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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION

Directorate of Committee Services

*Paper laid by
Hon Aden Keenan, MP
on Wednesday
24/5/2017 Afternoon
5:30pm*



THE PUBLIC INVESTMENTS COMMITTEE

SPECIAL REPORT ON THE IMPLEMENTATION OF THE
TOURISM FUND'S RONALD NGALA UTALII COLLEGE
PROJECT IN KILIFI COUNTY

MAY 2017



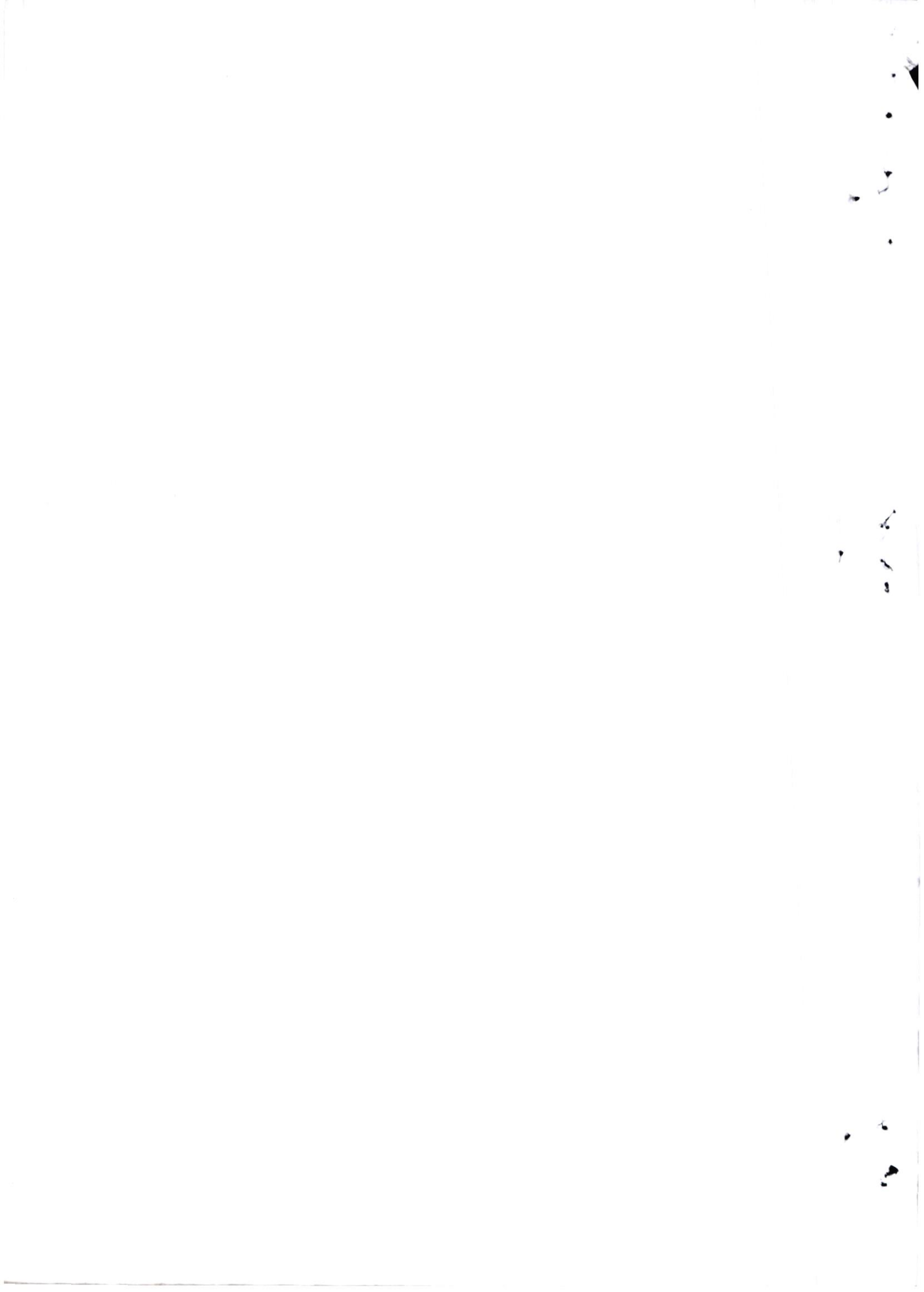


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LIST OF ABBREVIATIONS AND ACRONYMS

Ag.	-	Acting
Amb.	-	Ambassador
AOB	-	Any Other Business
BQ	-	Bills of Quantities
Bros	-	Brothers
CAB	-	Cabinet
Cap	-	Chapter
CCTV	-	Closed-Circuit Television
CEO	-	Chief Executive Officer
CEO	-	Chief Executive Officer
CLT	-	Catering Levy Trustees
CTDLT	-	Catering and Tourism Development Levy Trustees
EAC	-	East Africa Community
H.E.	-	His Excellency
Hon	-	Honourable
KES	-	Kenya Shillings
KUC	-	Kenya Utalii College
LAN	-	Local Area Network
LR	-	Land Registration
MEMO	-	Memorandum
MT	-	Ministry of Tourism
NEMA	-	National Environment Management Authority
No.	-	Number
OP	-	Office of the President
PPDA	-	Public Procurement and Disposal Act
PPOA	-	Public Procurement Oversight Authority
PPP	-	Public Private Partnership
PPP	-	Public Private Partnership

PS	-	Principal Secretary/Permanent Secretary
QS	-	Quantity Surveyor
REF.	-	Reference
RNUC	-	Ronald Ngala Utalii College
Sen.	-	Senator
SMEs	-	Small Micro-Enterprises
TF	-	Tourism Fund
V.A. T	-	Value Added Tax
Vol.	-	Volume
Vs.	-	Versus
WAN	-	Wide Area Network

1.0 PREFACE

The Public Investments Committee is established pursuant to Standing Order No. 206 and is responsible for the examination of the working of public investments.

Committee Mandate

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.

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.

Committee Membership

The Committee is comprised of the following Members-

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Kimani Ichung'wah, MP - Vice Chairperson
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 Mithika Linturi, MP
8. Hon. Wafula Wamunyinyi, MP
9. Hon. Elias Bare Shill, MP
10. Hon. Sammy Silas Komen Mwaita, MP
11. Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
12. Hon. John Olago Aluoch, MP

13. Hon. (Eng.) John Kiragu, MP
14. Hon. Dorcas Kedogo, MP
15. Hon. Abdullswamad Sheriff Nassir, MP
16. Hon. Beatrice Nkatha Nyaga, HSC, MP
17. Hon. Bernard Munywoki Kitungi, MP
18. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
19. Hon. Cornelly Serem, MP
20. Hon. (Eng.) Stephen Ngare, MP
21. Hon. Irungu Kang'ata, MP
22. Hon. Johana Kipyegon Ng'eno, MP
23. Hon. John Muchiri Nyaga, 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

Committee Secretariat

The Committee Secretariat comprises the following officers: -

- | | | | |
|----|---------------------|---|-----------------------|
| 1. | Ms. Susan Maritim | - | First Clerk Assistant |
| 2. | Mr. Philip Lekarkar | - | Third Clerk Assistant |
| 3. | Mr. Mohamed Boru | - | Third Clerk Assistant |
| 4. | Mr. Joash Kosiba | - | Fiscal Analyst I |
| 5. | Ms. Clarah Kimeli | - | Legal Counsel II |
| 6. | Mr. Charles Atamba | - | Research Officer III |

Committee Proceedings

The Committee commenced its inquiry into the implementation of the Tourism Fund's Ronald Ngala Utalii College Project in Kilifi County, on 31st March, 2016 pursuant to Standing Order No. 206 (c) which mandates the Committee to, "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."

following a request by the Committee held a total of sixteen (16) sittings, in which it closely received oral and written submissions and examined evidence from witnesses. The Committee heard and received both oral and written evidence from several witnesses, as indicated in Section 2.0 of this Report.

The Committee also undertook a site visit to the project, appraise itself on progress made in implementation of the Project.

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.

COMMITTEE GENERAL OBSERVATIONS

This sub-section provides a summary of the Committee's findings and observations on the Inquiry into the Procurement and Financing of the Tourism Fund's Ronald Ngala Utalii College Project:

The Committee observed:

- (i) **THAT, the first attempt to establish the Ronald Ngala Utalii College was mooted by the Government through the Ministry of Tourism in 1996, vide Cabinet Minute 30/1996 dated 1st February, 1996; the Government granted an approval for the establishment of the College through the Kenya Utalii College as its Coast Branch. This approval was, however, not implemented owing to lack of funds;**
- (ii) **THAT, the Project was never implemented as per the Cabinet Memorandum of 1996 where the Cabinet approved the construction of the Coast Branch of the Kenya Utalii College;**
- (iii) **THAT, the matter was revisited in the year 2007, vide letter Ref. OP.CAB.58/4A dated 13th September, 2007 to the Cabinet, proposing implementation of the Project. The Project was to be funded by the Government through the National Treasury at an estimated cost of KES 1.948 billion for the establishment of the College to cater for 600 students with a completion period of four years;**
- (iv) **THAT, the implementation of the Project did not commence owing to lack of funds until 19th March, 2010 when the Ministry of Tourism communicated to the (defunct) Catering and Tourism Development Levy Trustees (CTDLT), the decision to set up Ronald Ngala Utalii College in accordance with the Cabinet approval;**

- (v) THAT, the Board of CTDLT during its 104th Board Sitting held on 24th March 2010, deliberated and resolved to the establish the College, pursuant to Section 19 of the Hotels and Restaurants Act. The Minister for Tourism granted an approval to the Trustees' resolution as per Gazette Notice No. 3478 of 9th April, 2010;
- (vi) THAT, on 13th December, 2010, the CTDLT Board resolved to re-design the College to accommodate 3,000 students, amongst other additional components at a cost of KES 8.9 billion;
- (vii) THAT, pursuant to section 6(2) of the State Corporations Act, the former Minister for Tourism, revoked the appointment of the then Board of Trustees and reappointed new ones vide Gazette Notice No. 10228 of 20th July, 2012, with the aim of improving the Fund's performance. The de-gazetted Trustees, however, challenged the decision vide court case No. 317 of 2012 (Abdulkadir M. Omar & 2 Others Vs. Minister for Tourism & Catering and Tourism Development Levy Trustees). Although the court case was withdrawn in April 2013, the Fund remained without a substantive Board of Trustees until new Trustees were appointed on 2nd October, 2015 and the Chairman on 18th March, 2016. This delay in appointment of the Board hampered decision making in the Fund;
- (viii) THAT, in the absence of a substantive Board of Trustees between 19th July, 2012 and 2nd October, 2015, the Fund's management proceeded with the tendering process and awarded the tender for the Construction of the Project to Mulji Devraj and Brothers and signed the contract on 14th May, 2013. The Management, further proceeded to approve the first addendum to the Contract on 23rd June, 2013 and the second addendum on 25th August 2014, without Board approval, for checks and balances. The addendum, among other things, extended the contract period from 36 months to 60 months, making the completion date, 19th June 2018;
- (ix) THAT, the procurement for the project consultancy was conducted through restricted tendering following advertisement on 16th February, 2012 and subsequently awarded to a consortium of consultants namely: Baseline Architects Ltd, Ujenzi Consultants (Quantity Surveyor), Armitech Consulting Engineers (Structural Engineer), West Consult (Services Engineer), Geomeasures Surveyors Ltd and PKF

Consulting Ltd. The contract was signed on 25th May, 2012;

- (x) THAT, the Contract for the Main Works (Construction) was conducted through open tendering vide advertisement dated 23rd November, 2012. The tender evaluation committee for the project construction included two members from the consortium of consultants (Baseline Architects and Ujenzi Consultants) who were responsible for designing and drawing of the bill of quantities;
- (xi) THAT, the Contract for the Main Works was awarded to the third lowest prequalified bidder Mulji Devraj & Brothers Ltd at a cost of KES 8,961,370,998.00 vide letter Ref: TF/CONF/2/8/ (178-182) dated 12th April, 2013 and the contract signed on 14th May, 2013;
- (xii) THAT, the Contract for the Main Works (Construction) was scaled down from KES 8,961,370,998 to KES 4,923,005,699 vide an addendum dated 25th August, 2014;
- (xiii) THAT, the project cost and scope was varied from KES 8,961,370,998 to KES 4,923,005,699 without Cabinet approval;
- (xiv) THAT, the draft Cabinet Memorandum jointly signed by the Cabinet Secretary, National Treasury and Cabinet Secretary for East African Affairs, Commerce and Tourism on 26th June, 2014 and 9th July, 2014, respectively, is awaiting Cabinet approval;
- (xv) THAT, the total remittances from the National Treasury to the Project since inception from the financial year 2010/11 to 2015/2016 amounts to KES 2,359,397,211;
- (xvi) THAT, the Auditor General, in his Report on the Financial Statements of the Tourism Fund for FY 2014/2015, observed that the Project is branded by the management as a Vision 2030 flagship project, yet it does not appear in the documented planned flagship projects. Further, no feasibility study was done for the project to establish its viability.

The Auditor General further noted that the estimated cost of the project was neither captured in the Fund's procurement plan nor in the multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005 and Section 47 (c) of the Public Finance Management Act, 2012.

COMMITTEE GENERAL RECOMMENDATIONS

From the evidence adduced (oral and written) and the observations made, the Committee recommends as follows -

- (i) **THAT, the project should be implemented as per the CTDLT Board resolution of 13th December, 2010, to re-design the College to accommodate 3,000 students, amongst other additional components at a cost of KES 8.9 billion. This will ensure cost effectiveness of the project and give taxpayers value for money;**
- (ii) **THAT, the Cabinet Secretary, Ministry of Tourism, should as a matter of urgency, pursue post-facto Cabinet approval for the downscaled Project. The Cabinet Secretary also should seek Cabinet approval for the implementation of the hotel component of the Project, through the Public Private Partnership (PPP framework). *The Cabinet Secretary, Ministry of Tourism to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;***
- (iii) **THAT, there is need for all parties involved, to work together to ensure successful completion of the Project, not later than 19th June, 2018, as per the signed contract and the subsequent addendums issued on 14th May, 2013 and 25th August 2014, respectively. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than twelve (12) months after the adoption of this Report;***
- (iv) **THAT, tourism is an important sector in Kenya's economy and successful completion of the Project will boost the ailing sector. The Chief Executive Officer of the Tourism Fund should, therefore, in liaison with the Public Private Partnership Unit of the National Treasury, identify suitable financiers to complete Phase II component of the Project. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;***
- (v) **THAT, owing to the vital role of the Project in the tourism sector, the Chief Executive Officer of the Tourism Fund should, in liaison with the Kenya Vision 2030 Secretariat, ensure that the project is incorporated as a flagship project in the tourism sector. *The***

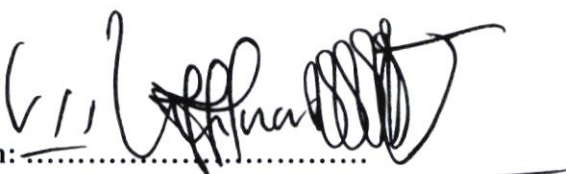
Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;

- (vi) **THAT, the Fund's management should comply with section 53 of the Public Procurement and Asset Disposal Act, 2015, by ensuring that the total estimated cost of the project is captured in the Fund's procurement plan. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report; and***
- (vii) **THAT, the appointing Authority of the Board members should ensure that there is timely appointment of Board members for effective operation of the Fund, and as a good governance measure.**

Acknowledgement

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, government officials and agencies that 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.

On behalf of the Members of the Public Investments Committee, I beg to table the Special Report on the Inquiry into Allegations of Financial Mismanagement in the Tourism Fund's Ronald Ngala Utalii College Project.

Sign: 

Date: 4-5-2017

HON. ADAN KEYNAN, CBS, MP

CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

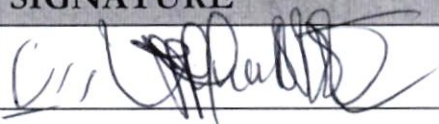
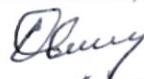


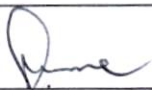

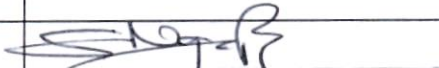
PUBLIC INVESTMENTS COMMITTEE


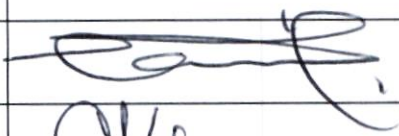
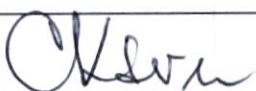




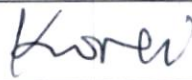


ADOPTION LIST

SPECIAL REPORT ON THE PROCUREMENT AND FINANCING OF
THE TOURISM FUND'S RONALD NGALA UTALII COLLEGE IN KILIFI
COUNTY

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	
14.	Hon. (Eng.) Stephen Ngare, MP	

	NAME	SIGNATURE
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 TOURISM FUND

1. The Tourism Fund is established pursuant to section 66 of the Tourism Act, 2011, which came into operation on 1st September, 2012. The Fund replaced the now defunct Catering and Tourism Development Levy Trustees (CTDLT).
2. The Fund is established to finance the following activities: -
 - a) the development of tourism products and services;
 - b) the marketing of Kenya as a tourist destination through the Tourism Board;
 - c) the activities of the Protection Service;
 - d) tourism research, tourism intelligence and the national tourism information management system;
 - e) the activities of the Tourism Sector Safety, Communication and Crisis Management Centre to be established and managed by the Ministry;
 - f) training and capacity development activities of the College and of such other tourism hospitality training institutions as may be established under this Act; and
 - g) mobilization of resources to support tourism-related activities.
3. Section 69 of the Act established the Board of Trustees whose functions shall be to—
 - a) collect the tourism levy imposed under section 105 of this Act or any other written law;
 - b) establish, equip and control such other tourism and hospitality training institutions as it may be necessary upon approval by the Minister;
 - c) formulate sound policies for the regulation and management of the Fund;
 - d) solicit for funds and other assistance to promote the object for which the Fund is established;
 - e) determine the amounts of money payable for the purposes of the Fund and formulate the conditions for disbursement;
 - f) invest any surplus funds not immediately required in securities approved by the Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
 - g) establish a tourism training revolving fund;
 - h) keep and maintain audited accounts of the Fund and publish the accounts in the manner approved by the Treasury;
 - i) cause to be kept all proper books and records of account of the income, expenditure,

- assets and liabilities of the Fund;
- j) receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements; and
 - k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established.

3.0 EVIDENCE AND SUBMISSIONS BY WITNESSES

Introduction

This Section contains evidence submitted both orally and in writing by key witnesses invited to adduce evidence before the Committee. Specific observations on each of the witness submission is also recorded.

The Public Investments Committee, pursuant to Standing Order 206 (c) commenced its inquiry into the procurement and financing of Ronald Ngala Utalii College Project in Kilifi County on 31st March, 2016 and since received oral and written submissions from the following witnesses –

- (i) Mr. Allan Chenane, former Chief Executive Officer, Tourism Fund;
- (ii) Mr. Joseph Cherutoi, Chief Executive Officer, Tourism Fund;
- (iii) Former Members of the Tourism Fund's Tender Committees
- (iv) Current Board of Trustees, Tourism Fund;
- (v) Former Board of Trustees, Tourism Fund;
- (vi) Dr. Ibrahim Mohammed, Former Principal Secretary, Ministry of Tourism;
- (vii) Hon. Najib Balala, Cabinet Secretary, Ministry of Tourism;
- (viii) Sen. Dan Mwazo, former Minister for Tourism
- (ix) Amb. Ruth Solitei, former Principal Secretary, Ministry of Tourism
- (x) Mrs. Phyllis Kandie, former Cabinet Secretary, Ministry of Tourism
- (xi) Mulji Devraj & Brothers, Project Contractor for the Main Works at the Ronald Ngala Utalii College;
- (xii) Baseline Architects Limited, Consortium of Consultants for the Ronald Ngala Utalii College;
- (xiii) Mr. Maurice Juma, Director General of the Public Procurement Regulatory Authority;
- (xiv) Mr. Henry Rotich, Cabinet Secretary, National Treasury

The Committee also considered the Report of the Auditor-General on Ronald Ngala Utalii College Project for Financial Year 2014/2015, in which the Auditor General raised concerns regarding the Project.

3.1 EVIDENCE BY MR. ALLAN CHENANE, CHIEF EXECUTIVE OFFICER, TOURISM FUND

Mr. Allan Chenane, the former Chief Executive Officer of the Tourism Fund appeared before the Committee on 11th May, 2016 to adduce evidence on the matter of procurement and financing of the Tourism Fund's Ronald Ngala Utalii College.

He submitted THAT–

1. The first attempt to establish the Ronald Ngala Utalii College was mooted by the Government through the Ministry of Tourism in mid-1990s, vide Cabinet Minute 30/1996 dated 1st February, 1996; the Government granted an approval for the establishment of the College. The Cabinet vide Minute No. 30/96 of the meeting held on 22nd February 1996 approved the initial action to set up the College in principle (**Annexure 1**)
2. This approval was not implemented due to lack of funds. The communication in relation to the approval is dated 29th March, 1996. (**Annexure 2**)
3. The matter was revisited in the year 2007, when the Cabinet adopted a second resolution to establish the College, vide Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September, 2007. (**Annexure 3**)
4. In this 2nd Memorandum, it was resolved that the Project would be funded by the Treasury at an estimated cost of KES 1.948 billion. The project implementation would be overseen by the Ministry of Tourism and was expected to be completed in four years. The finances would be disbursed in tranches of KES 500 million per year.
5. The process of implementing the 2nd Cabinet Memorandum was not initiated immediately. Implementation commenced vide a letter dated 19th March, 2010 by the Ministry of Tourism to the (defunct) Catering and Tourism Development Levy Trustees (**Annexure 4**), communicating the decision to set up the College in accordance with the resolution. In the letter, the Ministry informed the then CTDLT that a decision had been reached at the policy level, that Trustees should establish the College to be known as Ronald Ngala Utalii College,

pursuant to the provisions of the Hotels and Restaurants Act.

6. The matter was considered by the Board of CTDLT during its 104th Board Sitting held on 24th March 2010, where the Trustees deliberated on the subject and noted *inter alia*, that Section 19 of the Hotels and Restaurants Act provides as follows: - 1 (b) *To establish, equip and control such establishments for the training of persons for employment in hotels and restaurants as the Minister may approve. (Annexure 5)*
7. The Trustees resolved to establish the College as evidenced by 104th Board Meeting and that a Management Board, reporting to the latter, be appointed to oversee implementation of these resolutions. The Board was appointed on various dates.
8. The Minister for Tourism granted an approval to the Trustees' resolution as per Gazette Notice No. 3478 of 9th April, 2010. **(Annexure 6)**
9. In the period preceding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works had developed the initial concept paper and design works of the College.
10. As per the Concept Paper, the Project would constitute the following: -
 - (i) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (ii) Training and demonstration facilities including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary school, health centre, library and recreational facilities;
 - (iii) A five-star hotel complex that would serve as a training laboratory for the College besides being run as a commercial hotel enterprise to address sustainability issues at the College;
 - (iv) In addition, the College would be structured to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship, as set out in the Cabinet Memorandum of 2007.

Consultations on the Project Scope and Design

11. Further to the resolution by the Board of Trustees during the 104th Board Meeting, there were

certain developments that informed the final design for the project.

12. On 13th December 2010, the Management Board of the Ronald Ngala Utalii College, at its Board meeting held in Mombasa, and attended by the then Minister for Tourism and the Permanent Secretary, resolved that the initial design and concept paper for the College required to be updated.
13. The meeting observed that the initial designs and project proposal done by the Ministry of Public Works were undertaken in 2005 and nearly five (5) years had elapsed since then. In the meantime, costs had escalated and the amount then estimated at KES 1.948 billion or thereabouts needed to be reviewed to take into account the lapse of time.
14. The concept paper and design only provided for a student capacity of 600 students. This would not be adequate to cater for the new training areas that the industry required, especially cruise tourism, refresher courses for those already employed in the industry, entrepreneurship, training of trainers, among others. It was resolved that an initial capacity of 1,000 students, which would be increased over the years would be a good start.
15. The Board further noted that the designs and the drawings failed to adopt a coastal architecture in terms of culture, weather elements and local materials. The Ministry's vision for the tourism industry was to have a facility of international repute and centre of excellence in hospitality training, which would also encompass local architecture.
16. Moreover, when H.E the President met tourism stakeholders on 27th August, 2008 during the official opening of the Mombasa Continental Hotel at Shanzu, one of the issues discussed was the College. In the forum, it was agreed that the establishment of the new College should not only be fast-tracked but it should also be a Regional Centre of Excellence.
17. In view of the foregoing, a policy decision was taken that the initial design undertaken by the Ministry of Public Works should be used only as a guide. CTDLT was tasked with bringing on board a team of independent consultants who would be procured in accordance with the procurement laws. The consultant would redesign the College, taking into consideration the issues above and vision of the Board and industry in general.

Procurement of the Project Consultants

18. Further to the foregoing, the Trustees put in place measures to procure professionals to implement the Project. In accordance with the Public Procurement and Disposal Act, 2005 and the Regulations thereof, the Fund identified a consortium of consultants to oversee design and the overall supervision of the project.
19. The Trustees invited qualified firms to submit proposals for considerations vide advertisement carried out in the daily newspapers (**Annexure 7**). The respective consortia would be composed of architects, civil and structural engineers, and quantity surveyors.
20. The proposals were evaluated with technical assistance from the Ministry of Public Works. The tender was awarded to the successful consortium led by the firm of Baseline Architects as the lead consultant and Ujenzi Consultants as the Quantity Surveyors. Other members of the consortium were Armitech Consultants as Structural Engineers, West Consult as Electrical/ Mechanical Engineers, Geomeasures Ltd as Surveyors and PKF Consultants as Environmental Impact Assessment experts (**Annexure 8**).
21. From the onset, the Consultants were procured, using standard tender documents provided by the Public Procurement Oversight Authority. In the process of identifying the consultants, CTDLT would only evaluate proposals based on technical aspects. The financial evaluation would be guided by the scale of fees set out in the Architects and Quantity Surveyors Act.
22. After the award of the tender to the Consortium on 4th April, 2012, one unsuccessful bidder M/s Gitutho Associates lodged an appeal with the Public Procurement Administrative Board on 17th April, 2012. The appeal was heard and dismissed via a ruling dated 11th May, 2012, thereby allowing the process to proceed.

