lumbe Agencies weight score was 0.68. The two bidders were declared technically responsive.
9. The two responsive bids were subjected to financial evaluation which involved ranking of bids as summarised below.

Bid No	Bidders Name	Bid price (as opened)	Ranking
4	Machine Centre Ltd	70,168,067.00	2
5	Lumbe Agencies Ltd	64,719,250.00	1

10. M/s Lumbe Agencies Ltd was ranked lowest. The evaluation committee recommended M/s Lumbe Agencies Ltd. for the award of the tender at his tender sum of Kshs. 64,719,250.00. The evaluation report was signed by all members.

Tender Award and Notification

11. The TC meeting of 30th November, 2012 awarded the tender to M/s Lumbe Agencies Ltd. at the total quoted price of Kshs. 64,719,250.00. Tender committee minutes were confirmed on 6th December, 2012. The Boards PIU was expected to conduct a negotiation. The TC confirmed the fund for the available works was 61Million.
12. Notification of tender award to the successful and unsuccessful bidders was done on 10th December, 2012. The successful bidder was expected to furnish NIB with a

performance bond equivalent to 5% and make an acceptance within 14 days. A negotiation was held as scheduled on 13th December, 2012 and various clarification and agreement were arrived at among them being that the first and second interim certificate to be raised must be of at least 8 Million and then the third and subsequent interim certificate to be raised must be of at least 10 Million. M/s Lumbe Agencies Ltd made an acceptance of the award on 13th December, 2012.

Contract

13. The successful bidder furnished the procuring entity with a performance bond from Eco Bank worth Kshs.3, 235, 962.50
14. NIB and M/s Lumbe Agencies Ltd signed a contract on 11th January, 2013. The contract implementation period was 6 calendar Months.

Contract Implementation

15. NIB have paid a total amount of Kshs. 64, 640, 941.39 for the subject contract. The contractor had raised five certificate against the payment made.
16. The initial competition date of the subject works was 11th July, 2013, but it was later extended to 17th October, 2013. A was issued on 24th November, 2014.
17. The inspection and acceptance committee was appointed on 22nd July, 2013 and it comprised of David Tanui, Edwin Keitany, and John Kinyanjui. The final inspection was done on 20th November, 2014, thereafter completion certificate and Defect liability certificate were issued and raised respectively on 24th November, 2014.
18. The project is not in operation since it was destroyed by floods.

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation parameters had no scoring criteria and or the minimum technical requirement was not explicitly provided.
- ii. The tender opening was done by two members against the minimum quorum of at least three people as required under section 60 (1) (a) of the Act, 2005 which requires that the committee to have at least three members.

10. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013.

Tender No. : NIB/T/109/2012-2013
Description : Tender for construction works of the Turkwell Irrigation Scheme Development Project Turkana County.
Procurement Method : Restricted Tender
Contractor : M/s Tosha At General Construction Limited
Contract Sum : Kshs. 70, 854, 410.00.

Background

1. The subject procurement was in the procurement plan for the financial year 2012/2013. It was to be procured through restricted tendering at an estimated cost of 70, 000, 000. The procurement plan was prepared by Head of procurement unit and approved by Head of procuring Entity on 1st August, 2012.
2. The request for the procurement of the subject works was presented to the TC during its meeting of 8th February, 2013 by the Eng. Mwangi Thuita on behalf of Expanded National Irrigation Programme. The TC approved the procurement. Further, TC approved the procurement of the subject work be done through Restricted tendering since it was specialized in nature and therefore the need to engage prequalified contractors. From the NIB list of prequalified suppliers the TC approved the following ten (10) contractors who were latter issued with Invitation letter to bid:
 - i. Lumbe Agencies
 - ii. Joeli Building Contractors
 - iii. Machine Centre Limited
 - iv. Tosha At General Construction Ltd.
 - v. Erex Contractors Ltd
 - vi. Lopii Contractors
 - vii. Sapiri Building Contractors
 - viii. Rotalink Engineering Co. Ltd
 - ix. Gamona Enterprises Ltd
 - x. Riang International

The minutes of the above TC meeting of 8th February, 2013 was confirmed on 25th February, 2013

3. The invitation letter to tender provided information on how to obtain and submit the tender. The closing date of this tender was 17th June, 2013.
4. Tender opening committee was appointed on 17th June, 2013 and comprised of Michael Obimbo Evaline Akoth and Geoffrey Juma. Tender opening was done on 17th June, 2013. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, tender security (bank, amount and validity) and form of bid (original and number of copies).

5. Only four (4) firms that purchased and returned the bid as summarised below:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Lumbe Agencies Ltd	90,309,098.00	AMACO, Kshs 1,806,182.00 valid up to 150 days after tender opening	1 original 3 copies
2.	Rotalink Engineering Company Ltd	66,541,640.00	Family Bank, Kshs. 1,330,833.00 valid until 17 th November, 2013	1 original copy
3.	Tosha At General Construction Ltd	70,854,410.00	Equity Bank, Kshs. 1,417,100.00 valid until 17 th November, 2013	1 original and 3 copies
4.	Machine Centre Ltd	75,143,304.50	Equity Bank Kshs 1,503,000.00 valid until 21 st November, 2013	1 original copy

Evaluation

- Evaluation committee was appointed on 17th June, 2013 and comprised of Eng. Raphael Ogendo, Eng. Michael Thuita and Eng. Ochieng Ochiere and Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.
- The preliminary evaluation criteria used were: Physical location, contact address and fully filled confidential business questionnaire, tender security, certificate of incorporation /registration; VAT; tax compliance and valid trading license. Two bidders (M/s Lumbe Agencies Ltd and Rotalink Engineering Company Ltd) were declared non-responsive.
- The following evaluation criteria were used to conduct broad Technical Evaluation: past experience and performance, qualification and experience of key personnel, proof of ownership or lease of key plants and equipment for executing the works, adequacy of the proposed methodology and work schedule, average annual volume of construction works in the last five years and financial capability. The evaluation was either a *pass* or a *fail*. Two bidders (M/s Tosha At General Construction Ltd and Machine Centre Ltd) were declared technically responsive.
- The financial evaluation involve correction of arithmetic errors and ranking of bids which was done as summarised below:

Bid No	Bidders Name	Bid price (as opened)	Corrected bid price	Effect (Kshs.)	Rank
3	Tosha At General Construction Ltd	70,854,410.00	70,854,740.00	- 300	1
4	Machine Centre Ltd	75,143,304.50	75,159,986.00	- 16,681.50	2

10. The evaluation committee recommended M/s Tosha At General Construction Limited to be awarded the tender at his quoted tender price of Kshs. 70, 854, 410.00

Tender Award and Notification

11. The TC meeting of 8th July, 2013 awarded the tender to M/s Tosha At General Construction Limited at the total quoted price of Kshs. 70, 854, 410.00. Tender committee minutes were confirmed on 22nd July, 2013. The Boards PIU was expected to conduct a negotiation. The TC confirmed the fund for the available works was 70Million.
12. Notification of tender award to the successful and unsuccessful bidders was done on 9th July, 2013. The successful bidder was expected to furnish NIB with a performance bond equivalent to 5% and make an acceptance within 14 days. A negotiation was to be held on 15th July, 2013. M/s Tosha At General Construction Limited made an acceptance of the award on 15th July, 2013.

Contract

13. The successful bidder furnished the procuring entity with a performance bond from Chase Bank worth Kshs.3, 542, 720.00
14. NIB and M/s Toshe At General Construction Limited signed a contract on 30th July, 2013. The contract implementation period was 12 calendar Months.

Contract Implementation and status

15. NIB have so far paid a total of Kshs. 60, 870, 113.80 for this project after the contractor raised 7 certificate. A progress report was done on 17th May, 2015 following the inspection that was done on 15th May, 2015. The inspection and acceptance committee had been appointed on 14th August, 2013
16. The initial completion date of the project 30th July 2014, but it was later extended to 30th May, 2015 and handed over to the farmers. The defect liability certificate is yet to be issued and defect liability period is set to expire on 2nd August, 2016 when the 50% of the retention withheld will be paid.
17. The project is not in operation since it was destroyed by floods.

Observations

- i. The threshold for use of restricted under the First Schedule of the Regulations is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.
- ii. The preliminary evaluation indicated that the bid for M/s Rotalink Engineering Company Ltd was valid for 120 days against what was recorded in the tender opening that his bid was valid up to 17th November, 2013 which totals to 154 days. He was unfairly disqualified since the bid of the successful bidder M/s Tosha At General Construction Ltd was also indicated to expire on 17th November, 2013 but his bid was declared responsive.

- iii. Evaluation criteria were not applied uniformly since the two bidders who were responsive failed to meet the requirement of at least two criteria under technical evaluation but were said to be responsive. M/s Machine Centre Ltd failed under financial capacity and work programme while M/s Tosha At General Construction Ltd failed under qualification of key personnel and work programme. Thereafter the evaluation committee noted "M/s Tosha At General Construction Ltd and M/s Machine Centre Ltd had not materially deviated from the set conditions and therefore qualified to the next stage".

II. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

Tender No.	: NIB/T/124/2012-2013
Description	: Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County
Procurement Method	: Restricted Tender
Contractor	: Nyana Engineering Company Limited
Contract Sum	: Kshs. 79, 974, 700.49

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2012/2013. The estimated cost of the works was Kshs. 70, 000, 000.00 million and the NIB was to procure the works through Restricted Tendering. The procurement plan was prepared by the head of procurement unit and approved by the head of procuring entity on 1st August, 2012.
2. During the NIB Tender Committee (TC) meeting held on 20th March, 2013, Eng. Raphael Ogendo on behalf of the expanded national irrigation programme presented a procurement requisition to TC for construction works for Nadoto Irrigation scheme development Project. The TC approved procurement of the subject works through restricted Tendering from prequalified firms since the works was said to be specialised in nature. The requisition of the project was approved on 17th April, 2013. A similar requisition had also been raised with General Manger by Eng Kanui on 4th December, 2012 and approved on 6th December, 2012.
3. From the list of NIB prequalified firms the TC approved ten (10) firms to be invited. Invitation letter to bid was sent vide letter Ref.: NIB/T/124/2012-2013.on 27th May 2013 to the following bidders:
 - i. Nyana engineering company limited
 - ii. Benisa limited
 - iii. Vine yard holding limited

- iv. Hanamal construction limited
- v. Isiolo Mwangaza company limited
- vi. Oasis-den contractors and suppliers
- vii. Charwins limited
- viii. Blue top construction limited
- ix. Machine centre limited
- x. Property word limited

The deadline for submission of the bids was 17th June 2013 at 12.00 noon.

4. Tender opening committee was appointed on 17th June, 2013 and comprised of Michael Obimbo Evaline Akoth and Geoffrey Juma. Tender was opened on 17th June, 2013. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, bid bond and form of bid (original and number of copies). The committee also serialized the bid received and signed the tender opening minutes. Five bidders submitted their bids on time.

5. Five(5) bids were received as summarised below:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Machine centre Ltd	78,764,350.73	Equity Bank, Kshs 1,573,000.00 valid up to 18 th September, 2013	1 original and 2 copies
2.	Charwins Ltd	92,140,308.00	Amaco insurance company limited, Kshs. 1,843,000.00 valid up to 180 days from the date if tender opening	1 original and 3 copies
3.	Property word Ltd	8,5901,872.86	Amaco insurance company limited, Kshs. 1700,000.00 Valid up to 150 days from the date of tender opening	1 original and 3 copies
4.	Nyana engineering company Ltd	79,974,700.49	equity bank, Kshs. 1,599,494.00 valid up to 10 th June, 2014	1 original and 3 copies
5.	Blue top constructions Ltd.	66,000,870.72	Amaco insurance company Ltd, Kshs 1,320,000.00 Valid up to 150 days from the date of tender opening	1 original and 3 copies

Evaluation

6. Evaluation committee was appointed on 17th June, 2013 and comprised of Eng. Raphael Ogendo, Eng. Michael Thuita and Eng. Ochieng Ochiere and Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, technical and financial analysis stages.

7. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance and valid trading license. Three bidders (Charwins Ltd, Property World Ltd, Blue Top construction Ltd) were declared non-responsive because they provided bid securities from insurance company instead of bank guarantee. Another bidder (Machine centre Limited) was disqualified because she provided a bid security not meeting the required validity. Only one bidder (Nyana Engineering Company limited) qualified to the technical evaluation.
8. The following evaluation criteria were used to conduct Technical Evaluation: past experience of the contractor, qualification and experience of key personnel, plants and equipment for executing the works, adequacy of the proposed methodology and work schedule, average annual volume of construction work in the last five years and financial capacity. As per the evaluation committee Nyana engineering company Ltd met the set condition and proceeded to financial evaluation.
9. The evaluation committee conducted financial evaluation Of Nyana Engineering Co. Ltd by ranking the bid.

Bid No.	Name of Firm	Opened bid Price	Ranking
4	Nyana engineering Co. Ltd	79,974,700.49	1

10. The evaluation committee recommended Nyana Engineering Company Limited for the award of the tender at his quoted tender sum of Kshs. 79,974,700.49 after emerging the lowest evaluated bidder.

Tender Award and Notification

11. The TC awarded the tender on 8th July, 2013 as per the recommendation of the evaluation committee. The successful and unsuccessful bidders were notified vide letter Ref: C/P/197 VOL. 30 of 9th July, 2013.
12. Nyana engineering company limited accepted the award vide a letter dated 15th July 2013 and submitted a performance security from K-Rep Ban worth Kshs. 4, 000, 000 dated 5th August 2013.

Contract

13. A pre-contract negotiation meeting was to be held on 15th July, 2013. Tender price, price validity and payment method was agreed on during the pre-contract meeting.

14. NIB and Nyana Engineering Company Limited entered into a contract on 8th August, 2013 for the construction works of the Nadoto Irrigation Scheme Development Project at a contract price of Kshs.79, 974,700.49. The completion period for the contract was 12 calendar months.

Contract implementation and current status

15. To this far NIB have already paid a total of Kshs. 75, 171, 989.23 after the contractor raised five certificates.
16. An Inspection and Acceptance Committee was appointed on 15th August, 2013 with the following as members: David Tanui, Edwin Keitany and Francis Mwangi. The subject works was to be completed on 8th August, 2014, but was later extended to 8th May, 2015. The defect liability period was set to expire on 4th August, 2016 which will result to payment of the remaining 50% retention fee upon issuance of defect liability certificate.
17. Completed, however the river changed the course from the intake. Farmers have dug a canal to reach the water and divert it towards the main intake. The main intake and the primary canal requires frequent distillation.

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act, 2005 and Regulation 47, 49 and 50 of the PPDR, 2006.
- ii. The tender sum of the successful bidder M/s Nyana Engineering Company Limited of Kshs. 79,974,700.49 had an error, of which if it was corrected it would have resulted to an increase in his tender price to Kshs. 79,977,299.53. Correction of error was not done and instead the bidder was awarded the tender at his quoted price.
- iii. The minutes of the TC meeting that awarded the tender were incomplete hence we could not ascertain whether award of tender was done as recommended by evaluation committee.

12. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

Tender No.	:	NIB/T/112/2012-2013
Description	:	Tender for construction works of the Naoros Irrigation Development Schemes Project in Turkana County.
Procurement Method	:	Restricted tendering
Contractor	:	M/s Hanamal Construction
Original Contract	Sum	: Kshs. 73, 573, 793.00.
Revised Contract Sum	:	Kshs. 77, 669, 146.00

Background

1. The subject procurement was in the procurement plan for the financial year 2012/2013. It was to be procured through restricted tendering at an estimated cost of 60, 000, 000. The procurement plan was prepared by Head of procurement unit and approved by Head of procuring Entity on 1st August, 2012.
2. The request for the procurement of the subject works was presented to the TC during its meeting of 14th March, 2013 by Eng. Raphael Ogendo on behalf of Expanded National Irrigation Programme. The TC approved the procurement of the subject work through restricted tendering since it was specialized in nature and therefore the need to engage prequalified contractors. NIB used the list of prequalified suppliers from Turkana Central District. The following ten (10) contractors were approved to be invited:
 - i. Hanamal Construction Ltd.
 - ii. Nyana Hills Engineering Works Ltd
 - iii. Machine Centre Limited
 - iv. Yellow House Ltd
 - v. Libex Construction
 - vi. Lopii Contractors Ltd
 - vii. Saphira Building Contractors
 - viii. Rotalink Engineering Company Ltd
 - ix. Riang International
 - x. Eastern Redbull Enterprises Ltd

The minutes of the above TC meeting of 14th March, 2013 was confirmed on the same day 14th March, 2013

3. The invitation letter to tender was sent on 28th March, 2013 and it provided information on how to obtain and submit the tender. The closing date of this tender was 18th April, 2013. An addendum in form of a letter to extend the closing date was issued on 12th April, 2013, which extended the closing date to 25th April, 2013.
4. Tender opening committee was appointed on 28th March, 2013 and comprised of Stephen Mutinda, Charles Sifuma, Evaline Akoth and Geoffry Juma. Tender opening

was done on 25th April, 2013 The committee prepared tender opening minutes indicating the names of the bidder, total bid price, tender security (bank, amount and validity) and form of bid (original and number of copies).

5. Out of 10 firms that were invited only five (5) firms returned their bid as summarised below:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Nyana Engineering Company Ltd	77,224,873.00	Equity Bank, Kshs 1,500,000.00 valid up to 19 th September, 2013	1 original & 2 copies
2.	Hanamal Construction Ltd	73,573,793.00	First Community Bank, Kshs. 1,480,000.00 valid until 19 th September, 2013	1 original and 3 copies
3.	Saphira Company Ltd	77,224,873.00	Kennidia Assurance Co. Ltd Kshs 900,000.00 valid until 24 th August, 2013	1 original & 3 copies
4.	Libex Construction Ltd	69,555,917.00	KCB Kshs. 1,400,000 Valid Until 20 th August, 2013	1 original 3 copies
5.	Machine Centre Ltd	83,950,075.00	Giro Commercial Bank Ltd Kshs. 957,374 valid until 23 rd September, 2013	1 original 3 copies

Evaluation

6. Evaluation committee was appointed on 28th March, 2013 and comprised of Eng. Raphael Ogendo, Eng. Michael Thuita and Eng. Ochieng Ochiere and Raphael Mutiso.
7. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance and valid trading license. Three bidders (Nyana Engineering Company Ltd, Saphira Company Ltd and Machine Centre Ltd) were declared non-responsive because they provided bid securities from insurance company instead of bank guarantee. Another bidder (Libex construction Ltd) was disqualified because she provided a bid security not meeting the required validity. Only one bidder (Hanamal Construction Ltd) qualified to the technical evaluation.
8. The following evaluation criteria were used to conduct Technical Evaluation: past experience of the contractor, qualification and experience of key personnel, plants and equipment for executing the works, financial capacity, average annual volume of construction work in the last five years and programme of works (methodology and work schedule). As per the evaluation committee Hanamal Construction Ltd met the set condition and proceeded to financial evaluation.

9. The evaluation committee conducted financial evaluation of Hanamal Construction Ltd by ranking his bid.
10. The evaluation committee recommended M/s Hanamal Construction Ltd for the award of the tender at his tender sum of Kshs. 73, 573, 793.00. Evaluation report was signed by all the members.

Tender Award and Notification

11. The TC meeting of 3rd May, 2013 awarded the tender to M/s Hanamal Construction Limited at the total quoted price of Kshs. 73, 573, 793.00.
12. Notification of tender award to the successful and unsuccessful bidders was done on 10th May, 2013. The successful bidder was expected to furnish NIB with a performance bond equivalent to 5% and make an acceptance within 14 days. A negotiation was to be held on 16th May, 2013. M/s Hanamal Construction Ltd made an acceptance of the award on 15th July, 2013.

Contract

13. The successful bidder furnished the procuring entity with a performance bond from First Community Bank worth Kshs. 3, 678, 689.65. The bidder also submitted an acceptance letter on 14th May, 2013.
14. NIB and M/s Hanamal Construction Ltd signed a contract on 7th June, 2013. The contract implementation period was 12 calendar Months. An addendum to extend the contract completion date from 7th July, 2014 to 7th October, 2014 was signed on 7th August, 2014. The approval of the extension was granted by TC during its meeting of 4th July, 2014. Another extension of the contract completion time was granted by the TC during its meeting held on 2nd February, 2015, the new completion date was extended from 7th October, 2014 to 7th January, 2015.

Variations

15. The subject contract was varied from Kshs. 73, 573, 793.00 to Kshs 77, 669, 146.00. An addendum to amend the first contract was signed on 13th March, 2015 after the TC approved the variation which was equal to 5.57% during its meeting held on 21st November, 2014.

Contract implementation and status of project

16. The payments of the subject works was done upon the contractor raising 9 certificate which totalled to Kshs. 76, 669, 848.59.
17. An inspection and acceptance committee was appointed vide letter Ref.: GM/G/537 on 10th June, 2013 and comprised of Francis Mwangi, Edwin Keitany and

John Kinyanjui. The last inspection was done on 7th May, 2015 by Naoros Irrigation Scheme Committee members and project handed over 15th June, 2016.

18. Completed in June 2014. However it is not in operation since the floods caused siltation of the canal.

Observations

- i. The tender committee meeting of 3rd May, 2016 that awarded the tender did not have a quorum to adjudicate the award as required under Regulation 12 (2) of the PPDR, 2006. The TC had only four members against the required quorum of five members and Secretary.

13. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014.

Tender No.	: NIB/T/035/2013-2014
Description	: Tender for construction works of Neremit Irrigation Scheme Development Project Turkana County.
Procurement Method	: Open National Tender
Contractor	: M/s Nakuru Machinery Services Ltd
Contract Sum	: Kshs. 48, 356, 440.00.

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2013/2014. The estimated cost of the works was Kshs. 50, 000, 000.00 million and the NIB was to procure the subject works through Open National Tender. The procurement plan was prepared by the head of procurement unit and approved by the Accounting Officer on 1st August, 2013.
2. During the NIB Tender Committee (TC) meeting held on 19th September, 2013; Eng. Thuita Mwangi on behalf of expanded National Irrigation Programme presented a request for procurement of construction works for Neremit Irrigation Scheme development Project. The TC approved procurement of the subject works through National Open Tendering and further directed that the invitation for bids be published in the Daily Nation, The Standard, and The Star on 20th September, 2013. The TC also approved that the subject tender be reserved to citizen contractors.
3. The subject Tender was advertised in the Daily Nation, of 20th September, 2013. The notices provided information relevant for obtaining and submission of tender. The deadline for submission of tender was 15th October, 2013 at 12.00 a.m. this tender was reserved for citizen contractors.

4. Tender opening committee was appointed on 10th October, 2013 and comprised of Jairus Serede (Chair), Risper Okumbe, Micahel Obimbo and Patricia Siele. Tender was opened on 15th October, 2013. During opening there were other Six (6) in-attendance from NIB and bidders/representatives. The committee prepared tender opening minutes indicating the tenderers names and total tender price. The committee also serialized the bid received.
5. The following Twenty three (23) bids were received as recorded in the tender opening minutes and tender opening register:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Validity OF Bid bond
1.	Katulani Building and Construction	83,929,791.00	Equity Bank, Kshs 1,678,596.00	Valid up to 13 th March, 2014
2.	Warabow Building and Construction Company Ltd	21,105,194.00	First Community bank, Kshs. 422,104.00	Valid up to 1 st May, 2014
3.	Mbiwa Construction Co. Ltd	48,243,514.00	KCB, Kshs. 964,870.50	Valid up to 15 th March, 2014
4.	Cherangani Hills Ltd	50,634,347.50	No bid bond	No bid bond
5.	Bellagio Construction Ltd	45,580,480.00	Family bank, Kshs. 1,000,000	Valid up to 14 th March, 2014
6.	Atomex Gen. Merchants	41,463,885.80	No bid bond	No bid bond
7.	Sifucha Building & Contractors Ltd	46,761,649.00	No bid bond	No bid bond
8.	Tosha At Gen. Construction Co. Ltd	53,883,060.00	Chase bank, Kshs. 1,077,659.00	Valid up to 180 days after tender opening
9.	Koitebes Enterprises Ltd.	40,740,315.00	Family Bank Kshs. 840,000	Valid up to 23 rd April, 2014
10.	Dynamic Gen. Constructions Ltd	32,411,698.00	Equity Bank Kshs. 648,233.96	25 th March, 2014
11.	Wimax Ent. Ltd	33,156,002.00	No bid bond	No bid bond
12.	Novatech Ltd	36,741,430.00	Coop bank, Kshs. 780,000.00	25 th February, 2014
13.	Nakims Merchants and Contractors Company Ltd	48,157,956.00	Equity Bank Kshs. 790,000	6 th April, 2014

14.	Deche Construction Co. Ltd	45,032,324.00	Chase Bank Kshs. 1,000,000	Valid up to 15 th March, 2014
15.	Landmark Holding Ltd.	65,166,310.00	Oriental Commercial Bank Kshs. 1,320,000	Valid up to 30 th March, 2014
16.	Nakuru Machinery Services Ltd	48,356,440.00	Equity Bank Kshs. 967,128	Valid up to 14 th March, 2014
17.	Three Star Contractors	38,388,880.00	Equity Bank Kshs. 1,000,000	Valid up to 3 rd March, 2014
18.	Makenu Eng. Co. Ltd	42,676,782.50	No bid bond	No bid bond
19.	Two Key International Ltd	48,891,227.00	Bank of Africa Kshs 977,824.54	Valid up to 15 th March, 2014
20.	Machine Centre Ltd	50,011,687.00	Equity Bank Kshs. 1,000,000	Valid up to 15 th March, 2014
21.	Josfirm Engineering and Construction Company	40,896,806.50	Chase Bank Kshs. 800,000	Valid up to 15 th March, 2014
22.	Dafabotaz Transport and Construction Co.	41,603,452.00	AMACO Kshs. 832,069	Valid for 122 days after tender opening
23.	Balcha Water Drilling and Construction Company Ltd	41,603,452.00	AMACO Kshs. 832,069	Valid for 122 days after tender opening

Evaluation

6. Evaluation committee was appointed on 24th October, 2013 and comprised of Eng. Raphael Ogendo, Eng. Henry O. Ochiere, Eng. Thuita Mwangi, Eng. Eliud Gicheru and Mr. Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
7. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, valid trading license, NCA registration and power of Attorney. Seventeen (17) bids were declared non-responsive, Six (6) bids were responsive
8. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification and experience of key personnel, ownership or lease agreement for key plants and equipment for executing the works, financial capacity, annual volume of construction work in the last three years and adequacy of the proposed methodology and work schedule. The broad technical evaluation was either a *pass* or a *fail*. As per the evaluation committee only 1 bidders

(M/s Nakuru Machinery Services Ltd) met the technical requirement and proceeded to financial evaluation.

9. The financial evaluation involved ranking of the bid

Bid No.	Name of firm	Opened bid price	Ranking
16	Nakuru Machinery Services Ltd	48,356,440.00	1

10. The evaluation committee recommended the award of the tender to M/s Nakuru Machinery Services Ltd at their quoted bid price of Kshs.48,356,440.00 after emerging the lowest evaluated bidder.

Tender Award and Notification

11. The Tender Committee meeting held on 18th, November 2013, deferred with the recommendation of the evaluation committee to award the tender subject to an error correction factor and directed that the evaluation committee review and provide additional information as listed below:

- The client, value, year, location and major components of the stated works experience
- The requirement that the power of Attorney be witnessed by a commissioner for Oath/Advocate since the requirement was not explicitly stated
- The computation of the financial capacity in form of the available liquid assets and/or credit facility in comparison with the stated requirements
- The computation of average annual volume of construction works in the last three years and comparison with the stated requirements.