Final Designs

23. The Consortium developed the designs, outline maps, bill of quantities and necessary documents to facilitate the tendering process. In their estimates, the Project would cost KES 8.5 billion, with a margin error for revision at ten per cent (10%).
24. The Fund carried out an advertisement, seeking qualified contractors to submit bids to carry out the construction works (**Annexure 9**). The tendering process was carried out in accordance with the procurement laws and M/s Mulji Devraj and Brothers Ltd emerged to

have submitted the most responsive bid. The firm had a quotation of KES 8.9 billion. This was within the Engineer's estimate for the project and they were also found to possess the requisite technical experience for the project.

Rationalization of the Project

25. In 2013, consultations at the Cabinet level informed the decision to review and down scale the project, culminating in the Cabinet Memorandum of 9th July 2014, which gave guidance on the continued implementation of the project that is now ongoing. (**Annexure 10**)
26. The project, which is a Kenya Vision 2030 Flagship Project, would be financed by the National Treasury, which at the time had advised that the financing model for the five-star hotel, as a component of the whole project, would be undertaken within the Public Partnership Framework. The total cost of the project works was KES 8.9 billion as per the bill of quantities and the bid by Mulji Devraj and Brothers Ltd.
27. The cost of consultancy services, in accordance with the Architects and Quantity Surveyors Act, would be 16% of the total construction cost. This works out to be KES 1.4 billion, making the total project cost at KES 10.3 billion.
28. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KES 8.96 billion, the project must be rationalized, with a view of downsizing the total cost through possible ways, while ensuring the project would still be functional and achieve its mandate.
29. The review was done in consultation with both the parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost would be scaled down to KES 4.93 billion.
30. The National Treasury would provide the costs of construction, while Tourism Fund would pay for the professional services. This culminated in the signing of Cabinet Memorandum dated 9th July, 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier contract.

Committee Specific Observation

The Committee observed that there was no Cabinet approval for the variation of the project cost from KES 8.96 billion to KES 4.93 billion. There was only correspondence between the Cabinet Secretary for National Treasury and the Cabinet Secretary for Tourism, which did not count as a Cabinet approval.

3.2 EVIDENCE BY MR. JOSEPH CHERUTOI, CHIEF EXECUTIVE OFFICER, TOURISM FUND

Mr. Joseph Cherutoi, Chief Executive Officer, Tourism Fund accompanied by Ms. Margaret Njoka, Deputy Head of Finance; Mr. Joram Omondi, Acting Procurement Manager; and Mr. David Wainaina, Account Manager appeared before the Committee on 31st March, 2016 to adduce evidence on the matter of procurement and financing of Ronald Ngala Utalii College in Kilifi County.

The Ag. Chief Executive Officer submitted THAT –

Project Background

1. The Tourism Fund, formerly the Catering and Tourism Development Levy Trustees (CTDLT) initiated construction of the proposed Ronald Ngala Utalii College, whose overall goal was to establish facilities for training of students in different cadres in the hospitality industry and thereby enhancing the overall capacity of the industry in the region. The project was regarded as a flagship project in the tourism industry under Kenya Vision 2030.

Tendering Process for Procurement of the Main Contractor

2. The tendering process involved procurement of the main contractor to carry out the main works for the proposed project and consultants for architecture and design, civil and structural engineering, building, mechanical and electrical engineering and quantity surveying services.
3. The procurement of the contractor was done through prequalification of the contractors via an advertisement dated 23rd November, 2012. Six (6) contractors were shortlisted and prequalified from the process. The prequalified contractors, namely Messers Njuca Consolidated Company Ltd, EpcO Builders Ltd, Dinesh Construction, Cementers Ltd, China Jiangxi International Ltd and Mulji Devraj & Bros Ltd were invited to submit tenders for

execution and completion of the contract via invitation letters dated 18th February 2013.

4. The evaluation and tender committees were appointed in line with the Public Procurement and Disposal Act to evaluate the tenders. The Tender Committee on the recommendations from the Tender Evaluation Committee, awarded the contract for the construction of the Ronald Ngala Utalii College to M/s Mulji Devraj & Bros, the most responsive evaluated bidder at a contract sum of KES 8,961,370,998 for a contract period of 154 weeks. The award was made on the 11th April 2013.
5. The first addendum to the contract was issued on 14th May, 2013 and among other things, extended the contract period from 154 weeks (36 months) to 60 months, making the completion date, 19th June 2018.
6. A second addendum was on signed 25th August 2014 reduced the contract sum from KES 8,961,370,998.00 to KES 4,923,005,000.00 based on the revised scope of the project.

Procurement of Project Consultants

7. Procurement of the Consultants was done through open tender, where an invitation was advertised in the '*Daily Nation* Newspaper' on 16th February, 2012, in line with the Public Procurement and Disposal Act, 2005. An Evaluation Committee was appointed thereafter to evaluate the tenders.
8. Of the Sixteen (16) firms that submitted bids, five (5) qualified for evaluation, following the criteria set out in the Request for Proposal documents. The tender was awarded to a consortium led by Baseline Architects Ltd on 4th April, 2012.

Cost Variations from the Initial Contract

9. The tendered scope of works awarded to M/S Mulji Devraj amounted to KES 8,961,370,893. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KES 8.96 billion, the project had to be rationalized with a view to downscaling it to a tenable level, through a number of ways, which included;
 - (i) Omission of basement parking in administration block;
 - (ii) Omission of primary and nursery schools;
 - (iii) Reduction of the number of block of students' hostels;

- (iv) Reduction of staff houses;
 - (v) Change of specifications and substitution of some components, like finishes;
 - (vi) Omission of supply items, such as furniture, furnishings, computers installations;
 - (vii) Proportionate reduction of some common items in the preliminaries and external works; and
 - (viii) Reduction of prime cost sums for untendered items.
10. The measures had an overall effect of reducing the contract sum by KES 4.04 billion to KES 4, 923,005,669. The scaled down project was negotiated between the parties involved and an addendum signed to reflect these changes. This was done through a consultative process and a Cabinet Memorandum signed to that effect.

Total Project Cost

11. The total project cost for the downscaled project amounted to KES 4, 923,005,669, and comprised main works, electrical works services and installations, mechanical works services and installations and provisional sums for joinery and fixtures.

Committee Observations

The Committee made the following observations from the submission of the Chief Executive Officer:

- (i) Despite the management's assertion that the project is a Vision 2030 flagship project, the management failed to produce documentary evidence of the same.
- (ii) The project was initially approved at a cost of KES 1.948 billion to accommodate 600 students but failed to kick off immediately and was later expanded to accommodate 3,000 students at a cost of KES 8.9 billion, which thereafter escalated to KES 10 billion, due to change of specifications then downscaled to a cost of KES 4.9 billion.
- (iii) The Board resorted to use of restricted tendering to procure the consultants from the prequalified suppliers in the disguise of urgency of the project, contrary to Section 29 of the Public Procurement and Disposal Act, 2005, which states that, for each procurement, the procuring entity shall use open tendering.
- (iv) The Consultants were procured to provide drawings, quantity surveying services, structural

and civil engineering services and supervision of works, based on the original project value of KES 8.9 billion.

- (v) Works done by the Consultants up to tender stage amounted to seventy-five per cent (75%) of the contract, based on KES 8.9 billion, while supervised works would be paid 25% based on the KES 4.9 billion.
- (vi) Two members of the Consortium of Consultants (i.e. Baseline Architects and Ujenzi Consultants) sat in the Tender Evaluation Committee, contrary to section 26 (3) of the Public Procurement and Disposal Act, 2005.

3.3 EVIDENCE BY FORMER MEMBERS OF TENDER COMMITTEE – MAIN WORKS

The following former members of the Tourism Fund’s Tender Committee, who undertook the procurement of the Contractor for the Main Construction Works of Ronald Ngala Utalii College, appeared before the Committee on 24th May, 2016 to adduce evidence on the matter of alleged financial mismanagement at the Tourism Fund: Mr. Charles Okeyo (Former Chair), Ms. Margaret Njoka (Former Vice-Chairperson), Ms. Norah Mukuna (Former Secretary), Mr. Samuel Ngari (Former Member), and Ms. Nancy Siboe (Former Member).

They submitted THAT–

1. The following former Tender Committee members were appointed on various dates in accordance with the PPOA Act 2005 Section 26(5) to undertake the procurement of the main Contractor for the Ronald Ngala Utalii College in Kilifi County: -
 - (i) Mr. Charles Okeyo - Chairman
 - (ii) Ms. Margaret Njoka - Vice Chairman
 - (iii) Mr. Samuel Ngari - Member
 - (iv) Mr. David Wainaina - Member
 - (v) Mrs. Patricia Ondeng - Member
 - (vi) Ms. Nancy Siboe - Member
 - (vii) Mr Willis Ondiek - Member

Tender Advertisements

2. The Project Contractors were procured through the prequalification method, where tender notices were advertised in The Daily Nation newspaper on 23rd November 2012, in line with Section 51 of the Public Procurement and Disposal Act 2005 and Regulation 38 of the Public Procurement and Disposal Regulations 2006.

Tender Opening –Prequalification

3. A Tender Opening Committee was duly appointed by the Accounting Officer, as provided for in section 60(1) of the Public Procurement and Disposal Act 2005. The appointed Committee opened the tenders on 11 January 2013, in the presence of bidders who chose to attend.

Evaluation of Prequalification Bids

4. An Evaluation Committee, was appointed by the Accounting Officer on the 18th January, 2013, to undertake the evaluation exercise, in line with section 66(1) of the Public Procurement and Disposal Act, 2005 and Regulation 46 of the Public Procurement and Disposal Regulations, 2006. The Committee undertook the exercise and submitted its report, in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006.

Tender Award

5. The Tourism Fund Tender Committee, duly constituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations 2006, sat on the 15th February, 2013 and deliberated on the Evaluation Report and adopted the recommendations made by the Evaluation Committee by approving a list of six firms to be invited to quote for the main works. This was in line with Section 66(4) of the Public Procurement and Assets Disposal Act 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Invitation of successful Bidders to Quote

6. The six pre-qualified bidders were invited to submit their proposals on the 18th February, 2013, in line with Section 56 (1), (2) and Section 57 (1) of the Public Procurement and Disposal Act, 2005. The bidders were expected to submit their proposals by 11th March, 2013.

Tender Opening

7. A tender committee was duly appointed by the accounting officer as provided for in Section 60(1) of the Public Procurement and Assets Disposal Act, 2005. The appointed Committee opened the tender on the 21st March, 2013 in the presence of the bidders who chose to attend.

Evaluation of Tenders

8. An Evaluation Committee, comprising technical experts from the Ministry of Public Works was appointed by the Accounting Officer on the 3rd April, 2013 to undertake the evaluation exercise, in line with section 66(1) of the Public Procurement and Disposal Act, 2005 and Regulation 46 of the Public Procurement and Disposal Regulations 2006. The Committee undertook the exercise and submitted its report, in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006.

Tender Award

9. The Tourism Fund Tender Committee, duly constituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations, 2006 and an observer from the Architectural Association of Kenya, pursuant to Regulation 12(8) of the Public Procurement and Disposal Act, 2005, sat on the 11th of April, 2013 and deliberated on the evaluation and made an award to **M/s Mulji Devraj & Brothers**, in line with section 66(4) of the Public Procurement and Asset Disposal Act, 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Notification to Bidders

10. All participating bidders were duly notified of the results of the tendering process, in line with section 67 of the Public Procurement and Disposal Act, 2005.

Budgetary Considerations in the Award

11. Having procured the consultants and all the processes having commenced, the Fund continued to participate in the Medium Term Expenditure Framework (MTEF) processes for the Budget preparation. This was done through active participation at the Ministerial sector groups and ultimately ministerial budget. Through this process, RNUC Project was allocated a total of KES 600 million in the financial year 2013/14 budget and a further KES 2 billion in the financial year 2014/15 budget.

Committee Observations

The Committee made the following observations from the submission of the former Tender Committee: -

- (i) The Catering and Tourism Development Levy Trustees (CTDLT) placed an advertisement in the newspapers on 23rd November, 2012, inviting tenders for prequalification for construction of the proposed Ronald Ngala Utalii College as a Vision 2030 flagship project, yet the project is not listed as a Vision 2030 flagship project by the Kenya Vision 2030 Secretariat.
- (ii) The Ronald Ngala Utalii College (RNUC) project tendered for by the former Catering and Tourism Development Levy Trustees (CTDLT) illegally replaced the Kenya Utalii College, Coast Branch as no Cabinet approval was obtained for the change of name. RNUC was approved by the Cabinet, vide Memorandum Ref. OP. Cab.58/4A dated 13th September, 2007. Thus the CDLT and the Ministry of Tourism breached the Cabinet Memorandum, a legal instrument that established the Kenya Utalii College, Coast Branch.
- (iii) The Tender Committee tendered, evaluated bids and awarded the contract for the project for contractual value of KES 8,961,370,998. The project cost was later arbitrarily inflated to KES10.4 billion, and then scaled down to KES 4,923,005,699.
- (iv) At the time of procuring the project contractor, the procuring entity did not establish the availability of funds to undertake the project; thus it breached section 26 (2) (a) of the Procurement and Disposal Act, 2005 which states that: - *All procurement shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan.*

3.4 EVIDENCE BY FORMER TENDER COMMITTEE MEMBERS - CONSULTANCY SERVICES

The following members of the Tourism Fund's Tender Committee, who undertook the Procurement of a Consultant to Supervise the Construction of Ronald Ngala Utalii College, appeared before the Committee on 24th May, 2016 to adduce evidence on the matter of alleged financial mismanagement at the Tourism Fund: Mr. Eden Odhiambo (Former Chair), Ms. Margaret Njoka (Former Vice- Chairperson), Mr. George Njoroge (Former Member), Ms. Ruth Sande (Former Member) and Ms. Nancy Siboe (Former Member).

They submitted THAT-

1. The Tender Committee members who were appointed to undertake the procurement of the consultant for the Ronald Ngala Utalii College in Kilifi County were: -
 - (i) Mr. Eden Odhiambo - Chairman
 - (ii) Ms. Margaret Njoka - Vice Chairperson
 - (iii) Ms. Ruth Sande - Member
 - (iv) Ms. Nancy Siboe - Alternate Member
 - (v) Mr. George Njoroge - Member
 - (vi) Ms. Florah Ngonze - Member

Policy Direction Implemented by the Members

2. In the 104th Board Meeting held on 24th March, 2010 under AOB, the Board deliberated on establishment of RNUC (Minute 8). The Trustees recalled that Kenya Utalii College was established in 1975 as a pioneer institution for training persons in the hotel and restaurant businesses. They also noted that tourism had been established as one of the key enablers of Vision 2030. Management was engaged to draft a Gazette notice for the Minister to execute in accordance with Section 19(1)(b) of the Hotels and Restaurants Act.
3. In a Special Board Meeting held on 19th April 2010, the Trustees were informed by Management that subsequent to the Resolution, communication had been sent to the parent Ministry on 25th March, 2010 and a gazette notice had been signed, approving the

establishment of the College. The notice was published on 9th April 2010 as Gazette Notice No. 3478.

4. Management received a letter from the Principal Secretary, Ministry of Tourism, Ref. No. MT/12/8 dated 7th April, 2010, reporting that Treasury had set aside KES. 300 Million to be utilized in the project in the financial year 2010/11. The Board noted that the amount in the Concept Paper was approximately KES. 1.95 billion.
5. In the 105th Board Meeting, the Trustees proposed a skeletal staff to be seconded to the College consisting of 4 members of TF staff, 2 members of KUC and 2 members from the parent Ministry. The proposal was submitted to the Ministry for further guidance. The Board was gazetted by the Minister on 12th February, 2010.
6. In the 106th Board Meeting, it was noted that vide Gazette Notice No. 9109 of 6th August, 2010, the Hon. Minister had appointed Board members of the College (**Annexure 11**). Vide a letter dated 10th September 2010, the PS Tourism authorized Trustees to open a bank account for the College.
7. In a Special Board Meeting held on 9th December 2010, the RNUC gazetted Board was inaugurated by the Hon. Najib Balala, Minister for Tourism. It was noted that the College's first Board Meeting was held on 2nd December 2010 and the Board was represented by the CEO.
8. In the 107th Board Meeting held on 27th January 2011, Management informed the Trustees that the RNUC Board held various meetings on 13th December 2010, 10 January 2011, and 17th January 2011, during which the Board reiterated the need to fast-track the process of putting up the College.
9. In particular, requests were made by the College Board to the Fund, for the services of a consortium of private consultants, to carry out the designs, drawings and construction of the college. The Board deliberated and resolved to use its procurement structures, as established under the Public Procurement and Disposal Act, 2005 and regulations thereof.
10. In the 108th Board Meeting held on 28th April 2011, Management informed the Board that they had sought guidance from PPOA on 23rd February 2011 and were advised to initiate a

fresh procurement process by open tender. The process of advertisement commenced from then on until the awards were made.

Tender Advertisement

11. The Project Consultants were procured through the open tender method where tender notices were advertised as tender number **CTDLT/003/2011-2012** on both the Daily Nation and the Standard newspapers on 16th February, 2012, in line with Section 51 of the Public Procurement and Disposal Act, 2005 and Regulation 38 of the Public Procurement and Disposal Regulations, 2006. (**Annexure 12**)

Tender Opening

12. A Tender Opening Committee was duly appointed by the accounting officers, as provided for in Section 60(1) of the Public Procurement and Disposal Act, 2005. The appointed committee opened the tenders on 1st March, 2012 in the presence of bidders who chose to attend.

Evaluation of Tenders

13. An Evaluation Committee was appointed by the Accounting Officer to undertake the evaluation exercise, in line with Section 66(1) of the Public Procurement and Disposal Act, 2005 and Regulation 46 of the Public Procurement and Disposal Regulations of 2006. The Committee undertook the exercise and submitted its report, in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006. In addition, the Ministry of Public Works officials were invited during the exercise in order to give professional advice.

Tender Award

14. The Tender Evaluation Committee, duly constituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations, 2006, sat on 4th April, 2012 and deliberated on the evaluation report and made an award to M/s Baseline Architects, in line with Section 66(4) of the Public Procurement and Asset Disposal Act, 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Notification to Bidders

15. All participating bidders were duly notified of the results of the tendering process, in line with Section 67 of the Public Procurement and Disposal Act, 2005.
16. In the 112th Special Board Meeting held on 18th April 2012, Management informed Trustees that the Tender was awarded and notification sent out to the winning firm; Baseline Architects Ltd.

Budgetary Considerations in the Award

17. Since the year 2009, the Ministry of Tourism had, in conjunction with the National Treasury, set aside funds meant for the construction of the College. In particular, in the year 2011, CTDLT, now Tourism Fund, received a total of KES 43 million, which had been released earlier on but not utilized. In the financial year 2011/12, a total of KES 190 million was received, making a total of KES 233 million. By the time of the award on 4th April 2012, these funds had already been availed to the Tourism Fund by the parent Ministry to cater for the initial project costs. A further provision of KES 80 million had been made by the Ministry of Tourism for the subsequent year's budget FY 2012/13.

Possible Challenges

18. One of the unsuccessful consulting bidders sought review of the award from the Public Procurement Administrative Review Board. The Board dismissed the case.

Committee Observations

The Committee made the following observations from the submission of the former Tender Committee: -

- (i) The award letter of the contract for consultancy services awarded to Baseline Architects, did not specify scale of fees for professional services that were applicable;
- (ii) The Tender Committee did not provide any evidence that it approved the use of Request for Proposal method for procurement process for the consultancy services or that the process was initiated with Expression of Interest, as provided for in Section 78 of the Public Procurement and Asset Disposal Act, 2005;

- (iii) Whereas the Contract for the main works was scaled down from KES 8,961,370,998 to KES 4,923,005,699 the consultancy fee was not scaled down proportionately; as a result, the cost of consultancy is highly inflated.
- (iv) The procuring entity engaged in the procurement of consultancy services without sufficient funds being set aside in the budget. This was a breach of Section 26(6) of the PPDA, 2005.

3.5 EVIDENCE BY FORMER BOARD OF TRUSTEES (2010 – 2012)

Former Tourism Fund Board Members: Mr. Martin Ole Kamwaro, Ms. Amina Kasinga and Mr. Abdulqadir Omar appeared before the Committee on 11th May, 2016 to adduce evidence on the matter of procurement and financing of the Tourism Fund's Ronald Ngala Utalii College:

They submitted THAT–

Historical Background

1. In 1975, the Government of Kenya through the then Catering Levy Trustees (CLT) and the Government of Switzerland, through the Lausanne School of Tourism, set up the Kenya Utalii College (KUC). KUC was established as a regional centre of excellence in training for the tourism and hospitality industry. The College was run by CLT until 1987, when the then Minister for Tourism, in exercise of powers conferred by Section 29 (1) of the Hotels and Restaurants Act, gazetted KUC as an independent state corporation. In so doing, the Minister gazetted the Hotels and Restaurants (Kenya Utalii College) Regulations, 1987 No. 317 of 1987.
2. In the intervening period, the tourism and hospitality industry grew to become a key pillar in Kenya's economic planning and KUC became a premier training institution with high standards of training for the sector. KUC has since trained nearly forty thousand (40,000) personnel, who are employed both locally and internationally. The industry has grown progressively, leading to increased demand for training. Studies show that demand for tourism training in Kenya now stands at 100,000 per year. This has seen concerted efforts by the Government and the private sector to meet the ever growing demand. There are currently approximately 500 institutions training for the industry. It is against this backdrop

that the Government sought to establish a second national tourism and hospitality training institution at the Coast.

3. The setting up of a second national tourism and hospitality training institution was in recognition of the critical role that the Coast region plays in the tourism industry. The then Ministry of Tourism christened the new institution Ronald Ngala Utalii College. The institution would be national in character but coastal in its architecture.

The Policy Framework

(i) First Cabinet Memorandum – 1st February, 1996

4. The first attempt to establish the College was mooted by the Government, through the Ministry of Tourism in mid-1990s. Vide **Cabinet Minute 30/1996 dated 1st February 1996**, the Government granted an approval for the establishment of the College. This approval was not implemented due to the lack of funds. The communication in relation to the approval is dated 29th March, 1996.

(ii) Second Cabinet Resolution – 13th September, 2007

5. The matter was revisited in the year 2007, when the Cabinet passed a Second Resolution to establish the College, vide Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September, 2007.
6. In the second Memorandum, it was resolved that the Project would be funded by the Treasury at an estimated cost of KES 1.948 billion. The project implementation would be overseen by the Ministry of Tourism and was expected to be completed in four years. The finances would be disbursed in tranches of KES 500 million per year.
7. The process of implementing the Second Cabinet Memorandum was not initiated immediately. The Ministry of Tourism, vide a letter dated 19th March 2010 communicated the decision to set up the College in accordance with the resolution. The Ministry informed the then CTDLT that a decision had been reached at the policy level, that Trustees should establish the college to be known as Ronald Ngala Utalii College, pursuant to the provisions of the Hotels and Restaurants Act.
8. The matter was considered by the Board of CTDLT during its 104th Board Sitting, held on 24th March, 2010. The Trustees deliberated on the subject and noted *inter alia*, that Section

19 of the Hotels and Restaurants Act provides as follows: - 1 (b) *To establish, equip and control such establishments for the training of persons for employment in hotels and restaurants as the Minister may approve.*

9. The Trustees resolved to establish the College as evidenced by 104th Board Meeting. The trustees also resolved that a Management Board, reporting to the latter be appointed to oversee implementation of these resolutions. The Board was appointed on various dates.
10. The Minister granted an approval to Trustees' resolution, as per Gazette Notice No. 3478 of 9th April, 2010.

Laying the Framework for Project Implementation/Feasibility Study

11. In the period preceding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works, had developed the initial concept paper and design works of the college.
12. As per the Concept Paper, the project would constitute the following: -
 - (a) A training facility, with an initial capacity of 600 students but with room for further expansion;
 - (b) Training and demonstration facilities, including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary schools, health centre, library and recreational facilities;
 - (c) A five-star hotel complex, that would serve as a training laboratory for the College besides being run as a commercial hotel enterprise to address sustainability issues at the College;
 - (d) In addition, the College would be structured to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship as set out in the Cabinet Memorandum of 2007.

Consultations on the Project Scope and Design

Further to the resolution by the Board of Trustees during the 104th Board Meeting, there were certain developments that informed the final design for the project as enumerated below: -

13. On 13th December 2010, the Management Board of the Ronald Ngala Utalii College, at their Board meeting held in Mombasa and attended by the then Hon. Najib Balala, Minister for Tourism and the Permanent Secretary, resolved that the initial design and concept paper for the College required to be updated.
14. The meeting observed that the initial designs and project proposal done by the Ministry of Public Works were undertaken in 2005 and nearly 5 years had elapsed since then. In the meantime, costs had escalated and the amount then estimated at KES 1.948 billion or thereabouts needed to be reviewed to take into account the lapse of time.
15. The concept paper and design only provided for a student capacity of 600 students. This would not be adequate to cater for the new training areas that the industry required, especially cruise tourism, refresher courses for the those already employed in the industry, entrepreneurship and training of trainers. It was resolved that an initial capacity of 1,000 students, which would be increased over the years, would be a good start.
16. The Board further noted that the designs and the drawings failed to adopt a coastal architecture in terms of culture, weather elements and local materials. The Board pointed out that the vision of the Ministry and tourism was for an institute of repute and centre of excellence in hospitality training, which would also encompass local architecture.
17. Moreover, when H.E the President met tourism stakeholders on 27th August, 2008 during the official opening of the Mombasa Continental Hotel at Shanzu, one of the issues discussed was the College. In the forum, it was agreed that the establishment of the new College should not only be fast-tracked but it should also be a Regional Centre of Excellence.
18. In view of the foregoing, policy decision was taken that the initial design undertaken by the Ministry of Public Works should be used only as a guide. CTDLT was tasked with bringing on board a team of independent consultants, who would be procured in accordance with the procurement laws. The consultant would redesign the College taking into consideration the issues above and vision of the Board and industry in general.

Procurement of the Project Consultants

19. Further to the foregoing, Trustees put in place measures to procure professionals to implement the project. In accordance with the Public Procurement and Disposal Act, 2005

and the Regulations thereof, the Fund identified a consortium of consultants to oversee design and overall supervision of the project.

20. Vide advertisement carried out in the daily newspapers, Trustees invited qualified firms to submit proposals for considerations. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors.
21. The proposals were evaluated with technical assistance from the Ministry of Public Works.
22. The successful consortium is led by the firm of Baseline Architects as the lead consultant and Ujenzi Consultants as the quantity surveyors. Other members of the consortium are Armitech Consultants as structural engineers, West Consult as electrical/ mechanical engineers, Geomeasures Ltd as surveyors and PKF Consultants as environmental impact assessment experts.
23. From the onset, the consultants were procured using standard tender documents provided by the Public Procurement Oversight Authority. In the process of identifying the consultants, CTDLT would only evaluate proposals based on technical aspects. The financial evaluation would be guided by the scale of fees set out in the Architects and Quantity Surveyors Act.
24. After the award of the tender to the consortium on 4th April, 2012, one unsuccessful bidder M/s Gitutho Associates lodged an appeal with the Public Procurement Administrative Board on 17th April 2012. The appeal was heard and dismissed, via ruling dated 11th May 2012, thereby allowing the process to proceed.

Designs

25. The Consortium developed the designs, outline maps, bill of quantities and necessary documents to facilitate the tendering process. In their estimates, the project would cost KES 8.5 billion, with a margin error for revision at 10%.
26. The Fund carried out an advertisement calling out for qualified contractors to submit bids to carry out the construction works. The tendering process was carried out in accordance of the procurement laws and M/s Mulji Devraj and Brothers Ltd emerged to have submitted the most responsive bid. The firm had a quotation of KES 8.9 billion. This was within the engineer's estimate for the project and they were also found to possess the requisite technical experience for the project.

Rationalization of the Project

27. In 2013, consultations at top Government levels informed the decision to review and down scale the project, culminating in the Cabinet Memorandum of 9th July 2014, which gave guidance on the continued on the continued implementation of the project that's now ongoing.
28. The project, which is a Kenya Vision 2030 Flagship Project, would be financed by the National Treasury. The National Treasury at the time had advised that the financing model for the five-star hotel, as a component of the whole project, would be undertaken within the Public Partnership Framework. The total cost of the project works was KES 8.9 billion as per the bills of quantities and the bid by Mulji Devraj and Brothers Ltd. The cost of consultancy services in accordance with the Architects and Quantity Surveyors Act would be 16% of the total construction cost. This works out to be KES 1.4 billion, making the total project cost at KES 10.3 billion.
29. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KES 8.96 billion, the project must be rationalized with a view of downsizing the total cost through possible ways, while ensuring the project would still be functional and achieve its mandate. The review was done in consultations with parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost would be scaled down to KES 4.93 billion. The National Treasury would provide the costs of construction while Tourism Fund would pay for the professional services. This culminated in the signing of Cabinet Memorandum dated 9th July, 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier signed contract.

Title ownership of the Land

30. The College and the hotel would be constructed on a sixty-acre parcel of land L.R No. 5052/4 in Kilifi. The land was donated by Rea Vipingo Estates Group in the 1980s, with the condition that the land shall be used for the establishment of the Coast Branch of Kenya Utalii College. The title deed is in the name of Kenya Utalii College.

31. On 13th March, 2012, Kenya Utalii College wrote to the Fund to communicate the “no objection” to transfer the land to the then CTDLT, now Tourism Fund. The Fund appointed Kithi & Co. Advocates to spearhead the process of transfer of the land.
32. Kenya Utalii College had not paid land rates dating back to 1980s, amounting to KES, 17,912,989 at the time of applying for the transfer. The amount was negotiated and an amount of KES 13 million was agreed on, which has since been paid and the Fund is awaiting clearance certificate from Kilifi County Government, to pave way for the title transfer.

Financial Status

33. The project is financed jointly by the National Treasury and the Tourism Fund as agreed in the Cabinet Memorandum of 2014, which stipulated that the National Treasury should allocate KES 1.23 billion annually for four (4) years with effect from 2014/2015 financial year and Tourism Fund to allocate KES 0.50 billion.
34. Further, the hotel component is intended to be a teaching laboratory for the College, to be implemented under Public Private Partnership at the appropriate time.
35. As at 21st April 2016, a total of KES 3, 076, 082, 181 had been paid out from the National Treasury disbursements and Fund’s internal sources as indicated in the table below: -

No.	Payee	Treasury Funds (KES)	Tourism Fund Funds (KES)	Total (KES)
	Consultants			
1	Baseline Architects	312,863,775	403,226,460	716,090,235
2	Ujenzi Consultants	222,092,576	287,048,000	509,140,576
3	West Consult	88,568,623	26,312,000,	114,880,623
4	Armitech Consultants	112,618,646	26,360,000,	138,978,646
5	Mulji Devraj & Bros	1,312,612,892	235,510,717	1,548,123,609
6	Geomeasures	1,6,502,600	-	6,502,600
7	PKF Consultants	6,565,892	-	6,565,892
8	Kithi & Co. Advocates	-	34,800,000	34,800,000
9	NEMA	-	1,000,000	1,000,000
Total		2,061,825,004	1,014,257,177	3,076,082,1181

Committee Observation

The Committee observed that the submission by the former Board Members was similar to that of several witnesses who had appeared before it.

3.6 EVIDENCE BY CURRENT TOURISM FUND BOARD (2015 TO DATE)

Hon. Henry Kosgey, Chairperson, Tourism Fund Board accompanied by Board Members Mr. Zephaniah Angweye, Ms. Carolyn Ng'ang'a, Mr. Kiprop Chirchir, Mr. Caleb Kositany, Mr. Wallace Mark and Ms. Julie Scott appeared before the Committee on 11th May, 2016 to adduce evidence on procurement process and financing of the Ronald Ngala Utalii College in Kilifi County.

Hon. Henry Kosgey, the Chairperson of the Board, submitted THAT–

Historical Background

1. In 1975, the Government of Kenya, through the then Catering Levy Trustees (CLT) and the Government of Switzerland through the Lausanne School of Tourism, set up the Kenya Utalii College (KUC). KUC was established as a regional centre of excellence in training for the tourism and hospitality industry. The College was run by CLT until 1987 when the then Minister for Tourism, in exercise of powers conferred by section 29 (1) of the Hotels and Restaurants Act, gazetted KUC as an independent state corporation. In so doing, the Minister gazetted the Hotels and Restaurants (Kenya Utalii College) Regulations, 1987 No. 317 of 1987.
2. In the intervening period, the tourism and hospitality industry grew to become a key pillar in Kenya's economic planning and KUC became a premier training institution with high standards of training for the sector. KUC has since trained nearly forty thousand (40,000) personnel who are employed both locally and internationally. The industry has grown progressively leading to increased demand for training. Studies show that demand for tourism training in Kenya now stands at 100,000 per year. This has seen concerted efforts by the Government and the private sector to meet the ever growing demand. There are currently approximately 500 institutions training for the industry. It is against this backdrop that the Government sought to establish a second national tourism and hospitality training institution at the Coast.

3. The setting up of a second national tourism and hospitality training institution was in recognition of the critical role that the Coast region plays in the tourism industry. The then Ministry of Tourism christened the new institution Ronald Ngala Utalii College. The institution would be national in character but very coastal in design and general outlook.

The Policy Framework

First Cabinet Memorandum – 1st February, 1996

4. The first attempt to establish the College was mooted by the Government through the Ministry of Tourism in mid-1990s. Vide **Cabinet Minute 30/1996 dated 1st February 1996**, the Government granted an approval for the establishment of the College. This approval was not implemented due to lack of funds. The communication, in relation to the approval, is dated 29th March 1996.

Second Cabinet Resolution – 13th September, 2007

5. The matter was revisited in the year 2007, when the Cabinet passed a 2nd Resolution to establish the College, vide Cabinet Memorandum Ref. OP.CAB.58/4A dated 13 September 2007.
6. In the second Memorandum, it was resolved that the Project would be funded by the Treasury at an estimated cost of KES 1.948 billion. The project implementation would be overseen by the Ministry of Tourism and was expected to be completed in four years. The finances would be disbursed in tranches of KES 500 million per year.
7. The process of implementing the 2nd Cabinet Memorandum was not initiated immediately. The Ministry of Tourism, vide a letter dated 19th March 2010, communicated the decision to set up the College in accordance with the resolution. The Ministry informed the then CTDLT that a decision had been reached at the policy level that Trustees should establish the college to be known as Ronald Ngala Utalii College, pursuant to the provisions of the Hotels and Restaurants Act.
8. The matter was considered by the Board of CTDLT during its 104th Board Sitting held on 24th March, 2010. The Trustees deliberated on the subject and noted *inter alia*, that Section 19 of the Hotels and Restaurants Act provides as follows: - 1 (b) *To establish, equip and*

control such establishments for the training of persons for employment in hotels and restaurants as the Minister may approve.

9. The Trustees resolved to establish the College as evidenced by 104th Board Meeting. The trustees also resolved that a Management Board, reporting to the latter, be appointed to oversee implementation of these resolutions. The Board was appointed on various dates.
10. The Minister granted an approval to trustees' resolution as per Gazette Notice No. 3478 of 9th April, 2010.

Laying the Framework for Project Implementation/Feasibility Study

11. In the period preceding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works, had developed the initial concept paper and design works of the college.
12. As per the Concept Paper, the project would constitute of the following: -
 - (e) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (f) Training and demonstration facilities, including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary schools, health centre, library and recreational facilities;
 - (g) A five-star hotel complex that would serve as a training laboratory for the College, besides being run as a commercial hotel enterprise to address sustainability issues at the College;
 - (h) In addition, the College would be structured to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship as set out in the Cabinet Memorandum of 2007.

Consultations on the Project Scope and Design

13. Further to the resolution by the Board of Trustees during the 104th Board Meeting, there were certain developments that informed the final design for the project.
14. On 13th December 2010, the Management Board of the Ronald Ngala Utalii College, at their Board meeting held in Mombasa and attended by the then Hon. Minister for Tourism and

the Permanent Secretary, resolved that the initial design and concept paper for the College required to be updated.

15. The meeting observed that the initial designs and project proposal done by the Ministry of Public Works were undertaken in 2005 and nearly 5 years had elapsed since then. In the meantime, costs had escalated and the amount then estimated at KES 1.948 billion or thereabouts needed to be reviewed to take into account the lapse of time.
16. The concept paper and design only provided for a student capacity of 600 students. This would not be adequate to cater for the new training areas that the industry required especially cruise tourism, refresher courses for the those already employed in the industry, entrepreneurship and training of trainers. It was resolved that an initial capacity of 1,000 students, which would be increased over the years, would be a good start.
17. The Board further noted that the designs and the drawings failed to adopt a coastal architecture in terms of culture, weather elements and local materials. The Board pointed out the vision of the Ministry and Industry is for an international standard's facility and centre of excellence in hospitality training, which would also encompass local architecture.
18. Moreover, when H.E the President met tourism stakeholders on 27th August, 2008 during the official opening of the Mombasa Continental Hotel at Shanzu, one of the issues discussed was the College. In the forum, it was agreed that the establishment of the new College should not only be fast-tracked, but it should also be a Regional Centre of Excellence.
19. In view of the foregoing, policy decision was taken that the initial design undertaken by the Ministry of Public Works should be used only as a guide. CTDLT was tasked with bringing on board a team of independent consultants, who would be procured in accordance with the procurement laws. The consultant would redesign the College, taking into consideration the issues above and vision of the Board and industry in general.

Procurement of the Project Consultants

20. Further to the foregoing, the Trustees put in place measures to procure professionals to implement the project. In accordance with the Public Procurement and Disposal Act, 2005 and the Regulations thereof, the Fund identified a consortium of consultants to oversee design and overall supervision of the project.

21. Vide advertisement carried out in the daily newspapers, Trustees invited qualified firms to submit proposals for considerations. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors.
22. The proposals were evaluated with technical assistance from the Ministry of Public Works.
23. The successful consortium is led by the firm of Baseline Architects as the lead consultant and Ujenzi Consultants as the quantity surveyors. Other members of the consortium are Armitex Consultants as structural engineers, West Consult as electrical/ mechanical engineers, Geomeasures Ltd as surveyors and PKF Consultants as environmental impact assessment experts.
24. From the onset, the consultants were procured using standard tender documents provided by the Public Procurement Oversight Authority. In the process of identifying the consultants, CTDLT would only evaluate proposals based on technical aspects. The financial would be guided by the scale of fees set out in the Architects and Quantity Surveyors Act.
25. After the award of the tender to the consortium on 4th April, 2012, one unsuccessful bidder, M/s Gitutho Associates, lodged an appeal with the Public Procurement Administrative Board on 17th April, 2012. The appeal was heard and dismissed via ruling dated 11th May 2012, thereby allowing the process to proceed.

Designs

26. The Consortium developed the designs, outline maps, bill of quantities and necessary documents to facilitate the tendering process. In their estimate the project would cost KES 8.5 billion with a margin error for revision at 10%.
27. The Fund carried out an advertisement, calling out for qualified contractors, to submit bids to carry out the construction works. The tendering process was carried out in accordance with the procurement laws and M/s Mulji Devraj and Brothers Ltd emerged to have submitted the most responsive bid. The firm had a quotation of KES 8.9 billion. This was within the engineer's estimate for the project and they were also found to possess the requisite technical experience for the project.

Rationalization of the Project

28. In 2013, consultations at top Government levels, informed the decision to review and down scale the project culminating in the Cabinet Memorandum of 9 July 2014, which gave guidance on the continued implementation of the project, that is now ongoing.
29. The project, which is a Kenya Vision 2030 Flagship Project, would be financed by the National Treasury. The National Treasury, at the time, had advised that the financing model for the five-star hotel, as a component of the whole project, would be undertaken within the Public Partnership Framework. The total cost of the project works was KES 8.9 billion as per the bills of quantities and the bid by Mulji Devraj and Brothers Ltd. The cost of consultancy services, in accordance with the Architects and Quantity Surveyors Act, would be 16% of the total construction cost. This works out to be KES 1.4 billion, making the total project cost at KES 10.3 billion.
30. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KES 8.96 billion, the project must be rationalized, with a view of downsizing the total cost through possible ways, while ensuring the project would still be functional and achieve its mandate. The review was done in consultations with parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost would be scaled down to 4.93 billion. The National Treasury would provide the costs of construction while Tourism Fund would pay for the professional services. This culminated in the signing of Cabinet Memo dated 9th July, 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier.

Title ownership of the Land

31. The College and the hotel would be constructed on a sixty-acre parcel of land L.R No. 5052/4 in Kilifi. The land was donated by Rea Vipingo Estates Group in the 1980's with the condition that the land shall be used for the establishment of the Coast Branch of Kenya Utalii College. The title deed is in the name of Kenya Utalii College.

32. On 13th March 2012, Kenya Utalii College wrote to the Fund to communicate “no objection” to transfer the land to the then CTDLT now Tourism Fund. The Fund appointed Kithi & Co. Advocates to spearhead the process of the transfer of the land.
33. Kenya Utalii College had not paid land rates dating back to 1980s amounting to KES, 17,912,989, at the time of applying for the transfer. The amount was negotiated and an amount of KES 13 million was agreed on, which has since been paid and the Fund is awaiting clearance certificate from Kilifi County Government, to pave way for the title transfer.

Financial Status

34. The project is financed jointly by the National Treasury and the Tourism Fund as agreed in the Cabinet Memorandum of 2014, which stipulated that the National Treasury should allocate KES 1.23 billion annually for four (4) years with effect from 2014/2015 financial year and Tourism Fund to allocate KES 0.50 billion.
35. Further, the hotel component is intended to be a teaching laboratory for the College, to be implemented under Public Private Partnership at the appropriate time.
36. As at 21st April 2016, a total of KES 3, 076, 082, 181 had been paid out from the National Treasury disbursements and Fund’s internal sources.

No.	Payee	Treasury Funds (KES)	Tourism Fund Funds (KES)	Total (KES)
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3	West Consult	88,568,623	26,312,000,	114,880,623
4	Armittech Consultants	112,618,646	26,360,000,	138,978,646
5	Mulji Devraj & Bros	1,312,612,892	235,510,717	1,548,123,609
6	Geomeasures	1,650,600	-	6,502,600
7	PKF Consultants	6,565,892	-	6,565,892
8	Kithi & Co. Advocates	-	34,800,000	34,800,000
9	NEMA	-	1,000,000	1,000,000
Total		2,061,825,004	1,014,257,177	3,076,082,1181

Committee Observations

The Committee observed THAT –

- (i) There was no feasibility study undertaken before implementation of the Project;
- (ii) The establishment of the Ronald Ngala Utalii College had no legal backing, since it was a diversion of the Kenya Utalii College Coast Branch, which was established under the Tourism Act. The College is yet to obtain a corporate status;
- (iii) The establishment of the Kenya Utalii College, Coast Branch was done through a Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September 2007, at a cost of KES 1.95 billion. There was no evidence of another Cabinet Memo to establish Ronald Ngala Utalii College at an escalated cost of KES 8.9 billion in 2010. This was done through a Gazette Notice No. 3478 of 9th April, 2010, by the then Minister for Tourism;
- (iv) Further, there is no evidence of Cabinet endorsement of the variation of the KES 4.9 billion rationalized and downscaled project, incorporating Public Private Partnership approach to establish a hotel on 9th July 2014; and
- (v) As at 18th April, 2016, the project was 37% complete, based on the report from the Clerk of Works, with a total of KES 3,152,444,635 having already been paid to the Contractor and the Consultant, which represents 64% of the total cost of the revised project. There is, therefore, no assurance that the project would be completed within the budget. Consequently, it may result to loss of public funds, taking into account the accruing interest for unpaid bills.

3.7 EVIDENCE BY HON. N. BALALA, CS FOR TOURISM (2008-2012, 2015 TO DATE)

Hon. Najib Balala, the Cabinet Secretary for Tourism accompanied by Mrs. Fatuma Hirsi Mohamed (Principal Secretary), Mr. Joseph Cherutoi (Ag. CEO, Tourism Fund) Mr. Kevin Njuki (Economist) and Mr. Daudin Abdullahi (Technical Adviser) appeared before the Committee on 25th May, 2016 to adduce evidence on the matter of procurement and financing of the Ronald Ngala Utalii College.

He submitted THAT —

Project Conceptualization

1. The Government of Kenya through the Catering Levy Trustees (CLT) and the Government of Switzerland through Lausanne School of Tourism set up the Kenya Utalii College (KUC) as a centre of excellence in training for the Tourism and Hospitality industry in 1975.
2. In 1987, the Minister of Tourism, in exercise of his power conferred by section 29(1) of the Hotels and Restaurant Act, gazetted KUC as an independent state corporation vide Legal Notice No.317 of 1987.
3. The idea of setting up a second national tourism and hospitality institution at the coast was mooted in 1996 due to the increased demand that stood at 100,000 per year then and in recognition of the critical role played by tourism in the region.
4. The Cabinet, vide Cabinet Minute 30/1996 dated 1st February 1996, gave the approval for the establishment of a branch of the Kenya Utalii College at the Coast.
5. During the fifth meeting of the Cabinet held on 13th September 2007, the Ministry obtained a subsequent approval (Ref OP.CAB.58/4A) as follows:
 - a. *Directed that Kenya Utalii College, Coast Branch be established at the Rea Vipingo site or any other suitable site*
 - b. *the Ministry of Finance to avail the necessary funds*
6. The Rea Vipingo Sisal Estate donated sixty (60) acres of land (LR50525/1) to KUC for the establishment of the College.
7. The total project cost was KES 1.948 billion, to be undertaken in 4 phases at an estimated cost of KES 500 Million per phase/year.
8. The implementation of the 2nd Cabinet directive was not effected immediately until 19th March, 2010 when the Ministry wrote to *the Catering and Tourism Development Levy Trustee* (CTDLT) formerly CLT and asked them to establish the Ronald Ngala Utalii College.
9. The letter was premised, *inter alia*, by section 19 (1) (b) of the Hotels and Restaurant Act that provides for the Trustees to:

“To establish, equip and control such establishments for the training of persons for

employment in the hotels and restaurants as the Ministry may approve.”

10. The Trustees resolved to establish the College during their 104th Board Meeting, held on 24 March 2010, and also resolved that a management board be appointed to oversee its implementation.
11. The Hon. Minister granted an approval for the CTDLT to establish, equip and control Ronald Ngala Utalii College as per the Trustee’s resolution and it was subsequently gazetted as per Gazette Notice 3478 of 9th April 2010.
12. The Ronald Ngala Utalii College management board members were also appointed on various dates as per the gazette notices: No. 9109 (dated 27 July 2010), No. 13027 (dated 19th October, 2010) and No.13210 (dated 29 October 2010).

Project Implementation

Scope of Work

Original–KES1.95 billion in year 2005	Revised–KES 8.96 billion in year 2013
<ul style="list-style-type: none"> • College facilities for 400 students • Administration block - 972m² • Tuition block - 2,750m² • Kitchen/Dining hall - 2,396m² • Library - 1,128m² • Student Centre - 506m² • 2 Student Hostel blocks - 5,360m² • 5 -2BR maisonettes - 1,750m² • 6-2BR flats - 2,365 m² <p>Total for Phase I - 17,227 m²</p> <p>Total for Phase II - 13,603 m²</p>	<ul style="list-style-type: none"> • College facilities for 1200 students • Administration block - 5700m² • Tuition block(Twin) - 20,400m² • Kitchen/Dining hall - 4,000m² • Library - 4,200m² • Student Centre - 2,200m² • 4 Student Hostel blocks - 29,600m² • 18-2BR maisonettes - 5,355m² • 48-2BR flats - 7,160m² <p><u>Additions</u></p> <ul style="list-style-type: none"> • Sports Complex - 1,700 m² • Multi-purpose hall – 3,000 m² • Primary and Nursery School - 4,140 m² • Fire station - 155m² • Laundry and boiler room - 600m² • Transformer and stand-by generator - 270m²

Original–KES1.95 billion in year 2005	Revised–KES 8.96 billion in year 2013
	<ul style="list-style-type: none"> • Sickbay and changing rooms - 460m² • 24-3BR flats - 4,300m²
<u>GRAND TOTAL - 30,830 M²</u>	<u>GRAND TOTAL - 93,930 M²</u>

Procurement

Consultancy Services for Design, Documentation, Supervision and Contract Management for RNUC –CTDLT/003/2011-2012

13. Requests for Proposals were advertised in The Daily Nation on 16th February, 2012.
14. Bids were opened on 1st March, 2012.
15. On 4th April 2012, the CTDLT Tender Committee awarded the tender to undertake the consultancy to M/s Baseline Architects, having scored the highest mark of 89.79%.
16. On 17th April 2012, Gitutho Associates appealed to the Public Procurement Administrative Review Board (PPARB) against the award of tender to M/s Baseline Architects.
17. On 11th May 2012, PPARB dismissed the Appeal and ruled that the procuring entity followed the due process in award of the tender.
18. The Consultancy fees was pegged at 16% of the total contract sum/project cost of the successful bidder KES 8,961,370,998 as governed by Architects and Quantity Surveyors Act, which amounted to KES1, 433,819,359.68.

Prequalification of Contractors and Sub-Contractors for Construction of the Proposed RNUC

19. Prequalification of Contractors and Sub-Contractors for Construction of RNUC was advertised on 23rd November, 2012, and bids opened on 14th January, 2013.
20. On 18th February, 2013, CTDLT pre-qualified 6 firms after attaining the pass mark of 75%, to submit tenders to undertake the main works for the proposed RNUC.
21. Tenders were opened 21st March, 2013, with only 5 out of the 6, who were pre-qualified.
22. On 11th April, 2013, CTDLT Tender Committee awarded the contract to M/s Mulji Devraj

& Brothers, which was ranked first, with the highest combined technical and financial score at 93.24%.

23. The Contract with Mulji Devraj & Brothers was signed on 14th May, 2013, at a cost of KES 8,961,370,998 and for 48 months. As a result, the professional consultancy fee amount of 16% of the contract sum became KES 1,433,819,359.68.
24. On 23rd June, 2013, the contract sum was reduced from KES 8,961,370,998 to KES 4,923,005,699 as per the revised bill of quantities and contract duration extended to 60 months (ending on 19th June, 2018).

Project Status

25. As at May 2016, the College was at 35% completion and KES 3,152,444,635 paid to the Contractor and Consultants.

Governance Framework and Legal Status

The following are the necessary governance framework and legal status with regards to the project:

26. Cabinet approvals through Cabinet Minute 30/1996 dated 1st February 1996 and the subsequent approval in the fifth meeting of the Cabinet held on 13th September, 2007 (Ref OP.CAB.58/4A).
27. Presidential Directive, *Ref OP/CAB/26/1/3A* dated 26th September, 2008 for establishing a centre of excellence at the Coast to enhance the training capacity in the tourism industry.
28. Gazettement of the Ronald Ngala Utalii College establishment through CTDLT as per section 19 (1) (b) of the Hotels and Restaurant Act in the *Gazette notice 3478 of 9th April, 2010*.
29. Appointment and gazettement of the Ronald Ngala Utalii College Management Board members as per the gazette notices: No. 9109, No. 13027 and No.13210 all of 2010.
30. The project was taken over by the Tourism Fund when the Tourism Act 2011 came into effect and the Hotels and Restaurant Act was repealed.

Justification for the Variations

31. In 2010, the Ronald Ngala Utalii College Management Board held a meeting on 13th December, 2010 and resolved that an independent consultant to be identified to review the design and Concept Note for the Project (done by the Ministry of Public Works) to cater for the time lapse of 5 years, make it have a Swahili look and also expand its capacity in order to effect the Presidential Directive Ref OP/CAB/26/1/3A dated 26th September, 2008 for establishing a centre of excellence in the training of tourism and hotel at the Coast.
32. Austerity measures within Government when the new regime took over in 2013 led to rationalization of the Project to KES 4,923,005,699 for the training component only, while the hotel component to be undertaken under the PPP arrangement.