Tender committee minutes were confirmed on 28th November, 2013

12. The TC meeting of 28th November, 2013 awarded the tender to M/s Nakuru Machinery Services Ltd at the quoted price of Kshs.48,356,440.00. Tender committee minutes were confirmed on 5th December 2013

13. Notification of tender award to the successful bidder and 22 unsuccessful bidders was done on 24th January 2014. The successful bidder made an acceptance of the award on 29th January, 2014.

Contract

14. The successful bidder furnished the procuring entity with a performance bond from Eco Bank worth Kshs.2, 417, 822.00
15. NIB and M/s Nakuru Machinery Services Ltd signed a contract on 18th February, 2014. The contract implementation period was 12 Months calendar.

Contract Implementation and status of the project

16. An inspection and acceptance committee was appointed vide letter Ref.: NIB/HQ/M1/57 dated 21st July, 2014; it comprised of David Tanui, Francis Mwangi and John Kinyanjui.
17. Two payments certificates have been processed amounting to Kshs. 19, 431, 868.54. As per the progress report dated 22nd May, 2014 the overall achievement for the project is approximately 21%.
18. The third interim payment certificate of Kshs 13, 907, 500.76 was raised on 29th July, 2015 and is being processed. Further, the completion date was revised from 18th February, 2014 to 18th August, 2015.
19. The project is incomplete and contractor is going on with the works.

Observations

- i. The bid bond for M/s Novatech was expected to be valid for 150 days but the bid security it submitted was valid for 135 days. However, the evaluation committee declared it responsive. Further the bid security for M/s Three Star Contractors was said to be 150 days yet it was 141 days valid since it was to expire on 3rd March, 2014. However, his bid was declared responsive against the criteria.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation parameters had no scoring criteria.
- iii. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- iv. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum as required under Regulation 12 (2) of the PPDR, 2006. The TC had only four members against the required quorum of five members and Secretary.

14. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

Tender No.	: NIB/T/038/2013-2014
Description	: Tender for construction works of the flood and animal control infrastructure in Loborot and Nakamane Irrigation Schemes in Turkana County.
Procurement Method	: Open National Tender
Contractor	: M/s Machine Centre Ltd
Contract Sum	: Kshs. 49, 720, 000.00.

Background

1. The procurement of the construction works for the subject tender was in the procurement plan for the financial year 2013/2014. The estimated cost of the works was Kshs. 50, 000, 000.00 million and the NIB was to procure the subject works through Open National Tender. The procurement plan was prepared by the head of procurement unit and approved by the Accounting Officer on 1st August, 2013.
2. During the NIB Tender Committee (TC) meeting held on 19th September, 2013; Eng. Thuita Mwangi on behalf of expanded National Irrigation Programme presented a request for procurement of construction works for of the flood and animal control infrastructure in Loborot and Nakamane Irrigation Schemes in Turkana County. The TC approved procurement of the subject works through National Open Tendering and further directed that the invitation for bids be published in the Daily Nation, The Standard, and The Star on 20th September, 2013. The TC also approved that the subject tender be reserved to citizen contractors.
3. The subject Tender was advertised in the Daily Nation, of 20th September, 2013. The notices provided information relevant for obtaining and submission of tender. The deadline for submission of tender was 15th October, 2013 at 12.00 a.m. this tender was reserved for citizen contractors.
4. Tender opening committee was appointed on 10th October, 2013 and comprised of Jairus Serede (Chair), Risper Okumbe, Micahel Obimbo and Patricia Siele Tender was opened on 15th October, 2013. The committee prepared tender opening minutes indicating the tenderers names and total tender price. The committee also serialized the bid received.
5. The following Twenty (20) bids were received as recorded in the tender opening minutes and tender opening register:

No.	Bidder Name	Tender sum (Kshs)	Bid bond (Bank, Amount and)	Validity OF Bid bond
1.	Kongoris Enterprises Ltd	56,116,500.00	No bid bond	No bid bond
2.	Bellagio Construction Ltd	36,165,474.00	Family bank, Kshs. 1,000,000	Valid up to 14 th March, 2014
3.	Seo and Sons Ltd	47,533,750.00	Equity Bank, Kshs. 950,675.00	Valid up to 9 th April, 2014
4.	Laerhols General Supplies & Services Ltd	65,120,000.00	No bid bond	No bid bond
5.	Josfirm Engineering and Construction Company	31,592,550.00	Chase Bank Kshs. 800,000	Valid up to 15 th March, 2014
6.	Institute of Applied Technology	47,894,000.00	Equity bank, Kshs. 1,140,000	Valid up to 15 th March, 2014
7.	Cherengani Hills	53,719,600.00	No bid bond	No bid bond
8.	Mbiwa Construction Co. Ltd	40,554,250.00	KCB, Kshs. 811,085.00	Valid up to 15 th March, 2014
9.	Funan Construction Co. Ltd	121,685,740.00	Equity Bank Kshs. 2,255,100	Valid up to 15 th March, 2014
10.	Nakims Merchants and Contractors Ltd	48,097,500.00	Equity Bank Kshs. 1,020,000	6 th April, 2014
11.	Nakuru Machinery Services Ltd	48,505,600.00	Equity Bank Kshs. 970,112	Valid up to 14 th March, 2014
12.	Tosha At General Company Ltd	47,140,500.00	Coop bank, Kshs. 942,810.00	Valid up to 180 days after tender opening
13.	Dynamic General Construction	47,492,500.00	Equity Bank Kshs. 948,850	Valid up to 25 th March, 2014
14.	Dynocarp Logistics Ltd	45,834,250.00	Chase Bank Kshs. 950,000	Valid up to 15 th March, 2014
15.	Trimop Ltd	39,885,450.00	Equity Bank Kshs. 398,855	Valid up to 15 th January, 2014
16.	Toshe Construction and Engineering Ltd	43,209,650.00	Chase Bank Kshs. 864,193	Valid up to 14 th March, 2014
17.	Bitat Ltd	42,890,100.00	First Community Bank Kshs. 857,800	Valid up to 6 th May, 2014
18.	Machine Centre Ltd	49,720,000.00	Equity bank Kshs. 1,140,000	Valid up to 15 th March, 2014

19.	Lifeline Construction Company Ltd	47,632,750.00	Equity Bank Kshs 952,655	Valid up to 11 th February, 2014
20.	Three star Contractors	49,342,920.00	Equity Bank Kshs. 1,000,000	Valid up to 3 rd March, 2014

Evaluation

6. Evaluation committee was appointed on 24th October, 2013 and comprised of Eng. Raphael Ogendo, Eng. Henry O. Ochiere, Eng. Thuita Mwangi, Eng. Eliud Gicheru and Mr. Raphael Mutiso. Evaluation was carried out in three stages namely preliminary, broad technical evaluation and financial evaluation stages.
7. The preliminary evaluation criteria used were: Physical location and contact address, tender security, certificate of incorporation /registration; VAT; tax compliance, valid trading license, NCA registration and power of Attorney. Seventeen (14) bids were declared non-responsive, Six (6) bids were responsive
8. The following evaluation criteria were used to conduct Technical Evaluation: past experience and performance, qualification and experience of key personnel, ownership or lease agreement for key plants and equipment for executing the works, financial capacity, annual volume of construction work in the last three years and adequacy of the proposed methodology and work schedule. The broad technical evaluation was either a *pass* or a *fail*. As per the evaluation committee only 2 bidders (M/s Nakuru Machinery Services Ltd and Machine Centre Ltd) met the technical requirement and proceeded to financial evaluation.
9. The financial evaluation involved doing an arithmetic check and ranking of bids. None of the bid had an error. The bid were ranked as below:

Bid No	Name of tenderer	Tender Sum (Kshs.)	Ranking
11	Nakuru Machinery Services Ltd	48,505,600.00	1
18	Machine Centre Ltd	49,720,000.00	2

10. The evaluation committee recommended the award of the tender to M/s Machine Centre Ltd at their quoted bid price of Kshs. 49,720,000.00 having emerged the second lowest evaluated bidder since the first lowest evaluated bidder M/s Nakuru Machinery Services Ltd could not qualify to be awarded two tenders at the same time

since he was already awarded tender No. NIB/T/035/2013-2014. This was in requirement of clause 27.1 which stated: "... the employer will award the contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the contract works as required...". further clause 2.7.1 stated that no contractor will be awarded two tender concurrently so that as many citizen contractors may benefit and more so to ensure competition of project on time

Tender Award and Notification

11. The Tender Committee meeting held on 18th November, 2013, deferred with the recommendation of the evaluation committee to award the tender subject to an error correction factor and directed that the evaluation committee review and provide additional information as listed below:

- The client, value, year, location and major components of the stated works experience
- The requirement that the power of Attorney be witnessed by a commissioner for Oath/Advocate since the requirement was not explicitly stated
- The computation of the financial capacity in form of the available liquid assets and/or credit facility in comparison with the stated requirements
- The computation of average annual volume of construction works in the last three years and comparison with the stated requirements.

Tender committee minutes were confirmed on 28th November, 2013

12. The TC meeting of 28th November, 2013 discussed the recommendation of the Evaluation Committee and made reference to provision on the capability and resources of the lowest evaluated tenderer (M/s Nakuru Machinery Services Ltd). The TC argued that the resources of M/s Nakuru Machinery Services Ltd were inadequate to execute both works since the equipment proposed to be used in execution of both tender were same. The TC hence approved the recommendation of evaluation committee and awarded the tender to M/s Machine Centre Ltd at his quoted bid price of Kshs. 49,720,000.00. Tender committee minutes were confirmed on 5th December 2013
13. Notification of tender award to the successful bidder and 19 unsuccessful bidders was done on 24th January 2014. The successful bidder made an acceptance of the award on 29th January, 2014.

Contract

14. The successful bidder furnished the procuring entity with a performance bond from Eco Bank worth Kshs.2, 417, 822.00

NIB and M/s Machine Centre Ltd signed a contract on 19th February, 2014. The contract implementation period was 12 Months calendar.

Contract Implementation

15. An Inspection and Acceptance committee was appointed vide letter Ref.: NIB/HQ/F1/26 on 20th February, 2014
16. A total of Kshs. 49, 258, 070.00 has so far been paid for this project. A completion certificate was issued on 31st July, 2014 and the project handed over on 5th November, 2014.
17. Project completed but not in operation since the floods caused siltation of the main canal

Observations

- i. Whereas the tender opening register and tender opening minutes indicate that M/s Cherangani Hills did not provide a bid bond, during evaluation its indicated that he had a bid bond from Consolidated Bank of Kshs. 1, 074, 392 valid for 30 days
- ii. M/S Dynocarp Logistics Ltd was declared responsive whereas he had not provided the Power of Attorney. This criteria was used to disqualify other bidders like M/s Bellagio Construction Ltd, M/s Dynamic General Construction and M/s Institute of Applied Technology.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) the Act, 2005 and Regulation 46, 49 and 50 of the PPDR, 2006. The technical evaluation parameters had no scoring criteria.
- iv. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- v. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the PPDR, 2006. The TC had only four members against the required quorum of five members and Secretary.

- vi. As per the contract the successful bidder (M/s Machine Centre Ltd) failed to submit a performance bond as demanded in the letter of award. Further, NIB went ahead to sign a contract and yet there was no performance bond.

15. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

Tender No.	: NIB/T/114/2013-2014
Description	: Tender for construction works of the Lokipetot Irrigation Schemes Development Project in Turkana County.
Procurement Method	: Restricted tendering
Contractor	: M/s Turkana Salama Enterprises Limited
Contract Sum	: Kshs. 59, 826, 117.00.

Background

1. The subject procurement was in the procurement plan for the financial year 2012/2013. It was to be procured through restricted tendering at an estimated cost of 60, 000, 000. The procurement plan was prepared by Head of procurement unit and approved by Head of procuring Entity on 1st August, 2013.
19. The request for the procurement of the subject works was raised with Deputy General Manager (T) via a memo on 25th February, 2014 who approved and requested it be included in TC Agenda. It was then presented to the TC during its meeting of 3rd March, 2014 by the Eng. Charles Muasya on behalf of Expanded National Irrigation Programme. The TC approved the procurement of the subject work be done through Restricted tendering since it was specialized in nature and therefore the need to engage prequalified contractors. NIB wrote to County Commissioner Turkana County on 18th February, 2014 requesting them to provide NIB with the list of prequalified suppliers, a response to this effect with a list of 12 prequalified firms was sent on 25th March, 2014 and received at NIB on 2nd April, 2014. The Twelve (12) contractors were approved by TC and included the following:
 - i. Jagab Contractors
 - ii. Miecebo Contractors & Suppliers
 - iii. Nakadongoi Investment Ltd
 - iv. Riang International Ltd
 - v. Namorutung'a Contractors
 - vi. Lumbe Agencies
 - vii. Turkana Salama Enterprises
 - viii. Loine Investments
 - ix. Kataboi Investments
 - x. Garite Building and Contractors
 - xi. Kerman Contractors

xii. Turkana Technical Building and Construction

The minutes of the above TC meeting of 25th February, 2014 was confirmed on 13th March, 2013.

2. An invitation letter to bid was sent to ten firms and it provided information on how to obtain and submit the tender. The invitation letter were sent on 8th August, 2014 and the closing date of this tender was 22nd August, 2014.
3. Tender opening committee was appointed on 20th August, 2014 and comprised of Eng. Charles Muasya Evaline Akoth and Patricia Siele. Tender opening was done on 22nd August, 2014. The committee prepared tender opening minutes indicating the names of the bidder, total bid price, tender security (bank, amount and validity) and form of bid (original and number of copies).
4. Out of the ten who were invited only five (5) firms that returned the bid as summarised below:

No.	Bidder	Tender sum (Kshs)	Bid bond (Bank, Amount and Validity)	Bid
1.	Turkana Technical Building Contractors Ltd	74,050,426.00	AMACO, Kshs 1,481,008.52 valid for 90 days after tender opening	1 original & 3 copies
2.	Kataboi Investments Limited	41,846,442.00	Bid bond not submitted	1 original & 3 copies
3.	Jagab Contractors Limited	65,438,067.00	AMACO, Kshs. 1,308,761.34 valid for 90 days after tender opening	1 original & 3 copies
4.	Turkana Salama Enterprises Ltd	59,826,117.00	Equity Bank Kshs 1,196,523.00 valid for 90 days after tender opening	1 original & 3 copies
5.	Narotung'a Contractors	67,708,452.00	AMACO Kshs. 1,354,169.04 valid for 90 days after tender opening	1 original & 3 copies

Evaluation

5. Evaluation committee was appointed on 20th August, 2014 and comprised of Eng. Charles Muasya, Risper Okumbe, Spephen Mutinda and Sammy Boit. Evaluation was carried out in three stages namely preliminary, broad technical and financial evaluation stages.
6. The preliminary evaluation criteria used was tender security in the form and amount provided. Only one bidder was responsive i.e. M/s Turkana Salama Enterprises Ltd all the other four bidders were declared non-responsive.

7. The following evaluation criteria were used to conduct broad Technical Evaluation: past experience and performance, qualification and experience of key personnel, proof of ownership or lease of key plants and equipment for executing the works, financial capability, average annual volume of construction works in the last five years and adequacy of the proposed methodology and work schedule. The evaluation was either a *pass* or a *fail*. M/s Turkana Salama Enterprises Ltd got a pass in all the requirements.
8. The financial evaluation involve arithmetic check and no errors were noted:
9. The evaluation committee recommended M/s Turkana Salama Enterprises Ltd to be awarded the tender at his quoted tender price of Kshs. 59, 826, 117.00

Tender Award and Notification

10. The TC meeting of 25th February, 2015 awarded the tender to M/s Turkana Salama Enterprises Ltd at the total quoted price of Kshs. 59, 826, 117.00. Tender committee minutes were confirmed on 10th March 2015.
11. Notification of tender award to the successful and unsuccessful bidders was done on 24th March, 2015. The successful bidder was expected to furnish NIB with a performance bond equivalent to 5% and make an acceptance within 14 days. M/s Turkana Salama Enterprises Ltd made an acceptance of the award on 7th April, 2015.

Contract

12. The successful bidder furnished the procuring entity with a performance bond from Equity Bank worth Kshs.2, 900, 000.00
13. NIB and M/s Turkana Salama Enterprises Ltd signed a contract on 11th May, 2015. The contract implementation period was 12 calendar Months.

Contract implementation and current status

14. An inspection and acceptance committee was appointed on 12th May, 2015. The first interim certificate of Kshs. 16, 883, 567.50 was raised on 11th November, 2015 but was not honoured. The second interim certificate combined the gross work done including certificate no. one and the contractor claimed a total of Kshs. 22, 517, 147.39 on 22nd January, 2016. The total amount of Kshs. 22,517,147.39 as contained in certificate no. 2 has already been paid.
15. As per the monthly progress report dated 19th January 2016, the overall achievement for the project was 65.86%.
16. The construction works are on-going but little progress has been made.

Observations

- i. The threshold for use of restricted under the First Schedule of the PPDR, 2006 is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.

- ii. Whereas the TC approved 12 prequalified contractors to be invited, the invitation letter to bid was sent to 10 contractors. M/s. Lumbe Agencies Ltd and Kerman Contractors were not invited.

PROJECT SITE VISITS

In order to gather adequate evidence to substantiate the allegations, the Authority was to conduct a project site visit. Based on the limited timeline and resource constraints the Authority sampled some of the projects to be visited.

In order to make an informed decision to guide the sampling; the status of all the projects was used to categorize the projects into the following:

A. CATEGORY ONE: MP HAD MENTIONED THE PROJECT IN THE PETITION

1. Proposed detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

This project was selected.

B. CATEGORY TWO: INCOMPLETE PROJECTS

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase II NIB/T/036/2013-2014 respectively;
2. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/T/037/2013-2014 respectively;
3. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014; and
4. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

We selected: Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

C. CATEGORY THREE: COMPLETE BUT NOT IN OPERATION

They included:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012;
2. Tender for construction work of Iborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
3. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013;

4. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013;
5. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013; and
6. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

We selected: Tender for construction work of loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013 and Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.

D. CATEGORY FOUR: COMPLETE & IN OPERATION

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase I NIB/T/112/2011-2012;
2. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012;
3. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2012-2013; and
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

We selected: Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

CONSOLIDATED SAMPLE

1. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012;
2. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014;
3. Tender for construction work of loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013;
5. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012; and
6. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

The Authority appointed Three (3) Officers to conduct project site Audit of the projects between 17th and 21st October, 2016. A summary of the status of the sampled project after the visit is as below:

1. Nadapal irrigation project:

The contractor executed the work and upon completion it was handed over to farmers. The Scheme has a management committee selected amongst farmers. The project is in operation and we found farmers preparing the land and others had already planted. However, farmers are experiencing some challenges such as:

- a) Heavy flooding that destroys the crops since the floods meander and use other entry point to the Scheme where there are no flood protection.
- b) Siltation and blockage of the water canals
- c) River Turkwel which is the source of the water for the scheme is very wide and its course keeps on diverting which may result on no water getting into the scheme through the main canal. Every time the river change the course farmers are forced to dig canal manually in order to reach the water.

2. Lokipetot irrigation project:

The project is not complete and the contractor is still on site, the completion level is approximately 80%, bush clearing is a major problem which is caused by "Mathenge" that grows and spreads out very fast.

NIB have not paid the Contractor for two already raised interim certificate and this has delayed the completion of the project.

3. Lobotot irrigation project:

The contractor executed the contract for the works and upon completion the project was handed over to farmers. Farmers cultivated for three seasons, thereafter the flood blocked the main canal and it is therefore non-operational for close to one year.

- a) Major problems are:
- b) Blockage of canals through siltation hence no water flowing into the Scheme
- c) Floods that washed away the crops and caused blockage of canals
- d) Flood protection Gabions were destroyed (washed away) by floods
- e) Road bridge crossing was destroyed by floods
- f) The Turkwel river is encroaching the Scheme and part of the fence is inside the river
- g) The quality of work is poor since the walls of the canals are not plastered and can wear off very easily (poor workmanship).

4. Katilu irrigation project:

Initially Katilu Irrigation Scheme was the work of Food and Agricultural Organization (FAO) who provided capital cost and technical personnel, later FAO withdrew. It was later taken over by Norwin Agency for Development Corporation (NORAD) through the Ministry of Agriculture in 1982, they also withdrew. The initial acre rage under FAO and NORAD was 500 Acres.

NIB later came and did rehabilitation of the Scheme and it became operational. Further they expanded the acre rage from 500 to 2000 Acres. NIB also have full time employee to manage the scheme. In conjunction with the County Government they also provided machinery to assist the farmers to till the land and dredging the canal after siltation. This has helped to make the project operational throughout the year. The total size of the acre rage that is operational is 1600 Acres. The system of irrigation used by Farmers is furrow Irrigation.

Farmers have started to undertake diversification by introducing a variety of crops such as bananas, butternuts, tomatoes, pawpaws, spinach and sukumawiki, dania among others on top of the previous crop i.e. maize, rice and barley. We found farmers harvesting the produce for the market.

In the financial year 2011/2012 NIB intended to expand the project and they invited tenders for design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, Tender No. NIB/T/005/2011-2012.

The contractor M/s Appropriate Development Consultants Limited (ADCL) was awarded the tender for the Drip irrigation system at a tender sum of Kshs. 61,429,691.71. The size of the Acreage was 50. The contractors did most of the work which include bush clearing, fencing, building the foundation base for the tanks, supplied drip pipes, pumps and 15 tanks of 10, 000 litres. The contractor applied for variation which NIB did not honor and the contractor withdrew from site. The contract was not fully implemented but farmers who were to be allocated the land upon completion are farming the land using water from the other part of the Scheme.

The major problem in this scheme is "Mathenge" a weed that grows and spreads very fast and blocks the secondary canals.

5. Nadoto irrigation project:

The contractor executed the work as per the contract and upon completion of the project it was handed over to farmers who selected management committee for the Scheme. Farmers have been planting and even in the last season they harvested maize. We found farmers clearing the *Mathenge* Shrubs to prepare for the next season. The scheme have good canal, but flooding hinders consistent flow of water to the farm which if alleviated it can increase food production. Farmers are experiencing the following problems:

- a) Flooding and siltation leading to blockage of the main canal
- b) Water intake has been blocked by floods
- c) "Mathenge" shrubs have spread in the land under irrigation resulting to thick bushes.

6. Naoros irrigation project:

The project was not fully completed since all secondary canal structures were not done. However, Farmers approximately tilled 10 acres and harvested during the last season. The flooding made it impossible to till the major part of the land within the Scheme and especially at the main canal since thick bush of Mathenge shrub sprouted and grow to become big trees. Farmers have tried to manually clear the bush but they have inadequate tools to clear the bush. This makes their effort to become unfruitful since by the time they are halfway to reach the main canal Mathenge shrub that were initially cleared have sprouted back. Farmers are experiencing some challenges such as:

- a) Heavy flooding that blocked the intake at the main canal and destroyed the crops.
- b) Flood protection Gabions were destroyed by floods which led to water getting into the Scheme.
- c) "Mathenge" shrub have infested the Scheme and clearing of the same is difficult since farmers have inadequate, ineffective farm tools and equipment's to facilitate bush clearing.

Yours



M. J. O. JUMA (MBS)
DIRECTOR GENERAL



ANNEX 3

REPUBLIC OF KENYA
MINISTRY OF WATER AND IRRIGATION

Issues Raised by the Committee

Hon. Chair, this Committee has invited me to appear before it and respond to the following issues:

1. *Circumstances surrounding dismissal of the former General Manager, Eng. Daniel Barasa and the subsequent court case touching on his dismissal;*
2. *Reasons for reconstitution of the Board, and whether this action is related to issues raised in the Petition before the Committee;*
3. *Measures taken by the Ministry to address the issues raised by the Petitioners and to ensure prudent use of resources by the Board's Management and adherence to Public Financial Management Act and the Public Procurement and Disposal Act.*

Response

Hon. Chair, it came to my attention on 21st April, 2016 that a Special Board Meeting of the National Irrigation Board had been held earlier in the day during which the General Manager, Eng. Barasa was suspended. I later received a copy of the Minutes of the Special Board Meeting which recorded the resolution, among others, "*to suspend the General Manager, Eng. Daniel Barasa; Deputy General Manager, Finance and Strategy, Ms. Mary Chomba; and Procurement and Supplies Manager, Mr. Boaz Akello, for a period of six (6) months with immediate effect pending investigations*".

Hon. Chair, I obtained a copy of the Notice convening the Meeting which stated that it was to be an Ordinary Board Meeting and not a Special Board Meeting. I also obtained a copy of the Agenda proposed for the Meeting under notice and disciplinary action was not part of it.

Hon. Chair, it was not clear to me the circumstances under which the Ordinary Board Meeting became a Special Board Meeting. Secondly,



the serious accusations made against the Officers did not appear to be specific or particularized. I am aware that every person has a right to fair administrative action and casting blanket accusations against Public Officers without due regard to the principles of natural justice is unlawful. I communicated my concerns to the Board on 25th April, 2016 and directed the Board to investigate any allegations made against the concerned Officers and also reiterated my Ministry's policy of zero tolerance to corruption. I made it clear to the Board that all allegations of corruption should be thoroughly investigated and dealt with firmly in accordance with the law and in the meantime, the concerned Officers should continue with their normal duties.

Hon. Chair, my actions were guided by Section 13 of the Irrigation Act, Cap 347 which states that *"in the exercise of its powers and the performance of its functions under the Act, the Board shall act in accordance with any general or specific directions that may be given to it by the Minister"*. I re-stated my position on 26th April, 2016 and advised the Board that it risks being dissolved if it failed to abide with the directions I had given. These, then, were the circumstances and my actions surrounding the suspension of Eng. Daniel Barasa.

Hon. Chair, I was informed that Eng. Daniel Barasa had sued the Board regarding the suspension, a matter which he later withdrew from the Courts. However, Eng. Barasa did communicate to me his decision to proceed on early retirement from Public Service in a letter dated 3rd May, 2016. It was increasingly evident that there was a standoff between the Board and the Management which resulted in a state of paralysis in the Board thereby affecting operations of the Institution. This was a state of affairs that could not be allowed continue. I believe this is what led H.E. the President to reconstitute the Board through Gazette Notices Nos. 4421 and 4422 of 17th June, 2016.