Budgetary Provisions and Expenditure

33. The Ministry of Tourism wrote to the National Treasury, vide the letter Ref MOT/3/11/Vol III dated 20th November, 2013, requesting for an additional KES 1 billion under 2013/14 Supplementary Budget for payment of works as per contracted signed amounting to KES 8,961,370,998.
34. The National Treasury in response, vide letter Ref RES.118/13/01 (18) dated 19th December, 2013 advised as follows:
- i) The matter of Ronald Ngala Utalii College be referred to Cabinet for endorsement (due to variation of the initial cost);*
 - ii) The Tourism Fund should reorganize its internal revenues and provide initial requirements of the Project; and*
 - iii) The Ministry to embrace Public Private Partnership framework in implementing projects that require huge capital outlay.*
35. The Ministry subsequently prepared a Cabinet Memorandum that was endorsed by the National Treasury on 9th July, 2014 which had rationalized the project to KES 4,923,005,699 and incorporated the PPP approach. The Memorandum requested Cabinet to:
- i) Endorse the revised project and direct Cabinet Secretary to implement it;*
 - ii) Direct the National Treasury to allocate KES. 1.23 billion annually with effect from financial year 2014/15 and Tourism Fund to allocate 0.5 billion respectively for four years; and*

iii) Direct that the hotel component, requisite hostels and staff housing to be implemented through PPP.

36. The Cabinet never deliberated in order to endorse the variations but the funding in the last 2 financial years from the National Treasury and Tourism Fund, have been based on the recommendations of the Cab Memorandum of 9th July, 2014.

RNUC Schedule of Payments as at 18th April 2016

Payee	Fees Charged+ Interest Penalties Charged (A)	Interest Penalties Charged (B)	+ Fees Charged (A-B)	Amount Paid	Balance
Mulji Devraj	1,703,676,229.01	326,804,830.00	376,871,399.01	1,624,486,063.00	79,190,166.01
Consultants					-
Baseline Architects	845,316,027.14	195,304,204.05	650,011,823.09	716,090,235.00	129,225,792.14
Ujenzi Consultants	708,957,686.03	193,073,426.93	515,884,259.10	509,140,576.00	199,817,110.03
West Consult	167,075,820.29	63,044,836.89	104,030,983.40	114,880,623.00	52,195,197.29
Armitech Ltd	218,660,400.37	99,670,233.35	118,990,167.02	138,978,646.00	79,681,754.37
Geomeasures	6,502,600.00		6,502,600.00	6,502,600.00	-
PKF Consulting	6,565,892.00		6,565,892.00	6,565,892.00	-
Kithi & Co. Advocates	34,800,000.00		34,800,000.00	34,800,000.00	-
NEMA	1,000,000.00		1,000,000.00	1,000,000.00	-
Total	3,692,554,654.84	877,897,531.22	2,814,657,123.62	3,152,444,635.00	540,110,019.84
Total Amount from Treasury				2,138,187,458.00	
Total Amount from Tourism Fund				1,014,257,177.00	

Breakdown of the Source of Funding as at 18th April 2016

Payee	Treasury Funds (KES)	TF Funds (KES)	Totals (KES)
MAIN CONTRACTOR			
MULJI DEVRAJI	1,312,612,892	235,510,717	1,548,123,609
SUB-CONTRACTORS			
CENTRAL ELECTRICALS	40,000,000	-	40,000,000
VOLCANIC PLUMBING	23,000,000	-	23,000,000
MASTER POWER SYSTEMS	7,697,697	-	7,697,697
EXTRANET COMMS	5,664,757	-	5,664,757
CONSULTANTS			
BASELINE ARCHITECTS	312,863,775	403,226,460	716,090,235
UJENZI CONSULTANTS	222,092,576	287,048,000	509,140,576
WEST CONSULT	88,568,623	26,312,000	114,880,623
ARMITECH CONSULTANTS	112,618,646	26,360,000	138,978,646
GEOMEASURES	6,502,600	-	6,502,600
PKF CONSULTING	6,565,892	-	6,565,892
KITHI & CO. ADVOCATES		34,800,000	34,800,000
NEMA		1,000,000	1,000,000
Total	2,138,187,458	1,014,257,177	3,152,444,635

Compliance to Contract Terms of Payment

37. Late disbursement of funds from the National Treasury has led to interest and penalty claims on overdue accounts resulting in a loss of KES 877, 897, 531.22. Consequently, it has led to delay in completion of the project.

Value for Money for RNUC

38. The College would be able to cater for the increased demand for training in tourism and hotel industry, and this would improve the quality of service in the sector.
39. The College is scheduled to offer other courses such as cruise tourism, SMEs and community tourism entrepreneurship courses, which would benefit the coastal community.

40. The College would attract the private sector to put up the other requisite facilities through PPP approach i.e. hostels, hotel and staff.
41. The College is expected to be a regional centre of excellence as per the presidential directive of 2008, which if, effectively implemented, would attract students from the region.

Committee Observations

The Committee made the following observations from the submissions of the Cabinet Secretary: -

- (i) The Cabinet Secretary wanted to detach the coastal establishment from Kenya Utalii College, hence the change of name from 'Kenya Utalii College, Coast Branch' to 'Ronald Ngala Utalii College.' The name 'Ronald Ngala' was reached upon after consultations with local leaders;
- (ii) The Cabinet Memorandum dated 9th July 2014 that sought to scale down the project cost was not actually a Cabinet Memorandum but deliberations between two Cabinet Secretaries. The full Cabinet had not deliberated on the matter, despite concurrence by the Cabinet Secretaries for Tourism and the National Treasury on the need to scale down the project. The matter therefore was still under deliberation;
- (iii) The Cabinet Secretary's proposal to have the College named Ronald Ngala 'Academy' as a centre of excellence was re-considered, following advice by his technical officers that no Government institution bore the name 'Academy' as part of its title;
- (iv) An audit report by the National Treasury on the Ronald Ngala Utalii College concluded that the project may not realize value for money;
- (v) The audit further revealed that there was no justification for variation of the project cost to KES 10.4 billion. The audit concluded that the project could be a possible fraud scheme that might lead to loss of public funds;
- (vi) KES 1.34 billion had been paid out for consultancy services for work possibly not done. This should be subjected to a forensic audit with a view to possible recovery of funds; and
- (vii) The Cabinet Secretary allowed the Catering and Tourism Development Levy Trustee to manage the Ronald Ngala Utalii College project due to its technical ability, given that it

raises funds for tourism. It was therefore best placed to implement the project.

3.8 EVIDENCE BY SEN. DAN MWAZO, FORMER MINISTER FOR TOURISM (2012-2013)

Sen. Dan Mwazo, MP, the former Minister for Tourism (2012-2013) appeared before the Committee on 28th July, 2016 to adduce evidence on the matter of Tourism Fund's Ronald Ngala Utalii College.

He submitted THAT –

Justification for disbandment of the Board of Trustees of the Tourism Fund on 19th July 2012

1. By the time he made appointments to the Board, there was no substantive and duly appointed Chairman since the previous Chairman Mr. Anania Mwaboza had resigned from his position as a Board Chairman to venture into politics. The Vice Chairperson was then acting in the position of the Chairman.
2. In consultation with the Office of the President and the Office of the Prime Minister under the National Accord, the President appointed the Chairman of the said Board and in his capacity as the Minister and with powers conferred unto him under the State Corporations Act, he reorganized the Board by making various revocations and appointments, retaining some of the Board members for purposes of continuity. The Vice Chair, Ms. Amina Kasinga was retained in the said Board. This therefore ought not be seen as a disbandment but normal reorganization, pursuant to powers conferred to the office then under the law.
3. During the said time, he had also raised concerns to the Board of the Catering and Tourism Development Levy Trustee on the slow progress of the Ronald Ngala Utalii College and their headquarters, despite resources having been made available to the Trustees, so as to enable them establish the College and Headquarters. This failure on their part amounted to non-performance of their duties. This was a flagship project to the Ministry and country at large and he used to make periodical reports to the President and Prime Minister as well as Cabinet and as such, the Project was heavily weighted and performance of the Board critical.
4. His predecessor had in January 2012, revoked the appointment of some of the Board Members of Catering & Tourism Development Levy Trustees and replaced them with other

members that he thought would properly and positively carry out the functions of the office of the Trustees. This was still within his powers and nothing outward in the exercise of his official duties.

5. Having found that the Trustees were not properly discharging their responsibilities and without justification for their non-performance, the former Minister, together with the President, and under his guidance, made revocation and fresh appointments to the said Board of Trustees so as to change the manner in which the projects were being casually carried out. The Minister for Tourism had powers to revoke and appoint Trustees under the Act. Although the Act does not call for any justification for the same, he informed the Committee that he did so with reasons. This practice has been ongoing since time immemorial and no justification was ever cited by other former Ministers when they revoked and made appointments to the Board. The ultimate justification, however, was service delivery and protecting public interest.
6. By the time he was leaving office, Sen. Mwazo's hand over report to the Permanent Secretary, Amb. Ruth Solitei had highlighted Ronald Ngala Utalii College as an item that needed attention. This is because, this was considered a very important project and one that needed to be sustained and as such, among the key items in the handover report.

(Annexure 13)

Reasons for failure to appoint a new Board of Trustees to replace the disbanded one contrary to Section 66, 67 and 69 of the Tourism Act 2011

7. Upon the revocation of the previous Board as was provided for under Gazette Notice No. 10228 of 20th July, 2012, the former Minister in the same Notice appointed other members to the said Board. **(Annexure 14)**
8. As such, pursuant to the provisions of the State Corporations Act, a new Board was appointed. As at 20th July 2012, the Tourism Act, 2011 was not yet in force. It should be noted that the Tourism Act, 2011 was assented to on 16 September, 2011 and the commencement date set for 16th September, 2012.

9. In the circumstances, it cannot be seen that he failed to appoint a new Board pursuant to sections 66, 67 and 68 of the Tourism Act 2011, as the said sections of the Act, and the whole Act in that regard, was not in force, and as such he could not have failed to comply with the provisions of the said Act.
10. At the time he made the revocations and the appointments, the former President H.E. Mwai Kibaki also made three appointments under the State Corporations Act. These included the appointments to the Chairperson of the Board of the Catering and Tourism Development Levy Trustees, the Kenya Utalii College and the Hotels and Restaurant Authority.
11. Further to the foregoing, all previous appointments by his predecessor were also pursuant to the State Corporations Act, he also used in doing the revocations and appointments.
12. It also should be noted that after the appointments were made, a case was filed at the High Court, challenging the appointment of the Board in July 2012 and there were stay orders given. This was Milimani Judicial Review Case Number 317 of 2012 between Abdulkadir M. Omar & 2 Others Vs. Minister for Tourism & Catering and Tourism Development Levy Trustees. No appointments could be made even after the new Tourism Act came into force in September 2012, pending the outcome of this case, and the same was only withdrawn in April 2013 after he had left office as the Minister and as such, he was not available to make any Board appointments and reconstitutions under the Tourism Act, 2011.
13. Sen. Mwazo further added that he always took advice from his superiors on how to reorganize government corporate bodies so as to make them more responsive to government policy and serve the best interest of the Public. No interviews are conducted for Board members before appointment unlike the management, as such and more often than not, the appointment may not meet the expectations and functions as desired. This explains the constant re-organization in state corporations.

Committee Specific Observation

The Committee observed that pursuant to section 6(2) of the State Corporations Act, the former Minister for Tourism, revoked the appointment of the then Board of Trustees and reappointed new ones vide Gazette Notice No. 10228 of 20th July, 2012, with the aim of improving the Fund's performance. The de-gazetted Trustees, however, challenged the decision vide court case No. 317 of 2012 (Abdulkadir M. Omar & 2 Others Vs. Minister for Tourism & Catering and Tourism Development Levy Trustees). Although the court case was withdrawn in April 2013, the Fund

remained without a substantive Board of Trustees until new Trustees were appointed. The Minister was within the law in reorganising the Board of Trustees.

3.9 EVIDENCE BY MS. PHYLIS KANDIE, FORMER CABINET SECRETARY FOR TOURISM (2013-2015)

Hon. Phyllis Kandie, Cabinet Secretary for East African Community, Labour and Social Protection appeared before the Committee on 23rd August, 2016 to adduce evidence on the matter of Ronald Ngala Utalii College.

She submitted THAT –

Feasibility Studies and Approved Cabinet Memorandum for the Establishment of Ronald Ngala Utalii College

1. She took over office as Cabinet Secretary for East African Affairs, Commerce & Tourism in mid-May 2013, upon which she scheduled various briefing meetings for Heads of Departments and Parastatals between June and the end of July 2013, to familiarize herself with the programs and projects being implemented. By the time she was briefed on the activities of the Tourism Fund, the contracts for both the consultants and the main contractor had been awarded and executed.

Chronology of Reviews of the Scope of the Project during the period she served in the Ministry of Tourism

2. The review of the scope of the project was initiated as a result of the economic austerity measures. During the medium term preparation of the Budget, the National Treasury advised that the project's cost and timelines for the implementation required quite substantial amount of funds to be allocated per year. The required funds were too high compared to the Ministry's budget.
3. Therefore, in consultation with the National Treasury, the Ministry (of Tourism) prepared a Cabinet Memorandum to rationalize downwards the cost of the Project from the awarded contract of KES 8.9 billion to KES 4.9 billion. Essentially, this meant that the hotel component was left out in the new implementation. The rationalizing culminated in a duly signed Cabinet Memorandum.

4. There were delays experienced in the release of funds from the Exchequer, that resulted in the delay in completion of the project.

Budgetary Provisions and Breakdown of Funds released for the Implementation of the Project

5. The approved budgets for the three respective years were as follows:
 - i. FY 2013/14 – KES 547,987,500
 - ii. FY 2014/15 – KES 811,422,211
 - iii. FY 2015/16 – KES 687,000,000
6. The budgetary allocation for FY 2015/16 had however, not been released by the time she left the Ministry.

Compliance to the Terms and Conditions of the Contract Agreement on Payment of the Main Contractor and Consultants

7. The contract for the implementation of the college was between the Tourism Fund and the consultant and the main contractor. The agency experienced challenges of complying with the terms of the contract as a result of the delays of release of funds by the Exchequer.

Implementation of the Hotel Component of the Project through Public Private Partnership

8. The hotel component was to be implemented under the Public Private Partnership. There were, however, no formal engagements on the hotel implementation with the Public Private Partnership during her tenure.

Committee Observations

The Committee observed that: -

- (i) The varied contract which raised the cost of the project to KES 8.9 billion was signed with Mulji Devraj as the main contractor on 14th May, 2013. The contract period was meant to be 48 months. This contract was signed just a day before CS Kandie took up office on 15th May, 2013.

- (ii) On 23rd June, 2013, the contract was downscaled to KES 4.9 billion as per revised bill of quantities and the contract period was extended to last 60 months.
- (iii) The correspondence between CS Kandie and the National Treasury to downscale the project cost to KES 4.9 billion did not constitute a Cabinet Memorandum, since the Cabinet had not deliberated and acted on it. Despite this, the project was still downscaled to KES 4.9 billion without Cabinet approval.
- (iv) Despite the variation of the Project cost from KES 1.9 billion to KES 8.9 billion and downscaling to KES 4.9 billion, professional fees for the project remained constant throughout.
- (v) The consultant has been paid 70% of the total consultancy fee despite the limited progress of the project.

3.10 EVIDENCE BY DR. IBRAHIM MOHAMMED, FORMER PS, MINISTRY OF TOURISM (2013-2015)

Dr. Ibrahim Mohammed, former Principal Secretary, Ministry of Tourism appeared before the Committee on 18th August, 2016 to adduce evidence on procurement and financing of the Ronald Ngala Utalii College in Kilifi County.

He submitted THAT –

Feasibility Studies and approved Cabinet Memorandum for the establishment of the Ronald Ngala Utalii College.

1. The Cabinet, vide Minute No. 30/96 of the meeting held on 22 February 1996, approved the initial action to be taken to set up the College in principle.
2. The Cabinet Memorandum CAB/ (05)72 was discussed on the 5th Cabinet Meeting held on 13th September 2007 and directed the Ministry of Tourism to establish Kenya Utalii College (KUC) at the Coast on the 60-acre piece of land donated by Rea Vipingo or any other site and that the Ministry of Finance avails funds for the project. The project cost was Ksh. 1.948 billion to be undertaken in 4 phases (years) at KES 500 million.
3. The above never materialized due to delayed processes caused by Ministry returning funds back to the Treasury at the end of every financial year.

4. The Ministry, vide a letter Ref. No. MT4/5/3, dated 19 March 2010, tasked the Catering & Tourism Development Levy Trustee (CTDLT) to establish the Ronald Ngala Utalii College (RNUC).
5. CTDLT Trustees resolved to establish RNUC during their 104th Board Meeting dated 24 March 2010. By Gazette Notice 3478, signed by the Hon. Minister Balala on 25th March 2010, Ronald Ngala Utalii College (RNUC) was established and this appeared on the Kenya Gazette of 9 April 2010. RNUC Board Members were also appointed as per Kenya Gazette of 6 August 2010, 5 November 2010 and 12 February 2010
6. Request for Proposals (RFPs) were advertised in the Daily Nation on 16 February 2012 and opening of the bids took place on 1 March 2012.
7. On 4th April 2012, the CTDLT Tender Committee awarded M/s Baseline Architects the tender to undertake the consultancy, having scored the highest mark of 89.795%. Appeals ensued but they were dismissed.
8. Prequalification of the contractors and subcontractors for the construction of the RNUC was advertised on 23rd November, 2012 and bids were opened on 14th January 2013. The Committee prequalified 6 firms to undertake the main works after attaining the 75% pass mark for the proposed RNUC.
9. The tenders were opened on 21st March, 2013 and only 5 out of the 6 tenderers were prequalified. The Minutes of 11th April, 2013, awarded the Contract to M/S Mulji Devraj & Brothers, after the firm was ranked first with highest scores in both technical and financial evaluation at 93.24%
10. On 14th May 2013, Tourism Fund and Mulji Devraj & Brothers signed the contract for the construction of RNUC at a cost of KES 8,961,370,998 for a period of 48 months.
11. As a result, the professional consultancy fee amount of 16% of the contract sum became KES 1,433,818,359.68.
12. The contract sum was later to be reduced from KES 8,961,370,893 to KES 4,923,005,669 as per the revised bill of quantities and the contract duration extended to 60 months, thereby ending 19th June, 2018.

13. Dr. Ibrahim was appointed as the Principal Secretary in the Ministry of East African Affairs, Commerce and Tourism in July 2013. By this time the contract for both the consultants and the main contractor had been awarded. The feasibility study and the necessary approvals from the government were, therefore, issued before commencement of the project.

Chronology of reviews of the Scope of the Project during the period he served as the Principal Secretary in the Ministry of Tourism

14. The review of the scope of the project was initiated as a result of the economic austerity measures. During the Medium Term Preparation of Budget, Treasury advised that the project cost and the timelines for implementation required quite substantial amount of funds to be allocated every year. The required funds were too high compared to the Ministry's budget.
15. In view of the foregoing, the Ministry was tasked to liaise with the implementing agency, with a view of rationalizing the project cost but ensuring that the college remained functional after completion.
16. The project rationalization was done in consultations with the National Treasury. It culminated in a duly signed Cabinet Memorandum.

Justification for rationalizing and phasing of the project mid-stream and the relevant approvals

17. The approved budgets for the three respective years were: -

Financial year 2013/14 - KES 547,987,500

Financial year 2014/15 - KES 811,422,211

Financial year 2014/16 - KES 687,000,000

The funds for the financial year 2015/16 had not been released by the Treasury by the time he left the Ministry.

Compliance to the terms and conditions of the Contract Agreement on the payment of the Main Contractor and Consultants

18. The contract for the implementation of the College was between the Tourism Fund, the Consultants and the Main Contractor. The agency experienced challenges of complying with the terms of the Contract, owing to delays in the release of the funds.

Implementation of the Hotel component of the project through Public Private Partnership

19. The hotel component was supposed to be implemented under the public private partnership. There were no formal engagements on the hotel implementation with PPP unit during his tenure at the Ministry.

Value for Money on Establishment

20. The PS wrote to Tourism Fund on 4th March 2015, vide letter Ref No. MEAACT/PS/1A/04 requesting that they carry out an audit of the project, in order to determine the value for money.

Committee Observations on Dr. Ibrahim's submission

The Committee observed THAT –

- (i) There was no feasibility study conducted by the Ministry prior to initiating the project of more than KES 8 billion, thus no due diligence carried out and there was no documentary evidence submitted as proof that the project is a flagship project of Vision 2030.
- (ii) The project was initially approved at a cost of KES 1.48 billion to accommodate 600 students but failed to kick off immediately and was later expanded to accommodate 3,000 students at a cost of KES 8.9 billion, which thereafter escalated to KES 10 billion due to change of specifications then downscaled to a cost of KES 4.9 billion
- (iii) The Board resorted to use of restricted tendering to procure the Consultants from the prequalified suppliers in the disguise of urgency of the Project contrary to Section 29 of the Public Procurement and Disposal Act, 2005, which states that for each procurement, the procuring entity shall use open tendering.
- (iv) The Consultants were procured to provide drawings, quantity surveying services, structural and civil engineering services and supervision of works based on the original project value of KES 8.9 billion despite the project having been downscaled to KES 4.9 billion.
- (v) Works done by the consultants up to tender, amounts to 75% of the contract, based on KES 8.9 billion, while supervised works would be paid 25% based on the KES 4.9 billion.

3.11 EVIDENCE BY AMB. R. SOLITEI, FORMER PS, MINISTRY OF TOURISM (DEC 2012 – JUNE 2013)

Amb. Ruth Solitei, the Principal Secretary in the Ministry of Foreign Affairs appeared before the Committee on 23rd August, 2017 to adduce evidence on the matter of the Ronald Ngala Utalii College, which is the subject of an investigation by the Committee.

She submitted THAT –

Her Role as Permanent Secretary

1. She was appointed Permanent Secretary in the Ministry of Tourism on 22nd December, 2012, but took over the office from her predecessor on or about 5th January, 2013. She served in that capacity at the Ministry until 19th June, 2013.
2. At the time of her tenure at the Ministry, most of the Tourism agencies had no functional Boards. This included the Catering & Tourism Development Levy Trustee (CTDLT), currently the Tourism Fund. In the absence of the Board of Trustees, the Ministry became more involved with the State Corporations under its mandate. In this case, the CTDLT would from time to time consult the Ministry on various issues under its mandate.
3. As Permanent Secretary, her role included policy guidance and provision of advice. An officer, who had been nominated to represent the Ministry on the CTDLT Board remained the focal point for day to day matters that required the attention of the Ministry. Advice was also sought from other departments within the Ministry, particularly from the Finance department and from without the Ministry, including from the National Treasury.
4. On implementation and coordination of the project, the Permanent Secretary's role included receiving both verbal and written briefings and updates on the project. Areas covered in the briefings included; the background for the establishment of the College, the components of the project, the budgetary provisions and projections, that a consultant had already been engaged to re-design the initial designs done by the Ministry of Public Works to handle various aspects of the project, that the CTDLT had in November 2012 advertised for pre-qualification of contractors and sub-contractors for construction of the proposed College.

Project Scope during her tenure

5. The scope of the project as per the tender dated 23rd November, 2012 included erection, completion and equipping of the college facilities, which included the administration block, tuition block, nursery and primary schools, multi-purpose hall, library, student's centre, kitchen/dining hall, workshops, laundry block, student hostels, sports centre and staff accommodation together with all the site works. The total area of the building was estimated at approximately 88,000m sq.

Justification and Legal Backing for Change of Name and Transfer of Sixty Acres to RNUC

6. Prior to her joining the Ministry, Kenya Utalii College vide letter Ref. KUC/8/4/ (903) of 13th March 2012, informed CTDLT that they had no objection to the transfer of the property to CTDLT and proposed that the transfer is carried out through a legal process.
7. Any further communication on this matter may have occurred after her departure from the Ministry of Tourism.

Project Status at the time of handing over to the new Principal Secretary

8. The Consultancy Services for Design, Documentation, Supervision and Contract Management for RNUC-CTDLT/003/2011-2012 had been awarded to M/s Baseline Architects to undertake the consultancy.
9. The Consultancy fee was to be 16% of the total contract sum of the successful bid of KES 8,961,370,998, as governed by the Architects and Quantity Surveyors Act, which amounted to KES 1,433,819,359.68.
 - (i) Prequalification of contractors and sub-contractors for construction was advertised 23rd November, 2012.
 - (ii) The bids for prequalification of contractors and sub-contractors for construction had been opened at CTDLT on 14th January, 2013.
 - (iii) The CTDLT had pre-qualified 6 bidders, who had attained the pass mark of 75% to submit tenders to undertake the main works on 18 February 2013.
 - (iv) Tenders had been opened on 21st March, 2013, with only 5 out of the 6 who were pre-qualified.

- (v) The CTDLT Tender Committee had convened a meeting on 11th April, 2013 and awarded the contract to M/s Mulji Devraj & Brothers. The firm had the highest combined technical and financial score of 93%.
- (vi) Mulji Devraj & Brothers had signed the construction contract for an estimated cost of KES 8,961,370,998 on 14 May 2013.

Amb. Solitei vacated the office of Permanent Secretary, Ministry of Tourism on 19 June 2013.

3.12 EVIDENCE BY MR. HENRY ROTICH, CABINET SECRETARY, THE NATIONAL TREASURY

Mr. Henry Rotich, the Cabinet Secretary for National Treasury accompanied by Dr. Kamau Thugge, Principal Secretary, National Treasury appeared before the Committee on 7th September, 2016 to adduce evidence on the matter of Ronald Ngala Utalii College.

He submitted THAT –

Scope of the National Treasury’s involvement in the Ronald Ngala Utalii College Project

1. The National Treasury’s involvement in the project is a facilitative role of financing accounting units, with the approval of Parliament, in the execution of their mandates.
2. The total budgetary provision to the project is as follows:

Budgetary Allocation for the Ronald Ngala Utalii Project – 2013/14 to 2016/17			
Year	Printed Estimates	Supplementary	Total
2013/14	47,495,000	500,000,000	547,975,000
2014/15	500,000,000	311,422,211	811,422,211
2015/16	-	687,000,000	687,000,000
2016/17	500,000,000	-	500,000,000

3. The total remittances to the project since inception in the financial year 2010/11 amounts to KES 2,359,397,211 as tabulated below:

Financial Year	Amount (KES)	Bank Account
2010/11	43,000,000	Tourism Fund – RNUC Account No. 01003068119300
2011/12	190,000,000	
2012/13	80,000,000	
2013/14	547,975,000	

Financial Year	Amount (KES)	Bank Account
2014/15	811,422,211	
2015/16	687,000,000	
2016/17	-	
TOTAL	2,359,397211	

Cabinet Approval for Change of Scope of Works from KES 1.048 B to KES 8.96 B

4. The National Treasury received a request from the Ministry of East Africa, Commerce and Tourism regarding funding to this Project vide letter Ref. No. MOT/311/VOL.3 dated 20th November 2013, requesting for additional KES 1 billion under the 2013/14 Supplementary Budget for payment of works as per the Contract signed, amounting to KES 8.96 billion. However, the National Treasury noted the change of scope based on the previous Cabinet approval from KES 1.984 billion to KES 8.96 billion. In this regard, the National Treasury advised the Ministry as follows:
 - i) *The matter be referred to Cabinet for variation of the initial cost;*
 - ii) *The Tourism Fund should reorganize its internal revenues and provide the initial financing of the project;*
 - iii) *The Ministry to embrace Public Private Partnership in implementing projects that require huge capital outlay.*
5. Based on the recommendations, the Ministry of East Africa, Commerce and Tourism prepared a Cabinet Memorandum to be countersigned by the National Treasury, which the National Treasury granted its approval on 9th July, 2014. The Cabinet Memorandum proposed the project cost be rationalized to KES 4.92 billion.
6. It is on this understanding that the National Treasury did not allocate any resources in the subsequent estimates of expenditure submitted to Parliament for the Ministry of Tourism to cater for the construction of Ronald Ngala University College before the Cabinet had granted the approval for the variation of the project cost.

7. However, in the wisdom of Parliament, it approved funding to the project for FYs 2013/2014, 2014/2015 and 2015/2016. In this regard, the National Treasury's role was to release funds to the Ministry towards the implementation of the project, based on the approved budget.

Rationale for National Treasury's payment to Ronald Ngala Utalii College instead of Kenya Utalii College as per Cabinet Memorandum REF. OP/CAB.58/4A of 13th September, 2007

8. Exchequer releases to Ministries, Department and Agencies (MDAs) is based on approved budget by Parliament and formal requests by the relevant MDA. This is meant to facilitate the MDA to implement programmes and projects as approved by Parliament. It is therefore incumbent upon the relevant Accounting Officer to remit funds to State Corporations or any other Government Agency under that MDA.
9. The National Treasury released the funds to the Ministry for the Project as shown in the table above. The Ministry, in turn, disbursed the funds to the Catering and Tourism Development Levy Trustees, which is the legal entity charged with the responsibility of establishing the college.
10. The National Treasury does not transfer funds to any State Corporation or Agency directly.

Findings of the Audit carried out by the Ministry of EAC, Commerce and Tourism on the Project

11. The Ministry of East African Affairs, Commerce and Tourism carried out an audit of the project as part of the annual audit work plan approved by the Accounting Officer of that Ministry. This is the audit report which was submitted to the Accounting Officer of the Ministry and copied to the National Treasury. The National Treasury noted the findings and recommendations of the report and directed the Accounting Officer to address the concerns raised in that report, vide letter No. MOF/IAG/MOEA/178 (18) dated 9th September, 2015.

Challenges in Funding the Project

12. The National Treasury has been funding the Ministry of Tourism to implement its priority programmes and projects based on the budget approved by Parliament, including the Ronald Ngala Utalii College Project.

Committee Observations

The National Treasury continued releasing funds for the project contrary to its advice to the Ministry of Tourism, vide letter Ref RES.118/13/01 (18) dated 19th December, 2013 to seek Cabinet Approval before additional funds could be released.

3.13 EVIDENCE THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Mr. Maurice Juma, the Public Procurement Regulatory Authority Director General accompanied by Mr. Peter Wangai (Procurement Compliance Officer) appeared before the Committee on 25th May, 2016 to adduce evidence on the matter of alleged financial mismanagement at the Tourism Fund.

He submitted THAT—

Background

1. The establishment of a Branch of Kenya Utalii College (KUC) was first communicated by the Ministry of Tourism to the Principal of the KUC, vide Cabinet Memoranda dated 29th March, 1996. The approval was not implemented due to lack of funds.
2. The matter was re-visited in 2007, when a second approval of the Cabinet was granted vide Cabinet Memoranda dated 13th September, 2009, which directed that KUC Coast Branch, be established and the Minister for Finance to avail the necessary funds which were estimated at KES 1.948 billion. The project implementation was to be overseen by the Ministry of Tourism.
3. By a letter dated 19th March, 2010, the Ministry of Tourism communicated the decision of the Ministry to establish Ronald Ngala Utalii College to Catering & Tourism Development Levy Trustee (CTDLT) pursuant to the Catering Levy Trustee Fund Act.
4. In its second meeting held on 13th December, 2010, the CTDLT Board resolved that the initial design and concept paper for the College that had been prepared in 2005 by the Ministry of Public Works required to be updated. CTDLT was tasked to bring on board independent consultants to re-design the College. The consultants were to be procured in

accordance with the procurement law.

Procurement Process

5. The procurement process was undertaken in two levels; i.e. procurement of consultants and procurement of main works.

PROCUREMENT OF CONSULTANCY SERVICES

Advertisement and Tender Opening

6. The tender for procurement of consultancy services for design, documentation, supervision and contract management was advertised on 4th March, 2011 in The Standard Newspaper. The initial closing/opening date was 18th March, 2011 but was extended to 25th March, 2011 at 11.00 a.m., vide tender notice dated 14th March, 2011. However, this procurement process was terminated by the procuring entity due to lapse of time for evaluation as the matter was under investigation by the Kenya Anti-Corruption Commission.
7. The tender was re-advertised in the Daily Nation Newspaper on 16th February, 2012. The deadline for submission of tenders was 1st March, 2012 at 12.00 noon. Tenders were opened in the presence of bidders' representatives on 1st March, 2012 by the Tender Opening Committee, comprising of Ms. Patricia Terer, Mr. Fredrick Bwire and Mr. Wilfred Cheruiyot.
8. The Committee was appointed by the Accounting Officer, vide Memorandum Ref: CTDLT/CONF/2/8/VOL.VII (31) of 1st March, 2012. The Tender Opening Committee prepared Tender Opening Minutes, which showed that the following sixteen (16) firms responded:
 - a. AAKI Consultants
 - b. Scope Design Systems
 - c. Batiment Group
 - d. Symbion (K) Ltd
 - e. Diaspora Design Build Ltd
 - f. Mruttu Salmann & Associates

- g. Maestro Architects Ltd
- h. Gitutho Associates & Consulting Architects
- i. Baseline Architects Limited
- j. A. D. Design
- k. Tej Architects
- l. Conte Design Team
- m. Tectura International
- n. Moposis Architects & Interiors Ltd
- o. Planning Systems Services Ltd
- p. Kenchuan Architects

Evaluation

9. Evaluation was conducted by a committee comprising of Mr. Willis Ondiek, Ms. Christine Sitawa, Mr. Kariuki Muturi, Mr. David Wainaina, Mr. Isaiah Ruto, Mr. Collins Kipkosgei, Arch. M. Nguuri, QS Kibet K. Kamingoi, Eng. W. D. K. Ngumo and Eng. D. N. Munyingi. It was conducted in two stages, preliminary and technical evaluation.
10. Preliminary evaluation was done in three (3) stages; first to determine whether bidders submitted the required number of bids; Batiment Group Ltd were disqualified at this stage.
11. Secondly, the composition of the consortium where Scope Design Systems, Symbion (K) Ltd, Diaspora Design Build Ltd, AAKI Consultants, Maestro Architects Ltd, A D Design, Tectura International, Morphosis Architects & Interiors Ltd and Kenchuann Architects Ltd were disqualified.
12. Thirdly, responsiveness to the following mandatory requirements:
 - (i) notarized copy of certificate of business registration/incorporation
 - (ii) notarized copy of current and valid tax clearance certificate
 - (iii) notarized copy of VAT registration
 - (iv) statement of no conflict of interest

(v) Declaration that bidder is not under suspension by Public Procurement Oversight Authority.

(vi) Affidavit

(vii) Proof of works not less than one billion within the last five years

(viii) Declaration that bidder will not be involved in corruption or fraudulent practices

(ix) Disclosure on place of business

(x) Litigation history.

13. The following five (5) firms passed preliminary evaluation and proceeded to technical evaluation:

(i) Mruttu Salmann & Associates

(ii) Gitutho Associates & Consulting Architects

(iii) Baseline Architects Limited

(iv) Tej Architects

(v) Planning Systems Services Ltd

Technical Evaluation

14. Technical Evaluation was based on:

(i) Specific experience and Adequacy of methodology - 40%

(ii) Qualification and Competence of key personnel - 60%

15. Based on the evaluation report, the following four (4) bidders passed technical evaluation stage having score above the cut-off score of 75%:

(i) Mruttu Salmann & Associates - 78.08%

(ii) Gitutho Associates & Consulting Architects - 87.89%

(iii) Baseline Architects Limited - 89.79%

(iv) Tej Architects - 82.46%

16. Planning System Services scored 60.7% and were therefore disqualified since they did not

attain the cut-off score of 75%.

17. Based on the above information, the evaluation committee recommended that Baseline Architects Limited be considered for the award of the tender for consultancy services for design, documentation, supervision and contract management for the proposed Ronald Ngala Utalii College. The evaluation report is dated 30th March, 2012 and was signed by all members.

Award and notification

18. In its meeting No.TC/79/2011-2012 held on 4th April, 2012, the tender committee concurred with the recommendation of the evaluation committee and awarded the tender to Baseline Architects Limited. The award was communicated vide letters dated 4th April, 2012. The minutes were confirmed on 20th April, 2012.

Request for Review

19. The award was challenged at the Public Procurement Administrative Review Board (the Board) by Gitutho Associates under Review No.14/2012 of 17th April, 2012. The Board, in its ruling dated 11th May, 2012 dismissed the request for review and allowed the procurement process to continue.

Contract

20. The Procuring Entity and the successful bidder, the consortium of Baseline Architect Ltd, Ujenzi Consultants, Armittech Consulting Engineers, West Consult Consulting Engineers, Geomeasures Surveyors Ltd and PKF Consulting Ltd, with Baseline Architects Ltd., being the lead consultants, entered into written contract dated 25th May, 2012.

21. According to Clause 6 of the contract, the terms of payments were as follows:

- (i) Architects-scale of fees for professional services as provided under the Architects and Quantity Surveyors Act, Cap 525, Laws of Kenya.
- (ii) Quantity Surveyors - scale of fees for professional services as provided under the Architects and Quantity Surveyors Act, Cap 525, Laws of Kenya.
- (iii) Civil and Structural Engineers-scale of fees for professional services as provided by the Association of Consulting Engineers of Kenya under Registration of Engineers Act, Cap 530, Laws of Kenya.

- (iv) Mechanical and Electrical Engineers-scale of fees for professional services as provided by the Association of Consulting Engineers of Kenya under Registration of Engineers Act, Cap 530, Laws of Kenya.
- (v) Land Surveyors - scale of fees for professional services as provided under the Surveyors Act, Cap 299, Laws of Kenya.

Weaknesses in the Procurement Process for Consultancy Service

- 22. Whereas Section 26(3) of the Public Procurement and Disposal Act, 2005 required all procurements to be within the approved budget of a procuring entity and be planned through annual procurement plan, the procurement plan that was presented to PPRA by the Procuring Entity did not have the estimated cost of the subject procurement.
- 23. In its meeting held on 4th April, 2012 that awarded the tender, the tender committee noted that *“the award was based on the technical proposal submitted by the winning firm, who were to be invited for negotiation on the basis of scale of fees for professional services”*. It is not clear whether the Procuring Entity indeed negotiated with the Consultants taking into consideration that notification of award was done vide letters Ref: CTDLT/CONF/2/8 VOL.VII (43-58) dated 4th April 2012, which was the same day the tender committee awarded the tender. It is imperative to note that Clause 2.8 of the Request for Proposal document provided that the contract would be awarded following negotiation.
- 24. The award letter did not specify the scale of fees for professional services that were applicable.
- 25. The following bid documents were not availed for review by the entity:
 - a) Batiment Group
 - b) Diaspora Design Group Ltd
 - c) Tej Architects
- 26. Whereas the consultants were to be remunerated through scale of fees for professional services as indicated in the tender committee minutes that awarded the tender, the tender document was silent on how the consultants were to be paid.
- 27. Although the evaluation report indicated the scores allocated by each member of the evaluation committee, the individual score sheets that were prepared by the individual evaluators were

not availed. Therefore, it could not be ascertained whether each member of the evaluation committee evaluated the tender independently before sharing their analysis as required by Regulation 16(6) of the Public Procurement and Disposal Regulations, 2006.

28. A review of the evaluation report shows the following weaknesses:

- (a) The bid by the consortium of Baseline Architects Ltd included Geomeasures Surveyors Ltd. However, it was noted from the evaluation report that their bid was not evaluated. It is further noted from the contract document that they were one of the contracted consultants.
- (b) A sample check on evaluation report for the consortium of Mruttu Salmann and Associates and Baseline Architects Ltd were evaluated as not having submitted Notarized Certificate of Registration/Incorporation, Notarized Tax clearance certificate and Notarized VAT registration certificate. This was contrary to the review, since the said bidder had submitted the documents having been notarized as appropriate.
- (c) Table 3 of the evaluation report on consortium composition assessment shows that M/s Scope Design Systems and M/s Diaspora Design & Build Ltd were indicated to have provided all the necessary consultants. However, they were declared non-responsive at the preliminary evaluation stage on this indicator.
- (d) Three evaluators scored Mruttu Salmann & Associates zero (0) mark on the requirement of similar works. However, a review of their bid document that was submitted to us by the Procuring Entity showed that they had provided a list of various similar projects they had supervised in the past, such as the contract with Sport Stadia Management Board for architectural planning, design and contract administration worth KES 3.2 billion. Further, other evaluators scored the bidder on this requirement. This affected the overall score of the bidders since the evaluation committee computed the final score by averaging the scores given by each evaluator.
- (e) The scoring of bidders was not objective. For instance, similar works supervised was assigned 1.5 marks for a maximum of 6 assignment supervised, totalling to 9 marks. It is noted that from the evaluation, some bidders were assigned scores that were not multiples of 1.5.

(f) There is no proof that the Procurement Process for Consultancy started with Expression of Interest as envisaged by Section 78 of the Public Procurement and Disposal Act, 2005. Further, there was no proof that the tender committee approved use of Request for Proposal method without going through the expression of interest.

(g) There was unfairness in the evaluation process as the criteria was not used uniformly.

Procurement of Main Works

29. The procurement process was initiated through a prequalification process, whereby the bidders who passed prequalification were invited to submit detailed tender documents.

Advertisement and Tender Opening

30. The tender for procurement of prequalification of contractor and sub-contractors for construction of the Proposed Ronald Ngala Utalii College was advertised on 23rd November, 2012 in The Standard newspapers. The opening/closing date was 14th December, 2012 at noon.

31. Tenders were opened on 11th January, 2013 as per the tender opening minutes. The tender opening committee comprised of John Mutua, Susan Wanjohi, Aaron Kokita and Wilfred Cheruiyot. The tender opening committee prepared tender opening minutes and the responses were as shown below:

- a) China Jiangxi International Kenya Ltd
- b) Larsen & Toubro Ltd
- c) Mulji Devraj & Brothers Ltd
- d) China Overseas Engineering Group Co. Ltd
- e) Njuca Consolidated Co. Ltd
- f) EPCO Builders Ltd
- g) Dinesh Construction Ltd
- h) Spenco Kenya Ltd
- i) Cementers Ltd
- j) Portco Construction (Africa)

- k) China Machinery Engineering Corporation
- l) NK Brothers Ltd
- m) Tulsi Construction Ltd

Evaluation

32. The evaluation committee was appointed by the Accounting Officer vide letter Ref: CTDLT/CONF/2/12/ (53-55) dated 27th March, 2013 and 3rd April, 2013. The Committee comprised of Mr. Edward Kisali, Mr. David Komu Mwangi, Mr Muturi Kariuki, Mr. Collins Kipkosgei, Asinet Abila, Mr. Jared Otiato, QS S.M. Mutuma, Arch. Fredrick K. Koech, QS. Bernard K. Sang.
33. According to the evaluation report, evaluation was conducted in two stages, preliminary and technical, and was based on the following criteria:
- a) Copies of original document defining the constitution/legal status, place of registration and principal place of business and power of Attorney
 - b) Audited Account and financial statement for the last three years
 - c) Valid registration to operate in Kenya for international firms
 - d) Compliance to statutory taxes including VAT.
 - e) Compliance to statutory deduction including NSSF and NHIF
 - f) Declaration that the bidder is not under suspension under PPOA
 - g) Proof of Ministry of Public Works Registration for the current year 2012/2013.
 - h) Total monetary value of construction work performed in the last five (5) years
 - i) Experience in works of similar nature and size in the last five years, detail of work under way/contractually committed and names and address of clients
 - j) Major items of construction equipment.
 - k) Qualification and experience of management and technical personnel
 - l) Financial statements e.g. profit and loss account/statements and auditors reports for the last three years.

- m) Evidence of adequate working capital e.g. access to lines) of credit
- n) Authority to seek references from tenderers bankers.
- o) Information regarding litigation history for the last five years
- p) Proposal for sub-contracting components of the works amounting to more than 10% of the contract sum.

A summary of the evaluation for main works and other sub-contracts is as follows:

MAIN WORKS

Preliminary

34. The following four bidders were disqualified for failure to meet some of the mandatory requirements:

- i. Larsen and Toubro Limited
- ii. Spenco Kenya Limited
- iii. Portco Construction (Africa)
- iv. China Machinery Engineering Corporation

Technical Evaluation

35. The summary of technical evaluation is as follows:

S.no	Bidders name	Technical score (%)
1.	China Jiangxi International Kenya Ltd	79
2.	Mulji Devraj and Brothers Ltd	87
3.	China Oversea Engineering Group Co. Ltd	69
4.	Njuca Company Ltd	78
5.	Epc Builders Limited	86.5
6.	Dinesh Construction	79
7.	Cementers Limited	75
8.	N K Brothers	69

9.	Tulsi Construction Ltd	37
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Recommendation of the Evaluation Committee

36. In view of the above China Overseas Engineering Group Co. Ltd, N K Brothers and Tulsi Construction Ltd were disqualified for failing to attain the cut off score of 75%. The other bidders (China Jiangxi International Kenya Ltd, Mulji Devraj and Brothers Ltd, Njuca Company Ltd, EPCO Builders Ltd, Dinesh Construction and Cementers Limited) qualified for the second stage of the procurement process (main works) and the evaluation committee recommended them to be invited to tender.

TC approval of prequalified firms and invitation to tender for Main Works

37. In its meeting held on 15th February, 2013, the tender committee concurred with the recommendations of the evaluation committee and adopted its recommendations.

38. Prequalified bidders were notified that they were successful and further invited to bid for the main works. This notification/invitation was contained in letters Ref. CTDLT/CONF/2/8/dated 18th February, 2013. Notification letters for the firms that were unsuccessful were not availed.

39. The invitation letters required the bidders to submit their bids by 11th March, 2013 at 12.00 noon. The opening date was extended to 14 March 2013, vide letter Ref: CDLT/CVONF/2/8(141) dated 20th February, 2013. The opening was further extended to 21st March, 2013 at 12.00 p.m. vide letter Ref: CTDLT.CONF/2/8 VOLL.VII of 12th March, 2013.

Tender Opening

40. Tenders were opened on 21st March, 2013 by a committee comprising of Erastus Karanja, David Ogutu, Aaron Kokita and Rodah Cherutich. The bids received were as follows:

No.	Bidder's Name	Bid price (KES)
1.	Cementers Ltd	10, 928, 957, 640.00
2.	Mulji Devraj and Brothers Ltd	8, 961, 370, 998.00
3.	Njuca Consolidated Co. Ltd	9, 115, 000, 000.00
4.	EPCO Builders Ltd	8, 833, 755, 242.00
5.	China Jiangxi International Kenya Ltd	8, 462, 639, 707.00

Evaluation

41. Evaluation was conducted in three stages; i.e. preliminary, technical and financial.

Preliminary Evaluation

42. This was based on the following mandatory requirements:

- a) Submission of tender in the stipulated format
- b) Tender security of KES 10 million
- c) Signing of the tender by authorized person/power of attorney
- d) Tender validity
- e) Submission of all documents and information
- f) Bidder must be a company registered in Kenya under the Company's Act.

43. All the five (5) bidders were responsive and therefore proceeded to the technical evaluation.

Technical evaluation

44. Technical evaluation was done in two stages i.e.

- (a) Evaluation on responsiveness of tenders; and
- (b) Deviation from quantity surveyor's estimate.

45. The minimum score under responsiveness was 75%. Cementers Ltd did not meet the cut-off score and were therefore disqualified from further evaluation.

46. The remaining four (4) bidders passed the second part of the evaluation on deviation from the estimate.

47. A summary of the combined technical scores was as follows:

No.	Bidder	weighted technical score
1.	China Jiangxi International Kenya Ltd	65
2.	EPCO Builder Ltd	72.45
3.	Mulji Devraj & Brothers	75.33

4.	Njuca Consolidated Co. Ltd	64.67
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48. In view of the above, three (3) bidders qualified for financial evaluation. Njuca Consolidated Co. Ltd was disqualified. Based on the documents that were submitted by the Procuring Entity, there was no cut-off score and therefore it was not clear how the decision to disqualify Njuca Consolidated Co. Ltd was arrived at.

Financial Evaluation

49. This involved correction of arithmetical errors and computation of financial score. Three (3) bidders, China Jiangxi International Kenya Ltd, EPCO Builder Ltd and Mulji Devraj & Brothers, were considered in this stage. The results of financial evaluation are as summarized below:

No.	Bidder	Financial score
1.	China Jiangxi International Kenya Ltd	20
2.	EPCO Builder Ltd	19.16
3.	Mulji Devraj & Brothers	18.90

50. The combined technical and financial scores was as follows:

No.	Bidder	Combined technical and financial scores (5)
1.	China Jiangxi International Kenya Ltd	85
2.	EPCO Builder Ltd	90.95
3.	Mulji Devraj & Brothers	93.24

51. In view of the above, the Evaluation Committee recommended the award of the tender to Mulji Devraj & Brothers at their tender sum of KES 8, 961, 370,998.00, having scored the highest combined score of 93.24%.

Tender Award and notification

52. In its meeting held on 11th April, 2013, the tender committee concurred with the recommendation of the evaluation committee and awarded the tender to Mulji Devraj &

Brothers.

53. Notification of award was done through letter Ref: TF/CONF/2/8/ (178-182) dated 12th April, 2013.

Contract

54. The Procuring Entity and Mulji Devraj & Brothers Ltd entered into a contract on 14th May, 2013. The contract was for construction works of the Proposed Ronald Ngala Utalii College at a contract sum of KES 8, 961, 370, 998.00.

Scaling down the Scope of the Project

55. According to the Tender Committee Minutes Min. No.TC/32/2013-2014 held on 20 August 2014, the Committee noted as follows:

- a) Contractor moved to site in June, 2013 and substantial work, falling under Phase I, had been done and certified for payment.
- b) The project was to be funded by National Treasury. However, in December, 2013, National Treasury issued a letter notifying the Procuring Entity of the budget constraints, hence impossibility of funding the entire project in its current scope.
- c) Tourism Fund embarked on a process to rationalize the project and the Project Consultants gave the following alternatives for scaling down the project:

No.	Alternative	Projected Savings (KES billions)
1.	Omission of basement parking in administration block and entire omission of primary and nursery schools	0.246
2.	Reducing student hostels and staff houses by 50%	1.160
3.	Change of specifications including substituting components and finishes	0.170
4.	Omission of supply of furniture, furnishing, computers, software, UPS installations and interior design works.	0.653
5.	Reducing prime cost sum and provisional sum for untendered electrical and mechanical works and price escalation and contingencies by 50% respectively	1.140

No.	Alternative	Projected Savings (KES billions)
6.	Proportionate reduction of some common items in the preliminaries and external works bills.	0.346
Total Projected Savings		3, 715, 000, 000.00

- d) The proposal for scaling down the project was approved vide a Cabinet Memorandum dated 9th July, 2014.
- e) The contract period was to be reduced from 154 to 128 weeks.
- f) The scaling down of the project was to be negotiated with the contractor, Tourism Fund and Consultant and addendum to be issued.

Revision of Contract

56. The first addendum to the contract was issued on 14th May, 2013 and among other things, extended the contract period from 154 weeks (36 months) to 60 months. It also introduced Sectional Completion of the project into five (5) phases. The first phase was estimated to take twelve (12) months at a cost of KES 1.9 billion. Further, CTDLT was to grant the contractor an advance payment of 10% of builder's works.
57. The Procuring Entity and Mulji Devraj & Brothers Ltd signed a second addendum on 25th August 2014, reducing the contract sum from KES 8, 961, 370, 998.00 to KES 4, 923, 005, 000.00, based on the revised scope of the project.