Hon. Chair, the court case that involves me in this matter has regard to Notice of a Motion dated 23rd May, 2016 and filed in the High Court on behalf of a Mr. Felix Kiprono Matagei. The main point was that I, the 3rd Respondent in the matter, and in my capacity as the Cabinet



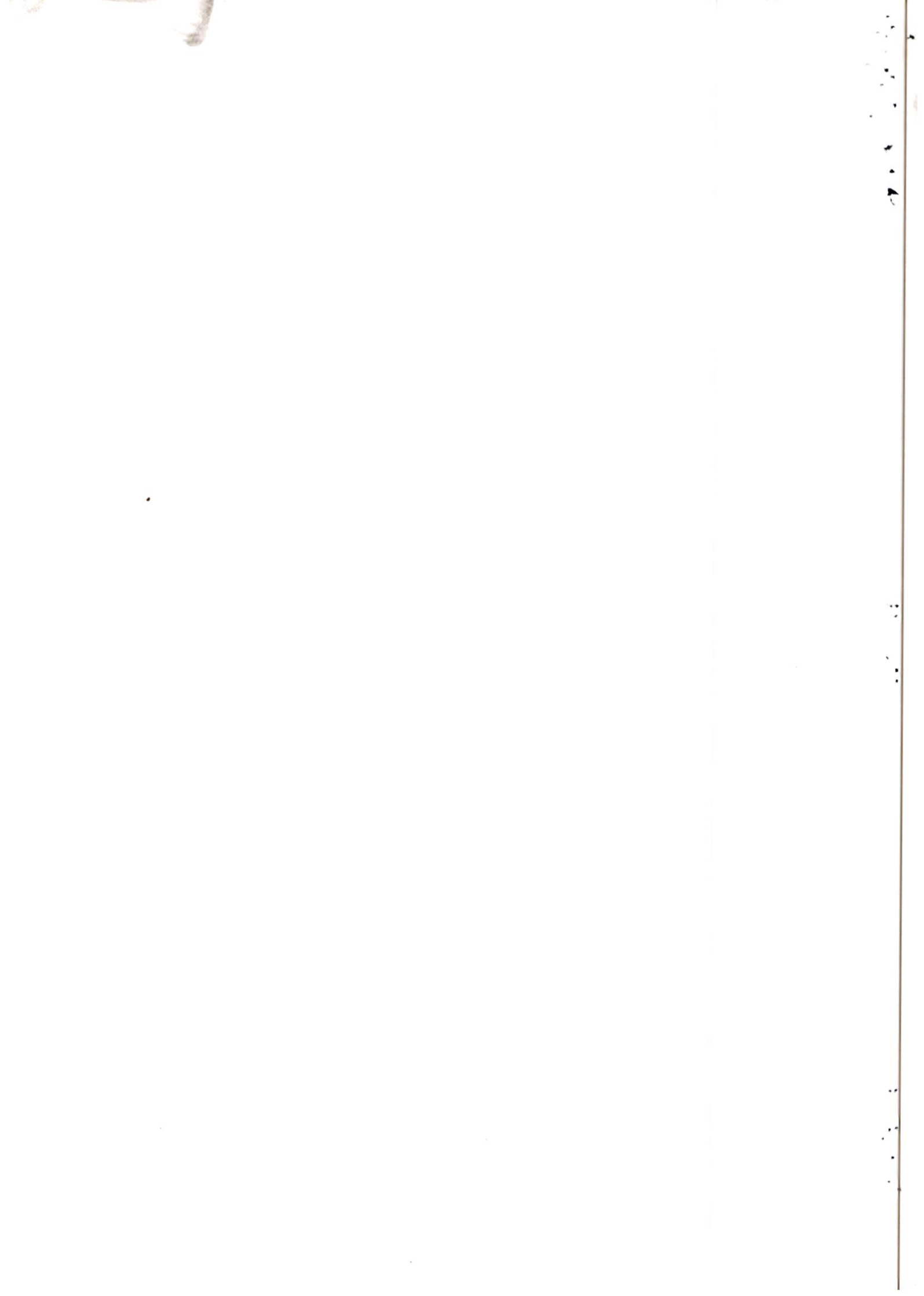
Secretary for Water and Irrigation, I had acted illegally by deciding to disband the Board of Directors of the National Irrigation Board.

Hon. Chair, I have since received a Notice of Withdrawal of the court case by Mr. Felix Kiprono Matagei dated 18th July 2016, in which he states that he had withdrawn the matter because it had been fully overtaken by events.

Hon. Chair, my Ministry and the new Board is following up on the issues raised by the Petitioners including following up on my earlier directive with regard to thorough investigations by the Kenya National Audit Office and the Ethics and Anti-Corruption Commission. The Commission's investigations on financial impropriety by Eng. Baraza and the other concerned staff are ongoing. The Auditor General Office has also been invited to undertake a forensic audit which is now ongoing. In addition, my Ministry organized an Internal Audit Team to undertake a special audit of specific projects including projects in Turkana County.

Hon. Chair, upon receiving the final reports from the Institutions conducting these investigations, I will act on their recommendations and share with this Committee the findings and my actions.

**HON. EUGENE WAMALWA, EGH,
CABINET SECRETARY**



ANNEX 4

RESPONSE
BY
ENG DANIEL K. BARASA
TO

ISSUES RAISED BY THE PUBLIC INVESTMENTS COMMITTEE ARISING FROM A PETITION BY HON PROTUS AKUJA, MP ON BEHALF OF TURKANA RESIDENTS ON ALLEGED FINANCIAL IMPROPRIETY BY THE GENERAL MANAGER NATIONAL IRRIGATION BOARD (NIB). (LETTER DATED 16TH SEPTEMBER 2016 FROM CLERK TO NATIONAL ASSEMBLY).

DATED 23RD SEPTEMBER 2016

1.0 INTRODUCTION

- (i) In a letter dated 16TH September, 2016 REF KNA/PIC/CORR/2016/149 but received on 21ST September 2016, the clerk to the national assembly asked me to appear before the Public Investments Committee to adduce evidence on issues which allegedly relate to my conduct during my term as the General Manager, National Irrigation Board.
- (ii) I wish to observe that the Board operates under the Irrigation Act CAP 347 of the Laws of Kenya read together with the State Corporations Act CAP 446. As required by the Public Audit Act 2003(section 14) the Board has during my tenure presented all its records to the Auditor General for auditing purposes. The Auditor General has prepared Certificates that I believe have been presented to this August House.
- (iii) The board operated within its approved budgets and was transparent and accountable in all its dealings and more so in the implementation of Irrigation projects in the Country.
- (iv) That the National Irrigation Board implemented many irrigation projects in various parts of the country and specifically 15 projects were implemented in Turkana County.

- (v) That irrigation projects require constant maintenance of the infrastructure if they are to provide services as expected of them. This should be done at least once a year.

2.0 RESPONSES TO ISSUES RAISED IN THE SUMMONING LETTER

ISSUE No1

The allocation and management of funds for irrigation projects in the region by the NIB was characterized by massive impropriety, thereby causing many projects to stall for years;

RESPONSE

- (i) While I was the General Manager of the Board we commenced the implementation of 15 projects in Turkana County. A list of these projects is attached. (**Attachment 1a**). Out of the 15 projects only 3 projects are not complete; two of them are under implementation. Completion certificates for the projects as issued by the Engineer are attached. (**Attachment 1b**). The only project that has stalled is Katilu Drip Irrigation project and this is due to the disagreement between the Engineer and the Contractor on technical issues. The dispute could not be settled amicably leaving termination of the contract as the only option available. Therefore it is not true that many projects have stalled for years as alleged.

- (ii) Though most of the projects were completed as per the design and put under production, it is also true that completion of some of the projects took slightly longer periods beyond the contracted dates due to delayed payments to the contractors, arising from NIB not receiving exchequer disbursements on time and/or technical evaluation.

- (iii) As concerns the issue of impropriety, I wish to state that the NIB adhered to the approved procurement plans and laws as it was then provided and existed. Details of procurements for each of the projects is attached (**Attachment2**). In addition payments were only done as per the Engineers Certificates for measured works.

- (iv) The procurement records show that the NIB was transparent in the procurement process, which is the first step in project implementation.

- (v) I also visited a few of these projects and inspected them. The Engineers supervising the projects either directly or carrying out supervision in chief were all competent in the irrigation field and they did manage the contracts properly as per the specifications (see attachment No 4).

- (vi) It is worthy to note that the issue in the petition herein is made in very general terms to wit, "the allocation and management of funds for irrigation projects in the region by the NIB was characterized by massive impropriety....." The statement is not true. But it is too general. It is very difficult to give a very specific answer since every project had its budgets and was implemented as per its budgetary items.

ISSUE No2

Circumstances behind abandonment of works by contractors on the stalled irrigation projects in Turkana County and neighboring regions during your tenure;

RESPONSE

- (i) Only one project has stalled and this is Katilu Drip Irrigation project. The implementation stalled as a result of a dispute in the payment of certain items as claimed by the Contactor, The Engineer in charge could not approve the claims as requested by the contactor thus occasioning a dispute. Meetings were held to resolve the dispute but the Contactor became adamant. Thereafter the contactor abandoned site and efforts to get him back to site were all fruitless. When the issue was brought to my attention I realized that the Engineer was right in declining to approve the claims. I therefore directed the Contactor to go back to site failure of which the termination clause would be invoked. The Engineer eventually invoked the termination clause, in terms of the provisions of the stated contract. Details of the

procurement of this contract and the relevant contract information is attached. (**Attachment 3**)

- (ii) It is important to note that this project required the winning bidder to design, implement, train people and also plant and maintain a crop as would be agreed, for one season. Therefore the contractor is presumed to have understood the site and the required works before quoting a price.

Failure to undertake any of the works amounts to breach of the contract inclusive of the attempts to vary the contract Prices. Note is also made of the fact that most of the claims were catered for by the contractor in his contract.

ISSUE No3

Allocation of resources to non-existent projects, for instance, Katilu Drip Irrigation for which colossal amount of money was paid to contractors yet there is no such project on the ground;

RESPONSE

- (i) As shown above and in the attachments all the 15 projects exist and are on the ground.
- (ii) It is not true that there is no project known as Katilu Drip on the ground. As observed above there arose a dispute during project implementation. I believe once the termination of contract is

completed, a new contractor will be procured to complete the remaining works.

(iii) Honorable members may wish to note that the only works left are:-

- a) Pump installation.
- b) Installation of elevated tanks (Tanks are already supplied).
- c) Construction of drainage works.
- d) Land preparation and planting of a crop for one season.
- e) Training of a staff in use of the drip irrigation technology.

(iv) Honorable members may wish to note that by the time the Contact was terminated KShs 44.3m out of the Contact sum of KShs 61.4m had been paid. The remaining works may fit within the balance of the funds on the contract, as the terminated contractor had commenced works on some of the items.

ISSUE No4

Your unavailability to engage the petitioners and Turkana County legislators to address their concerns on implementation of projects in the county;

RESPONSE

(i) As far as I am aware the projects were identified by the beneficiaries directly or through the county office. The minutes of the implementation progress meetings that I had opportunity to go through were attended by the beneficiaries.

ATTACHME

1. LIST OF PROJECTS IMPLEMENTED BY NIB IN TURKANA COUNTY

- 1)** Kalemunyang Irrigation Project PH I
- 2)** Kabulokor Irrigation Project
- 3)** Kalemunyang Irrigation Project PH II
- 4)** Kolyoro Irrigation Project
- 5)** Loborot Irrigation Project
- 6)** Morulem Irrigation Project PH I
- 7)** Morulem Irrigation Project PH II
- 8)** Nadapal Irrigation Project
- 9)** Nadoto Irrigation Project
- 10)** Naoros Irrigation Project
- 11)** Naremit Irrigation Project
- 12)** Turkwel Irrigation Project
- 13)** Lokipetot Irrigation Project
- 14)** Nakamane Irrigation Project
- 15)** Katilu Drip





COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction Of Nakamane Irrigation Scheme
Contract No.	TUR/DIO-LOIMA/19/011-012
Name of Contractor	Makenu Engineering Co. Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 28,679,150.00
Variation	N/A
Revised Contract value	N/A
Starting Date	18 th January, 2012
Original Completion Date	18 th July, 2012
Extended Completion date	30 th June 2013

B. PROJECT COMPONENTS

- I. Conveyance canals
- II. Flood protection bund
- III. Fencing
- IV. Land Preparation
- V. Bush Clearing and De-stumping
- VI. Division Boxes

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as successfully completed.

D. PAYMENT STATUS

Contract Value	Kshs. 28,679,150.00
Value of Work done	Kshs. 28,233,162.50
Payment made to date (Including 50% of retention money)	Kshs. 26,821,504.38
50% of Retention due on	30 th June 2013

E. DEFECTS LIABILITY PERIOD

START DATE:	30 th June 2013
END DATE:	30 th December 2013

F. CERTIFICATION

Signed by:

Resident Engineer.....

Project Coordinator.....

Contractor.....

[Signature]
COORDINATOR
EXPANDED IRRIGATION PROGRAM
RIFT VALLEY REGION

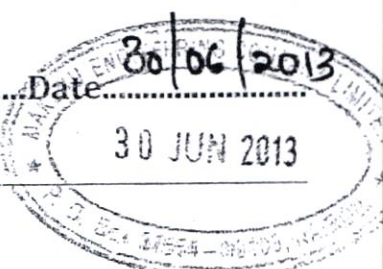
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30/06/2013

EXPANDED IRRIGATION PROGRAM
NATIONAL IRRIGATION BOARD
P. O. Box 30372-00100
NAIROBI

17/07/2013

Ken Koeh ~~*[Signature]*~~





COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Kolioro Irrigation Scheme
Contract No.	NIB/T/038/2012-2013
Name of Contractor	M/S Lumbe Agencies Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 64,719,250.00
Variation	N/A
Revised Contract value	N/A
Starting Date	11 th January 2013
Original Completion Date	11 th July 2013
Extended Completion date	17 th October 2013

B. PROJECT COMPONENTS

- I. Intake works
- II. Conveyance
- III. Hydraulic Structures
- IV. Drains
- V. Perimeter fence
- VI. Floods protection
- VII. Bush clearing and de-stumping
- VIII. Land preparation

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as successfully completed.

D. PAYMENT STATUS

Contract Value	Kshs. 64,719,250.00
Value of Work done	Kshs. 64,566,041.39
Payment made to date (Including 50% of retention money)	Kshs. 61,337,739.32
50% of Retention due on	17 th October 2014

E. DEFECTS LIABILITY PERIOD

START DATE:	17 th October 2013
END DATE:	17 th October 2014

F. CERTIFICATION

Signed by:

Resident Engineer *By R. Ogendo* **CO-ORDINATOR**
EXPANDED NATIONAL IRRIGATION
RIET VALLEY REGION
P. O. Box 470-2000
NAKURU **Date** *24/11/2014*

Project Coordinator *Eng. Charles M. Mwangi* **Date** *25/11/2014*

Contractor *VINCENTI Okumbi* **Date** *24/11/2014*

LUMBE AGENCIES LTD.
P.O. Box 674 50400,
BUSIA



NATIONAL
IRRIGATION
BOARD

SUBSTANTIAL COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Kalemnyang Phase II Irrigation Scheme
Contract No.	NIB/T/036/2013-2014
Name of Contractor	Lumbe Agencies Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 43,635,955.00
Variation	Kshs. 10,633,213.00
Revised Contract value	Kshs. 54,269,168.00
Starting Date	28th February 2014
Original Completion Date	28th February 2015
Extended Completion date	N/A

B. PROJECT COMPONENTS

- I. Intake works & Rehabilitation
- II. Conveyance
- III. Hydraulic structures
- IV. River bank protection

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as substantially completed with the following snag list;

i) Prime cost for supervision	346,287.00
ii) Defects Liability Period Maintenance	100,000.00
iii) Testing of Works, 14 days after Completion	100,000.00
ii) Provisional sum for capacity building of the farmers	500,000.00
iii) River bank protection	<u>2,988,350.00</u>
Total Amount	Kshs. <u>4,034,637.00</u>

D. PAYMENT STATUS

Revised Contract Value	Kshs. 54,269,168.00
Value of Work done	Kshs. 50,195,738.00
Payment made to date (including 50% of retention money)	Kshs. 47,685,951.10
50% of Retention due on	22 nd July 2016

E. DEFECTS LIABILITY PERIOD

START DATE:	22 nd July 2015
END DATE:	22 nd July 2016

F. CERTIFICATION

Signed by:

Resident Engineer Eng. R. Ogendo



Date 29/7/15

Project Coordinator Eng. Charles M. Muaya

Date 29/7/15

Contractor VINCENT Olumbi

Date 29/7/2015

LUMBE AGENCIES LTD.

P. O. Box 674 - 50400,
BUSIA. (K)



SUBSTANTIAL COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Nadoto Irrigation Scheme
Contract No.	NIB/T/124/2012-2013
Name of Contractor	Nyana Engineering Co. Ltd.
Name of Resident Engineer	Eng. Godfrey O. Nyanchama
Total Value of Contract	Kshs. 79,974,700.49
Variation	N/A
Revised Contract value	N/A
Starting Date	8 th August 2013
Original Completion Date	8 th August 2014
Extended Completion date	8 th May 2015

B. PROJECT COMPONENTS

- I. Orifice/ intake works
- II. Conveyance
- III. Hydraulic Structures
- IV. Drains

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as substantially completed with the following snag list;

i) Prime cost for supervision	201,029.00
ii) Construction of Resident Engineer's office	150,000.00
iii) Provisional sum for capacity building of the farmers	150,800.00
iv) Provisional sum to facilitate Environmental Audit	250,000.00
v) Provisional sum for land preparation, purchase of farm inputs and pesticides	3,000,000.00
vi) 9 No Drop structures	481,528.57
Total Amount	Kshs. 4,233,357.57

D. PAYMENT STATUS

Contract Value	Kshs. 79,974,700.49
Value of Work done	Kshs. 75,171,989.23
Payment made to date (Including 50% of retention money)	Kshs. 71,413,389.77
50% of Retention due on	4 th August 2016

E. DEFECTS LIABILITY PERIOD


START DATE:	4 th August 2015
END DATE:	4 th August 2016

F. CERTIFICATION

Signed by:

Resident Engineer  Date 17/08/2015

Irrigation Engineer- ENIP  Date 21/8/2015

Contractor  Date 17/08/2015

CHIEF ENGINEER-CONSTRUCTION
NATIONAL IRRIGATION BOARD
WESTERN REGION
P. O. Box 16948 - 20100
NAKURU

MYANA ENGINEERING CONSULTANTS
P. O. Box 60907 - 00100 NAIROBI
TEL: 311457



NATIONAL
IRRIGATION
BOARD

SUBSTANTIAL COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Naoros Irrigation Scheme
Contract No.	NIB/T/112/2012-2013
Name of Contractor	Hanamal Construction Ltd.
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 73,573,793.00
Variation	Kshs. 4,095,353.00
Revised Contract value	Kshs. 77,669,146.00
Starting Date	7th June 2013
Original Completion Date	7th June 2014
Extended Completion date	16th June 2015

B. PROJECT COMPONENTS

- I. Intake works
- II. Conveyance (Less farmers contribution)
- III. Hydraulic structures
- IV. Drains (Less farmers contribution)
- V. Perimeter fence
- VI. Bush clearing and destumping

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as substantially completed with the following snag list;

i) Prime cost for supervision	303,838.91
ii) Provisional sum for capacity building of the farmers	<u>500,000.00</u>
Total Amount	Kshs. <u>803,838.91</u>

D. PAYMENT STATUS

Revised Contract Value	Kshs. 77,669,146.00
Value of Work done	Kshs. 76,671,175.59
Payment made to date (Including 50% of retention money)	Kshs. 72,837,616.81
50% of Retention due on	11th June 2016

E. DEFECTS LIABILITY PERIOD

START DATE:	11th June 2015
END DATE:	11th June 2016

F. CERTIFICATION

Signed by: *[Signature]*
 Resident Engineer *Eg. R. Oge* **CHIEF ENGINEER-CONSTRUCTION**
NATIONAL IRRIGATION BOARD
WESTERN REGION Date: *11/6/15*
 P.O. Box 470-20100, NAKURU.

Project Coordinator *[Signature]* Date: *12/5/15*
For:

Contractor: **HANAMAL CONSTRUCTION LIMITED**
 P. O. Box 29173 - 00100, NAIROBI. *[Signature]* Date: *11/6/15*
 EMAIL: hanamal@kenya.com



COMPLETION CERTIFICATE

A. CONTRACT DATA	
Name of Project	Construction of Loborot Irrigation Scheme
Contract No.	NIB/T/039/2012-2013
Name of Contractor	Machine Center Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 64,593,995.80
Variation	N/A
Revised Contract value	N/A
Starting Date	14 th January 2013
Original Completion Date	14 th July 2013
Extended Completion date	16 th October 2013
B. PROJECT COMPONENTS	
I. Intake works	
II. Conveyance; main and secondary canals	
III. Hydraulic structures; division boxes, road crossings, drop structures	
C. COMPLETION STATUS	
In accordance with the contract agreement, the works were inspected and certified as successfully completed.	

D. PAYMENT STATUS

Contract Value	Kshs. 64,593,995.80
Value of Work done	Kshs. 64,294,287.90
Payment made to date (Including 50% of retention money)	Kshs. 61,079,522.06
50% of Retention due on	16 th October 2014

E. DEFECTS LIABILITY PERIOD

START DATE:	16 th October 2013
END DATE:	16 th October 2014

F. CERTIFICATION

Signed by:

Resident Engineer *Eng R. Ogenda*

[Signature]
COORDINATOR
EXPANDED IRRIGATION PROGRAM
RIFT VALLEY REGION
P. O. Box 470
NAKURU

Date: 11/12/2013

Project Coordinator

[Signature]
COORDINATOR
EXPANDED NATIONAL IRRIGATION PROGRAM
NATIONAL IRRIGATION BOARD
P. O. Box 30372 - 00100
NAIROBI

Date: 17/12/13

Contractor

[Signature]

MACHINE CENTER LIMITED
P. O. Box 67575 - 00200
NAIROBI
www.machine-center.com

Date: 16/11/13



NATIONAL
IRRIGATION
BOARD

DEFECTS LIABILITY CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Morulem Phase I Irrigation Scheme
Contract No.	NIB/T/049/2011-2012
Name of Contractor	Nyana Engineering Co. Ltd.
Name of Consultant/Engineer	Eng. Godfrey O. Nyanchama
Total Value of Contract	Kshs. 58,392,246.43
Variation	N/A
Revised Contract value	N/A
Starting Date	23rd July 2012
Original Completion Date	23rd January 2013
Extended Completion date	30th April 2013

B. PROJECT COMPONENTS

- I. Intake works
- II. Conveyance: Main and sub-main canal lining
- III. Gully control
- IV. Bush clearing and de-stumping
- V. Rehabilitation of hydraulic structures

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified following the expiry of the defects liability period on **30th December 2013.** The contractor has completed his obligations under the contract and all remedied defects.


D. PAYMENT STATUS


Contract Value	Kshs. 58,392,246.43
Value of Work Done	Kshs. 58,191,584.60
Payment To Date (Including 100% Retention)	Kshs. 58,191,584.60

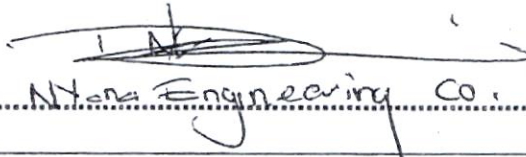
E. CERTIFICATION

Signed by:

CHIEF ENGINEER-CONSTRUCTION
NATIONAL IRRIGATION BOARD
WESTERN REGION
P. O. Box 16948 - 20100
NAKURU

Resident Engineer.....  Date 22/09/2015

Irrigation Engineer- ENIP.....  Date 16/10/2015

Contractor.....  Date 20/09/2015

NYANA ENGINEERING COMPANY LTD.
P. O. Box 80957 - 00200 NAIROBI
TEL: 311467



SUBSTANTIAL COMPLETION CERTIFICATE

A. CONTRACT DATA	
Name of Project	Construction of Morulem P II Irrigation Scheme
Contract No.	NIB/T/037/2013-2014
Name of Contractor	Toddy Civil Engineering Ltd.
Name of Resident Engineer	Eng. Godfrey O. Nyanchama
Total Value of Contract	Kshs. 47,576,870.00
Variation	N/A
Revised Contract value	N/A
Starting Date	22 nd January 2014
Original Completion Date	22 nd January 2015
Extended Completion date	N/A
B. PROJECT COMPONENTS	
I. Excavations for Conveyance Canals II. Division Boxes III. 7 No Road crossings IV. 50 No Drop structure V. Main drain	
C. COMPLETION STATUS	
In accordance with the contract agreement, the works were inspected and certified as substantially completed with the following snag list;	
i) Testing of Works, 14 days after Completion	100,000.00
ii) Defects Liability Period Maintenance	100,000.00

iii) Provisional sum for capacity building of the farmers	<u>500,000.00</u>
Total Amount	Kshs. <u>700,000.00</u>

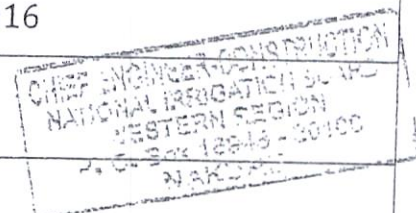
D. PAYMENT STATUS

Contract Value	Kshs. 47,576,870.00
Value of Work done	Kshs. 39,535,965.16
Payment made to date (Including 50% of retention money)	Kshs. 37,559,166.90
50% of Retention due on	28 th October 2016

E. DEFECTS LIABILITY PERIOD

START DATE:	28 th October 2015
END DATE:	28 th October 2016

F. CERTIFICATION



Signed by:

Resident Engineer.....*[Signature]*.....Date. 02/12/2015

Irrigation Engineer- ENIP.....*[Signature]*.....Date. 2/12/15

Contractor.....*[Signature]*.....Date. 02/12/2015





SUBSTANTIAL COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Nadapal Irrigation Scheme
Contract No.	NIB/T/071/2011-2012
Name of Contractor	Toshe Construction and Engineering Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 63,983,393.00
Variation	N/A
Revised Contract value	N/A
Starting Date	11th July 2012
Original Completion Date	11th January 2013
Extended Completion date	17th September 2013

B. PROJECT COMPONENTS

- I. Intake works
- II. Conveyance; main and secondary canals
- III. Hydraulic structures; division boxes, road crossings, drop structures
- IV. Main drain excavation
- V. Perimeter fence
- VI. Gully control
- VII. River bank protection
- VIII. Land preparation

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as successfully completed with the following snag list;

1. Perimeter fence	2,346,000.00
2. Floods protection	1,028,380.00
3. Land preparation	588,000.00
	<u>3,962,380.00</u>

D. PAYMENT STATUS

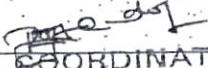
Contract Value	Kshs. 63,983,393.00
Value of Work done	Kshs. 52,343,260.00
Payment made to date (Including 50% of retention money)	Kshs. 49,726,097.00
50% of Retention due on	17th September 2014

E. DEFECTS LIABILITY PERIOD

START DATE:	17th September 2013
END DATE:	17th September 2014

F. CERTIFICATION

Signed by:


COORDINATOR
EXPANDED IRRIGATION PROGRAM
RIFT VALLEY REGION
P. O. Box 470-20100
NAKURU

Resident Engineer Eng. R. Ogina Date 16/12/2013

Project Coordinator Eng. Charles M. Nduya Date 4/12/14

Contractor.....Date.....



COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Kabulokor Irrigation Scheme
Contract No.	NIB/T/070/2011-2012
Name of Contractor	Lumbe Agencies Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 59,169,863.12
Variation	N/A
Revised Contract value	N/A
Starting Date	6 th July, 2012
Original Completion Date	6 th January 2013
Extended Completion date	31 st July 2013

B. PROJECT COMPONENTS

- I. Conveyance: Main and sub-main canal lining, excavation of secondary and tertiary canals
- II. Hydraulic structures: Main and secondary division boxes; road crossing
- III. Rehabilitation of intake structure, division boxes and road crossings
- IV. Drains: Main drain, field drains
- V. Perimeter fence
- VI. Floods protection; Gulley control, river bank protection
- VII. Land preparation
- VIII. Construction of basins

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as successfully completed.

D. PAYMENT STATUS

Contract Value	Kshs. 59,169,863.12
Value of Work done	Kshs. 58,907,119.96
Payment made to date (Including 50% of retention money)	Kshs. 55,961,763.96
50% of Retention due on	31 st July 2014

E. DEFECTS LIABILITY PERIOD

START DATE:	31 st July 2013
END DATE:	31 st July 2014

F. CERTIFICATION

Signed by:

Resident Engineer Eng. R. P. K. K. K. Date 18/08/2014
COORDINATOR
EXPANDED IRRIGATION PROGRAM
RIFT VALLEY REGION
P. O. Box 470 - 20100
NAKURU

Project Coordinator Eng. Charles M. Mwasya Date 20/8/2014

Contractor VINCENT OLUKE Date 08/08/2014
LUMBE AGENCIES LTD.
P. O. Box 674
BUSIA



COMPLETION CERTIFICATE

A. CONTRACT DATA

Name of Project	Construction of Kalemunyang Irrigation Scheme
Contract No.	NIB/T/112/2012-2013
Name of Contractor	Yellowhouse Ltd
Name of Resident Engineer	Eng. Raphael Ogendo
Total Value of Contract	Kshs. 92,990,077.40
Variation	N/A
Revised Contract value	N/A
Starting Date	15 th August 2012
Original Completion Date	15 th February 2013
Extended Completion date	N/A

B. PROJECT COMPONENTS

- I. Intake works
- II. Conveyance
- III. Hydraulic Structures
- IV. Drains
- V. Perimeter fence
- VI. Floods protection
- VII. Land preparation

C. COMPLETION STATUS

In accordance with the contract agreement, the works were inspected and certified as successfully completed.