SUB-CONTRACTS

58. The procuring entity also processed tenders for sub-contracts alongside the tender for main works. A summary of the tenders received/opened for various categories were as follows:

S/NO	Category	Number of responses
1.	General Electrical Installation	9
2.	Plumbing, drainage and firefighting installation	3
3.	Refrigeration, Air conditioning and mechanical installation	3

S/NO	Category	Number of responses
4.	Kitchen equipment, liquid petroleum gas and Laundry equipment installation	1
5.	Sports, sauna, steam and gym equipment installation	1
6.	Solar water heating	1
7.	CCTV, access control, fire detection and alarm equipment installation	3
8.	Stand-by generator installation	6
9.	PABX equipment, data and telephone instrument, structured cabling, computer networking LAN, WAN, internet works, building management system installations	6
10.	Solar street light installation	1
11.	Furniture and furnishings	1
12.	public address and conference equipment installation	3
13.	Lifts installation	2
14.	Waste water management and disposal installation	1
15.	Rain water harvesting, water storage and booster pump installation	1
16.	Transformers HV and LV switch board, distribution boards and power factor correction equipment's installation	56
17.	Borehole drilling and equipment installation	1

Evaluation

A summary of the evaluation is as indicated below:

General Electrical Installation

a) Preliminary

59. Out of the nine (9) bidders who participated, the following three (3) bidders were disqualified for failure of meeting some mandatory requirements:

- i. Jogra Electrical (K) Ltd
- ii. Projects Electrical Limited

iii. Glama Electrical and Mechanical Co. Ltd

b) Technical Evaluation

60. The other six (6) bidders qualified for technical evaluation. The summary of technical evaluation is as bellow:

S.no	Bidders name	Technical score (%)
1.	Contemporary Electrical Enterprises Ltd	78
2.	Central Electricals International	86.25
3.	Sawarn Singh and Sons	36
4.	Power Group Technologies Ltd.	60
5.	Relcon Power System	52.75
6.	Philafe Engineering Ltd	59

61. In view of the above, Sawarn Singh and Sons, Power Group Technologies Ltd., Relcon Power System and Philafe Engineering Ltd were disqualified for failing to attain the cut off score of 75%. Two (2) bidders qualified in this category.

Stand-by Generator Installations

62. This category attracted six (6) bidders, of whom the following two bidders were disqualified for failure of meeting some mandatory requirements:

- i. Project Electrical Ltd
- ii. Mantrac Kenya Limited

63. The other four (4) bidders qualified for technical evaluation. The summary of technical evaluation is as bellow:

S.no	Bidders name	Technical score (%)
1.	Philafe Engineering Ltd	69
2.	Ants Electrical Contractors & Engineering	78
3.	Sawarn Singh and Sons	36

4.	Central Electricals International	80
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64. In view of the above, Sawarn Singh and Sons and Philafe Engineering Ltd were disqualified for failing to attain the cut off score of 75%. Ants Electrical Contractors & Engineering and Central Electricals International qualified for the next stage of the procurement process.

PABX Equipment, Data and Telephone Instrument, Structured Cabling, Computer Networking LAN, WAN, Internet Works, Building Management System Installations

65. Out of the six (6), the following two (2) firms were disqualified at the preliminary evaluation stage since they did not meet some of the mandatory requirements:

- (i) Conquer Technologies Ltd
- (ii) Dynotronics Co. Ltd

66. The other four (4) firms were considered in the technical evaluation. The results were as follows:

S/No.	Bidders name	Technical score (%)
1.	Philafe Engineering Ltd	65
2.	Ants Electrical Contractors & Engineering	62
3.	Uni Data System Ltd	68
4.	Servtel Communications Ltd	54.5

67. Based on the above information all the bidders were disqualified at the technical evaluation stage since none of them met the cut-off score of 75%.

Transformers HV and LV Switch Board, Distribution Boards and Power Factor Collection Equipment's Installation

68. Five (5) bidders, Project Electrical Ltd, Contemporary Electrical Enterprises, Philafe Engineering Ltd, Central Electrical International and Power Group Technology Ltd submitted bids for this category. All of them passed preliminary evaluation and were therefore subjected to the technical evaluation.

69. A summary of the technical evaluation was as follows:

S/No.	Bidders name	Technical score (%)
1.	Project Electrical Ltd	35
2.	Contemporary Electrical Enterprises	84
3.	Philafe Engineering Ltd	66
4.	Central Electrical International	85
5.	Power Group Technology Ltd	75

70. In view of the above, Project Electrical Ltd and Philafe Engineering Ltd were disqualified for failing to attain the cut-off score of 75% and the rest qualified for the next stage.

CCTV, Access Control, Fire Detection and Alarm Equipment Installation

71. Three (3) bidders, namely Dyntronics Co. Ltd, Servtel Communication Ltd and Contemporary Electrical Enterprises responded. They all passed preliminary evaluation and qualified for technical evaluation.

72. A summary of the Technical Evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Dyntronics Co. Ltd	32
2.	Servtel Communication Ltd	57
3.	Contemporary Electrical Enterprises	84

73. Only one bidder, Contemporary Electrical Enterprises, met the cut-off score of 75%.

Plumbing, Drainage and Firefighting Installation

74. Three (3) bidders, namely Trident Plumbers Ltd, Aqua Plumbing Co. Ltd and Volcanic Plumbing Works responded to this category. They all passed preliminary evaluation and qualified for technical evaluation.

75. A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Trident Plumbers Ltd	56

2.	Aqua Plumbing Co. Ltd	91
3.	Contemporary Electrical Enterprises	68.5

76. Only one bidder, Aqua Plumbing Co. Ltd, met the cut-off score of 75%.

Public Address and Conference Equipment Installation

77. Three (3) bidders, namely Sevtel Communications Ltd, Avtech Systems Ltd and Pillar Audio Visual Services participated in the subject category. They all passed preliminary evaluation and qualified for technical evaluation.

78. A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Sevtel Communications Ltd	62
2.	Avtech Systems Ltd	76
3.	Pillar Audio Visual Services	36.5

79. Only one bidder, Avtech Systems Ltd, met the cut-off score of 75%.

Refrigeration, Air Conditioning and Mechanical Installation

80. Three (3) bidders, namely Unicool International, Viotech Ltd and Climate Engineering Works Ltd responded. They all passed preliminary evaluation and qualified for technical evaluation.

81. A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Unicool International	91
2.	Viotech Ltd	47
3.	Climate Engineering Works Ltd	54

82. Only one bidder, Unicool International, met the cut-off score of 75%.

Other Sub- Contracts

83. The other nine (9) Sub-Contracts that attracted less than three bidders were not evaluated. The

Committee observed that *no competitive tendering can result from this number of respondent as it would amount to single sourcing; they consequently decided that further analysis of these bids would serve no purpose.*

Recommendation of Evaluation Committee on Sub- Contract Works

84. The committee recommended that all the sub-contracts be re-advertised through open tender method.
85. Further, the Committee recommended that related sub-contract works be amalgamated with view of reducing the categories of sub- contracts and the evaluation criteria be reviewed.

Tender Committee Adjudication of the Sub-contracts

86. The TC adopted the recommendation of the evaluation committee to re-advertise all the sub-contracts.

Weaknesses in the Procurement Process for Main Works

87. Whereas the closing/opening of tender was supposed to be on 14th December, 2012 at 12.00 noon, the opening minutes indicate that opening of tenders was done on 11th January, 2013. There was no documentary evidence that were presented to us to demonstrate that the tender opening was extended.
88. The following persons participated in the evaluation of the tender but their appointment letters were not availed:
- a) Maureen Chacha
 - b) James Owak
 - c) Nahason Oenga
 - d) Kepha K. Osoro
 - e) Michael Mudhune
89. The Tender Opening Committee allocated identification numbers to the bids during the tender opening. However, the Committee did not sign the forms of tender as provided by Section 60 (7) (b) of the Act.
90. The evaluation committee considered three bidders in the financial evaluation stage who had

the highest technical score and dropped Njuca Consolidated without a justification. The reasons for disqualifying M/s Njuca Consolidated Co. Limited at technical stage of evaluation for main works could not be ascertained

91. Notification letters for the unsuccessful bidders for prequalification process for main works were not availed. It could not therefore be verified whether notification was done and communicated to all bidders in accordance section 67 of the PPDA Act, 2005.
92. The Evaluation Committee corrected arithmetical errors but there were no records to demonstrate that the Procuring Entity sought concurrence from the bidders as required by Section 63 of Public Procurement and Disposal Act, 2005. It is important to note that M/s EPCO Builders Limited lodged a request for review with Public Procurement Administrative Review Board, Application No. 15/2013 dated 12th April, 2013 against CTDLT for having corrected arithmetical errors established in his document without notifying the bidder. However, the application was not heard and determined, since EPCO Builders Ltd withdrew the request for review on 8th May, 2013 and the Review Board therefore marked the request for review withdrawn and accordingly allowed procurement process to proceed. Correction of arithmetical errors was also done to the bid document of M/s China Jiangxi International Kenya Ltd and no evidence of informing the bidder was availed.
93. The procuring entity did not furnish PPOA with a blank copy of the tender document for prequalification and for the main works that were issued to the bidders. In the circumstance, it was not possible to verify whether the evaluation criteria were set out in the bid documents pursuant to Section 52(3) (j) of the Public Procurement and Disposal Act, 2005. It was also not possible to verify whether the evaluation was conducted using the said criteria pursuant to Section 66(2) of the Act and Regulation 5(4) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
94. It was noted that evaluation was based on the requirements that were in the advertisement notice. However, the criteria in the advertisement did not have scores whereas the technical evaluation as contained in the report had scores.
95. The original bid document of the successful bidder M/s Mulji Devraj & Brothers Ltd. was not availed. The copy of the document availed for review was incomplete, since the Form of Tender and the grand summary page of the BQ were not attached. Therefore, we could not

ascertain the tender value as quoted against what was awarded.

96. The content of the 1st Addendum alluded to over-pricing of items in the preliminaries section of the BQ for successful bidder. It is purported that the overpricing was noted by the evaluation team and reported to tender committee. However, minutes of deliberation of the same were not availed. Accordingly, we note from the same addendum, the overpricing was not adjusted, rather payment was to be staggered in all the phase, i.e. 20% to be paid in phase one (1) and 80% to be spread across the other phases.
97. Attachment 1 of the 2nd Addendum on cost analysis and summary of bill of reduction, Option 2- table 3, provided for prime costs. However, there was a provision in the Appendix to Conditions of Contract that the sub-contracts for electrical works and services, and Mechanical Works and Services were to be engaged by the Employer on site.
98. The procurement process for various sub-contracts was terminated by the procuring entity but were not reported to the Authority as provided by Section 36 (7) of the Act and PPOA Circular N0.4/2009. It is important to note that Tourism Fund procured related sub-contract works in the financial year 2014/2015 and the same were reported to the Authority under contract awards for contracts valued at KES 5,000,000 and above.

Committee Observations

The Committee made the following observations from the submission of the Director General: - THAT

- (i) The main contractor and sub-contractors had been paid a total of KES 1, 624, 486, 063.00 while the consultants had been paid a total of KES 1,527, 958, 572.00. Based on these figures, it shows that the consultants had been paid the entire amount of the original contract sum for their consultancy fee which should not have been the case since the project was scaled down.
- (ii) From the payment schedule, it was indicated that four (4) sub-contractors (Central Electricals, Volcanic Plumbing, Master Power Systems and Extranet Communications) had been paid a total of KES 96, 362, 454.00. However, the procurement process that resulted in the engagement of these sub-contractors could not be ascertained, since the entity had terminated the procurement process for sub-contractors.
- (iii) The procuring entity did not furnish PPRA with a blank copy of the tender document for

prequalification and for the main works that were issued to the bidders. PPRA could not, therefore, verify whether the evaluation criteria were set out in the bid documents pursuant to Section 52(3) (j) of the Public Procurement and Disposal Act, 2005. The Authority could also not verify whether the evaluation was conducted using the said criteria pursuant to Section 66(2) of the Act and Regulation 5(4) of the Public Procurement and Disposal (Amendment) Regulations, 2013.

3.14 EVIDENCE BY THE PROJECT CONTRACTOR (MULJI DEVRAJ & BROTHERS LTD)

Mr. Mahendra Halai, a Director at Mulji Devraj & Brothers Ltd appeared before the Committee on 5th April, 2016 to adduce evidence on the matter of alleged financial mismanagement at Tourism Fund.

He submitted THAT—

1. The procurement of the contractor was done through prequalification of the contractors in November 2012. Mulji Devraj & Brothers Ltd Company was prequalified to tender for the contract of the main works of the Project.
2. Mulji Devraj & Brothers Ltd Company and other prequalified tenderers were invited to submit a tender for execution and completion of the project via letter dated 18th February 2013 Ref. CTDTL/CONF/2/8.
3. The Company tendered for the contract at a total cost of KES 8,961,370,998 and after evaluation it won the tender and was notified of the tender award on 11 April 2013, via a letter Ref No. TF/CONF/2/8/9(178).
4. The Contract Agreement for the construction of the proposed works was signed on 14th May, 2013 between the Tourism Fund and Mulji Devraj & Brothers Ltd., wherein the employer shall pay the contractor KES 8,961,370,998 at the times and manner specified in the contract.
5. The Tourism Fund was to appoint the Project Consultants, who shall include quantity surveyor, architect and engineers.

Overview of the Contract

6. The commencement date of the contract was 26 June 2013 while the completion date is

scheduled to be 19 June 2018, with a contract period of 60 months from the date of commencement.

7. The works commenced on 20 June 2013 and performed as per the required standards and specifications.
8. However, the works were suspended due to non-payment on 24 April, 2014. Part of the payment was made and immediately resumption of works commenced on 1 November 2014 with a new completion date scheduled to be 31 October 2017 with a period of 44 months from the date of recommencement.
9. Due to the second addendum of the Contract, the scope of works was reduced to KES 4,923,005,699 and phased into two phases, in order to cope with the employer's budget. Some aspects of the contract were phased out by the procuring entity.
10. The Contractor applied for the first extension of time upon which, the contract completion date moved from 31st October, 2017 to 28 February 2018, as requested vide letter MDBL/ROY/RNUC 45 dated 12th May, 2016 and confirmed through another letter MDBL/ROY/RNUC 46 dated 2nd July, 2016.
11. A second extension of time extended the contract completion date from 28th February, 2018, to 18 June 2018, vide letter MDBL/ROY/RNUC-A 47 dated 31st August 2016 and confirmed through letter MDBL/ROY/RNUCA 49 dated 31st October 2016.

Overview of the Construction Contract

12. The General Contract comprises of the following;
 - i. **Main Buildings:** Administration Building, Twin Tuition Block, Library Block, Students Centre, Sports Complex, Multipurpose Hall, Kitchen and Dining Hall.
 - ii. **Ancillary Buildings:** Primary School (Administration and Classroom Blocks), Workshop Block, Sick Bay and Changing Rooms, Laundry and Boiler House, Transformer and Standby Generator House and Fire Station.
 - iii. **4 Hostel Blocks**
 - iv. **Staff Accommodation:** 5 maisonettes type QQ (twin - blocks), 8 maisonettes type PP, 3 blocks of 3-bedroom flats, 48 2-bedroom flats and 18 domestic staff quarters.

- v. **External Works:** site clearance and boundary walling: gates and gate houses: footpaths, side walkways and paved areas, landscaping, earthworks, roads, driveways and surface parking, storm water draining, foul drainage, water supply, water storage tank, underground water tank and fencing at water tanks area.

13. Construction Progress Report as at 2nd January 2017

Task Name	% Complete	Planned %
Main Buildings		
Tuition Block 1	58%	68%
Tuition Block 2	7%	8%
Administration Block	67%	59%
Kitchen and Dining Hall	52%	30%
Multipurpose Hall	7%	7%
Student Centre	4%	0%
Library	12%	16%
Sports Complex	3%	2%
Hostels		
Hostel Block 4	60%	58%
Hostel Block 3	33%	24%
Ancillary Buildings		
Workshop	0%	6%
Sick Bay and Changing Rooms	0%	4%
Laundry and Boiler House	0%	6%
Staff Accommodation		
3 Bedroom Apartment	16%	10%
2 Bedroom Apartment No1	13%	9%
2 Bedroom Apartment No2	7%	8%
Maisonettes Type PP No 1	64%	71%
Maisonettes Type PP No 2	56%	68%
Maisonettes Type QQ No 1	67%	75%
Maisonettes Type QQ No 3	67%	68%
Others and External Works		
Swimming pool	0%	0%
Sewer Treatment Plant	0%	0%
Athletics/Football Pitch	71%	100%
Roads and Footpaths	48%	68%
Fire Station	0%	39%
Transformer and Standby Generator Rooms	1%	66%
Overhead Water Tanks and Borehole	0%	18%
Underground water tanks	0%	31%
Boundary Wall and Gates	80%	88%
Gate House A	0%	0%

Task Name	% Complete	Planned %
Gate House B	2%	62%
Gate House C	0%	0%
Storm water drainage	0%	13%
Foul drainage	0%	13%
Footpaths	0%	20%
Landscaping	0%	20%
Fencing around water tanks	0%	0%

Payment Certificate Issued

14. The Company has so far issued 13 approved payment certificates, totalling KES 1,263,031,460.04.
15. Of the 13 payment certificates, only 7 have been honoured by the procuring entity by making a payment of KES 698,153,090.95 including an earlier advance payment of KES 307,004,441 that was paid to the Company for mobilization and commencement of the works.
16. Payments have not been made strictly as per the certificates issued by the Company.

Interest Accrued on Overdue Accounts

17. As at 9th November, 2015, the total interest accrued on outstanding payments was KES 180,504,764.24.

Committee Observations and Findings

The Committee made the following observations from the submission of the Main Contractor: -

- (i) The proposed works have stalled due to the failure of the Tourism Fund to ensure timely payment to the contractor in accordance with the terms and conditions stipulated in the Contract.
- (ii) The certificates remaining unpaid, beyond the period for honouring certificates, continue attracting interest at commercial banks' lending rates, which may further escalate the cost of the project;
- (iii) Some works were omitted from the contract when the scope of the project was reduced and as a result, the contractor may claim reimbursement of the profit he would have made had

he carried out the omitted works;

3.15 EVIDENCE BY THE PROJECT CONSULTANT (BASELINE ARCHITECTS)

Mr. Motanya Otengo, Managing Director of Baseline Architects Ltd appeared before the Committee on 24th May, 2016 to adduce evidence on the matter of alleged financial mismanagement at the Tourism Fund.

He submitted THAT—

1. That the tendering process for the project consultants of the Ronald Ngala Utalii College in Kilifi County was an open process through the advertisements carried out in the daily press. The Client invited qualified firms to submit proposals for consideration.
2. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors. The advertisement dated 4th March 2011 and a notice of extension dated 14th March, 2011, were both carried out in the daily press.
3. Baseline Architects Limited in the consortium of Ujenzi Consultants, Armitech Consulting Engineers and West Consult Consulting Engineers, submitted their bid which was evaluated with others.
4. On 4th April 2012, Baseline Ltd was notified that they had won the tender and advised that the contract would be signed at an appropriate time.
5. After the award, there was an appeal to Public Procurement Oversight Authority by one M/s Gitutho and Associates on 17th April, 2012. The appeal was subsequently dismissed. They later appealed to the High Court and the judge upheld the ruling of the Public Procurement Oversight Authority.
6. Baseline subsequently signed the contract on 25th May, 2012.

Scope of Works

7. As per the advertisement, the consultant was to provide consultancy services for the design of the proposed Ronald Ngala Utalii College in the following areas: -
 - (i) Architecture and Interior Design;

- (ii) Civil and Structural Engineering;
- (iii) Building, Mechanical and Electrical Engineering Services and;
- (iv) Quantity Surveying.

8. As at 18th April, 2016, Baseline Ltd had done and completed all pre-contract services that include tender documents in form of drawings and details which constitute 75% of the architectural services. The consortium is currently doing supervision works on site.

Payment of fee notes and interest accrued on payments as at 18th April, 2016

9. The payment of fee notes received from the Tourism Fund as at 18th April, 2016 is as follows:

Consultant	Fees/Amount Due Inclusive of Taxes & Interest (KES)	Fees/Amount Paid Inclusive of Taxes & Interest (KES)	Interest Accrued (KES)
Baseline Architect Ltd	845,316,027.14	678,590,235	195,304,204.05

Committee Observations and Findings

The Committee made the following observations from the submission of the Consultant: -

- (i) There is no proof that the procurement process for the consultancy services started with Expression of Interest as provided for in Section 78 of the Public Procurement and Disposal Act, 2005.
- (ii) The letter of award of the contract for Consultancy services for Ronald Ngala Utalii College to Baseline Architects Ltd had no tender/contract amount, as it should ordinarily be the case. This amount provided room for manipulation of the tender sum and exposed public funds to ineligible charges not agreed upon.
- (iii) Baseline Architects Ltd participated in Technical Evaluation of the bids in which it participated as a bidder; which amounts to conflict of interest
- (iv) The calculations of the contract sum for consultancy services payable to Baseline Architects were based on the original project contract amount of KES 8.96 billion and were not revised downwards during scaling of the scope of works of the project to a cost of KES 4.9 billion.

- (v) The fees paid so far to Baseline Architects of KES 678,590,235 is higher than the fees paid to the main contractor, which indicates that the Company was paid ineligible payments

3.16 EVIDENCE BY MR. EDWARD OUKO, AUDITOR-GENERAL

The Auditor General in his Report on the Financial Statements of the Tourism Fund for FY 2014/2015 submitted THAT:

1. Ronald Ngala Utalii College had initially been established as Kenya Utalii College, Coast branch, vide Cabinet Memorandum Ref. CAB.58/4A of 18th September, 2007 at REA Vipingo site on 60 acres of land donated by REA Plantations Ltd, a projected cost of KES 1.948 billion to be undertaken in 4 phases of KES 500 million each. However, out of the total acreage, only 40 acres have been fenced off leaving the other 20 acres exposed to the risk of encroachment.
2. The development of the College was on 19th March 2010 transferred to Catering and Tourism Development Levy Trustees (now Tourism Fund) from Kenya Utalii College and a process began to change and legalise the College's name to Ronald Ngala Utalii College without Cabinet approval. By Gazette Notice No.3478 of 25 March 2010, the then Tourism Minister established Ronald Ngala Utalii College and further appointed board members of the Academy through Gazette Notices of 6th August, 2010 and 5th November, 2010. However, these appointments were in 2012 nullified, alongside those of other Tourism agencies, by the subsequent Minister for Tourism. In view of the change of name from Ronald Ngala Utalii College to Ronald Ngala Utalii Academy, there are uncertainties as to the name the new title deed would be registered in.
3. Though the Project is branded by the management as a Vision 2030 flagship project, it does not appear in the documented planned flagship projects. Further, no feasibility study was done for the project to establish its viability. The procurement plan of the procuring entity did not capture the estimated cost of the project nor in the multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005 and Section 47 (c) of the Public Finance Management Act, 2012.
4. No evidence has been availed to prove that the procurement process for the consultancy started with expression of interest as envisaged by Section 78 of the Public Procurement and

Disposal Act, 2005. Further, there is no proof that the tender committee approved use of request for proposal method without going through the expression of interest.

5. The tender evaluation committee included two members from the consortium of consultants' procured (Baseline Architects and Ujenzi Consultants – Quantity Surveyor), who were responsible for designing and drawing of bill of quantities, in contravention of section 26(3) (c) and section 28 of the PPDA 2005 on segregation of duties and appointment of procuring agent respectively.
6. The tender for consultancy services was awarded to Baseline Architects Ltd and the award was based on the technical proposal submitted by the winning firm, who were to be invited for negotiation on the basis of scale of fees for professional services. It is not clear whether the procuring entity indeed negotiated as provided for by request for proposal document with the consultants taking into consideration that the negotiation of award was done on 4 April 2012, which was the same day the tender was awarded. The award letter did not specify the scale of fees applicable for professional services and the tender document was silent on how the consultants were to be paid. Individual score sheets by evaluation committee members have not been availed for audit verification. Baseline Architects Ltd consortium included Geomeasures Surveyors Ltd., whose bid was not evaluated and was one of the contracted Consultants, hence casting doubting on the fairness of the evaluation process.
7. The award of the construction project contract was made to the third lowest prequalified bidder Ms. Mulji Devraj and Brothers at a contract cost of KES 8,961,370,998. It is not clear why the contract was not awarded to the lowest bidder (M/S China Jiangxi International Ltd) since there was a material difference of KES 498,731,291, yet all bidders had undergone evaluation and prequalification. The Contract provides for interest charges of late payment and an advance payment of 10% before commencement of works, thus the contract was flawed in favour of the contractor.
8. The contract was revised on 25 August 2014 vide second addendum, which scaled down the contract sum from KES 8,961,370,998 to 4,923,005,699. However, no cabinet approval has been availed to confirm this revised scope of the project.
9. According to monthly progress report No. 21 of March 2016, the certified gross value of work done together with advance payment, materials on site plus contractual claims was approximately KES 1.61 billion, representing approximately 32.7% completion. Total

payments made in respect of the project so far amount to KES 3,152,444,635, whereas the interest accrued on the payments as at 18 April 2016 amounted to KES 877,897,530.

10. The amount of KES 1,303,755,521 paid to consultants of the Project as at 30 June 2015 was based on the original contract sum of KES 8,961,370,998 (representing about 15%) yet the contract had been scaled down to KES 4,923,005,699 as per revised bills of quantities which should be KES 738,450,855, resulting to an overpayment to the consultants by KES 565,304,666. Further, the contract duration was extended to sixty months ending 19 June 2018.

Consequently, the proprietary of the project expenditure could not be ascertained.

3.17 SITE VISIT TO RONALD NGALA UTALII COLLEGE

The Committee conducted a site visit to Ronald Ngala Utalii College on 20th August, 2016 to acquaint itself with the Project and ascertain its implementation progress. The delegation was received by the TF Board of Trustees and management, the Project Consultant and the Contractor.

The Committee inspected the administration block, tuition blocks, dining halls, library, students centre and students' hostels.