D. PAYMENT STATUS

Contract Value	Kshs. 92,990,077.40
Value of Work done	Kshs. 92,411,920.00
Payment made to date (Including 50% of retention money)	Kshs. 87,791,324.00
50% of Retention due on	15 th February 2014

E. DEFECTS LIABILITY PERIOD

START DATE:	15 th February 2013
END DATE:	15 th February 2014

F. CERTIFICATION

Signed by: *Eng D. Ogendo*
Resident Engineer.....
COORDINATOR
EXPANDED IRRIGATION PROGRAM
RIFT VALLEY REGION
P.O. Box 470-20100
NAKURU
Date: 27/09/2013

Project Coordinator.....
EXPANDED NATIONAL IRRIGATION PROGRAM
NATIONAL IRRIGATION BOARD
P.O. Box 30372 - 00100
NAIROBI
Date: 27/09/2013

Contractor.....
YELLOW HOUSE LTD
Registered Building & Road Contractor
Structural Steel Fabricator
P.O. Box 27352-00100, NAIROBI
Call: 254-10-722-744
Email: info@yellowhouse.co.ke
Website: www.yellowhouse.co.ke
Date: 27/09/2013

C. W. Njoroge

ATTACHMENT 2

TURKANA COUNTY PROJECTS PROCUREMENT PROCESS

MENT 2

DETAILS ON PROJECTS PROCUREMENT CYCLES

1.0 KALEMNYANG' IRRIGATION PROJECT PHASE 1

1.1 Background

The project is in Loima constituency, it's about 60 km upstream of Lodwar town and the source of water is Turkwel River. The respond to the issues raised in the petition is as follows

1.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Kalemnyang' Irrigation Project, Turkana County Phase I

Tender No. NIB/T/112/2011-2012

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 7 th May 2012	Copy of procurement request and Tender Committee minutes and Section 29 and Section 73 of the PPDA 2005 (Annex 4-1)
Invitation to tender	Letter of Invitation to tender dated 25 th May 2012 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy of Letter of Invitation (Annex 4-2)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 15 th June 2012	Copy of minutes of tender opening (Annex 4-3)
Date of award	Tender Committee in its meeting on 28 th June 2012 awarded to the lowest evaluated tenderer/bidder to Yellow House Ltd for a tender sum Kes 92,990,077.40	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-4)
Notification of tender award	The Board notified Yellow House Ltd of the award The 20 th July 2012	Copy of notification of award letter (Annex 4-5)
Contract duration	6 months	
Date of commencement of works	15 th August 2012	

Original completion date	15 th February 2013	Attached Completion certificate issued on 27 th September 2014(Annex 4-6)
Project status	Completed and handed over to the community	Minutes of Inspection

2.0 KALEMNYANG' IRRIGATION PROJECT PHASE II

2.1 Background

The project is in Loima constituency, it's about 60 km upstream of Lodwar town and the source of water is Turkwel River. The respond to the issues raised in the petition is as follows

2.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Kalemnyang' Irrigation Project, Turkana County Phase II

Tender No. NIB/T/036/2013-2014

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 and Section 50 of the PPDA 2005 in its meeting on 19 th September 2013	Copy of the Tender Committee minutes and Section 29 and Section 73 of the PPDA 2005 (Annex 4-7)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th September 2013 in accordance to Section 29 (1) and Section 50 of the PPDA 2005 and	Copy of Letter of Invitation (Annex 4-8)

	Addendum No.1 for extension of bid submission date on 8 th February 2012	
Date of opening of Tenders/Bids	Tenders/Bids were opened on 15 th October 2013	Copy of minutes of tender opening (Annex 4-9)
Date of award	Tender Committee in its meeting on 28 th November 2013 awarded to the lowest evaluated tenderer/bidder to Lumbe Agencies Ltd for a tender sum Kes 43,635,955.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4 -10)
Notification of tender award	The Board notified Lumbe Agencies Ltd of the award The 24 th January 2014	Copy of notification of award letter (Annex 4-11)
Contract duration	12 months	
Date of commencement of works	28 th February 2014	
Original completion date	28 th February 2015	Attached substantial Completion certificate issued on 24 th July 2015 (Annex 4-12)
Project status	Completed and handed over to the community	Substantial Completion certificate

3.0 LOBOROT IRRIGATION SCHEME

3.1 Background

The project is in Loima constituency, Turkana County. Water abstraction is from Turkwel River about 15 km upstream of Lodwar town. The area under irrigation by 400 acres benefitting 300 farmers.

3.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Loborot Irrigation Scheme Development Project, Turkana County

Tender No. NIB/T/039/2012-2013

Item	Description	Supporting documents
Background of Project		
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 26 th September 2012	Copy of procurement request and Tender Committee minutes and Section 29 and Section 73 of the PPDA 2005 (Annex 4-13)
Invitation to tender	Letter of Invitation to tender dated 23 rd October 2012 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy of Letter of Invitation to tender (Annex 4-14)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 2 nd November 2012	Copy of minutes of tender opening (Annex 4-15)
Date of award	Tender Committee in its meeting on 30 th November 2012 awarded to the lowest evaluated tenderer/bidder to Machine Centre Limited for a tender sum Kes 64,593,955.80	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-16)
Notification of tender award	The Board notified Machine Centre Limited of the Award on 10 th December 2012	Copy of notification of award letter (Annex 4-17)
Contract duration	6 months	
Date of commencement of works	14 th January 2013	
Expected completion date	14 th July 2013	Attached Completion certificate issued on 11 th December 2013 (Annex 4-18)
Project status	Completed and handed over to the community	Minutes

4.0 NADAPAL IRRIGATION PROJECT

4.1 Background

The project is in Loima constituency Turkana County, it's about 13 km upstream of Lodwar town and source of water is Turkwel River. The Board undertook rehabilitation of canals work in the scheme and expanded the area under irrigation to 5000 acres benefitting 664 farmers

4.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Nadapal Irrigation Project, Turkana County

Tender No. NIB/T/071/2011-2012

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 (1) and Section 50 of the PPDA 2005 in its meeting on 13 th January 2012	Copy of procurement request and Tender Committee minutes, Copy of Section 29 and Section 50 of the PPDA 2005 (Annex 4-19)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th January 2012 in accordance to Section 29 (1) and Section 50 of the PPDA 2005. Addendum No.01 for extension of submission deadline dated 8 th February 2012	Copy of advertisement and copy of Addendum No. 01 advertisement (Annex 4-20)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 21 st February 2012	Copy of minutes of tender opening (Annex 4-21)
Date of award	Tender Committee in its meeting on 10 th May 2012 awarded to the lowest evaluated tenderer/bidder to Toshe Construction and Equipment Ltd for a tender sum Kes 63,983,393.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-22)

Notification of tender award	The board notified Toshe Construction and Equipment Ltd of the award on 23 rd May 2012	Copy of notification of award letter (Annex 4-23)
Contract duration	6 months	
Date of commencement of works	11 th July 2012	
Expected completion date	11 th January 2013	
Project status	completed	Completion certificate (Annex 4-24)

5.0 KABULOKOR IRRIGATION PROJECT

5.1. Background

Kabulokor Irrigation Scheme is situated in Turkwel Division, Loima District of Turkana County. The scheme is approximately 55 km from Lodwar town. The present area under construction is 500 acres benefitting 750 farmers. The respond to the issues raised in the petition is as follows;

5.2 Procurement procedures

Tender Name: Tender for Construction Works for Kabulokor Irrigation Project, Turkana County

Tender No. NIB/T/071/2011-2012

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 and Section 50 of the PPDA 2005 in its meeting on 13 th January 2012	Copy of the Tender Committee minutes and Section 29 and Section 50 of the PPDA 2005 (Annex 4-25)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th January 2012 in accordance to	Copy of advertisement and Addendum No.01 for extension of bid submission deadline (Annex 4- 26)

	Section 29 and Section 50 of the PPDA 2005 and Addendum No.1 for extension of bid submission date on 8 th February 2012	
Date of opening of Tenders/Bids	Tenders/Bids were opened on 21 st February 2012	Copy of minutes of tender opening (Annex 4- 27)
Date of award	Tender Committee in its meeting on 3 rd May 2012 awarded to the lowest evaluated tenderer/bidder to Lumbe Agencies Ltd for a tender sum Kes 59,169,863.12	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-28)
Notification of tender award	The Board notified Lumbe Agencies Ltd of the Award The 17 th May 2012	Copy of notification of award letter (Annex 4- 29)
Contract duration	6 months	
Date of commencement of works	6 th July 2012	
Expected completion date	6 th January 2013	Extended completion date 31 st July 2013
Project status	Completed and handed over to the community	Attached Completion certificate issued on 18 ^h August 2014(Annex 4- 30)

6.0 KOLYORO IRRIGATION PROJECT

6.1 Background

Kolyoro Irrigation Scheme is situated in Turkwel Division in Loima District. The scheme is approximately 30 km from Lodwar town and source of the Turkwel River. Currently the scheme has 400 acres under irrigation benefitting 400 farmers. The respond to the issues raised in the petition is as follows

6.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Kolyoro Irrigation Scheme Development Project, Turkana County

Tender No. NIB/T/038/2012-2013

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 26 th September 2012	Copy of the Tender Committee minutes and Section 29 and Section 73 of the PPDA 2005 (Annex 4-31)
Invitation to tender	Letter of Invitation to tender dated 5 th October 2012 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy of Letter of Invitation to tender (Annex 4-32)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 2 nd November 2012	Copy of minutes of tender opening (Annex 4-33)
Date of award	Tender Committee in its meeting on 30 th November 2012 awarded to the lowest evaluated tenderer/bidder to Lumbe Agencies Ltd for a tender sum Kes 64,719,250.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-34)
Notification of tender award	The Board notified Lumbe Agencies Ltd of the Award The 10 th December 2012	Copy of notification of award letter (Annex 4-35)
Contract duration	6 months	
Date of commencement of works	11 th January 2013	
Expected completion date	11 th July 2013	Attached Defect Liability Certificate issued on 24 th November 2014(Annex 4-36)
Project status	Completed and handed over to the community	Minutes

7.0 MORULEM IRRIGATION PROJECT PHASE I

7.1 Background

The Morulem Irrigation Project is situated in Turkana East constituency in Turkana County. The project was implemented in two phases. Phase 1 was implemented from 2012 to 2013 and phase 2 of the project from 2013 to 2015. The source of water is Kerio River which is seasonal. The total area under irrigation is 1000 acres benefitting 400 farmers. The response to the issues raised in the petition is as follows

A) MORULEM IRRIGATION SCHEME PHASE ONE

The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated;

7.2 Procurement Procedures

Tender Name: Tender for Construction of Morulem Irrigation Scheme in Turkana East District, Turkana County Phase 1

Tender No: NIB/T/049/2011-12

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 and Section 50 of the PPDA 2005 in its meeting on 29 th September 2011	Copy of the Tender Committee minutes and Section 29 and Section 50 of the PPDA 2005 (Annex 4-37)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th January 2012 in accordance to Section 29 (1) and Section 50 of the PPDA 2005 and	Copy of advertisement and Addendum No.01 for extension of bid submission deadline (Annex 4-38)

	Addendum No.1 for extension of bid submission date on 8 th February 2012	
Date of opening of Tenders/Bids	Tenders/Bids were opened on 21 st February 2012	Copy of minutes of tender opening (Annex 4-39)
Date of award	Tender Committee in its meeting on 3 rd May 2012 awarded to the lowest evaluated tenderer/bidder to Nyana Engineering Company for a tender sum Kes 58,024,199.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-40)
Notification of tender award	The Board notified Nyana Engineering Company of the Award The 17 th May 2012	Copy of notification of award letter (Annex 4-41)
Contract duration	6 months	
Date of commencement of works	23 rd July 2012	
Expected completion date	23 rd January 2013	Attached Defect liability Completion certificate issued on 23 rd September 2015(Annex 4-42)
Project status	Completed and handed over to the community	Minutes of site meeting and inspection (Annex 4-43)

8.0 MORULEM IRRIGATION SCHEME PHASE TWO

8.1 Background

The Morulem Irrigation Project is situated in Turkana East constituency in Turkana County. The project was implemented in two phases. Phase 1 was implemented from 2012 to 2013 and phase 2 of the project from 2013 to 2015. The source of water is Kerio River which is seasonal. The total area under irrigation is 1000 acres benefitting 400 farmers. The response to the issues raised in the petition is as follows

8.2 Procurement Procedures

The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated

Tender Name: Tender for Construction Works of the Morulem Irrigation Scheme Development Project, Phase II

Tender No: NIB/T/037/2013-2014

Item	Description	Supporting documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 and Section 50 of the PPDA 2005 in its meeting on 19 th September 2013	Copy of the tender committee minutes and copy of Section 29 and Section 50 of the PPDA 2005 (Annex 4-44)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th September 2013 in accordance to Section 29 (1) and Section 50 of the PPDA 2005	Copy of advertisement and section (Annex 4-45)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 15 th October 2013	Copy of minutes of tender opening (Annex 4-46)
Date of award	Tender Committee in its meeting on 18 th November 2013 awarded to the lowest evaluated tenderer/bidder to Toddy Civil Engineering Company Ltd at contract sum of Kes 47,576,870.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-47)
Notification of tender award	The Board notified Toddy Civil Engineering Company Ltd of the Award The 11 th December 2013	Copy of notification of award letter (Annex 4-48)
Contract duration	12 Months	

Date of commencement of works	22 nd January 2014	
Expected completion date	22 nd January 2015	Completion certificate (Annex 4-49)
Project status	completed	Completion certificate (Annex 4-50)

9.0 NADOTO IRRIGATION PROJECT

9.1 Background

Nadoto irrigation project is in Turkana Central constituency, Turkana County. It is on the lower reaches on the right bank of Turkwel River about 70 km downstream of Lodwar town. After the intervention of the Board, the total area under irrigation is 1500 acres benefitting 300 farmers.

9.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Nadoto Irrigation Scheme Development Project, Turkana County

Tender No: NIB/T/124/2012-2013

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 20 th March 2013	Copy of the Tender Committee minutes and copy of Section 29 and Section 73 of the PPDA 2005 (Annex 4-50)
Invitation to tender	Letter of Invitation to tender dated 27 th May 2013 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy Letter of Invitation to tender (Annex 4-52)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 17 th June 2013	Copy of minutes of tender opening (Annex 4-53)
Date of award	Tender Committee in its meeting on 8 th July 2013 awarded to the lowest	Copy of extract of Tender Committee meeting that

	evaluated tenderer/bidder to Nyana Engineering Company for a tender sum Kes 79,974,700.49	approved the tender award (Annex 4-54)
Notification of tender award	The board notified Nyana Engineering Company of the Award on 9 th July 2013	Copy of notification of award letter (Annex 4-55)
Contract duration	12 months	
Date of commencement of works	8 th August 2013	
Expected completion date	8 th August 2014	
Project status	Completed	Substantial completion certificate (Annex 4-56)

10.0 NAOROS IRRIGATION PROJECT

10.1 Background

The project is in Turkana Central constituency, Turkana County and the source of is Turkwel River about 70 km downstream from Lodwar town. After the intervention of the Board, the total area under irrigation is 275 acres benefitting 200 farmers. The respond to the issues raised in the petition is as follows

10.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Naoros Irrigation Development Project, Turkana County

Tender No. NIB/T/112/2012-2013

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 14 th March 2013	Copy of the tender committee minutes and Section 29 and Section 73 of the PPDA 2005 (Annex 4-57)

Invitation to tender	Letter of Invitation to tender dated 12 th April 2013 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy of Letter of Invitation (Annex 4-58)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 25 th April 2013	Copy of minutes of tender opening (Annex 4-59)
Date of award	Tender Committee in its meeting on 3 rd May 2013 awarded to the lowest evaluated tenderer/bidder to Hanamal Construction Ltd for a tender sum of Kes 73,573,793.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-60)
Notification of tender award	The board notified Hanamal Construction Ltd of the Award The 10 th May 2013	Copy of notification of award letter (Annex 4-61)
Contract duration	12 months	
Date of commencement of works	7 th June 2013	
Expected completion date	7 th June 2014	
Project status	Complete	Completion certificate (Annex 4-62)

11.0 NAREMIT IRRIGATION PROJECT

11.1 Background

Naremit Irrigation Project is situated in Loima constituency in Turkana County. It is located 65 km from Lodwar town and source of water is Turkwel River. After the intervention of the Board, the total area under irrigation is 500 acres benefitting 250 farmers. The respond to the issues raised in the petition is as follows

11.2 Procurement Procedures

The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated

Tender Name: Tender for Construction Works of Neremit Irrigation Scheme Development project, Turkana County

Tender No: NIB/T/035/2013-2014

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through Opened tender in accordance to Section 29 (1) and Section 50 of the PPDA 2005 in its meeting on 19 th September 2013	Copy of the Tender Committee minutes and Copy of Section 29(1) and Section 50 of the PPDA 2005 (Annex 4-63)
Invitation to tender	The invitation was published in the local dailies, "The Daily Nation", "The Standard" and "The Star" on 20 th September 2013 in accordance to Section 29 (1) and Section 50 of the PPDA 2005	Copy of advertisement (Annex 4-64) and section
Date of opening of Tenders/Bids	Tenders/Bids were opened on 15 th October 2013	Copy of minutes of tender opening (Annex 4-65)
Date of award	Tender Committee in its meeting 18 th November 2013 awarded to the lowest evaluated tenderer/bidder to Nakuru Machinery Services Limited for a tender sum Kes 48,356,440.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-66)
Notification of tender award	The board notified Nakuru Machinery Services Limited of the Award he 24 th January 2014	Copy of notification of award letter (Annex 4-67)
Contract duration	12 months	
Date of commencement of works	18 th February 2014	

Expected completion date	18 th February 2015	
Project status	80 % complete	Progress report (Annex 4-68)

12.0 TURKWEL IRRIGATION PROJECT

12.1 Background

Turkwel Irrigation Scheme is situated in Loima constituency in Turkana County. The scheme is about 60 km from Lodwar town and source of water is Turkwel River. After intervention, the area under irrigation was increased to 350 acres benefitting 400 farmers. The respond to the issues raised in the petition is as follows

The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated

12.2 Procurement Procedures

Tender Name: Tender for Construction Works of the Turkwel Irrigation Scheme Development Project, Turkana County,

Tender No. NIB/T/109/2012-2013

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to Section 29 and Section 73 of the PPDA 2005 in its meeting on 8 th February 2013	Copy of the tender committee minutes, copy of Section 29 and Section 73 of the PPDA 2005 (Annex 4-69)
Invitation to tender	Letter of Invitation to tender dated 27 th May 2013 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy Letter of Invitation to tender (Annex 4-70)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 17 th June 2013	Copy of minutes of tender opening (Annex 4-71)
Date of award	Tender Committee in its meeting on 8 th July 2013 awarded to the lowest	Copy of extract of Tender Committee meeting that

	evaluated tenderer/bidder to Tosha General Construction Limited for a tender sum Kes 70,854,410.00	approved the tender award (Annex 4-72)
Notification of tender award	The board notified Tosha General Construction Limited of the Award the 9 th July 2013	Copy of notification of award letter (Annex 4-73)
Contract duration	12 months	
Date of commencement of works	30 th July 2013	
Expected completion date	30 th July 2014	
Project status	Complete	Substantial Completion Certificate (Annex 4-74)

13.0 LOKIPETOT IRRIGATION PROJECT

13.1 Background

Lokipetot Irrigation Scheme is situated in Turkana Central Constituency in Turkana County. After intervention, 150 acres benefitting 200 farmers will be put under irrigation. The respond to the issues raised in the petition is as follows

13.2 Procurement Procedures

The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated

Tender Name: Tender for Construction Works of the Lokipetot Irrigation Scheme Development Project, Turkana County

Tender No. NIB/T/134/2013-2014

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	Tender Committee approved procurement request, tender document and procurement method through restricted tendering in accordance to	Copy of the tender committee minutes and Copy of Section 29 and Section 73 of the PPDA 2005 (Annex 4-75)

	Section 29 and Section 73 of the PPDA 2005 in its meeting on 3 rd March 2014	
Invitation to tender	Letter of Invitation to tender dated 8 th August 2014 in accordance to Section 29 and Section 73 of the PPDA 2005	Copy of invitation of tenderers (Annex 4-76)
Date of opening of Tenders/Bids	Tenders/Bids were opened on 22 nd August 2014	Copy of minutes of tender opening (Annex 4-77)
Date of award	Tender Committee in its meeting on 27 th February 2015 awarded to the lowest evaluated tenderer/bidder to Turkana Salama Limited for a tender sum Kes 59,826,117.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-78)
Notification of tender award	The board notified Turkana Salama Limited of the award on 24 th March 2015	Copy of notification of award letter (Annex 4-79)
Contract duration	12 months	
Date of commencement of works	11 th May 2015	
Expected completion date	11 th May 2016	
Project status	On progress (65.86%)	Payment Certificate (Annex 4-80)

14.0 NAKAMANE IRRIGATION PROJECT

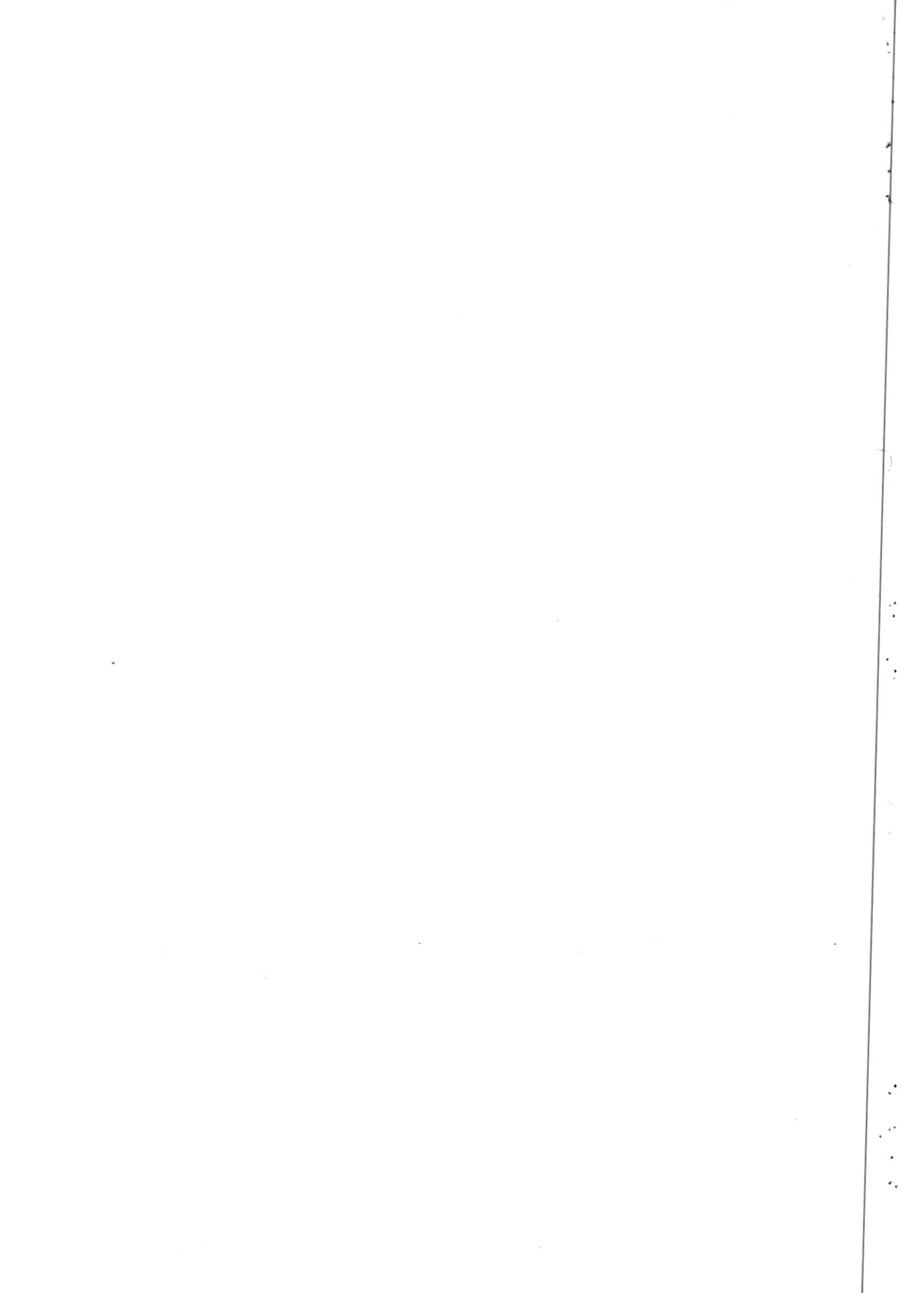
14.1 Background

Nakamane Irrigation Scheme is situated in Loima Constituency in Turkana County. After intervention, 600 acres benefitting 300 farmers were put under irrigation. The respond to the issues raised in the petition is as follows

14.2 Procurement Procedures

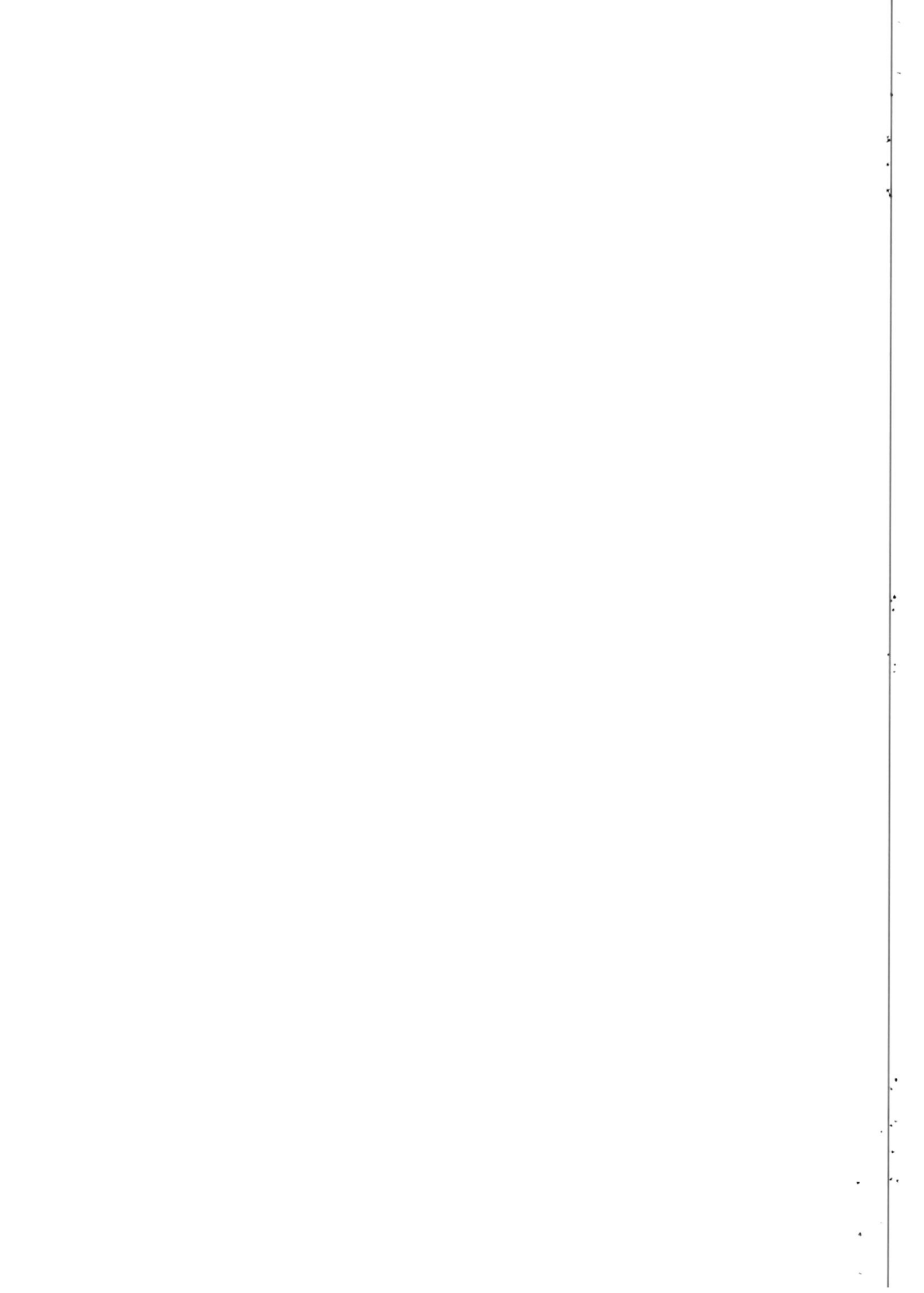
The table below summarizes the process followed in procuring the project as per the procurement act of 2005 and no procedures were violated