During the tour, the Committee was informed THAT –

1. The construction of the College and the proposed hotel is being undertaken on a sixty-acre parcel of land, L.R No. 5052/4 in Kilifi County. The land was donated by Rea Vipingo Estates Group in the 1980s with the condition that the land shall be used for the establishment of the Coast Branch of Kenya Utalii College only.
2. The initial concept paper and design works of the College was developed by the Ministry of Tourism in conjunction with the Ministry of Public Works in 2007.
3. As per the Concept Paper, the project would constitute of the following: -
 - (i) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (ii) Training and demonstration facilities, including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary schools, health centre, library and recreational facilities;

- (iii) A five-star hotel complex that would serve as a training laboratory for the College, besides being run as a commercial hotel enterprise, to address sustainability issues at the College;
4. In addition, the College would be designed to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship.
 5. The location of the College was in recognition of the important role the Coast region plays in the tourism industry.
 6. The initial cost of the Project was KES 1.948 billion, that was to be funded by the Treasury. The figure was later escalated to KES 8.9 billion, which was occasioned by passage of time and escalation of costs before the project could be implemented.
 7. The main contractor for the project is Mulji Devraj and Brothers Ltd., who was awarded the tender for main works at a cost KES 8.9 billion. The lead consultant is Baseline Architects and Ujenzi Consultants are the Quantity Surveyors. Other members of the consortium are Armitech Consultants as Structural Engineers, West Consult as Electrical/Mechanical Engineers, Geomeasures Ltd as Surveyors.
 8. The cost of consultancy services, in accordance with the Architects and Quantity Surveyors Act, is 16% of the total construction cost. This works out to be KES 1.4 billion, making the total project cost at KES 10.3 billion. Both the Contractor and the consultants were on site.
 9. The Project was later rationalized by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost was scaled down to 4.93 billion as a result of austerity measures within Government in 2013. The components of the project left out on rationalizing of the project include: - primary school, some blocks of staff houses, two hostel blocks.
 10. The hotel component is proposed to be undertaken under the Public Private Partnership arrangement and negotiations with potential investors are at advanced stage.

Evidence by Baseline Architects.

11. Architect Motanya Otengo of Baseline Ltd informed the Committee that as at April 2016, Baseline Ltd had done and completed all pre-contract services that include tender documents in form of drawings and details which constitute 75% of the architectural services. The consortium is currently carrying out supervision works on site.

12. The cost of consultancy services, in accordance with the Architects and Quantity Surveyors Act, would be 16% of the total construction cost.
13. The payment of fee notes received from the Tourism Fund as at 18th April, 2016 is KES 678,590,235, while accrued interest is KES 195,304,204.05

Remarks by MCA Naphali Kombo – Chair Tourism Committee Kilifi County Government

The Chair Tourism Committee Kilifi County Government MCA Naphali Kombo informed the Committee that: -

14. Kilifi County Government supports the implementation of the project, as it not only boosts the economy of the Country, but also that of Kilifi County; tourism being the backbone of the economy of County. Thus the County is eager to see the successful completion of the project.
15. On completion, the College would offer employment opportunities to the local population and market for agricultural produce from the area.
16. The proposed hotel is strategically placed, as it would be served by two airports; Moi International Airport and Malindi Airport.
17. The local community embraced the project and 55% of the labourers on site are from the surrounding communities.

4.0 COMMITTEE GENERAL OBSERVATIONS

This sub-section provides a summary of the Committee's general observations on the Inquiry into the Procurement and Financing of the Tourism Fund's Ronald Ngala Utalii College Project: –

The Committee observed:

- (i) **THAT**, the first attempt to establish the Ronald Ngala Utalii College was mooted by the Government through the Ministry of Tourism in 1996, vide Cabinet Minute 30/1996 dated 1st February, 1996; the Government granted an approval for the establishment of the College through the Kenya Utalii College as its Coast Branch. This approval was, however, not implemented owing to lack of funds;

- (ii) **THAT**, the Project was never implemented as per the Cabinet Memorandum of 1996 where the Cabinet approved the construction of the Coast Branch of the Kenya Utalii College, and not Ronald Ngala Utalii College as purported;
- (iii) **THAT**, the matter was revisited in the year 2007, vide a letter Ref. OP.CAB.58/4A dated 13th September, 2007 to the Cabinet, proposing implementation of the Project. The Project was to be funded by the Government through the National Treasury at an estimated cost of KES 1.948 billion for the establishment of the College to cater for 600 students with a completion period of four years;
- (iv) **THAT**, the implementation of the Project did not commence owing to lack of funds until 19th March, 2010 when the Ministry of Tourism communicated to the (defunct) Catering and Tourism Development Levy Trustees (CTDLT), the decision to set up Ronald Ngala Utalii College in accordance with the Cabinet approval;
- (v) **THAT**, the Board of CTDLT during its 104th Board Sitting held on 24th March 2010, deliberated and resolved to establish the College, pursuant to Section 19 of the Hotels and Restaurants Act. The Minister for Tourism granted an approval to the Trustees' resolution as per Gazette Notice No. 3478 of 9th April, 2010;
- (vi) **THAT**, on 13th December, 2010, the CTDLT Board resolved to re-design the College to accommodate 3,000 students, amongst other additional components at a cost of KES 8.9 billion;
- (vii) **THAT**, pursuant to section 6(2) of the State Corporations Act, the former Minister for Tourism, revoked the appointment of the then Board of Trustees and reappointed new ones vide Gazette Notice No. 10228 of 20th July, 2012, with the aim of improving the Fund's performance. The de-gazetted Trustees, however, challenged the decision vide court case No. 317 of 2012 (Abdulkadir M. Omar & 2 Others Vs. Minister for Tourism & Catering and Tourism Development Levy Trustees). Although the court case was withdrawn in April 2013, the Fund remained without a substantive Board of Trustees until new Trustees were appointed on 2nd October, 2015 and the Chairman on 18th March, 2016. This delay in appointment of the Board hampered decision making in the Fund;
- (viii) **THAT**, in the absence of a substantive Board of Trustees between 19th July, 2012 and 2nd

October, 2015, the Fund's management proceeded with the tendering process and awarded the tender for the Construction of the Project to Mulji Devraj and Brothers and signed the contract on 14th May, 2013. The Management, further proceeded to approve the first addendum to the Contract on 23rd June, 2013 and the second addendum on 25th August 2014, without Board approval, for checks and balances. The addendum, among other things, extended the contract period from 36 months to 60 months, making the completion date, 19th June 2018;

- (ix) **THAT**, the procurement for the project consultancy was conducted through restricted tendering following advertisement on 16th February, 2012 and subsequently awarded to a consortium of consultants namely: Baseline Architects Ltd, Ujenzi Consultants (Quantity Surveyor), Armitech Consulting Engineers (Structural Engineer), West Consult (Services Engineer), Geomeasures Surveyors Ltd and PKF Consulting Ltd. The contract was signed on 25th May, 2012;
- (x) **THAT**, the Contract for the Main Works (Construction) was conducted through open tendering vide advertisement dated 23rd November, 2012. The tender evaluation committee for the project construction included two members from the consortium of consultants (Baseline Architects and Ujenzi Consultants) who were responsible for designing and drawing of the bill of quantities;
- (xi) **THAT**, the Contract for the Main Works was awarded to the third lowest prequalified bidder Mulji Devraj & Brothers Ltd at a cost of KES 8,961,370,998.00 vide letter Ref: TF/CONF/2/8/ (178-182) dated 12th April, 2013 and the contract signed on 14th May, 2013;
- (xii) **THAT**, the Contract for the Main Works (Construction) was scaled down from KES 8,961,370,998 to KES 4,923,005,699 vide an addendum dated 25th August, 2014;
- (xiii) **THAT**, the project cost and scope was varied from KES 8,961,370,998 to KES 4,923,005,699 without Cabinet approval;
- (xiv) **THAT**, the draft Cabinet Memorandum jointly signed by the Cabinet Secretary, National Treasury and Cabinet Secretary for East African Affairs, Commerce and Tourism on 26th June, 2014 and 9th July, 2014, respectively, is awaiting Cabinet approval;
- (xv) **THAT**, the total remittances from the National Treasury to the Project since inception from

the financial year 2010/11 to 2015/2016 amounts to KES 2,359,397,211;

- (xvi) **THAT**, the Auditor General, in his Report on the Financial Statements of the Tourism Fund for FY 2014/2015, observed that the Project is branded by the management as a Vision 2030 flagship project, yet it does not appear in the documented planned flagship projects. Further, no feasibility study was done for the project to establish its viability.

The Auditor General further observed that the estimated cost of the project was neither captured in the Fund's procurement plan nor in the multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005 and Section 47 (c) of the Public Finance Management Act, 2012.

5.0 COMMITTEE RECOMMENDATIONS

From the evidence adduced (oral and written) and the observations made, the Committee recommends as follows-

- (i) **THAT**, the project should be implemented as per the CTDLT Board resolution of 13th December, 2010, to re-design the College to accommodate 3,000 students, amongst other additional components at a cost of KES 8.9 billion. This would ensure cost effectiveness of the project and give taxpayers value for money;
- (ii) **THAT**, the Cabinet Secretary, Ministry of Tourism, should as a matter of urgency, pursue post-facto Cabinet approval for the downscaled Project. The Cabinet Secretary also should seek Cabinet approval for the implementation of the hotel component of the Project, through the Public Private Partnership (PPP framework). *The Cabinet Secretary, Ministry of Tourism to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;*
- (iii) **THAT**, there is need for all parties involved, to work together to ensure successful completion of the Project, not later than 19th June, 2018, as per the signed contract and the subsequent addendums issued on 14th May, 2013 and 25th August 2014, respectively. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than twelve (12) months after the adoption of this Report;*
- (iv) **THAT**, tourism is an important sector in Kenya's economy and successful completion

of the Project would boost the ailing sector. The Chief Executive Officer of the Tourism Fund should, therefore, in liaison with the Public Private Partnership Unit of the National Treasury, identify suitable financiers to complete Phase II component of the Project. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;*

- (v) **THAT, owing to the vital role of the Project in the tourism sector, the Chief Executive Officer of the Tourism Fund should, in liaison with the Kenya Vision 2030 Secretariat, ensure that the project is incorporated as a flagship project in the tourism sector. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;***
- (vi) **THAT, the Fund's management should comply with section 53 of the Public Procurement and Asset Disposal Act, 2015, by ensuring that the total estimated cost of the project is captured in the Fund's procurement plan. *The Chief Executive Officer of the Tourism Fund to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;* and**
- (vii) **THAT, the appointing Authority of the Board members should ensure that there is timely appointment of Board members for effective operation of the Fund, and as a good governance measure;**

4.0 ANNEXURES

ANNEX I

SECRET

MINISTRY OF TOURISM AND WILDLIFE

CAB (05) 72

(A Cabinet Memorandum submitted to Cabinet by the Minister for Tourism and Wildlife, Hon. Morris M. Dzoro, M.P. on the proposed establishment of the Coast Branch of the Kenya Utalii College)

1.0 OBJECTIVE OF THE MEMORANDUM

The purpose of this Memorandum is to seek Cabinet approval for the establishment of the Kenya Utalii College, Coast Branch.

2.0 BACKGROUND

Kenya Utalii College (KUC) was established in 1975 to provide top quality training for the country's tourism sector. In keeping with this vision, the institution has achieved good reputation recognized internationally and currently is designated as a regional centre of excellence by United Nations World Tourism Organization (UNWTO).

In the mid-nineties, in response to the changes taking place in the industry world wide, the Government commissioned studies to determine the character and direction training for the industry should take in the new millennium.

The proposal for the development of a branch of the college at the Coast is based on such studies that recommended the expansion of training capacity for the hotel and tourism sector in Kenya. These studies include a study by KUC (August, 1990) the results of which were corroborated by subsequent studies by such bodies as the then World Tourism Organization (now

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ANNEX I

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UNWTO) and the International Labour Organization (ILO) (July and October 1992 respectively) and Tourist Consult of Basel, Switzerland (August 1991).

As a result, a Cabinet Memorandum on the establishment of a branch of KUC at the Coast, CAB (96) 15 was tabled before Cabinet by the then Minister for Tourism and Wildlife in February 1996.

The rationale for the proposal was to decongest the Nairobi campus which had and still has outstripped its capacity and also broaden the scope of training components.

The Cabinet, vide Minute No.30./96 of their meeting held on 22nd February 1996, noted that recurrent costs were to be met from the Catering Levy Fund now Catering and Tourism Development Levy Trustees (CTDLT) profit from hotel services provided by the college as well as students' fees and approved that -

- a) Initial action be taken to set up the college in principle.
- b) Action be taken to start construction work when finances for capital development are obtained and
- c) Action be taken to broaden the training curriculum to cater for hotel services in rural areas and among low-income groups.

The Minister for Tourism and Wildlife was to take the necessary action.

Given the financial constraints the college has faced despite all the training programmes being heavily subsidized through grants from 2 % training levy,

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there has not been adequate internal generated funds to implement the above Cabinet decision. In addition, there have been a lot of layoffs in the tourism industry since 1996.

It is against this background that a revised memorandum is submitted to Cabinet on the establishment of KIC Coast Branch by the Minister for Tourism and Wildlife.

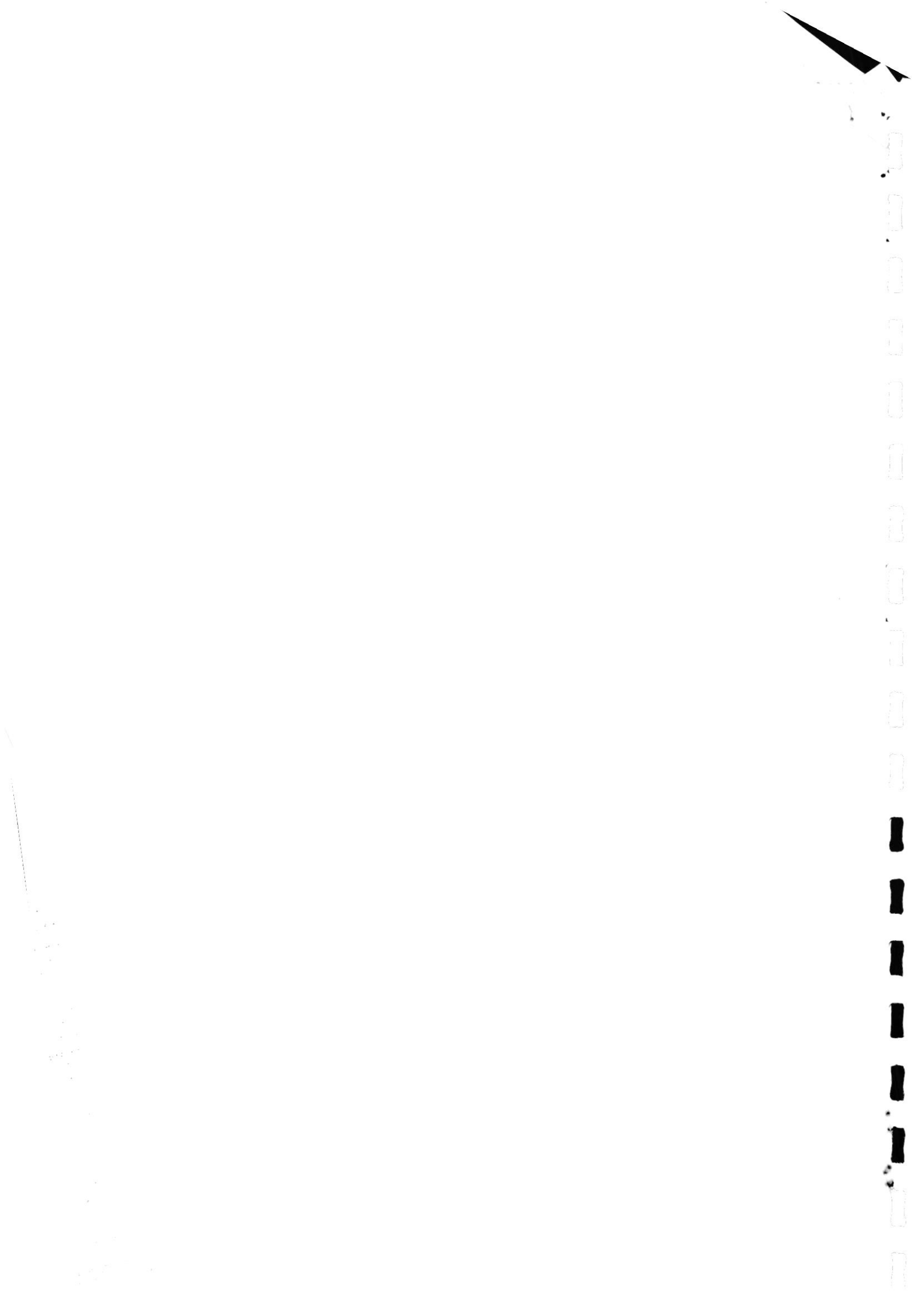
3.0 ANALYSIS OF THE PROBLEM

An International Labour Organization (I.L.O) study of October 1992 established that only 10% of the labour force in the hotels and catering sub-sector had some form of formal (institution based) training in Kenya. To date, the situation has not changed much and this indicates that there is a huge skills gap and the majority of the estimated 138,000 workers in the sector are yet to be trained.

Given this scenario, and assuming that the current up-turn in tourism will continue, there is reason for the sector's demand for skilled labour to outstrip the aggregate output of the college. This is further aggravated by the erosion of the sector's brain drain to other regions particularly the United States, Europe and the Middle East.

As a result of the unmet demand for skilled manpower, a number of local institutions and Universities are offering programmes in hospitality and tourism. However, there are concerns among tourism industry stakeholders as to the quality of training offered by them.

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Given its track record, superior facilities and experience in this field, KUC will for the foreseeable future remain the main source of the sector's skilled labour. Accordingly, it will be expected to play a key role in the Government's strategy of re-positioning Kenya as an up-market tourist destination.

While marketing (re-branding of Kenya as an attractive tourist destination) is already being done, service delivery is equally a key component of the tourism product. Services in the sector must be up-graded and maintained at the highest possible levels to guarantee visitor satisfaction.

Due to its highly practical nature, the KUC curriculum does not easily lend itself to the use of other existing colleges, a concept that is gaining popularity among other institutions of higher learning. This is because the colleges with which KUC would have entered into collaboration lack the necessary facilities and infrastructure to provide the training to the required standards.

4.0 THE WAY FORWARD

The establishment of the Coast Branch is part of the KUC's strategic expansion programme in an attempt to keep pace with the envisaged demand by the industry not only in Kenya but in the region as a whole.

As an UNWTO designated regional centre of excellence and as well as within the context of the East African Community, the College is expected to commit a certain proportion of its annual intake to trainees from other countries within the region.

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offer sub-standard training due to lack of proper facilities and qualified trainers. The market for qualified trainers in hospitality and tourism sector is therefore enormous.

4.3 Entrepreneurship Training

This will enable more of the College's graduates to start their own small and micro enterprises (SMES) in the sector with the potential of being macro enterprises and help in employment creation, enhance local ownership of tourist enterprises and alleviate poverty.

5.0 FINANCIAL IMPLICATIONS

The anticipated cost of establishing the Branch is KShs. 1.948 billion. An analysis of the cash flow projections for a period of ten years gives a positive net present value, an indication that the project is viable as indicated in Appendix II.

5.1: CONSTRUCTION OF PURPOSE-BUILT INSTITUTION AT REA VIPINGO SITE

The Rea Vipingo Sisal Estates donated sixty acres of land (LR50525/1) to KUC for the establishment of a purpose-built Campus of the College.

The total estimated cost of this venture is KShs 1.948 billion broken down according to the following components:

(a) Estimated cost of training facilities - KShs. 462 million.

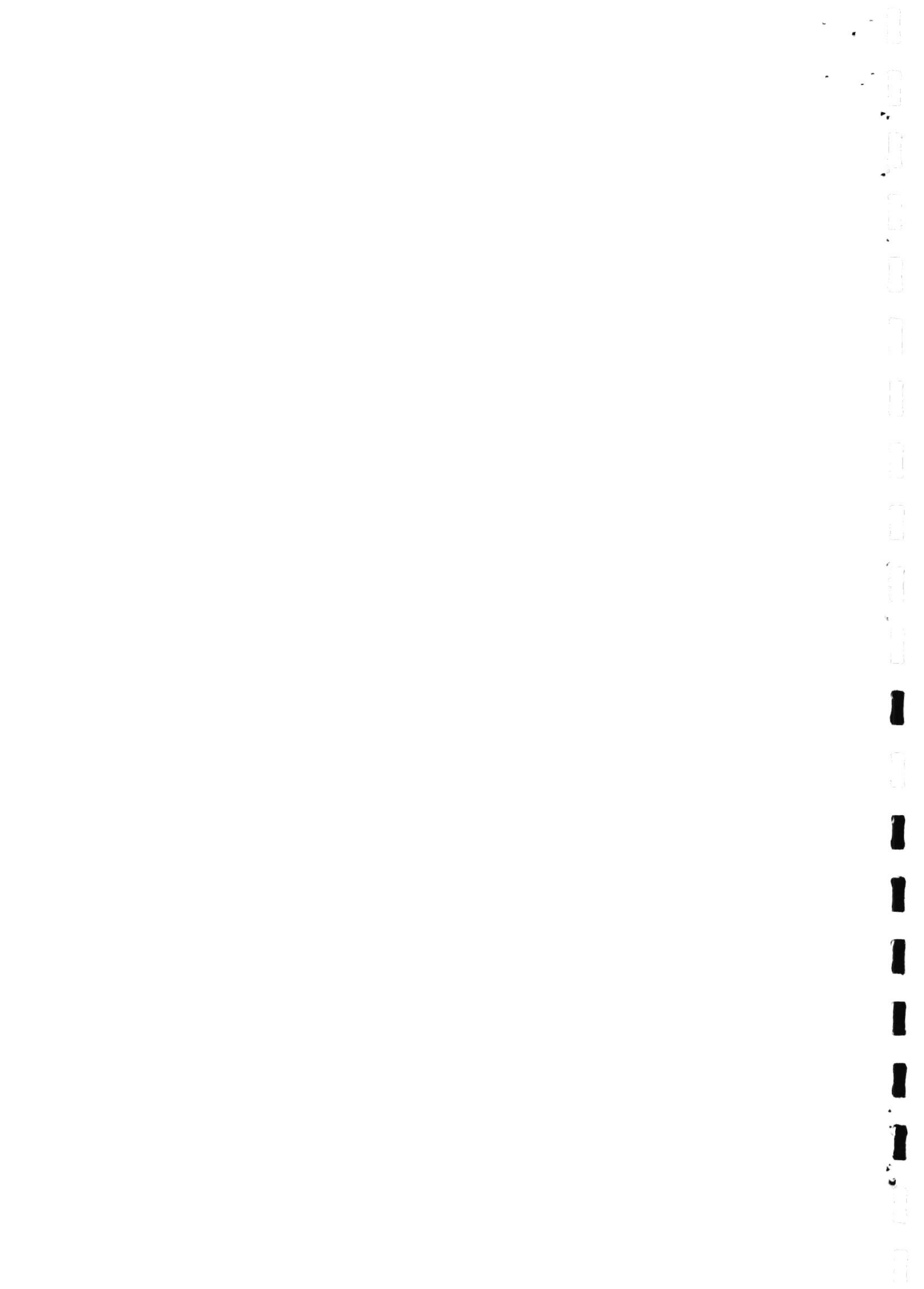
(b) Estimated cost of Administration facilities - KShs 138.6 million.

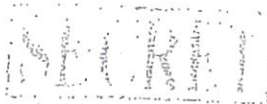
(c) Estimated cost of staff accommodation - KShs. 462 million.

(d) Estimated cost of three or four star application hotel - KShs. 616 million.

(e) Estimated cost of pre-opening expenses - KShs. 15.5 million.

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In this regard, substantial expansion of quality training for the sector can be achieved through the establishment of a branch of the College at the Coast where more than 60% of the country's tourism activities takes place.

The Coast Branch should be initially planned for a total capacity of 600 trainees and an estimated annual output of about 270 in all craft areas, as indicated in the table in Appendix I.

In terms of the scope of training, the Coast Branch will enable the College to introduce new course programmes in response to growing demand. The proposed courses include:

4.1 Cruise Ship Catering

This will cater for a niche segment of tourism that is foreseen to grow in importance on the Western Indian Ocean rim in the coming years due to increasingly volatile weather phenomena in the traditional cruise shipping zones of Australia and the Caribbean.

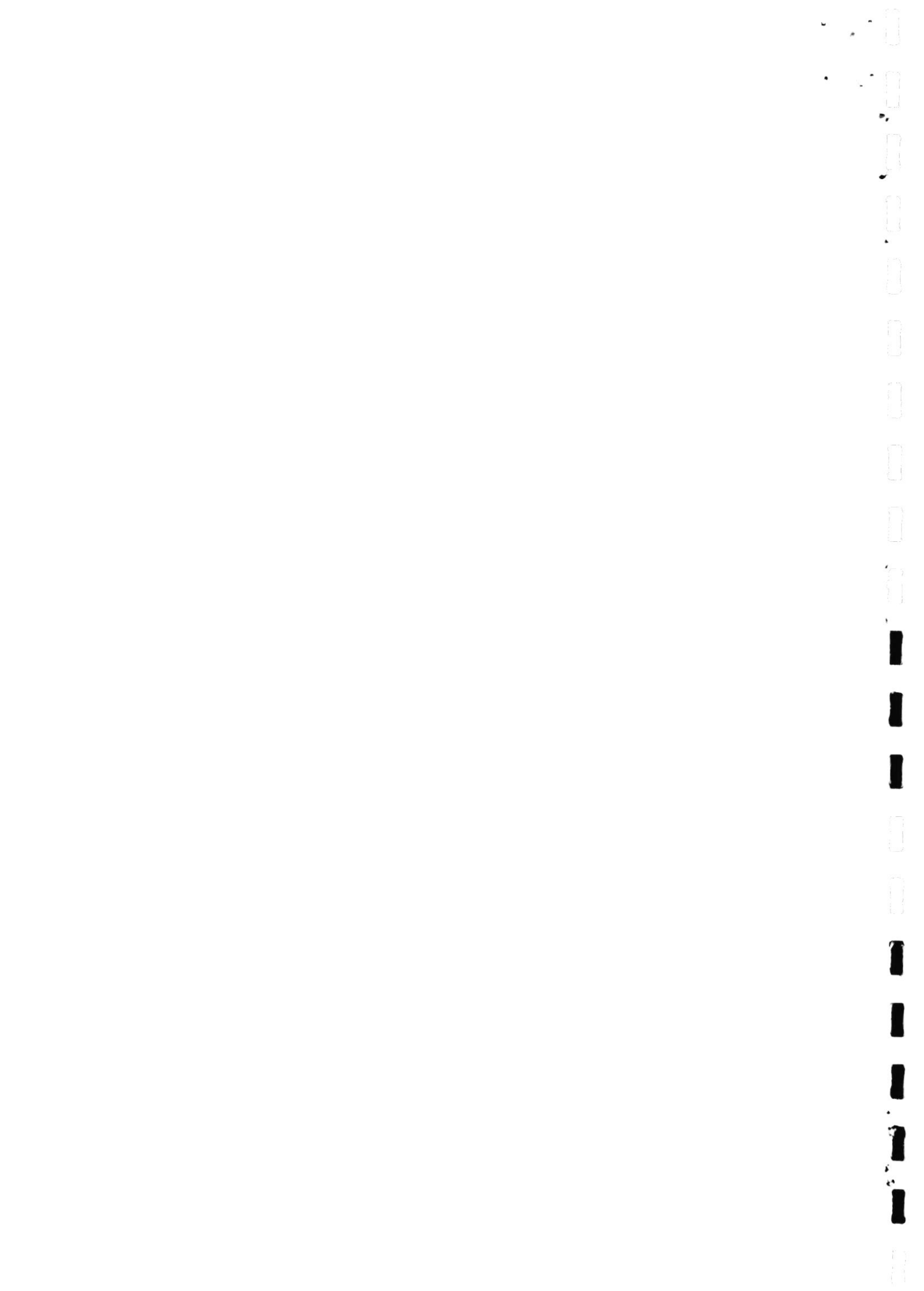
This form of tourism can also be enriched with excursions to the African hinterland. Training in this field will also open up exciting employment opportunities for Kenyans in a world-wide industry that currently relies heavily on workers from South East Asia. It is in recognition of the great potential that exists in this area that the Kenya Ports Authority (KPA) is investing in a cruise ship-handling terminal at a cost of KShs 500 million.