Item	Description	Supporting Documents
Approval for procurement request, Tender document and procurement method	The contract was procured by the Tender Committee's District Commissioners Office Loima	
Date of opening of Tenders/Bids	Tenders/Bids were opened on 3rd November 2011	Copy of minutes of tender opening (Annex 4-81)
Date of award	Tender Committee Loima District in its meeting on 18 th November 2011 awarded to the contract to Makenu Engineering Limited at tender sum of Kes 28,679,150.00	Copy of extract of Tender Committee meeting that approved the tender award (Annex 4-82)
Notification of tender award	The District Commissioner Loima notified Makenu Engineering Limited of the Award the 24 th November 2011	Copy of notification of award letter (Annex 4-83)
Contract duration	6 months	
Date of commencement of works	18 th January 2012	
Expected completion date	18 th July 2012	
Project status	complete	Completion certificate (Annex 4-84)

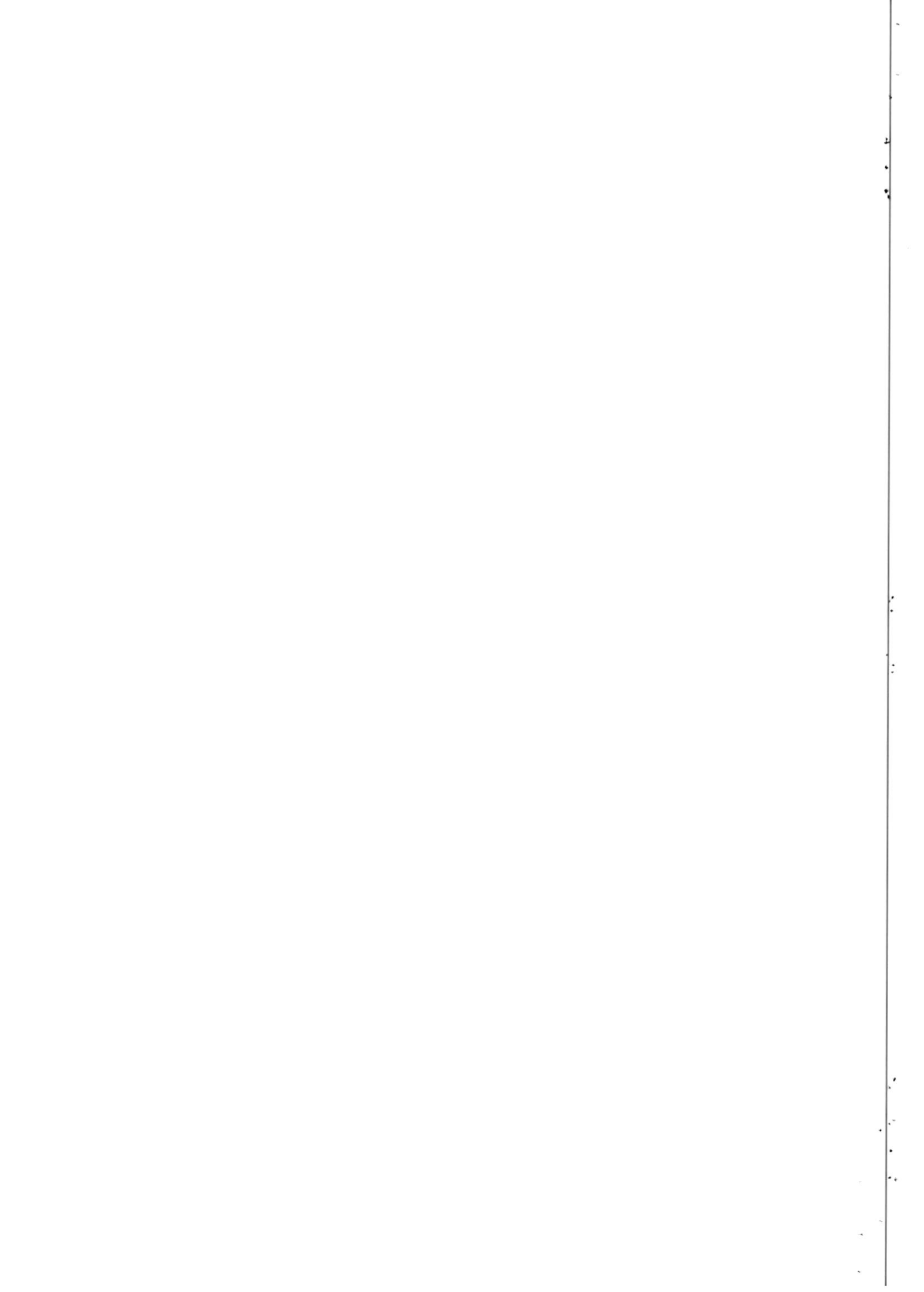


REPORT OF TECHNICAL COMMITTEE SET BY NIB TO ASSESS
THE STATUS OF SCHEMES AFTER THE PETITION.

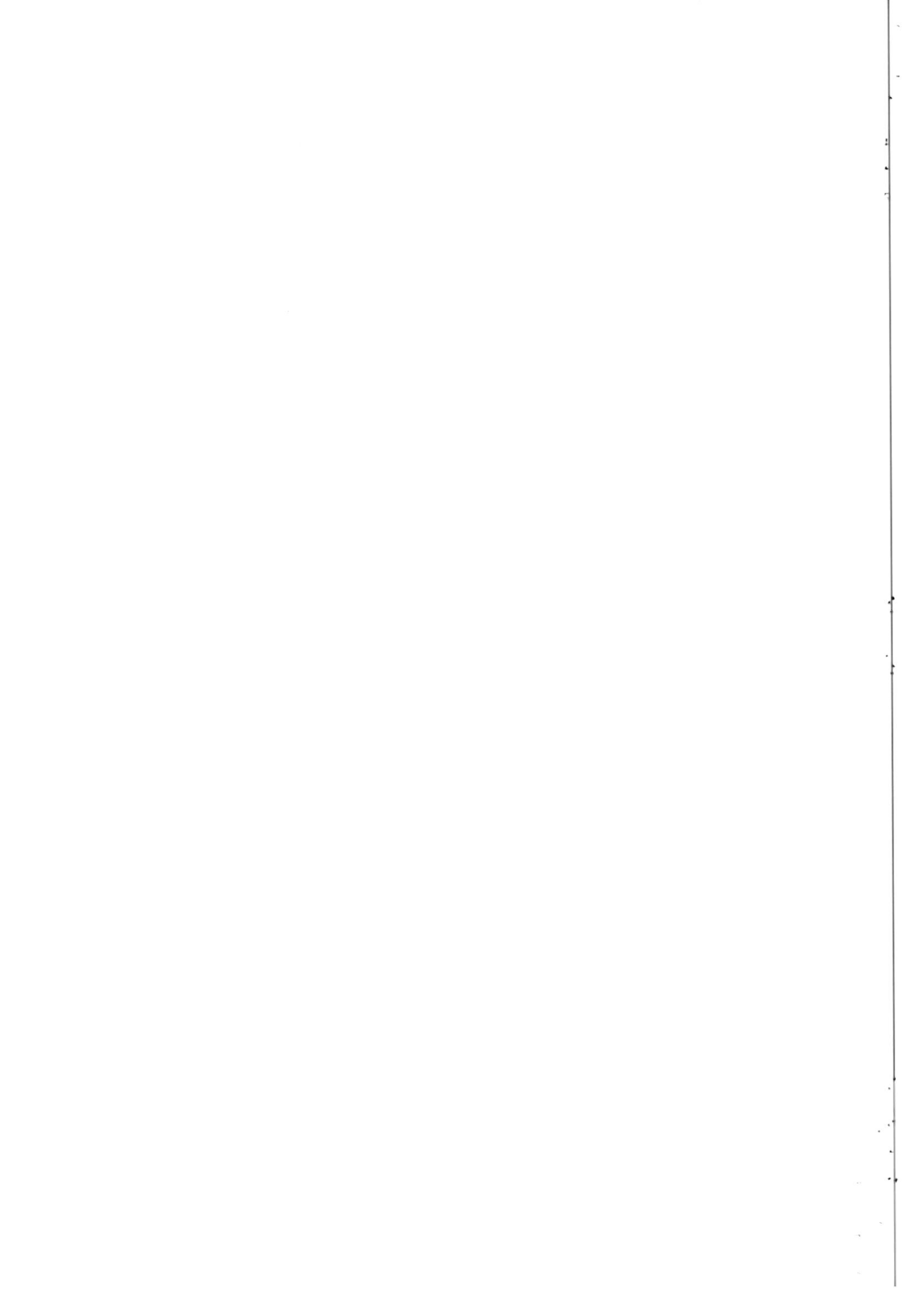
PROJECT NAME	CHALLENGES	INTERVENTIONS	ESTIMATED COST
1. LOKOJOBWO	<ul style="list-style-type: none"> Destruction of 4 No main road Crossings- through erosion of the wing walls. 	Repair of the main road crossings by <ul style="list-style-type: none"> Extending wing walls by 3 m by 4 m upstream and downstream of 5m by 3 m respectively by stone pitching. 	15,000,000.00
	<ul style="list-style-type: none"> The Main Canal wall has collapsed 	<ul style="list-style-type: none"> Reconstructing the main canal with reinforcement preferably BRC 	
	<ul style="list-style-type: none"> 3 No secondary canal road crossings eroded and cracked 	Repair of the secondary road crossings by <ul style="list-style-type: none"> Extending wing walls by 1.5 m by 2 m upstream and downstream of 3m by 1.5 m respectively by stone pitching. 	
	<ul style="list-style-type: none"> 4 No Division box gates destroyed by floods 	<ul style="list-style-type: none"> Repairing of the 4 No.division boxes 	
	<ul style="list-style-type: none"> 5000m of Flood protection structure destroyed by floods 	<ul style="list-style-type: none"> Repairing the bridged sections approximately 5000 m with properly selected materials Desilting and grading the waterway 	
2. KOLIORO			
	<ul style="list-style-type: none"> 4 sections of the main canal approx 150 m bridged 	<ul style="list-style-type: none"> Repair 4 sections of the main canal approx 150 m bridged by using Reinforced concrete (BRC) 	4,000,000.00
	<ul style="list-style-type: none"> 3No canal road crossings bridged 	<ul style="list-style-type: none"> Reinstatement of the structures 	



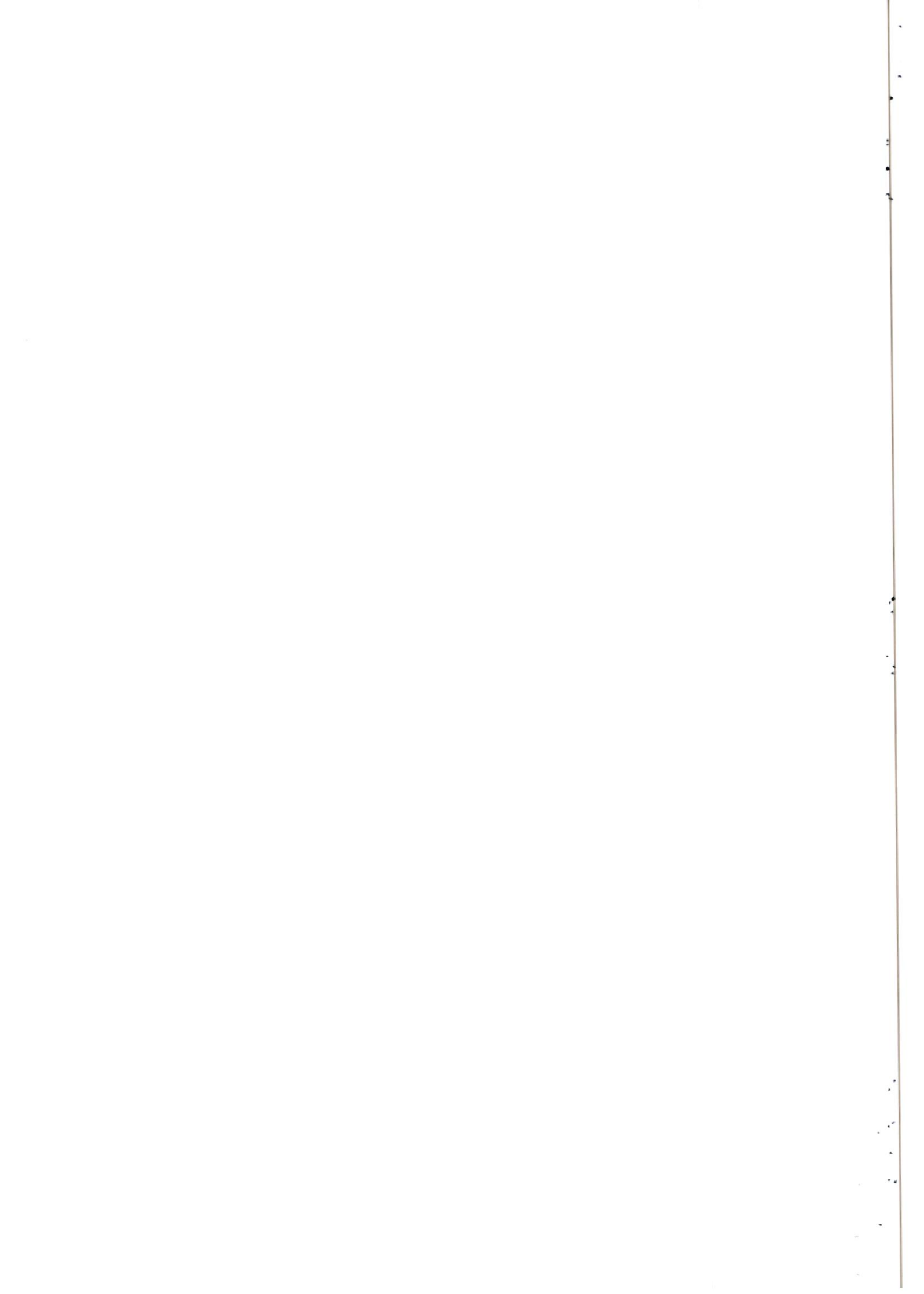
	<ul style="list-style-type: none"> • Destruction of 1 No. e Main gate measuring 800 mm x 900mm x 4mm complete with spindle 	<ul style="list-style-type: none"> • The main gate requires to be replaced 	
	<ul style="list-style-type: none"> • Destruction of 3 No. secondary gate measuring 800 mm x 900mm x 4mm by floods 	<ul style="list-style-type: none"> • The secondary gate requires to be replaced 	
	<ul style="list-style-type: none"> • Destruction of 100 mm length of flood protection structure by flood The gate requires to be replaced 	<ul style="list-style-type: none"> • Reinstatement of the bridged section and strengthen the structure with appropriate materials. 	
	<ul style="list-style-type: none"> • 2 No. Farm gates destroyed by floods 	<ul style="list-style-type: none"> • The 2 No farm gates need to be replaced 	
	<ul style="list-style-type: none"> • 		
	<p>OTHER CHALLENGES-</p> <ul style="list-style-type: none"> • Non payment of casual laborers hired working with the contactors • Crop pest and Scheme management • 	<ul style="list-style-type: none"> • The contractor to clear the bills and continue with the contract immediately • Training on - Scheme management, Water Management By-laws 	<p>58,000/= -casuals 78,000/= - watchmen</p>
	<ul style="list-style-type: none"> • Protection of intake works was not done by the contractor 	<ul style="list-style-type: none"> • Protection of the intake works using gabion boxes 	
3. NADAPAL	<ul style="list-style-type: none"> • Destruction of 40 m secondary canals by floods 	<ul style="list-style-type: none"> • Reinstatement of the structure 	5,000,000.00
	<ul style="list-style-type: none"> • Destruction of Flood protection structure by floods 	<ul style="list-style-type: none"> • Reinstatement of the structure 	
	<ul style="list-style-type: none"> • Destruction of 100 m perimeter fence by floods 	<ul style="list-style-type: none"> • Reinstatement of the structure 	
	<ul style="list-style-type: none"> • Destruction of 2 canal road crossing 	<ul style="list-style-type: none"> • Reinstatement of the structure 	
	<ul style="list-style-type: none"> • 50 acres of land not 	<ul style="list-style-type: none"> • Construction of 1000 m of 	



		commanded after the area was Cut off by after the main drain was bridged by floods	secondary canal to assist in the irrigation of the 50 acres	
		<ul style="list-style-type: none"> OTHER CHALLENGES-The May crop was invaded by locusts 	Training on crop husbandry	
4. NAREMIT		<ul style="list-style-type: none"> Delay by the contractor. The contractor has been in the site for 28 months against the of the 12 month period 	<ul style="list-style-type: none"> The reason for delay should established and acted on. 	
		<ul style="list-style-type: none"> Main Canal has been excavated and 1250 m lined but 2630mhas been excavated but the side slopes and leveling have not been accomplished 	The contractor should commence the works	
5. KALEMNYANG Rehabilitation and Expansion	II-	<ul style="list-style-type: none"> The river bank has not been protected 		8,000,000.00
		<ul style="list-style-type: none"> The main canal is silted up 		
		<ul style="list-style-type: none"> Secondary canal was not completed 		
		<p>The contractor has not completed the following</p> <ol style="list-style-type: none"> Lining of 50 m secondary 2 canal Construction of 3 No. main division boxes Construction of 11 No. secondary division boxes Rehabilitation of the intake works River bank protection structure along Kotela block 		



	•		
	•		
6. KABULOKOR	<ul style="list-style-type: none"> The intake works- the river bend at the intake pointb was eroded leaving the invert level of the intake 0.8 above the river bed level 		15,000,000.00
	<ul style="list-style-type: none"> Flood protection bunds 	Rehabilitation	
	<ul style="list-style-type: none"> The opposite bank of the river eroded more thus the water moved to the opposite bank off the intake 	Construct a gabion weir across the river downstream of the intake	
	•		
7. TURKWEL	<ul style="list-style-type: none"> Dam reservoir heavily silted and bushy 	Bush Clearing	16,000,000.00
	<ul style="list-style-type: none"> Man canal lining destroyed by floods 1500m 		
	<ul style="list-style-type: none"> Flood Protection bund destroyed by floods 500 m 		
	<ul style="list-style-type: none"> Lined canal heavily silted 		
	<ul style="list-style-type: none"> Dam wall bridged 		
8. NAKAMANE	<ul style="list-style-type: none"> Erosion of the intake works 		20,000,000.00
	<ul style="list-style-type: none"> Destruction of 2 No road crossings 		
	<ul style="list-style-type: none"> Siltation of canal 		
	<ul style="list-style-type: none"> Destruction of main canal by floods 		
	<ul style="list-style-type: none"> REQUEST- LINING OF THE 2250 m of canal. 		
16. LOBOROT/NABUIN	<ul style="list-style-type: none"> Heavy siltation of the intake 	Desilt the intake	32,000,000.00
	<ul style="list-style-type: none"> Silted canal measuring 640m 	Desilt the canals	
	<ul style="list-style-type: none"> 1310m primary canal silted 	Desilt the canal	

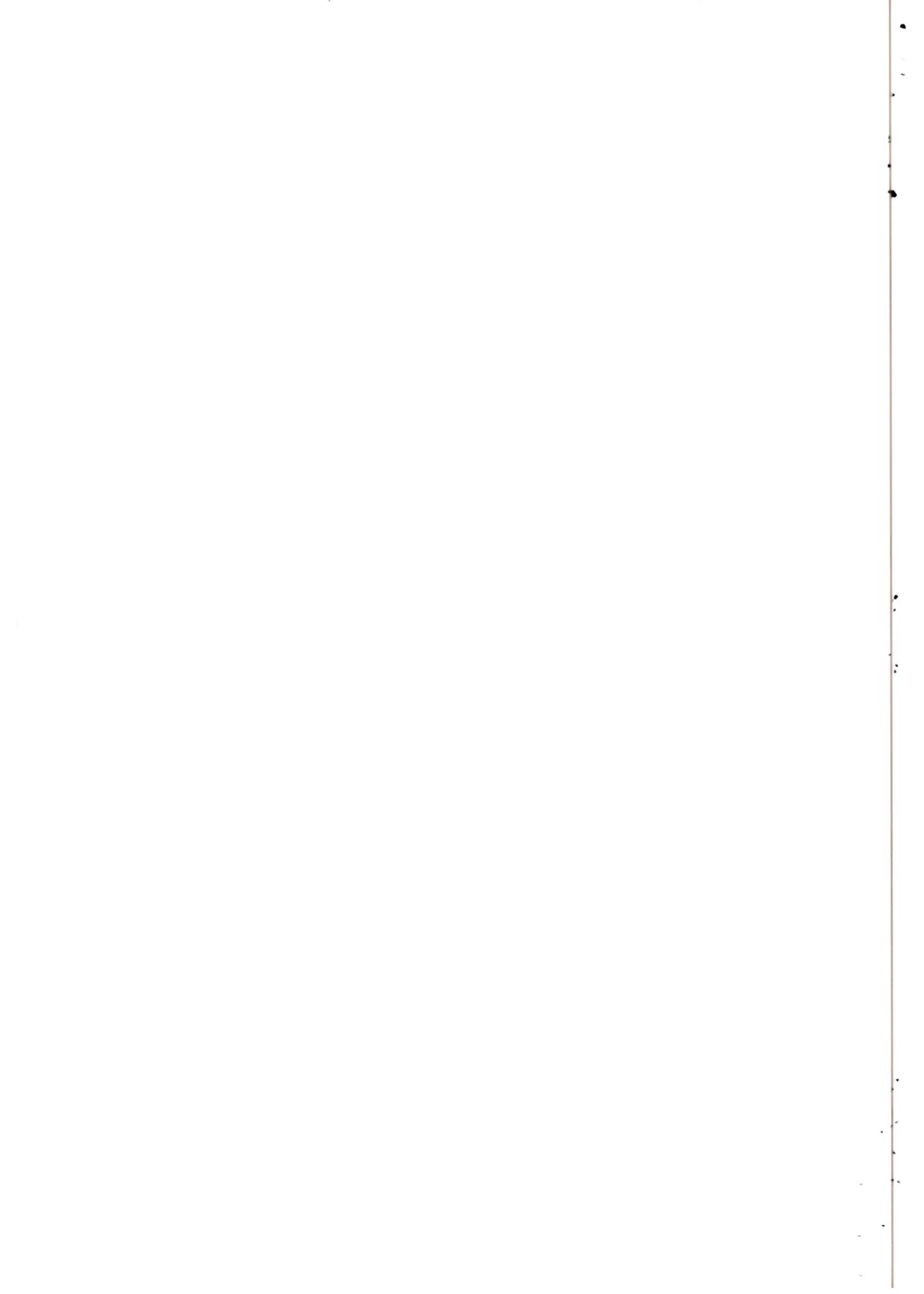


	up		
	•		
	• 5000m secondary canal silted up	Desilt the canal	
	• Damage gabions along the river bank over a length of 400m	Put up the gabions over the 400m long bank	
	• Worn dyke over a length of 1500m	Construct the 1500m long dyke	
	• An access road required measuring 800m	Construct a murrum road measuring 800m	
	• Damaged gates at the fences ,require welding	Construct to repair the gates	
	• Some section of the fence fell, measuring 60m	Constructor to reinforce the fence	
	• Lengthening of the fence required, by 350m	Put up a fence over the 350m	
	• Office required	Design the office and solicit for funds	
	• Storage facility needed	Design the office and solicit for funds	
	• Three (3) canal Crossings required	Construct the 3 canals	
GRAND TOTAL			115,000,000.00

NADAPAL

The project is in Loima constituency Turkwel ward.

Secretary -Perter Topos 0706253841



M.C.A -Turkwel ward Jermiah Lomurukei

**NAREMIT
BACKGROUND INFORMATION**

Not completed to date 2017

The contract was started in 2013 and was to be completed in 6 months. The contract was to be done in two phases. Phase I targeted 400 farmers. The contract has been extended twice. The first extension was in 201// and the other extension was in 20//

The contract components were:

- Office
- Bush clearing ...etc
- Secondary earth canals-I 885M II 770M,III- 340, IV 440

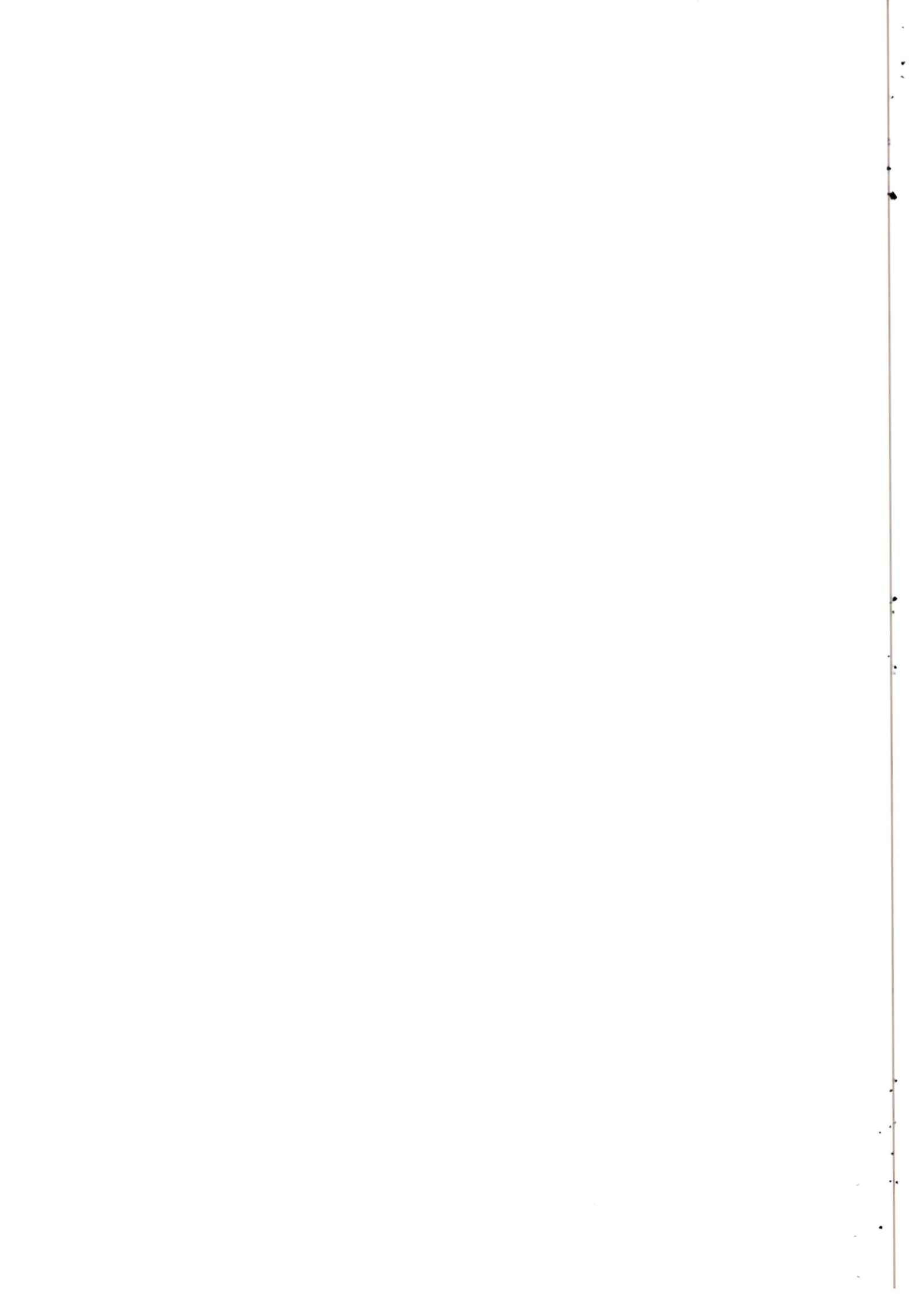
Achievement

1. 50 % completion of Project Office
2. Main canal 3880 m excavated and 1250m of it lined
3. Secondary earth canals-I 885M II 770M, but levels not ascertained.
4. Road crossings
5. Bush clearing
6. Intake works- complete
- 7.

There are other components that were added in the project. The contingency fund was used to construct some necessary infrastructure

- Additional road crossings- 3 No
- Flood protection works -600 m
- Gabions boxes at intake works 20m upstream and 10m downstream
- 2 No Flumes
-

The main canal has been excavated but not to the designed levels and n some sections up to 1 metre.



REQUESTS

1. Lining of the remaining part of the canal
2. Fencing
- 3.

Chairman=- john Naparen 0714504453

David tukei -Secretary 0705388129

KALEMNYANG PHASE II REHABILITATION AND EXPANSION

- Not complete up to date 2017

BACKGROUND INFORMATION

The project was started on 8th January 2014. The intervention of the National Irrigation Board was to rehabilitate the hydraulic structures and increase area under production through

1. Lining of 700 m of main canal
2. Lining of secondary canals..etc

The project targeted 600 farmers irrigation ----- acres. The project has 4 blocks

1. Achukut Block
2. Nawayeregai Block
3. Kaloteger Block
4. Kotela Block
- 5.

The contractor has not completed the following

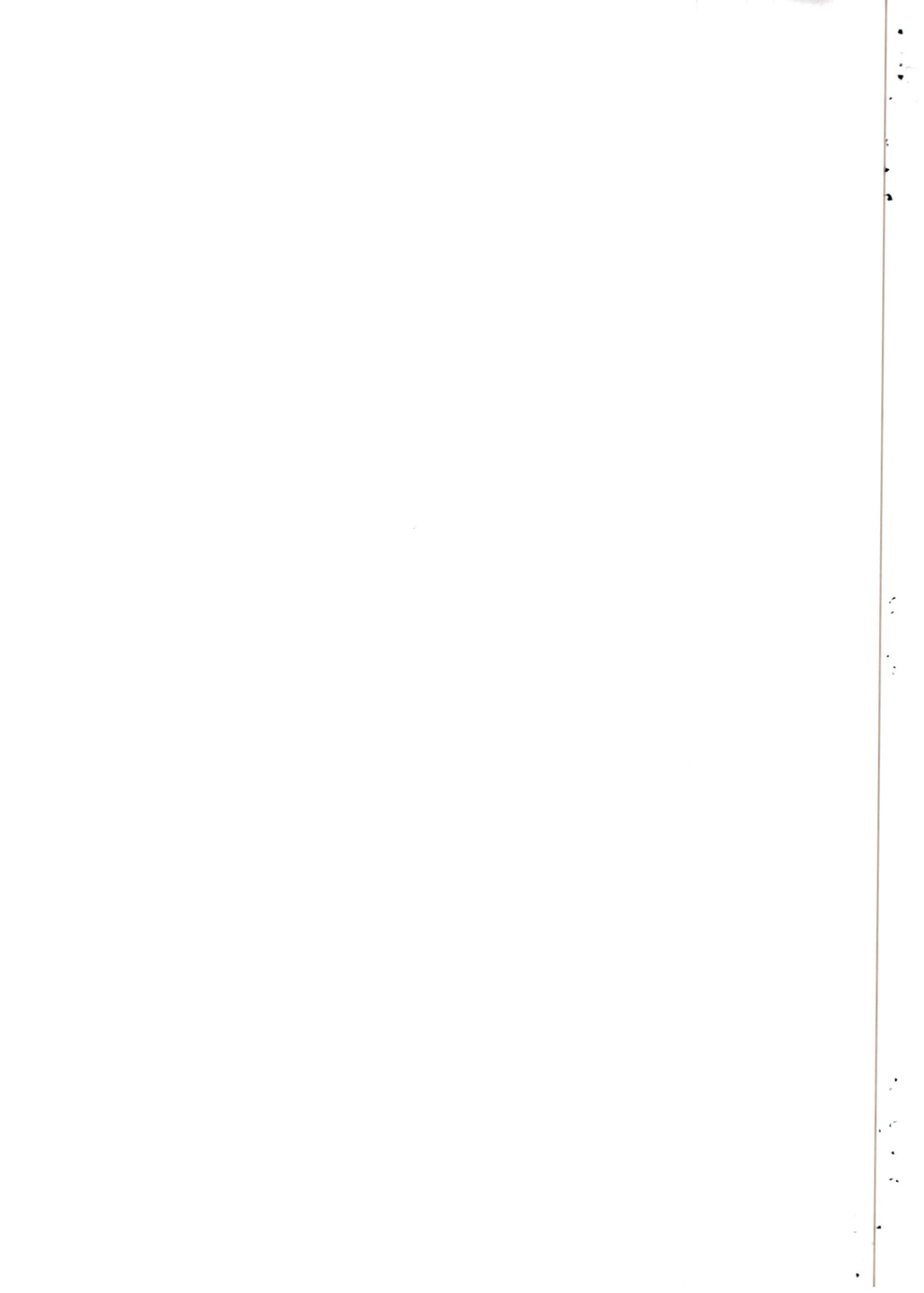
6. 50 m of secondary 2 canal
7. 3 main division boxes
8. 11 secondary division



9. River bank protection structure

PHOTOGRAPHS

1. Ackukut farmer





NATIONAL IRRIGATION BOARD DEVELOPMENT PROJECTS - TURKANA COUNTY
EFFECTS OF ABOVE NORMAL FLOODS OF 9-3-2016



NO.	PROJECT NAME	SUB-COUNTY/ CONSTITUENCY	PROJECT SIZE (ACRES)	NO. OF FARMERS	CURRENT STATE OF PERFORMANCE	TARGET CROPS	NEW CHALLENGES/ RECOMMENDATIONS	ESTIMATED COST FOR NEW RECOMMENDED PROPOSALS (KSHS)
1	Turkwel	Loima/Loima	500	750	Completed and in production	Maize, Sorghum, Beans & Vegetables	300 m of Main canal destroyed by a heavy flood on 9/3/2016 Required: (i) Flood protection structure (ii) Repair of min canal, (iii) Plastering of main canal	7,500,000
2	Kabulkor	Loima/Loima	500	1,000	Completed and in production	Maize, Sorghum, Beans & Vegetables	River changed course at intake with heavy riverbed erosion at the intake point. Therefore existing intake does not abstract water adequately. Requires a new intake and about 300m new main canal to command the scheme	5,000,000
3	Nadapal	Loima/Loima	200	300	Completed and in production	Maize, Sorghum, Beans & Vegetables	Flood protection bund breached and two road crossings destroyed. Requires urgent repair	5,000,000
4	Nakamane	Loima/Loima	400	800	Completed	Maize, Sorghum, Beans & Vegetables	Requires construction of main canal and reconstruction of damaged road crossings	5,000,000
6	Kolioro	Loima/Loima	400	1,000	95 % Completed and in production	Maize, Sorghum, Beans & Vegetables	300 m of Main canal destroyed by a heavy flood on 9/3/2016 Required: (i) Flood protection structure (ii) Repair of min canal, (iii) The contractor to complete the billed Gabion protection required at the intake	5,000,000
7	Loborot(NABUIN)	Loima/Loima	400	600	Completed and in production	Maize, Sorghum, Beans & Vegetables	500 m flood protection structure and Intake/Riverbank protection structure destroyed and 600 m of Main canal buried by a heavy flood on 9/3/2016 Required: (i) Flood protection structure (ii) Repair intake protection structure (iii) Careful reexcavation of 600m main canal.	7,500,000

EXTRA FUNDING TO THE SAME FULLY FUNDED SCHEMES BUT GOT DAMAGED DUE TO SHODDY WORKMANSHIP BY THE CONTRACTORS.



8	Nadoto	Turkana Central	600	1,250	Completed	Maize, Sorghum, Beans & Vegetables	The river width at the intake point is very wide (about 250 m) hence periodically water drifts off away from the intake to the opposite embankment. REQUIRED: A new intake at a more stable upstream location plus appropriate river bank protection structure.	5,000,000
10	Kalemnyang Phase I (LOJOKOBWO)	Loima/Loima	750	1,500	Completed and in production	Maize, Sorghum, Beans & Vegetables	200 m of Main canal and 500m of flood protection structure destroyed by a heavy flood on 9/3/2016 Required: (i) Flood protection structure repair(ii) Repair of min canal, (iii) Plastering of main canal	5,000,000
11	Kalemnyang Phase II	Loima/Loima	400	800	85% complete. Pending works: Intake works rehabilitation, 50m canal lining and 11 division boxes, river bank protection	Maize, Sorghum, Beans & Vegetables		
14	Naremit Phase I	Loima/Loima	300	800	Implementation ongoing(55% complete)	Maize, Sorghum, Beans & Vegetables	The contractor stopped working five months ago due to non-payment of certificate.	
15	Lokipetot	Turkana Central	200	500	Implementation ongoing(65% complete)	Maize, Sorghum, Beans & Vegetables	The contractor stopped working one months ago due to non-payment of certificate.	
17	Lowat Dam	Turkana East	30,000		Draft Design completed Geotechnical Investigation Completed Construction of overhead tanks ongoing	Maize, Sorghum, Beans & Vegetables		
20	Katilu Drip	Turkana South	50	100		Maize, Sorghum, Beans & Vegetables		
21	Naipa Clusters	Loima/Loima	3,000					

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MINUTES

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**MINUTES OF THE 38TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY, 9TH MAY, 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 2:30 P.M.**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. Franklin Mithika Linturi, MP
5. Hon. Wafula Wamunyinyi, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. John Olago Aluoch, MP
8. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. Bernard Munywoki Kitungi, MP
11. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
12. Hon. Cornelly Serem, MP
13. Hon. Irungu Kang'ata, MP
14. Hon. Korei Ole Lemein, MP
15. Hon. John Ogutu Omondi, MP

APOLOGIES

16. Hon. Francis Mwanzia Nyenze, MP
17. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
18. Hon. (Eng.) John Kiragu, MP
19. Hon. Johana Kipyegon Ngeno, MP
20. Hon. Dorcas Kedogo, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. Elias Bare Shill, MP
23. Hon. Adan Mohammed Nooru, MP
24. Hon. John Muchiri Nyaga, HSC, MP
25. Hon. Mary Sally Keraa, MP
26. Hon. Onesmus Muthomi Njuki, MP
27. Hon. (Eng.) Stephen Ngare, MP

IN-ATTENDANCE:

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Philip Lekarkar - Clerk Assistant III
2. Mr. Mohamed Boru - Clerk Assistant III
3. Mr. Joash Kosiba - Fiscal Analyst I
4. Mr. Charles Atamba - Research Officer III
5. Ms. Clarah Kimeli - Legal Counsel II

6. Mr. Abdi Salat - Senior Sergeant-At-Arms
7. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. Josiah Oyuko - Manager, Audit
3. Mr. Peter Lugirah - Manager, Audit

THE NATIONAL TREASURY

- Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

- Mr. Chris Makokha - Representative of Inspector General (Corporations)

MIN/PIC/287/2016:

PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past two O'clock. Hon. Korei Ole Lemein, MP said the prayer.

MIN/PIC/288/2016:

CONFIRMATION OF MINUTES

Confirmation of Minutes of the previous sitting was deferred to the next meeting.

MIN/PIC/289/2016:

EVIDENCE BY NATIONAL IRRIGATION BOARD

Eng. Raphael Ogendo, the Ag. General Manager of the National Irrigation Board accompanied by Mr. Kisaka Sakari (Ag. Deputy General Manager, Finance), Mr. Michael Obimbo (Ag. Head of Procurement), Eng. Charles Mwasya (Engineer), Mr. Tirus Kabuthia (Accountant), Mr. George Otieno (Accountant), Mr. Robinson Gaita (Director, Ministry of Water and Irrigation) and Eng. Winfred Onchoke (Director of Irrigation, Ministry of Water and Irrigation) appeared before the Committee to adduce evidence on the audited accounts of the Board for the financial years 2012/2013, 2013/2014, 2014/15 and the petition by Hon. Protus Akujah, MP on alleged financial impropriety by the General Manager of the Board, Mr. Daniel Baraza.

The Committee was informed that the Board of Directors at the National Irrigation Board had suspended Mr. Daniel Baraza as the General Manager of the Board.

The Committee resolved to defer the agenda on consideration of audited accounts for the Board and the petition by Hon. Protus Akuja on alleged financial mismanagement by Mr. Daniel Baraza to allow the Ag. General Manager sufficient time to prepare responses to these matters.

Committee Resolutions

The Acting General Manager was asked to submit the following information:

1. Minutes of the Board resolution suspending Mr. Daniel Baraza as the General Manager of National Irrigation Board;

2. Minutes of the Board decision appointing Eng. Raphael Ogendo as the Acting General Manager of the National Irrigation Board; and
3. The letter of appointment for Eng. Raphael Ogendo as Acting General Manager.

The Committee resolved to have the Ag. General Manager re-appear before it on 23rd May, 2016.

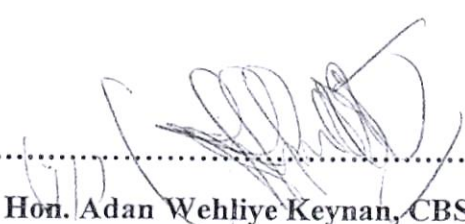
MIN/PIC/290/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/291/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 3:05pm. The next meeting will be held on Wednesday 11th May, 2016 at 10:00am.

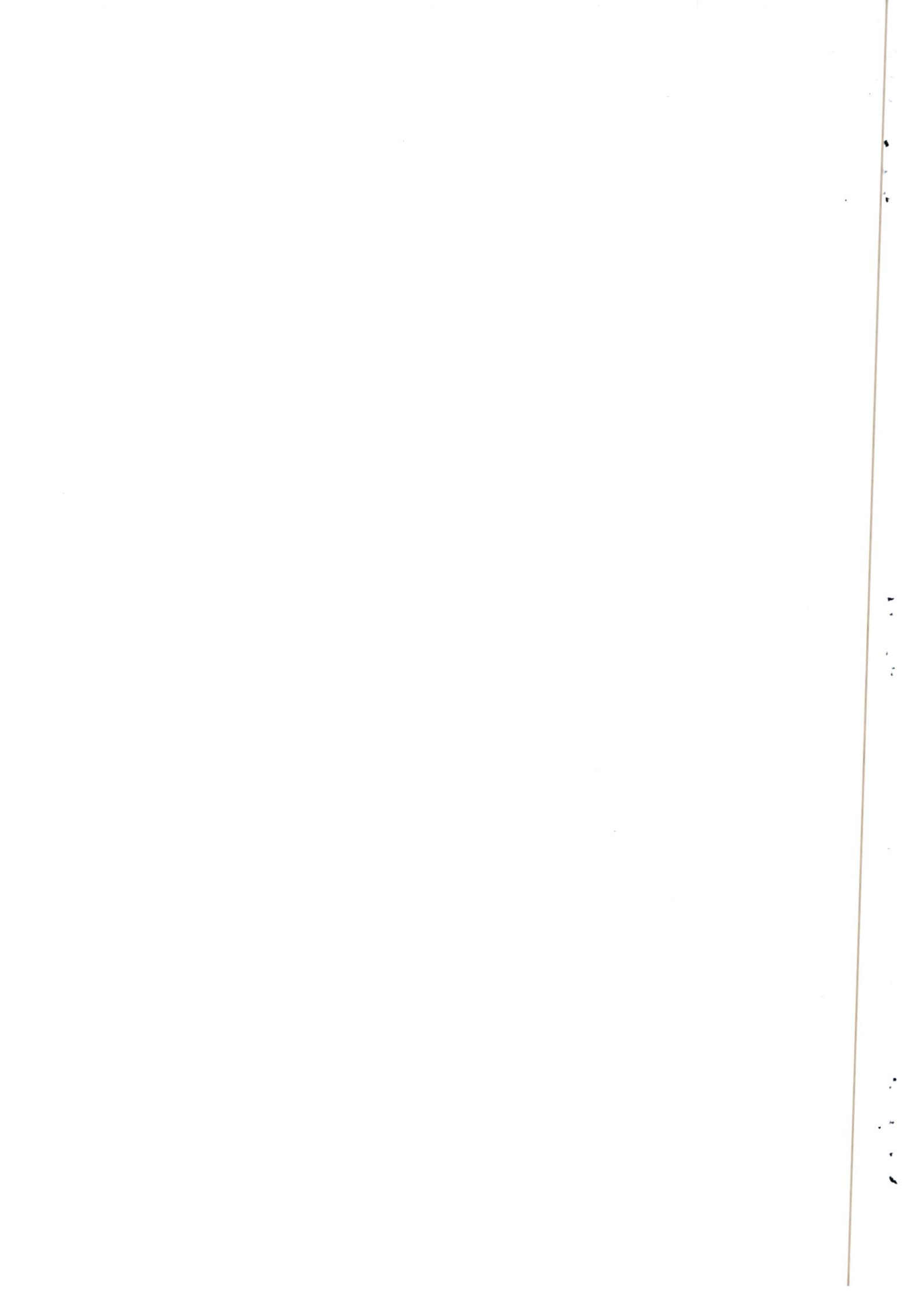
Signed.....


Hon. Adan Wehliye Keynan, CBS, MP

(Chairman)

Date.....

18/6/2016



MINUTES OF THE 80TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 6TH SEPTEMBER 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Adan Mohammed Nooru, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
8. Hon. Bernard Munywoki Kitungi, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Cornelly Serem, MP
13. Hon. Wafula Wamunyinyi, MP
14. Hon. John Olago Aluoch, MP
15. Hon. John Muchiri Nyaga, HSC, MP

APOLOGIES

16. Hon. Francis Mwanzia Nyenze, EGH, MP
17. Hon. Elias Bare Shill, MP
18. Hon. (Eng.) Stephen Ngare, MP
19. Hon. Franklin Mithika Linturi, MP
20. Hon. (Eng.) John Kiragu, MP
21. Hon. Irungu Kangata, MP
22. Hon. Korei Ole Lemein, MP
23. Hon. Dorcas Kedogo, MP
24. Hon. Abdullswamad Sheriff Nassir, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Mohamed Boru - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

1. Mr. George Otieno Nashon - Deputy Director, Audit
2. Mr. Peter Lugera - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Peter Ruteere

Inspector

MIN/PIC/599/2016: PRELIMINARIES

The meeting started at thirty five minutes past two o'clock with a word of prayer.

MIN/PIC/600/2016: CONFIRMATION OF MINUTES

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/601/2016: EVIDENCE BY AG. GENERAL MANAGER, NATIONAL IRRIGATION BOARD (NIB)

Mr. Gitonga Mugambi, the Ag. General Manager of the National Irrigation Board accompanied by Eng. Raphael Ogendo (Deputy General Manager), Eng. Vincent Kibuti (Chief Officer, Planning), Mr. Dennis Aroka (Company Secretary), Eng. Mwangi Thuita (Chief Engineer, Planning), Mr. Kisaka Sakari (Chief Officer, Finance) and Eng. Charles Muasya (Irrigation Engineer) appeared before the Committee to adduce evidence on the petition by Hon. Protus Akuja, MP regarding alleged financial mismanagement at the Board.

The Ag. General Manager gave apologies for failing to appear before the Committee on several occasions due to changes in leadership at the National Irrigation Board. He explained that the new leadership needed time to acquaint themselves with the content of the petition to prepare an adequate response, hence the delay.

The Committee was informed that the former General Manager, Mr. Daniel Baraza, was suspended by the Board and opted for early retirement while on suspension. Eng. Raphael Ogendo was appointed as the General Manager in an acting capacity.

The Cabinet Secretary for Water and Irrigation then suspended the Board of the National Irrigation Board for unprocedurally suspending Eng. Daniel Baraza. A new Board was appointed by the Cabinet Secretary and they went ahead to appoint Mr. Gitonga Mugambi as the current Ag. General Manager.

MIN/PIC/602/2016: RESPONSE TO THE PETITION

The Committee was informed that:

The National Irrigation Board has maintained transparency and accountability in management of the public resources while providing irrigation development and management services to the citizenry. NIB in its efforts to demonstrate accountability and transparency has been operating within the approved budgets prepared according to the provisions of both section 11 and 12 of the state corporations Act cap 446 of the Laws of Kenya and preparing the financial

statements which are presented for audit to the Kenya National Audit in accordance with section 22 of the irrigation Act, Cap 347 of the Laws of Kenya. The National Irrigation Boards provided copies of its 2011/2012, 2012/ 2013, 2013/2014 and 2014/2015 audit certificates and budgets as Attachment 1.

The National Irrigation Board is mandated under Section 15 of the Irrigation Act to develop, control and improve national irrigation schemes in Kenya. It is in fulfilment of this mandate that the Board has been implementing public and community irrigation projects in Turkana County among others in the arid and semi-arid (ASAL) regions in Kenya in a bid to empower communities. The Board has completed implementing 84 projects and currently 27 projects under construction in these regions are expected to be completed by December 2016. (Attachment 2).

In the last five years, NIB has initiated 13 irrigation projects in Turkana County namely Kabulokor, Kalemnyung, Kolyoro, Loborot, Nadapal, Nadoto, Naoros, Morulem, Turkwel, Nakamane, Naremit, Lokipelot, Katilu drip irrigation projects. Out of these, 3 projects namely Naremit, Lokipelot, Katilu drip irrigation projects are ongoing while the rest have been successfully implemented. The projects have been implemented within the set contract guidelines as detailed in the supporting documents. (Attachment 3).

The ongoing projects are still within the contract period except Katilu drip whose delay is because of disagreement over false claims forwarded by the contractor for work not done, flooding of site and lack of cooperation from the contractor.

Due to threats from the contractor to proceed to court for payments despite the inadequate progress of work, the Board engaged the contractor for an amicable solution. This has not borne fruits so far and NIB has opted for the final option of initiating termination of the contract in accordance with Clause 63.1 on conditions of the contract (FIDIC 1987 Revised in 1992) (Attachment 4).

The installation of drip system at Katilu Irrigation Scheme was initiated with the overall goal of introducing modern technology of farming and efficient water application owing to the scarcity of water in the Turkana County. The project exists and its implementation is ongoing albeit slow.

The project was awarded to Appropriate Development Consultants Ltd after a competitive bidding amongst prequalified contractors at a tender sum of KES 61,429,691.71 (inclusive of taxes). The procurement followed the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations, 2006. To date, the Contractor has been paid KES 44,370,808.54 against certified works as detailed in the project implementation table and in the supporting documents in Attachment 4.

The Board has been adhering to the procurement law in procuring of goods, services and works. In the procurement of irrigation projects, all the provisions

of the Procurement Act and Regulation have been followed as can be attested to by the detailed procurement reports of the projects in Attachment 5.

NIB has continuously engaged the project beneficiaries during implementation where they have participated in project site meetings as demonstrated in the supporting documents. In addition, NIB took part in a meeting convened by the Principal Secretary, State Department of Irrigation with leaders from Turkana County. So far there is no evidence of any official request by either the petitioners or the area legislators to the National Irrigation Board or its officers requesting for an audience on these projects that has been received and not acted upon. However the Board is open to consultations since it is a public office and welcomes consultations.

Committee Resolutions

The Committee deferred taking further evidence on the matter and resolved that the Ag. General Manager of the National Irrigation Board should submit the following:

1. Chronology of events leading to changes in the Board and General Manager of NIB;
2. The Gazette Notice on appointment of the current Board at NIB;
3. A copy of Eng. Daniel Baraza's resignation letter;
4. A copy of the Board Minutes appointing the current General Manager of NIB;
5. A copy of the notice withdrawing the case against suspension of the NIB Board;
6. A synopsis of how services were procured for the irrigation projects in Turkana;
7. The completion rate for the irrigation projects in Turkana;
8. A list of completed irrigation projects in Turkana and how they are being utilized;
9. Quantification in acreage of the Turkana irrigation projects to include the scope of the projects and their implementation status;
10. A list of all flagship irrigation projects in the country and their implementation status.

The Committee further resolved to invite the following witnesses to adduce evidence on the petition:

1. The former General Manager of NIB, Eng. Daniel Baraza;
2. The Cabinet Secretary for Water and Irrigation;
3. The former Board of the National Irrigation Board;
4. The Current Board and Management at NIB;
5. The Petitioner;
6. The Public Procurement Regulatory Authority; and
7. The National Treasury.

MIN/PIC/603/2016:

ANY OTHER BUSINESS

No other business arose.

MIN/PIC/604/2016:

ADJOURNMENT

There being no other business, the meeting was adjourned at 4:40 pm. The next meeting will be held on Wednesday, 7th September, 2016 at 10:00am.

Signed.....

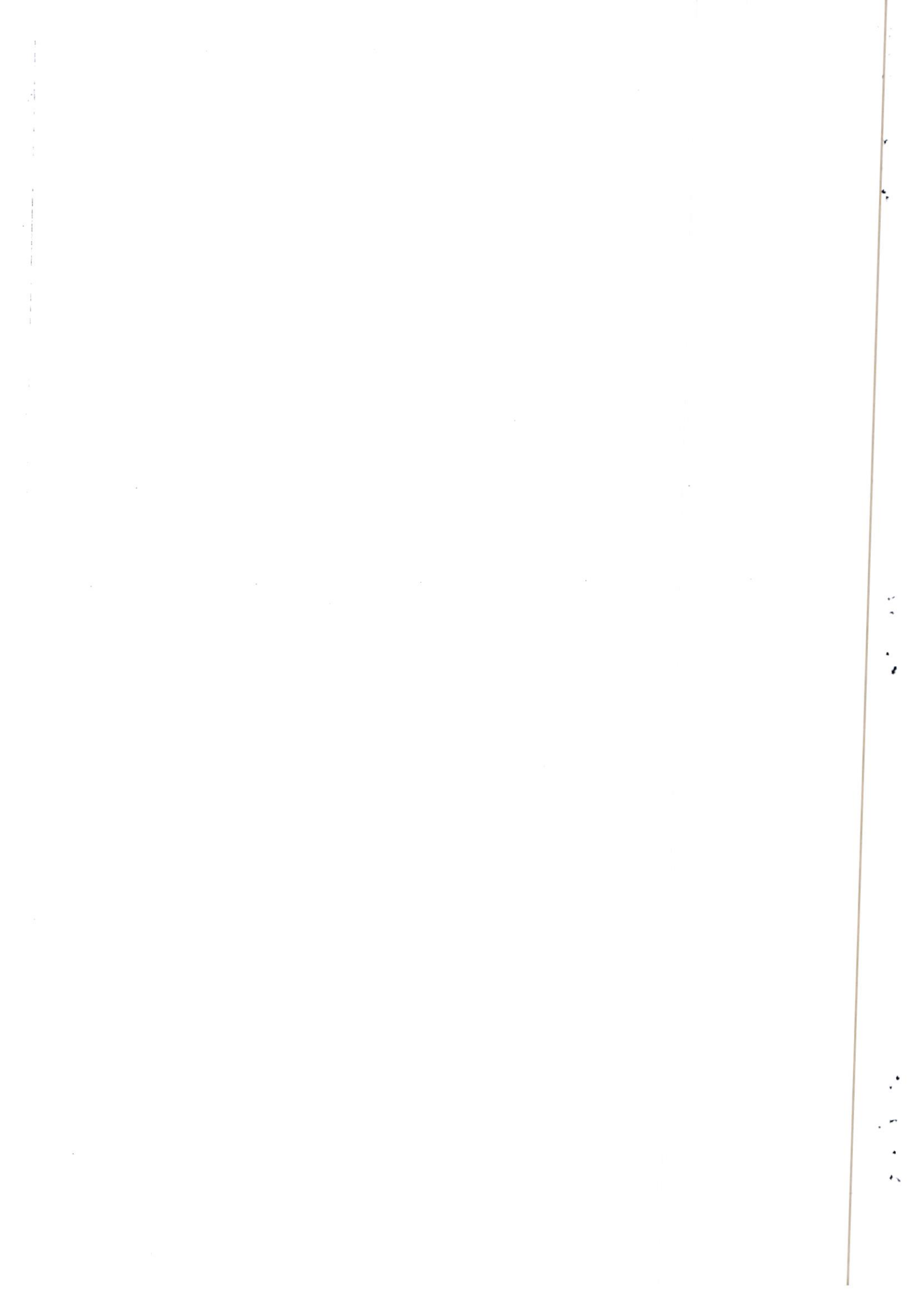


Hon. Adan Wehliye Keynan, CBS, MP

(Chairman)

Date.....

28/9/2016



MINUTES OF THE 87TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 27TH SEPTEMBER 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. Dorcas Kedogo, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. Cornelly Serem, MP
9. Hon. (Eng.) Stephen Ngare, MP
10. Hon. Johana Kipyegon Ngeno, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Mary Sally Keraa, MP

APOLOGIES

13. Hon. Dr. Oburu Oginga, MGH, MP
14. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
15. Hon. Adan Mohammed Nooru, MP
16. Hon. Wafula Wamunyinyi, MP
17. Hon. Franklin Mithika Linturi, MP
18. Hon. Elias Bare Shill, MP
19. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
20. Hon. (Eng). John Kiragu, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. Bernard Munywoki Kitungi, MP
23. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
24. Hon. Irungu Kangata, MP
25. Hon. John Muchiri Nyaga, HSC, MP
26. Hon. Korei Ole Lemein, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III

4. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Josiah Oyuko - Manager, Audit
2. Mr. Peter Lugerah - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Senior Efficiency Monitoring Officer

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MIN/PIC/660/2016: PRELIMINARIES

The Chair called the meeting to order at thirty-five minutes past two O'clock after a word of prayer.

MIN/PIC/661/2016: CONFIRMATION OF MINUTES

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/662/2016: EVIDENCE BY HON. PROTUS AKUJAH MP, LOIMA CONSTITUENCY ON A PETITION BY CONCERNED RESIDENTS OF TURKANA COUNTY ON ALLEGED FINANCIAL IMPROPRIETY BY THE GENERAL MANAGER FOR NATIONAL IRRIGATION BOARD (NIB) IN TURKANA COUNTY

Hon. Protus Akujah Member of Parliament for Loima Constituency appeared before the Committee to adduce evidence on his Petition before the Committee on behalf of concerned residents of Turkana County on alleged financial impropriety by the General Manager for National Irrigation Board (NIB) Eng. Daniel Barasa in Turkana County.

He drew the attention of the Committee to the following:

THAT

1. Article 201(d) of the Constitution underscores financial probity, accountability and transparency as cardinal principles of management of public resources by providing that public money shall be used in a prudent and responsible way;
2. The National Irrigation Board (NIB) has been responsible for facilitating irrigation projects with a view to empower communities in Arid and Semi Arid (ASAL) regions of the Country, including Turkana.
3. The allocation of funds for irrigation projects in the region by the Board has been characterized by massive impropriety, thereby causing many projects to stall for years;

4. In other instances, resources have been allocated to non-existent projects, a case in mind being the Katilu Drip Irrigation project for which colossal amounts of money was paid to the contractors yet there is no such project on the ground;
5. The former General Manager seriously violated the procurement procedures set out in the Public Finance Management Act and the Procurement and Assets Disposal Act, 2015 when implementing irrigation projects in the County;
6. Efforts by the petitioners and area legislators to engage the General Manager to address these concerns have been met with defiance, casting possibilities that he could be complicit to the impropriety intended to defraud the government of public resources and deny residents of the intended benefits from the stalled irrigation projects;
7. The matter raised in the Petition is not pending before any tribunal or court of law;

The petitioners pray that since the issues raised in the Petition touch on imprudent financial investments practices, the National Assembly through the Public Investments Committee: -

1. Investigates the activities of the National Irrigation Board in Turkana County, particularly the conduct of Eng. Daniel Baraza, HSC for the unwillingness to address the alleged financial impropriety, financial imprudence and allocation of resources to non-existent projects.
2. Investigates the circumstances behind abandonment of the works by the contractors on the stalled irrigation projects in Turkana County and neighbouring regions and when works on the said projects will resume;
3. Recommend a special audit of the capital projects undertaken by the National Irrigation Board in Turkana County, its environs and countrywide with a view to ascertaining their level of implementation and value for money;
4. Recommend appropriate disciplinary action for financial imprudence by the General Manager and other persons, including contractors culpable of financial impropriety aimed at defrauding the government; and
5. Make any other order and /or direction that it deems fit in the circumstances of the case.

Committee Observations

The Committee observed that the Petition lacked specific facts on the allegations and advised the Petitioner to submit further evidence to support the allegations as contained in the Petition.

The Committee may also resolve to visit the said projects in Turkana County at a later

date to ascertain the allegations, if need be.

MIN./PIC/663/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/664/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 3:10 pm and will be reconvened at 3:30 pm same day.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP
(Chairperson)

Date.....

13/10/2016

MINUTES OF THE 88TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 27TH SEPTEMBER 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. Dorcas Kedogo, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. Cornelly Serem, MP
9. Hon. (Eng.) Stephen Ngare, MP
10. Hon. Johana Kipyegon Ngeno, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Mary Sally Keraa, MP

APOLOGIES

13. Hon. Dr. Oburu Oginga, MGH, MP
14. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
15. Hon. Adan Mohammed Nooru, MP
16. Hon. Wafula Wamunyinyi, MP
17. Hon. Franklin Mithika Linturi, MP
18. Hon. Elias Bare Shill, MP
19. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
20. Hon. (Eng.) John Kiragu, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. Bernard Munywoki Kitungi, MP
23. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
24. Hon. Irungu Kangata, MP
25. Hon. John Muchiri Nyaga, HSC, MP
26. Hon. Korei Ole Lemein, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

PETITIONER

Hon. Protus Akuja, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III

- 3. Mr. Charles Atamba - Research Officer III
- 4. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

- 1. Mr. Josiah Oyuko - Manager, Audit
- 2. Mr. Peter Lugerah - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

- Mr. Dominic Katiku - Senior Efficiency Monitoring Officer

THE NATIONAL TREASURY

- Mr. John Munge - Accountant I

MIN/PIC/665/2016: PRELIMINARIES

The Chair called the meeting to order at thirty-eight minutes past two O'clock after a word of prayer.

MIN/PIC/666/2016: CONFIRMATION OF MINUTES

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/667/2016: EVIDENCE BY FORMER NATIONAL IRRIGATION BOARD GENERAL MANAGER ENG. DANIEL BARASA ON A PETITION BY ALLEGED FINANCIAL IMPROPRIETY BY RESIDENTS OF TURKANA COUNTY

Eng. Daniel Barasa the former General Manager of the National Irrigation Board accompanied by his Advocate Mr. Simon Namada appeared before the Committee to adduce evidence on a Petition by residents of Turkana County on the alleged financial impropriety by the former General Manager at the National Irrigation Board

Eng. Daniel Barasa responded to the allegations contained in the Petition as follows:

1. The National Irrigation Board operates under the Irrigation Act CAP 347 of the laws of Kenya read together with the State Corporations Act 446. As required by the Public Audit Act 2003 (Section 14) the Board has during his tenure presented all its records to the Auditor General for auditing purposes. The Auditor General prepared reports that were presented to Parliament.
2. The Board operated within its approved budget and was transparent and accountable in all its dealings.

Allegation of massive impropriety in the allocation and management of funds for irrigation projects in Turkana County which caused many projects to stall for years

3. During the time he was the General Manger of the Board, the Board commenced implementation of sixteen projects in Turkana County as follows: - Lokipetot, Kolyoro, Lobot, Naremit, Kalemunyang Phase I & II, Turkwel, Kolyoro, Morolem

Phase I & II, Nakamane, Kabulkor, Katilu, Nadapal, Nadoto, Eleleya, Naoros and Lokobae. Of the sixteen projects only three projects are not complete, two of them are under implementation.

4. The only project that has stalled is the Katilu Drip Irrigation Project and this is due to the disagreement between the engineers and the contractor on technical issues. The issue could not be settled amicably leaving termination of the contract as the only solution. Therefore, its not true that many projects have stalled for years as alleged.
5. As concerns the issue of impropriety, the approved procurement method in accordance with the then existing laws was used in the procurement of all services in the stated projects. The Board was transparent in procurement.
6. He also visited some of the projects and inspected them. The engineers supervising either directly or carrying out supervision were all competent personnel.
7. He is not aware of any impropriety in any of the projects.

Circumstances behind abandonment of works by contractors on the stalled irrigation projects in Turkana County during his tenure

1. Only one project has stalled and that is Katilu Drip Irrigation Project. The implementation stalled as a result of a dispute in the payment of certain items and the construction of some aspects of the works that the contractor was objecting to. The engineer in charge could not approve some payments as requested by the contractor thus occasioning a dispute.
2. When the issue was brought to his attention, he approved the termination of the contract in accordance with the provisions of the contract.
3. The project required the winning bidder to design, implement and train people and also plant and maintain crop for one season. Therefore, the contractor is presumed to have understood the site and required works before quoting a price. Failure to undertake any of the above would amount to breach of the contract prices.

Allegation of allocation of resources to non-existent projects, for instance Katilu Irrigation for which colossal amount of money was paid to contractors yet there is no such project on the ground

1. It is not true Katilu Drip Irrigation project does not exist. A dispute arose over the implementation of the project which led to its termination before completion. A new contractor was to be procured to complete the remaining works.
2. The works that were left out were: -

- (i) Pump installation,
- (ii) Installation of elevated tanks
- (iii) Construction of drainage works
- (iv) Land preparation and planting of crops for one season
- (v) Training of staff in use of drip irrigation technology

Allegation of his unavailability to engage the petitioners and Turkana County legislators to address their concerns on implementation of projects in the County

1. The projects were identified by the beneficiaries directly or through the County office.
2. While in office he met most of the elected leaders including the Members of Parliament from the County personally and at times accompanied by the supervising engineers.
3. In a number of these meetings most of the issues pertaining to the projects were resolved, however at times not all requests from the leaders were not granted. This was due to the fact that there were no adequate resources for the requests. At no time did a Member of Parliament or scheme beneficiary was denied audience by him.

Circumstances leading to exit Eng. Daniel Barasa from office

He was suspended from the Board on allegations of corruption but was later reinstated by the court. He however opted for terminal leave of 3 months pending retirement.

Committee Observations

The Committee observed that: -

1. The allegations in the Petition were against Eng. Daniel Barasa who was the General Manager of National Irrigation Board at the time of filing the Petition.
2. Response provided by Eng. Daniel Barasa against the allegations was too general and does not specifically address the prayers of the Petitioners.
3. The Petition as presented to the Committee does not contain specific allegation of financial impropriety. The Petitioners should have demonstrated particular projects that were abandoned and the nature of financial misappropriation.

Way Forward

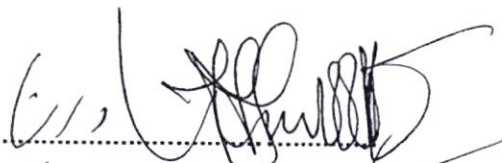
The Committee directed Eng. Daniel Barasa to provide a detailed response to the allegations as contained in the petition by Friday, 7th October, 2016.

MIN./PIC/668/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/669/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 4:20 pm. The next meeting will be held on Wednesday 28th September 2016 at 10:00 am.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairperson)

Date.....13/10/2016



MINUTES OF THE 89TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 28TH SEPTEMBER 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Elias Bare Shill, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. Dorcas Kedogo, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. Bernard Munywoki Kitungi, MP
9. Hon. Cornelly Serem, MP
10. Hon. Korei Ole Lemein, MP
11. Hon. Mary Sally Keraa, MP
12. Hon. Onesmus Muthomi Njuki, MP

APOLOGIES

13. Hon. Francis Mwanzia Nyenze, EGH, MP
14. Hon. Dr. Oburu Oginga, MGH, MP
15. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
16. Hon. Adan Mohammed Nooru, MP
17. Hon. Wafula Wamunyinyi, MP
18. Hon. Franklin Mithika Linturi, MP
19. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
20. Hon. (Eng). John Kiragu, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
23. Hon. (Eng.) Stephen Ngare, MP
24. Hon. Irungu Kangata, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. John Ogutu Omondi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

- 1. Mr. Josiah Oyuko - Manager, Audit
- 2. Mr. Peter Lugerah - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Senior Efficiency Monitoring Officer

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MIN/PIC/670/2016: PRELIMINARIES

The Chair called the meeting to order at forty-one minute past two O'clock after a word of prayer.

MIN/PIC/671/2016: CONFIRMATION OF MINUTES

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/672/2016: FAILED APPEARANCE OF CURRENT AND FORMER BOARD OF DIRECTORS OF THE NATIONAL IRRIGATION BOARD

The Committee was informed that the current Board and former Board of Directors were scheduled to appear before the Committee at 10:00 a.m. and 2:30 p.m. respectively to respond to the allegations contained in the Petition by concerned residents of Turkana County on alleged financial impropriety by the General Manager for National Irrigation Board (NIB) in Turkana County.

The Board members had however written to the Clerk of the National Assembly seeking for postponement of their appearance before the Committee to enable them prepare the responses to the issues raised in the Petition.

Way Forward

The Committee directed the secretariat to write to the individual Board members inviting them to appear before the Committee without fail on 11th October 2016 at 10:00 a.m.

MIN./PIC/673/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/674/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:15 am and will be reconvened at 2:30 pm same day.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP

(Chairperson

Date.....

13/10/2016

MINUTES OF THE 91ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 29TH SEPTEMBER 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. Franklin Mithika Linturi, MP
5. Hon. Elias Bare Shill, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. John Olago Aluoch, MP
8. Hon. Dorcas Kedogo, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. Bernard Munywoki Kitungi, MP
11. Hon. (Eng.) Stephen Ngare, MP
12. Hon. Korei Ole Lemein, MP

APOLOGIES

13. Hon. Dr. Oburu Oginga, MGH, MP
14. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
15. Hon. Adan Mohammed Nooru, MP
16. Hon. Wafula Wamunyinyi, MP
17. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
18. Hon. (Eng.) John Kiragu, MP
19. Hon. Abdullswamad Sheriff Nassir, MP
20. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
21. Hon. Cornelly Serem, MP
22. Hon. Irungu Kangata, MP
23. Hon. Johana Kipyegon Ngeno, MP
24. Hon. John Muchiri Nyaga, HSC, MP
25. Hon. John Ogutu Omondi, MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

- 1. Mr. Josiah Oyuko - Manager, Audit
- 2. Mr. Peter Lugerah - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Chris Makokha - Senior Assistant Inspector General

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MIN/PIC/675/2016: PRELIMINARIES

The Chair called the meeting to order at forty minutes past ten O'clock after a word of prayer.

MIN/PIC/676/2016: CONFIRMATION OF MINUTES

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/677/2016: EVIDENCE BY CABINET SECRETARY FOR WATER AND IRRIGATION HON. EUGENE WAMALWA ON THE PETITION BY CONCERNED RESIDENTS OF TURKANA COUNTY ON ALLEGED FINANCIAL IMPROPRIETY BY THE GENERAL MANAGER FOR NATIONAL IRRIGATION BOARD (NIB) IN TURKANA COUNTY.

Hon. Eugene Wamalwa, the Cabinet Secretary for Water and Irrigation accompanied by Mr. Patrick Nduati, the Principal Secretary for Irrigation; Mr. Gitonga Mugambi, Acting National Irrigation Board General Manager; Eng. R.K. Gaita, Director of Irrigation in the Ministry of Water and Irrigation; Mr. Bob Muathe, Advisor to the CS and Ms. Jacinta Hezron, Personal Assistant to the PS appeared before the Committee to adduce evidence on the allegations contained in the Petition by concerned residents of Turkana County on alleged financial impropriety by the General Manager for National Irrigation Board (NIB) in Turkana County.

The Cabinet Secretary informed the Committee as follows: -

Circumstances surrounding dismissal of the former General Manager, Eng. Daniel Barasa and the subsequent court case touching on his dismissal

1. The matter came to his attention on 21st April, 2016 that a Special Board Meeting of the National Irrigation Board had been held earlier in the day during which the General Manager, Eng. Barasa was suspended. He later received a copy of the Minutes of the Special Board Meeting which recorded the resolution, among others, *"to suspend the General Manager, Eng. Daniel Barasa; Deputy General Manager, Finance and Strategy, Ms. Mary Chomba; and Procurement*

and Supplies Manager, Mr. Boaz Akello, for a period of six (6) months with immediate effect pending investigations”.

2. He obtained a copy of the Notice convening the Meeting which stated that it was to be an Ordinary Board Meeting and not a Special Board Meeting. He also obtained a copy of the Agenda proposed for the Meeting under notice and disciplinary action was not part of it.
3. It was not clear to him the circumstances under which the Ordinary Board Meeting became a Special Board Meeting. Secondly, the serious accusations made against the officers did not appear to be specific or particularized. Every person has a right to fair administrative action and casting blanket accusations against Public Officers without due regard to the principles of natural justice is unlawful. He communicated the concerns to the Board on 25th April, 2016 and directed the Board to investigate any allegations made against the concerned Officers and also reiterated Ministry's policy of zero tolerance to corruption. He made it clear to the Board that all allegations of corruption should be thoroughly investigated and dealt with firmly in accordance with the law and in the meantime, the concerned Officers should continue with their normal duties.
4. His actions for reconstitution of the Board were guided by Section 13 of the Irrigation Act, Cap 347 which states that *“in the exercise of its powers and the performance of its functions under the Act, the Board shall act in accordance with any general or specific directions that may be given to it by the Minister”*. He re-stated his position on 26th April, 2016 and advised the Board that it risks being dissolved if it fails to abide with the directions he had given. These, then, were the circumstances and actions surrounding the suspension of Eng. Daniel Barasa.

Reasons for reconstitution of the Board, and whether this action is related to issues raised in the Petition before the Committee;

1. He was informed that Eng. Daniel Barasa had sued the Board regarding over his suspension, a matter which he later withdrew from the courts. However, Eng. Barasa did communicate to the Cabinet Secretary of his decision to proceed on early retirement from Public Service in a letter dated 3rd May, 2016. It was increasingly evident that there was a standoff between the Board and the Management which resulted in a state of paralysis in the Board thereby affecting operations of the Institution. This was a state of affairs that could not be allowed to continue. This was the likely reason that led H.E. the President to reconstitute the Board through Gazette Notices Nos. 4421 and 4422 of 17th June, 2016.
2. The court case that involved him as the Cabinet Secretary in the matter was in regard to Notice of a Motion dated 23rd May, 2016 and filed in the High Court on

behalf of a Mr. Felix Kiprono Matagei. The main point was that him, the 3rd respondent in the matter, and in his capacity as the Cabinet Secretary for Water and Irrigation made an illegal decision to disband the Board of Directors of the National Irrigation Board.

3. He has since received a Notice of Withdrawal of the court case by Mr. Felix Kiprono Matagei dated 18th July 2016, in which he states that he had withdrawn the matter because it had been fully overtaken by events.

Measures taken by the Ministry to address the issues raised by the Petitioners and to ensure prudent use of resources by the Board's Management and adherence to Public Financial Management Act and the Public Procurement and Disposal Act.

1. The Ministry and the new Board is following up on the issues raised by the Petitioners including following up on his earlier directive with regard to thorough investigations by the Kenya National Audit Office and the Ethics and Anti-Corruption Commission. Upon receiving the resulting report from this Institution, he will act on their recommendations and share with the Committee the findings and his actions.
2. Most senior officers at the National Irrigation Board are serving in acting capacities in the Board; however, the positions will be substantively filled through a competitive recruitment process.

MIN/PIC/678/2016: THE GALANA KULALU FOOD SECURITY PROJECT

The Cabinet Secretary informed the Committee as follows: -

The completion of the 10,000-acre model farm at the Galana Irrigation Scheme is set for March 2017, after full implementation was deferred. The 10,000 acre model farm forms the first phase of the Galana-Kulalu One Million Acre Food Security Project. 4,000 acres have so far been put under maize with an additional 6,000 acres set to be put under the crop before the projected date of completion.

Successful completion of the project is expected to drop the price of maize flour for the Kenyan people and will directly employ hundreds of people.

Israel is the major financier of the model farm having provided KES 7 billion loan for the first phase of the project that is aimed at making Kenya food secure.

The Project together with other NIB projects across the country had fallen behind schedule mainly because of limited budgetary allocation from the government and weather challenges. Early in the year, the government reduced the budget for the model farm from Sh14 billion to Sh7 billion after abandoning some of the key

components such as a milling plant and other non-essential components of the project like logistics, delivery of the produce to milling plants and sale of the produce. This is expected to be done in through Public- Private Partnership.

The Ministry is planning to initiate other major projects in various parts of the country including Kibwezi, Turkana, Baringo, Turkwel and Kerio Rivers among other projects spread across the country in a bid to address Kenya's food security.

Committee Observations

The Committee observed the following: -

1. There are ongoing investigations into the alleged malpractices at the National Irrigation Board by the Office of the Auditor General and the Ethics and Anti-Corruption Commission.
2. The Cabinet Secretary informed the Committee that the Internal Audit Report on the matter will be ready in one month's time.
3. That the Director for Irrigation Eng. R. Gaita and the Director for Water Eng. Onjoke represent the Cabinet Secretary in the Board of NIB.
4. The Cabinet Secretary reinstated senior managers at the Board vide a letter to the then NIB Board Chairman Mr. Sammy Letema, on grounds that the board did not follow the law in removing the executives and that he was not consulted as Cabinet secretary overseeing the NIB against corporate governance principles that guarantees board independence.
5. The Cabinet Secretary defended his appointment of Prof. Imana as the Chairman of NIB stating that he is highly qualified and meets the requirements of Mwongozo.

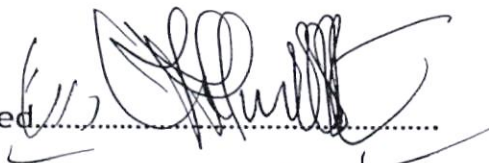
MIN./PIC/679/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/680/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:15 am to be reconvened at 11:30 am same day.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP
(Chairperson)

Date.....

13/10/2016



MINUTES OF THE 99TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 27TH NOVEMBER 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:30 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. Franklin Mithika Linturi, MP
5. Hon. Wafula Wamunyinyi, MP
6. Hon. Elias Bare Shill, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. (Eng.) John Kiragu, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
11. Hon. Bernard Munywoki Kitungi, MP
12. Hon. (Eng.) Stephen Ngare, MP
13. Hon. Irungu Kangata, MP
14. Hon. John Muchiri Nyaga, HSC, MP
15. Hon. John Ogutu Omondi, MP
16. Hon. Korei Ole Lemein, MP
17. Hon. Mary Sally Keraa, MP
18. Hon. Onesmus Muthomi Njuki, MP

APOLOGIES

19. Hon. Francis Mwanzia Nyenze, EGH, MP
20. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
21. Hon. Adan Mohammed Nooru, MP
22. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
23. Hon. John Olago Aluoch, MP
24. Hon. Dorcas Kedogo, MP
25. Hon. Abdullswamad Sheriff Nassir, MP
26. Hon. Cornelly Serem, MP
27. Hon. Johana Kipyegon Ngeno, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Mohammed Boru - Clerk Assistant
4. Mr. Charles Atamba - Research Officer III
5. Ms. Clara Kimeli - Legal Counsel II

OFFICE OF THE AUDITOR-GENERAL

Mr. Josiah Oyuko - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

BUSIA COUNTY ASSEMBLY - PUBLIC ACCOUNTS & INVESTMENTS COMMITTEE

Hon. Maurice Chetambe - Chairperson
Hon. Ernest Oballa - Member
Hon. Charles Wasike - Member
Hon. Gardy Jakaa - Member
Mr. Siatta Gerald - Committee Clerk
Ms. Dester Nabwire - Secretary
Mr. James Karani - Security Officer
Mr. Elijah Mwaro - Hansard Reporter

MIN/PIC/734/2016: PRELIMINARIES

The meeting commenced at forty five minutes past eleven o'clock with a word of prayer followed by introduction of all present, including visiting delegation of the Busia County Assembly Public Accounts and Investments Committee.

MIN/PIC/735/2016: CONFIRMATION OF MINUTES

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/PIC/736/2016: EVIDENCE BY PUBLIC PROCUREMENT REGULATORY AUTHORITY ON THE PETITION BY TURKANA RESIDENTS ALLEGING FINANCIAL MISMANAGEMENT AT THE NATIONAL IRRIGATION BOARD

Mr. Maurice Juma, The Director General of the Public Procurement Regulatory Authority appeared before the Committee to adduce evidence on the petition by Turkana residents alleging financial mismanagement at the National Irrigation Board.

He briefed the Committee as follows:

On 26th September, 2016, NIB submitted to the Authority copies of the above documents for the following projects:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.
2. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase I and Phase II, NIB/T/112/2011-2012 AND NIB/T/036/2013-2014 respectively.

3. Proposed detailed design, supply of materials, Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.
4. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012.
5. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I and Phase II, NIB/T/049/2012-2013 and NIB/T/037/2013-2014 respectively.
6. Tender for construction work of loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013.
7. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013.
8. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013.
9. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.
10. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013
11. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014.
12. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.
13. Tender for construction work of Lokipelot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

On 12th October, 2016 NIB further submitted another set of documents which included:

1. Invitation notice for tender No. NIB/T/039/2012-2013
2. Purchase requisition for tender No. NIB/T/124/2012-2013
3. Certified copy of tender for the successful bidder for tender No. NIB/T/049/2012-2013
4. Purchase requisition for tender No. NIB/T/109/2012-2013
5. Invitation notice for tender No. NIB/T/114/2013-2014
6. Purchase requisition for tender No. NIB/T/005/2011-2012
7. Purchase requisition for tender No. NIB/T/112/2011-2012

Original Contract Sum : Kshs.43, 635,955.00.

Revised contract sum : Kshs.54, 269, 168.00

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
 - ii. The bid for M/s Lumbe Agencies Ltd was declared responsive yet the bid security provided was not valid for 150 days from the date of closing as required by clause 13.3 under Instruction to Tenderers. The bid was valid up to 4th March, 2014 whereas the validity required was for up to 19th March, 2014. This evaluation criteria was not applied uniformly.
 - iii. The subjective technical evaluation criteria were not applied uniformly. For example under qualification of key personnel M/s Nakims Merchants and Contractors Limited is said to have “partially met the set condition” and given a *Pass*; on the other hand under list of available essential equipment M/s Mbiwa Construction Company Ltd. Is said to have “partially met the set condition” and given a *fail*.
 - iv. Whereas 16 unsuccessful bidders’ letters of notification were sent on 24th January 2014, the regret letter for M/s Balcha Water Drilling & Construction Co. Ltd was sent on 28th September 2013 even before the closing /opening of the tender which was on 15th October, 2013.
 - v. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
 - vi. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.
4. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

Tender No. : NIB/T/005/2011-2012

Description : Tender for construction works of the Katilu Irrigation Project, Turkana County

Procurement Method : Request for Proposal

Contractor : Appropriate Development Consultants Limited (ADCL)

Contract Sum : Kshs. 61,429,691.71

Observations

- i. NIB directly invited request for proposal (RFP) instead of advertising the Expression of Interest (EOI), and then invite proposal from qualified person as required under section 80 and 81 of the Act.
- ii. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 13th February, 2012.

5. Tender for construction works for the Kabulokor Irrigation Project, Turkana County NIB/T/070/2011-2012.

Tender No. : NIB/T/070/2011-2012

Description : Tender for Construction Works of the Kabulokor Irrigation Project Turkana County.

Procurement Method : Open National tender

Contractor : M/sLumbe Agencies Limited

Contract Sum : Kshs.59, 169, 863.12

Observations

- i. The tender was opened by one member, Mr. Stephen Apome, the other three members were absent with apologies. This is contrary to Section 60(1) (a) of the Act which requires that the committee to have at least three members.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) of the Act and Regulation 46, 49 and 50 of the Regulations. The technical evaluation requirement had no scoring criteria.
- iii. The evaluation committee made recommendation for award to M/s Lumbe Agencies at the corrected figure of Kshs. 59,795,727.37. However, the tender committee approved the award of contract at the original price of Kshs. 59, 169,863.12. The award of the tender at original price by TC saved NIB kshs. 625, 864.25, though it was contrary to provision of Regulation 11 (2) (a) of the Regulations which bar the TC from modifying any

submission with respect to the recommendations for a contract award or in any other respect.

6. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2011-2012

Tender No. : NIB/T/049/2011-2012

Description : Construction works of Morulem Irrigation Scheme Rehabilitation Project Phase (I)

Procurement Method : Open National Tender

Contractor : Nyana Engineering Company Limited

Contract Sum : Kshs. 58,024,199.00

Observations

- i. The TC revised the estimated cost in the procurement plan for the project which was Kshs. 20,000,000.00 to Kshs.56, 723,007.00; however the procurement plan was not amended.
- ii. Whereas the technical evaluation shows that Machine Centre Ltd. obtained a fail, he was ranked among the three bidders who passed the technical evaluation stage.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.

7. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/T/037/2013-2014

Tender No. : NIB/T/037/2013-2014

Description : Tender for construction works of the Morulem Irrigation Scheme Development Project Phase II, Turkana County

Procurement Method : Open National Tender

Contractor : M/S Toddy Civil Engineering Co. Ltd

Contract Sum : Kshs.47, 576, 870.00

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.

- ii. The bid for Katulani Building Contractors was declared responsive in the preliminary evaluation yet his confidential business questionnaire form was not filled which was a mandatory requirement.
- iii. There is no proof that the tender committee's instructions to defer and refer to the evaluation committee were taken into account since the re-evaluation report was not availed and the award done as previously recommended in the first evaluation report.

8. Tender for construction work of Loborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013.

Tender No. : NIB/T/039/2012-2013

Description : Tender for Construction Works of the Loborot Irrigation scheme Development Project Turkana County.

Procurement Method : Restricted Tender

Contractor : M/sMachine Centre Limited

Contract Sum : Kshs.64, 593, 955.80

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required under Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The evaluation committee evaluated 6 bids against the 5 bids received as recorded in the tender opening minutes. The extra bid document was for M/s. Yellow House Ltd.
- iii. After the correction of the arithmetic error, notice of the correction was not given to the person who submitted the tender contrary to provisions of Section 63(2) of the Act.
- iv. There is no evidence to show that a pre contract meeting was convened as provided for in the notification for tender award dated 10th December 2012.

9. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013.

Tender No. : NIB/T/038/2012-2013

Description : Tender for construction works of the Kolyoro Irrigation Scheme Development Project Turkana County.

Procurement Method : Restricted Tender

Contractor : M/s Lumbe Agencies Ltd
Contract Sum : Kshs.64, 719, 250.00.

Observations

- i. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria and or the minimum technical requirement was not explicitly provided.
- ii. The tender opening was done by two members against the minimum quorum of at least three people as required under section 60 (1) (a) of the Act which requires that the committee to have at least three members.

10. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013.

Tender No. : NIB/T/109/2012-2013

Description : Tender for construction works of the Turkwell Irrigation Scheme Development Project Turkana County.

Procurement Method : Restricted Tender

Contractor : M/s Tosha At General Construction Limited

Contract Sum : Kshs.70, 854, 410.00.

Observations

- i. The threshold for use of restricted under the First Schedule of the Regulations is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.
- ii. The preliminary evaluation indicated that the bid for M/s Rotalink Engineering Company Ltd was valid for 120 days against what was recorded in the tender opening that his bid was valid up to 17th November, 2013 which totals to 154 days. He was unfairly disqualified since the bid of the successful bidder M/s Tosha At General Construction Ltd was also indicated to expire on 17th November, 2013 but his bid was declared responsive.

- iii. Evaluation criteria were not applied uniformly since the two bidders who were responsive failed to meet the requirement of at least two criteria under technical evaluation but were said to be responsive. M/s Machine Centre Ltd failed under financial capacity and work programme while M/s Tosha At General Construction Ltd failed under qualification of key personnel and work programme. Thereafter the evaluation committee noted "M/s Tosha At General Construction Ltd and M/s Machine Centre Ltd had not materially deviated from the set conditions and therefore qualified to the next stage".

11. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

Tender No. : NIB/T/124/2012-2013

Description : Tender for construction works of the Nadoto Irrigation Scheme Development Project, Turkana County

Procurement Method : Restricted Tender

Contractor : Nyana Engineering Company Limited

Contract Sum : Kshs.79, 974, 700.49

Observations

- i. NIB used a standard bid document. However, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 47, 49 and 50 of the Regulations.
- ii. The tender sum of the successful bidder M/s Nyana Engineering Company Limited of Kshs. 79,974,700.49 had an error, of which if it was corrected it would have resulted to an increase in his tender price to Kshs. 79,977,299.53. Correction of error was not done and instead the bidder was awarded the tender at his quoted price.
- iii. The minutes of the TC meeting that awarded the tender were incomplete hence we could not ascertain whether award of tender was done as recommended by evaluation committee.

12. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

Tender No. : NIB/T/112/2012-2013

Description : Tender for construction works of the Naoros Irrigation Development Schemes Project in Turkana County.

Procurement Method : Restricted tendering

Contractor : M/s Hanamal Construction

Original Contract Sum : Kshs.73, 573, 793.00.

Revised Contract Sum : Kshs. 77, 669, 146.00

Observations

- i. The tender committee meeting of 3rd May, 2016 that awarded the tender did not have a quorum to adjudicate the award as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

13. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014.

Tender No. : NIB/T/035/2013-2014

Description : Tender for construction works of Neremit Irrigation Scheme Development Project Turkana County.

Procurement Method : Open National Tender

Contractor : M/s Nakuru Machinery Services Ltd

Contract Sum : Kshs.48, 356, 440.00.

Observations

- i. The bid bond for M/s Novatech was expected to be valid for 150 days but the bid security it submitted was valid for 135 days. However, the evaluation committee declared it responsive. Further the bid security for M/s Three Star Contractors was said to be 150 days yet it was 141 days valid since it was to expire on 3rd March, 2014. However, his bid was declared responsive against the criteria.
- ii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Public Procurement and Disposal Regulations of 2006. The technical evaluation parameters had no scoring criteria.
- iii. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- iv. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.

14. Tender for construction works of the flood and animal control infrastructures in Loborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

Tender No. : NIB/T/038/2013-2014

Description : Tender for construction works of the flood and animal control infrastructure in Loborot and Nakamane Irrigation Schemes in Turkana County.

Procurement Method : Open National Tender

Contractor : M/s Machine Centre Ltd

Contract Sum : Kshs.49, 720, 000.00.

Observations

- i. Whereas the tender opening register and tender opening minutes indicate that M/s Cherangani Hills did not provide a bid bond, during evaluation its indicated that he had a bid bond from Consolidated Bank of Kshs. 1, 074, 392 valid for 30 days
- ii. M/S Dynocarp Logistics Ltd was declared responsive whereas he had not provided the Power of Attorney. This criteria was used to disqualify other bidders like M/s Bellagio Construction Ltd, M/s Dynamic General Construction and M/s Institute of Applied Technology.
- iii. Whereas NIB used a standard bid document, the evaluation criteria provided were not objective and there were no preliminary, technical and evaluation criteria as required by Section 66 (2) and Regulation 46, 49 and 50 of the Regulations. The technical evaluation parameters had no scoring criteria.
- iv. The Re-evaluation report from the evaluation committee after the TC declined to award the tender were not availed.
- v. The TC that deliberated the award of the subject tender and other tenders on 18th November, 2013 did not have the quorum needed as required under Regulation 12 (2) of the Regulations. The TC had only four members against the required quorum of five members and Secretary.
- vi. As per the contract the successful bidder (M/s Machine Centre Ltd) failed to submit a performance bond as demanded in the letter of award. Further, NIB went ahead to sign a contract and yet there was no performance bond.

15. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

Tender No. : NIB/T/114/2013-2014

Description : Tender for construction works of the Lokipetot Irrigation Schemes Development Project in Turkana County.

Procurement Method : Restricted tendering

Contractor : M/s Turkana Salama Enterprises Limited

Contract Sum : Kshs.59, 826, 117.00.

Observations

- i. The threshold for use of restricted under the First Schedule of the PPDR, 2006 is a maximum of 20, 000, 000.00 against the budgeted estimate of Kshs 70, 000, 000.00 indicated in the procurement plan.
- ii. Whereas the TC approved 12 prequalified contractors to be invited, the invitation letter to bid was sent to 10 contractors. M/s. Lumbe Agencies Ltd and Kerman Contractors were not invited.

PROJECT SITE VISITS

In order to gather adequate evidence to substantiate the allegations, the Authority was to conduct a project site visit. Based on the limited timeline and resource constraints the Authority sampled some of the projects to be visited.

In order to make an informed decision to guide the sampling; the status of all the projects was used to categorize the projects into the following:

A. CATEGORY ONE: MP HAD MENTIONED THE PROJECT IN THE PETITION

1. Proposed detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012.

This project was selected.

B. CATEGORY TWO: INCOMPLETE PROJECTS

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase II NIB/T/036/2013-2014 respectively;
2. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase II, NIB/T/037/2013-2014 respectively;

3. Tender for construction works of Naremit Irrigation Scheme Development Project, Turkana County, NIB/T/035/2013-2014; and
4. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

We selected: Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014.

C. CATEGORY THREE: COMPLETE BUT NOT IN OPERATION

They included:

1. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012;
2. Tender for construction work of laborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
3. Tender for construction works of the Kolyoro Irrigation Scheme development Project, Turkana County, NIB/T/038/2012-2013;
4. Tender for construction works of the Turkwell Irrigation Scheme development Project, Turkana County, NIB/T/109/2012-2013;
5. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013; and
6. Tender for construction works of the flood and animal control infrastructures in Laborot and Nakamane Irrigation Schemes, Turkana County, NIB/T/038/2013/2014.

We selected: Tender for construction work of laborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013 and Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012.

D. CATEGORY FOUR: COMPLETE & IN OPERATION

They included:

1. Tender for construction works of the Kalemnyang' Irrigation development Project, Phase I NIB/T/112/2011-2012;
2. Tender for construction works for the Kabulokor irrigation project, Turkana County NIB/T/070/2011-2012;
3. Tender for construction works of the Morulem Irrigation Scheme development Project, Turkana County, Phase I NIB/T/049/2012-2013; and
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

We selected: Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013.

CONSOLIDATED SAMPLE

1. Proposal detailed design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, NIB/T/005/2011-2012;
2. Tender for construction work of Lokipetot Irrigation Scheme Development Project, Turkana County, NIB/T/114/2013-2014;
3. Tender for construction work of laborot Irrigation Scheme Development Project, Turkana County, NIB/T/039/2012-2013;
4. Tender for construction works of the Nadoto Irrigation Scheme development Project, Turkana County, NIB/T/124/2012-2013;
5. Tender for construction works of the Nadapal Irrigation Project, Turkana County, NIB/T/071/2011-2012; and
6. Tender for construction works of the Naoros Irrigation Development Scheme Project, Turkana County, NIB/T/112/2012-2013

The Authority appointed Three (3) Officers to conduct project site Audit of the projects between 17th and 21st October, 2016. A summary of the status of the sampled project after the visit is as below:

1. Nadapal irrigation project:

The contractor executed the work and upon completion it was handed over to farmers. The Scheme has a management committee selected amongst farmers. The project is in operation and we found farmers preparing the land and others had already planted. However, farmers are experiencing some challenges such as:

- a) Heavy flooding that destroys the crops since the floods meander and use other entry point to the Scheme where there are no flood protection.
- b) Siltation and blockage of the water canals
- c) River Turkwel which is the source of the water for the scheme is very wide and its course keeps on diverting which may result on no water getting into the scheme through the main canal. Every time the river change the course farmers are forced to dig canal manually in order to reach the water.

2. Lokipetot irrigation project:

The project is not complete and the contractor is still on site, the completion level is approximately 80%, bush clearing is a major problem which is caused by "Mathenge" that grows and spreads out very fast.

NIB have not paid the Contractor for two already raised interim certificate and this has delayed the completion of the project.

3. Loborot irrigation project:

The contractor executed the contract for the works and upon completion the project was handed over to farmers. Farmers cultivated for three seasons, thereafter the flood blocked the main canal and it is therefore non-operational for close to one year.

- a) Major problems are:
- b) Blockage of canals through siltation hence no water flowing into the Scheme
- c) Floods that washed away the crops and caused blockage of canals
- d) Flood protection Gabions were destroyed (washed away) by floods
- e) Road bridge crossing was destroyed by floods
- f) The Turkwel river is encroaching the Scheme and part of the fence is inside the river
- g) The quality of work is poor since the walls of the canals are not plastered and can wear off very easily (poor workmanship).

4. Katilu irrigation project:

Initially Katilu Irrigation Scheme was the work of Food and Agricultural Organization (FAO) who provided capital cost and technical personnel, later FAO withdrew. It was later taken over by Norwin Agency for Development Corporation (NORAD) through the Ministry of Agriculture in 1982, they also withdrew. The initial acre rage under FAO and NORAD was 500 Acres.

NIB later came and did rehabilitation of the Scheme and it became operational. Further they expanded the acre rage from 500 to 2000 Acres. NIB also have full time employee to manage the scheme. In conjunction with the County Government they also provided machinery to assist the farmers to till the land and dredging the canal after siltation. This has helped to make the project operational throughout the year. The total size of the acre rage that is operational is 1600 Acres. The system of irrigation used by Farmers is furrow Irrigation.

Farmers have started to undertake diversification by introducing a variety of crops such as bananas, butternuts, tomatoes, pawpaws, spinach and sukumawiki, dania among others on top of the previous crop i.e. maize, rice and barley. We found farmers harvesting the produce for the market.

In the financial year 2011/2012 NIB intended to expand the project and they invited tenders for design, supply of materials Construction/Installation, testing and commissioning of drip irrigation system for Katilu Irrigation development project, Turkana County, Kenya, Tender No. NIB/T/005/2011-2012.

The contractor M/s Appropriate Development Consultants Limited (ADCL) was awarded the tender for the Drip irrigation system at a tender sum of Kshs. 61,429,691.71. The size of the Acreage was 50. The contractors did most of the work which include bush clearing, fencing, building the foundation base for the tanks, supplied drip pipes, pumps and 15 tanks of 10, 000 litres. The contractor applied for variation which NIB did not honor and the contractor withdrew from site. The contract was not fully implemented but farmers who were to be allocated the land upon completion are farming the land using water from the other part of the Scheme.

The major problem in this scheme is “Mathenge” a weed that grows and spreads very fast and blocks the secondary canals.

5. Nadoto irrigation project:

The contractor executed the work as per the contract and upon completion of the project it was handed over to farmers who selected management committee for the Scheme. Farmers have been planting and even in the last season they harvested maize. We found farmers clearing the *Mathenge* Shrubs to prepare for the next season. The scheme have good canal, but flooding hinders consistent flow of water to the farm which if alleviated it can increase food production. Farmers are experiencing the following problems:

- a) Flooding and siltation leading to blockage of the main canal
- b) Water intake has been blocked by floods
- c) “Mathenge” shrubs have spread in the land under irrigation resulting to thick bushes.

6. Naoros irrigation project:

The project was not fully completed since all secondary canal structures were not done. However, Farmers approximately tilled 10 acres and harvested during the last season. The flooding made it impossible to till the major part of the land within the Scheme and especially at the main canal since thick bush of Mathenge shrub sprouted and grow to become big trees. Farmers have tried to manually clear the bush but they have inadequate tools to clear the bush. This makes their effort to become unfruitful since by the time they are halfway to reach the main canal Mathenge shrub that were initially cleared have sprouted back. Farmers are experiencing some challenges such as:

- a) Heavy flooding that blocked the intake at the main canal and destroyed the crops.
- b) Flood protection Gabions were destroyed by floods which led to water getting into the Scheme.

- c) "Mathenge" shrub have infested the Scheme and clearing of the same is difficult since farmers have inadequate, ineffective farm tools and equipment's to facilitate bush clearing.

COMMITTEE OBSERVATIONS

The Committee observed the following: -

1. The report was quite detailed and needed time to be interrogated properly.
2. There was a need to have a representative of the Public Procurement Regulatory Authority attached to the Committee since a significant number of audit queries are procurement related.

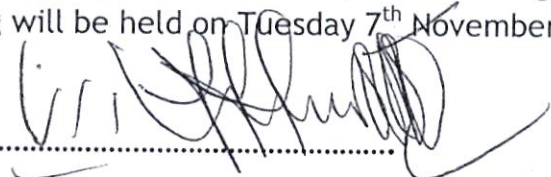
MIN/PIC/737/2016: ANY OTHER BUSINESS

1. **Matter of EGMS Inquiry** - The Committee was awaiting a special audit of the EGMS matter before proceeding with the inquiry. The report was expected to be presented to the Committee by 16th November, 2016.
2. **Alleged loss of funds at the Ministry of Health** - The Committee noted that while the Ministry of Health was under the mandate of the Public Accounts Committee, Kenyatta National Hospital, Kenya Medical Supplies Agency and the Quality Control Laboratory were under the purview of the Public Investments Committee. The Committee therefore resolved to inquire into the matter of alleged loss of funds at the three institutions.
3. **National Hospital Insurance Fund** - The Committee further resolved to look into the matter of alleged loss of public funds at the Fund, with the witness scheduled to appear on 8th November, 2016.

MIN/PIC/738/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:50 pm. The next meeting will be held on Tuesday 7th November, 2016 at 10:00am.

Signed.....

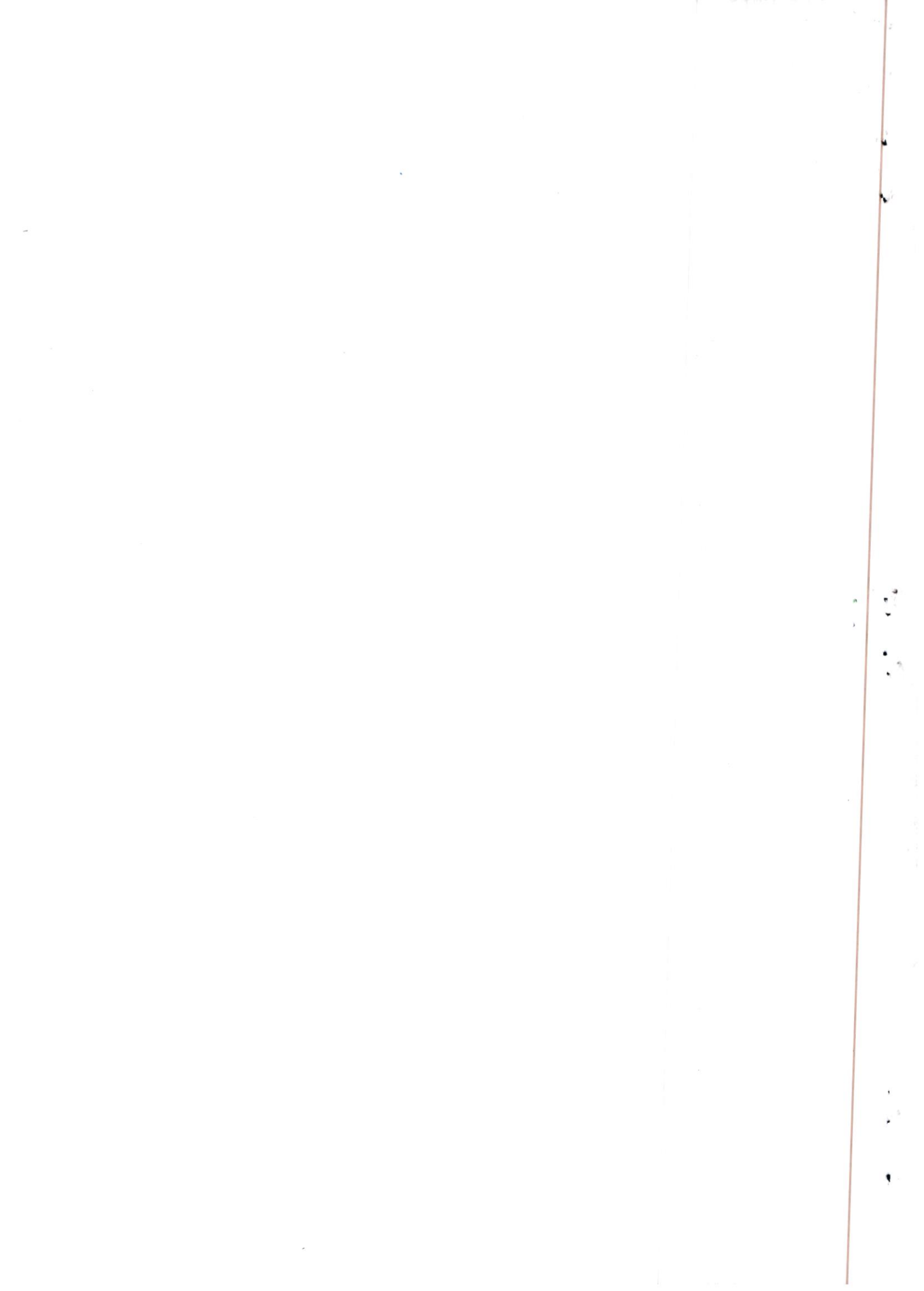


Hon. Adan Wehliye Keynan, CBS, MP

(Chairperson)

Date.....

18/11/2016



MINUTES OF THE 29TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 6TH MAY 2017 IN FAHARI HALL, WHITESANDS HOTEL, MOMBASA AT 9.30 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Franklin Mithika Linturi, MP
3. Hon. Elias Bare Shill, MP
4. Hon. John Olago Aluoch, MP
5. Hon. Dorcas Kedogo, MP
6. Hon. Beatrice Nkatha Nyaga, HSC, MP
7. Hon. Cornelly Serem, MP
8. Hon. (Eng.) Stephen Ngare, MP
9. Hon. Irungu Kang'ata, MP
10. Hon. Korei Ole Lemein, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Mary Sally Keraa, MP
13. Hon. Onesmus Muthomi Njuki, MP

APOLOGIES

14. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
15. Hon. Francis Mwanzia Nyenze, EGH, MP
16. Hon. Dr. Oburu Oginga, MGH, MP
17. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
18. Hon. Adan Mohammed Nooru, MP
19. Hon. (Eng.) John Kiragu, MP
20. Hon. Wafula Wamunyinyi, MP
21. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
22. Hon. Sammy Silas Komen Mwaita, MP
23. Hon. Abdullswamad Sheriff Nassir, MP
24. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
25. Hon. Bernard Munywoki Kitungi, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Johana Kipyegon Ngeno, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Nicholas Emejen - Principal Clerk Assistant I
2. Ms. Susan Maritim - Clerk Assistant I
3. Mr. Philip Lekarkar - Clerk Assistant III
4. Mr. Mohamed Boru - Clerk Assistant III
5. Mr. Nimrod Ochieng - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

Mr. Josiah Oyuko - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Gerald Mwangi - Inspector

MIN/PIC/370/2017: PRELIMINARIES

The Chair called the meeting to order at thirty minutes past nine o'clock after a word of prayer.

MIN/PIC/371/2017: CONFIRMATION OF MINUTES

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN./PIC/372/2016: ADOPTION OF SPECIAL REPORT ON THE PUBLIC INVESTMENTS COMMITTEE TOUR OF THE KENYA PIPELINE COMPANY LINE 1 (CAPACITY ENHANCEMENT) PROJECT: MOMBASA - NAIROBI PIPELINE UNDERTAKEN BETWEEN 2ND - 3RD FEBRUARY, 2017

The Committee considered and unanimously adopted the Special Report on the Public Investments Committee Tour of the Kenya Pipeline Company Line 1 (Capacity Enhancement) Project: Mombasa - Nairobi Pipeline undertaken between 2nd - 3rd February, 2017, having been proposed by Hon. Hon. Mary Sally Keraa, MP and seconded by Hon. Hon. Dorcas Kedogo, MP

MIN./PIC/372/2016: ADOPTION OF REPORT ON THE PETITION BY RESIDENTS OF TURKANA COUNTY REGARDING ALLEGED FINANCIAL IMPROPRIETY BY ENG. DANIEL BARAZA, FORMER GENERAL MANAGER OF THE NATIONAL IRRIGATION BOARD

The Committee considered and unanimously adopted the Report on the Petition by Residents of Turkana County regarding Alleged Financial Impropriety by Eng. Daniel Baraza, former General Manager of the National Irrigation Board been proposed by Hon. (Eng.) Stephen Ngare, MP and seconded by Hon. Cornelly Serem, MP.

Under Findings/ Observations

- Rephrase Observation (vii) for clarity;
- On Observation (xi), write PPRA in full.

Under Recommendations

- Recommendation (i): replace 'performance audit' with 'forensic audit';
- Insert the names of specific officers where the titles or the committees in which they were members, are mentioned;

MIN./PIC/373/2016: ADOPTION OF SPECIAL REPORT ON THE PROCUREMENT AND FINANCING OF THE TOURISM FUND'S RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

The Committee considered and unanimously adopted the Special Report on the Procurement and Financing of the Tourism Fund's Ronald Ngala Utalii College in Kilifi County, having been proposed by Hon. Beatrice Nyagah, MP and seconded by Hon. Mary Sally Keraa, MP.

MIN./PIC/374/2016: ADOPTION OF PUBLIC INVESTMENTS COMMITTEE WINDING-UP REPORT (MAY 2013 TO JUNE 2017)

The Committee considered and unanimously adopted the Public Investments Committee Winding-Up Report (May 2013 to June 2017), having been proposed by Hon. Omondi Ogutu, MP and seconded by Hon. Cornelly Serem, MP.

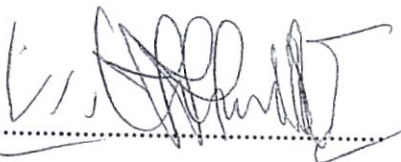
MIN/PIC/375/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/376/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 6:10 pm. The next meeting will be held on Friday, 5th May 2017 at 2.30 p.m.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....