4.2 Training of Trainers (TOT) Programmes

The wide gap in the demand and supply of properly skilled manpower for the sector has resulted in the mushrooming of private commercial colleges currently numbering over 200 offering training for the sector. Most of these

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After sub-standard training due to lack of proper facilities and qualified trainers. The market for qualified trainers in hospitality and tourism sector is therefore enormous.

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- (b) Estimated cost of Administration Facilities - Kshs 138.6 million.
- (c) Estimated cost of staff accommodation - Kshs. 462 million.
- (d) Estimated cost of three or four star application hotel - Kshs. 616 million.
- (e) Estimated cost of pre-opening expenses - Kshs. 115.5 million.

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(b) Contingencies Kshs 130 million.

This project can be undertaken in four phases at an estimated cost of Kshs. 500 million per phase per year.

6.0 REQUEST TO CABINET

Cabinet is, therefore, requested to note the contents of this Memorandum and direct that:-

(a) Kenya Utalii College, Coast Branch, be established at the Coast, at the Raa Vipinge Site or any other more suitable site;

(b) The Minister for Finance to avail the necessary funds.

The Ministers for Tourism and Wildlife and Finance to take the necessary action.

Submitted by:




Hon. Morris M. Dzoro, MP

Date: 22nd May 2007

MINISTER FOR TOURISM AND WILDLIFE

Countersigned:



Hon. Amos Kimunya, MP

Date: 22nd May 2007

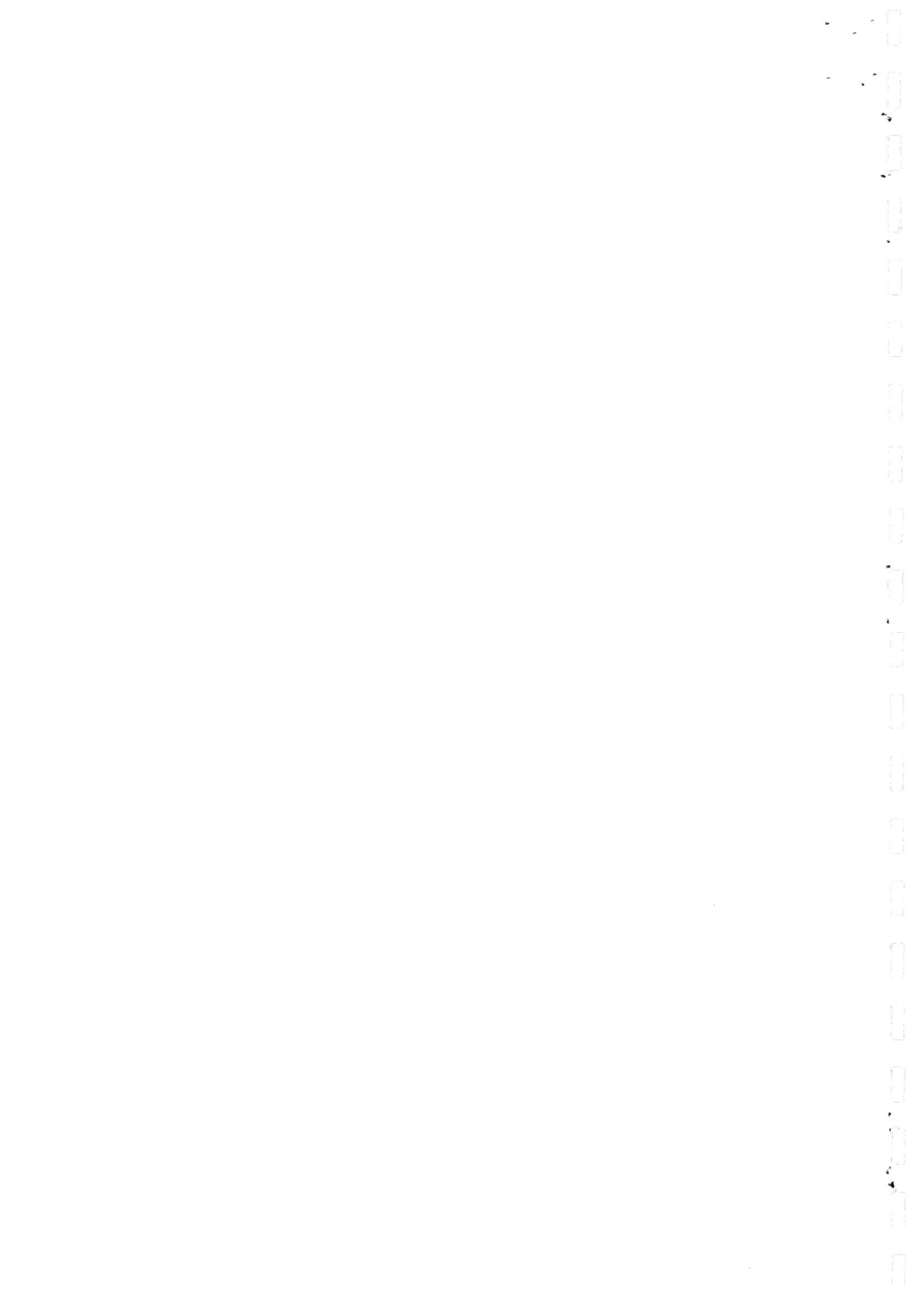
MINISTER FOR FINANCE

APPENDIX I

THE PROPOSED COURSES AND CAPACITIES OF THE COAST BRANCH

COURSE	DURATION	INTAKE (Per Annum)	TOTAL NO.
Food Production	2	96	192
Service (Advanced)	1	48	48
Service (Basic)	1	64	64
Front Office	2	48	96
Housekeeping & Laundry	2	32	64
Hotel Maintenance	1	32	32
Driver Guides	1	24	24
F&B Control	2	32	64
Animation	1	16	16
TOTAL		392	600

Note: Cruise ship catering training shall be offered as part of the food production, Service and Housekeeping courses. Up-grading for small scale establishment and support training for the proposed apprenticeship scheme will be scheduled to coincide with periods of recess for the full-time courses.





ANNEX 2

Ministry of Tourism and Wildlife

OFFICE OF THE PERMANENT SECRETARY

Telegrams: "UTALII", Nairobi

Telephone: 331030

Fax: 213508

When replying quote

Ref. No. MTW/S.7/1/4 Vol.V/(56)
and dateUTALII HOUSE
UTALII STREET
P.O. BOX 30027
NAIROBI

29th March, 1996

M. K. Sio, Esq.,
Principal,
Kenya Utalii College,
NAIROBI.

Dear *Shiraz*,CABINET MEMORANDA

I am pleased to inform you that the Cabinet has approved the following Memoranda for implementation:-

- (i) Establishment of a Branch of Kenya Utalii College at the Coast.
- (ii) Proposal for the Introduction of Fees at the Kenya Utalii College.

2. In view of the foregoing, therefore, you may now initiate action to put the decisions into effect. I would, however, like to suggest that it is important that your Board should be adequately briefed on these matters particularly on the question of the implementation of fees.

3. Please take the necessary action accordingly.

Yours

(Signature)
(Signature)
(S. M. Mbova, CBS)
PERMANENT SECRETARY

ANNEX 2





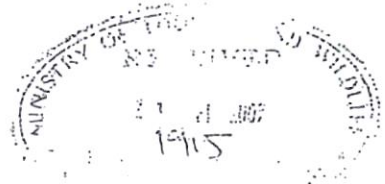
OFFICE OF THE PRESIDENT
PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address: "Rais"
Telephone: Nairobi 227411
When replying please quote
Ref. No.
and date



P.O. Box 62345-00200
NAIROBI
13th September, 2007

Mrs. Rebecca M. Nabutola, CBS
Permanent Secretary
Ministry of Tourism and Wildlife
NAIROBI.



Mr. Joseph K. Kinyua, CBS
Permanent Secretary
Ministry of Finance
NAIROBI.

Dear *Rebecca*,

CABINET MEMORANDUM ON THE ESTABLISHMENT OF
THE KENYA UTALII COLLEGE - COAST BRANCH

I refer to the Fifth Cabinet meeting held on 13th September, 2007, during which Cabinet Memorandum CAB(05)72, jointly submitted by the Minister for Tourism and Wildlife and the Minister for Finance was presented and discussed.

I wish to inform you that Cabinet considered the contents of the Memorandum and:

- i) Directed that Kenya Utalii College, Coast Branch, be established at the Coast, at the Rea Vipingo Site or any other suitable site.

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ANNEX 3



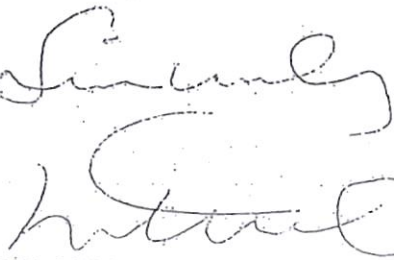
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ii) The Minister for Finance to avail the necessary funds.

The Minister for Tourism and Wildlife and the Minister for Finance to take necessary action.

Please proceed and initiate action along the lines of the Cabinet decision..

Yours



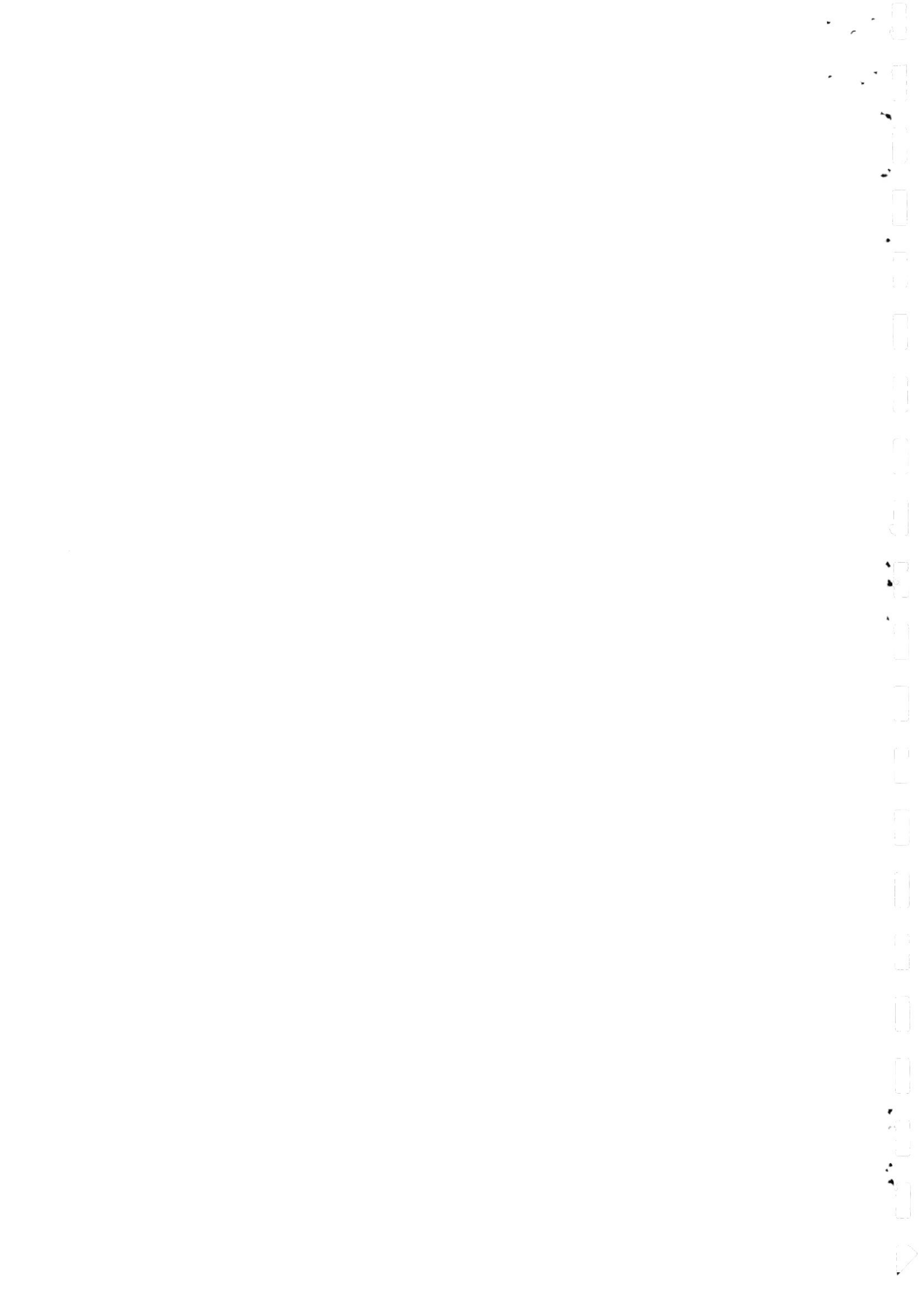
AMB. FRANCIS K. MUTHAURA, EGH
PERMANENT SECRETARY, SECRETARY TO THE
CABINET AND HEAD OF THE PUBLIC SERVICE

c.c.

Hon. Morris M. Dzoro, EGH, M.P
Minister for Tourism and Wildlife
NAIROBI.

Hon. Amos Kimunya, EGH, MP
Minister of Finance
NAIROBI.

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urgent discuss
2010/3

ATTENTION IV

ANNEX 4



MINISTRY OF TOURISM

Telephone: 254(020)313010/316usine849
Fax: 254(020)318045 Email: ps@tourism.go.ke
Website: www.tourism.go.ke

UTALII HOUSE
P.O. Box 30027
NAIROBI

Ref: No. MT4/5/3

Date: 19th March, 2010

Mr. Allan Chenane
Chief Executive Officer
Catering and Tourism Development Levy Trustee
NAIROBI



Dear Mr. Chenane,

RE: THE LEGAL NOTICE FOR THE ESTABLISHMENT OF UTALII COAST BRANCH

As you are aware, we have been persuing the legal notice for the establishment of Ronald Ngala Utalii College Coast Branch.

However, due to the delayed process against the background that the funds provided for in the budget is likely to go back to Treasury at the end of the financial year, the Ministry has decided to establish the College under the Catering Levy Trustee Fund Act.

It is for this reason that I kindly request you to present this matter before the full board meeting scheduled on 24th March, 2010 to enable for the gazettment of the college.

I will appreciate your consideration and expeditious action.

Yours sincerely

Eunice K. Miima
Ag. PERMANENT SECRETARY

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ANNEX 5

MINUTES OF THE 104TH BOARD MEETING OF
CTDLT HELD ON 24TH MARCH, 2010, AT
10.00 A.M. IN THE CTDLT BOARDROOM, NHIF
BUILDING, PARKING TOWER, 5TH FLOOR,
NAIROBI

PRESENT

- | | | |
|-----------------------|---|---|
| Mr. Joseph Kipsanai | - | Chairman |
| Mr. Ernest Kimani | - | Trustee |
| Mrs. Margaret Nteere | - | Trustee |
| Mr. Saad Faraj Ahmed | - | Trustee |
| Ms. Amina Kasinga | - | Trustee |
| Mrs. Anne Musau | - | Alternate Trustee
Representing
Permanent
Secretary, Ministry
of Tourism |
| Mrs. Margaret Onyimbo | - | Alternate Trustee
Representing
Permanent
Secretary, Treasury |

SECRETARY

- | | | |
|-------------------|---|----------------------------|
| Mr. Allan Chenane | - | Chief Executive
Officer |
|-------------------|---|----------------------------|

IN ATTENDANCE

- | | | |
|---------------------|---|------------------------------------|
| Dr. Kenneth Ombongi | - | Principal, Kenya
Utalii College |
|---------------------|---|------------------------------------|

ANNEX 2

Management assured Trustees that all processes would be undertaken within the confines of the law and regular reports made to Trustees.

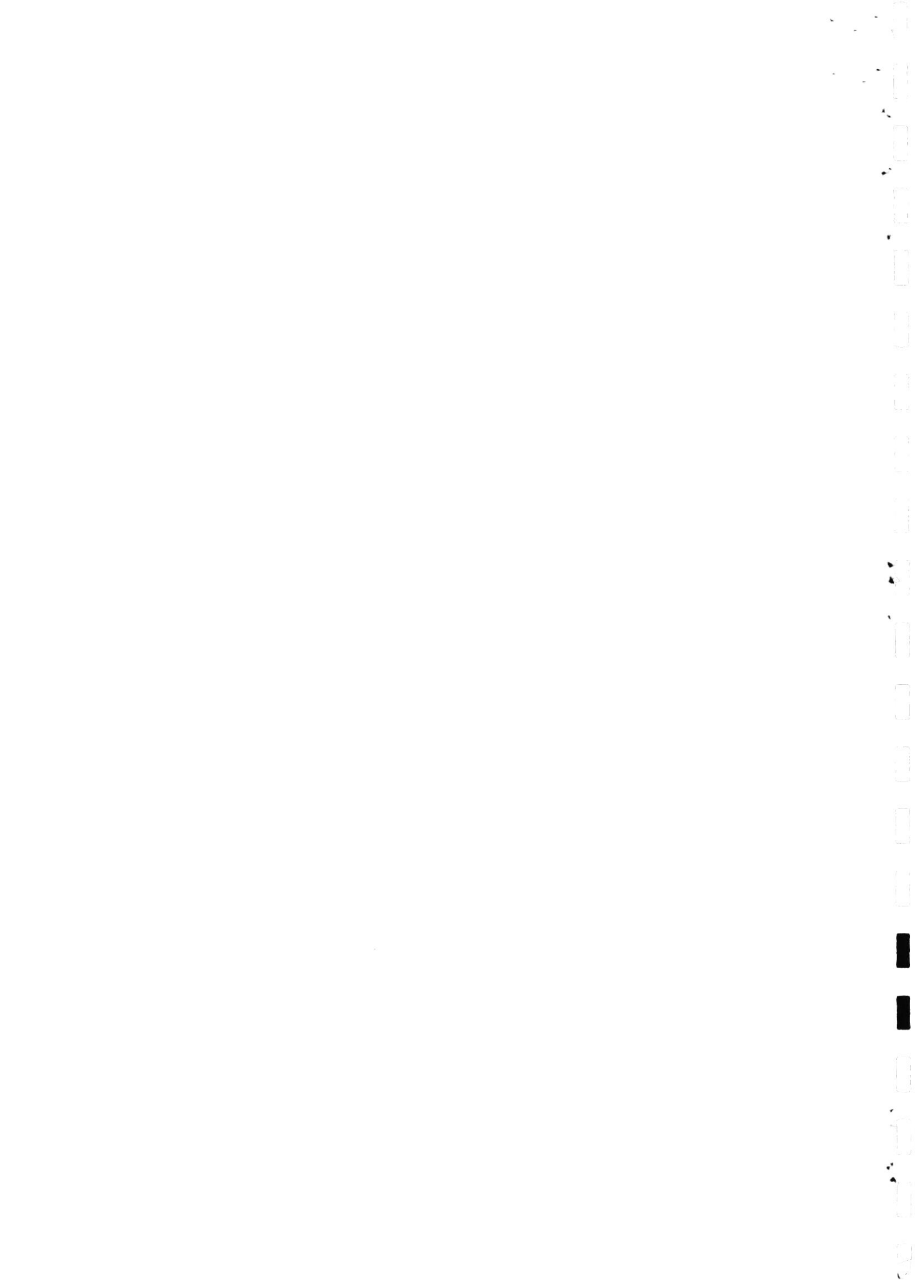
MIN.BM.8/2010:

ANY OTHER BUSINESS

a) **ESTABLISHMENT OF
RONALD NGALA
UTALII COLLEGE**

Trustees recalled that in 1975, we established Kenya Utalii College to be the pioneer institution for training persons to be employed in hotels and restaurants. In this regard, the Government and Laussane School of Tourism, Switzerland pooled resources and established the College.

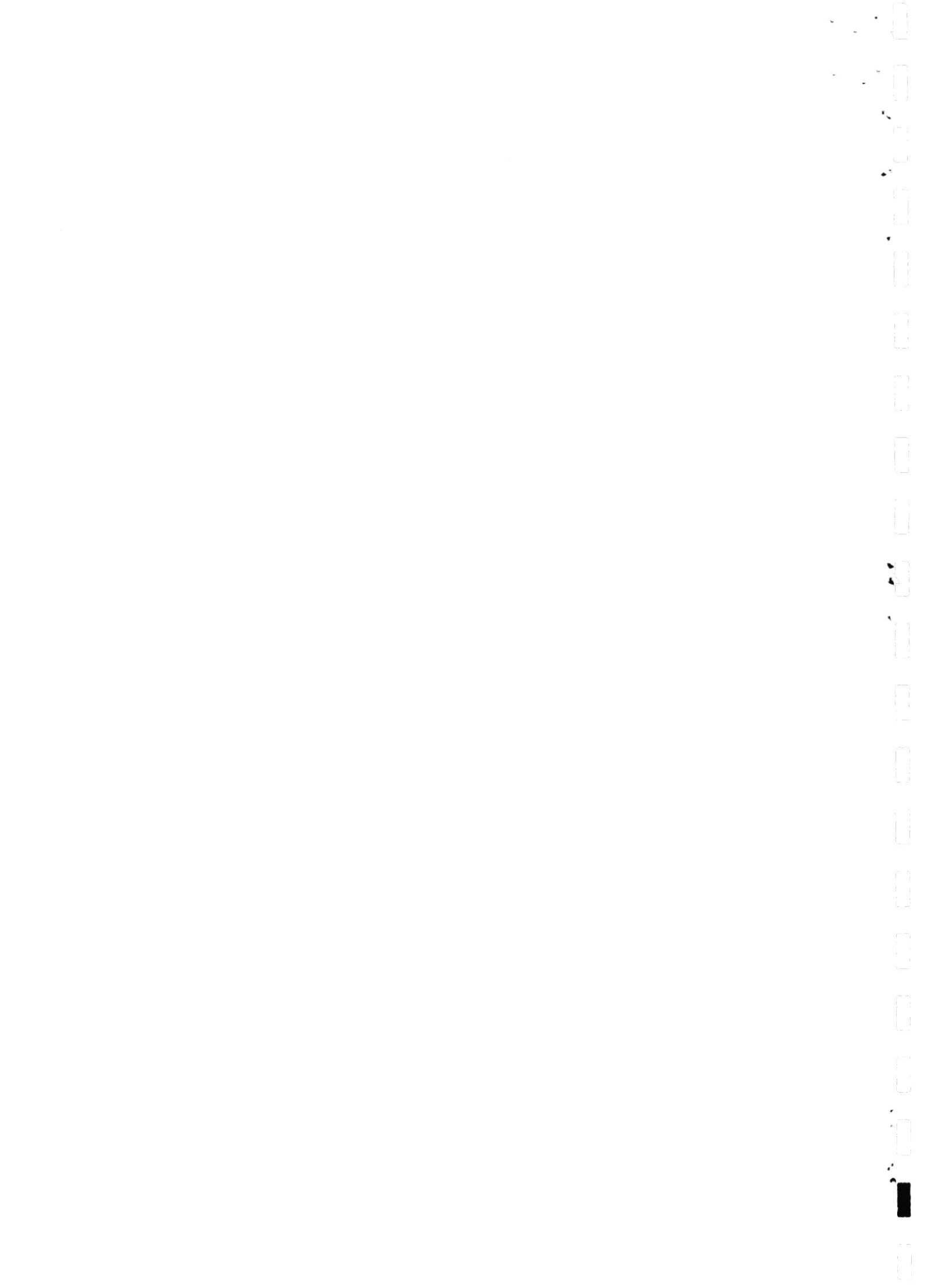
The College had since trained some 35,000 students. This was about 10% of the country's need for personnel for the Tourism and Hospitality Industry.



Management informed Trustees that the issue of establishing a second training institution for the industry had been taken up by the parent Ministry who had sourced for funds from the Treasury for the establishment thereof.

The Ministry had proposed that the funds released by Treasury be utilized to establish Ronald Ngala Utalii College within the provisions of the Hotels and Restaurant Act.

Trustees deliberated on the proposal and approved the same noting that the issue of establishing a second Utalii had been pending for too long. Trustees directed Management to inform the Ministry of the resolution and thereafter proceed to develop a detailed framework addressing the following matters:-

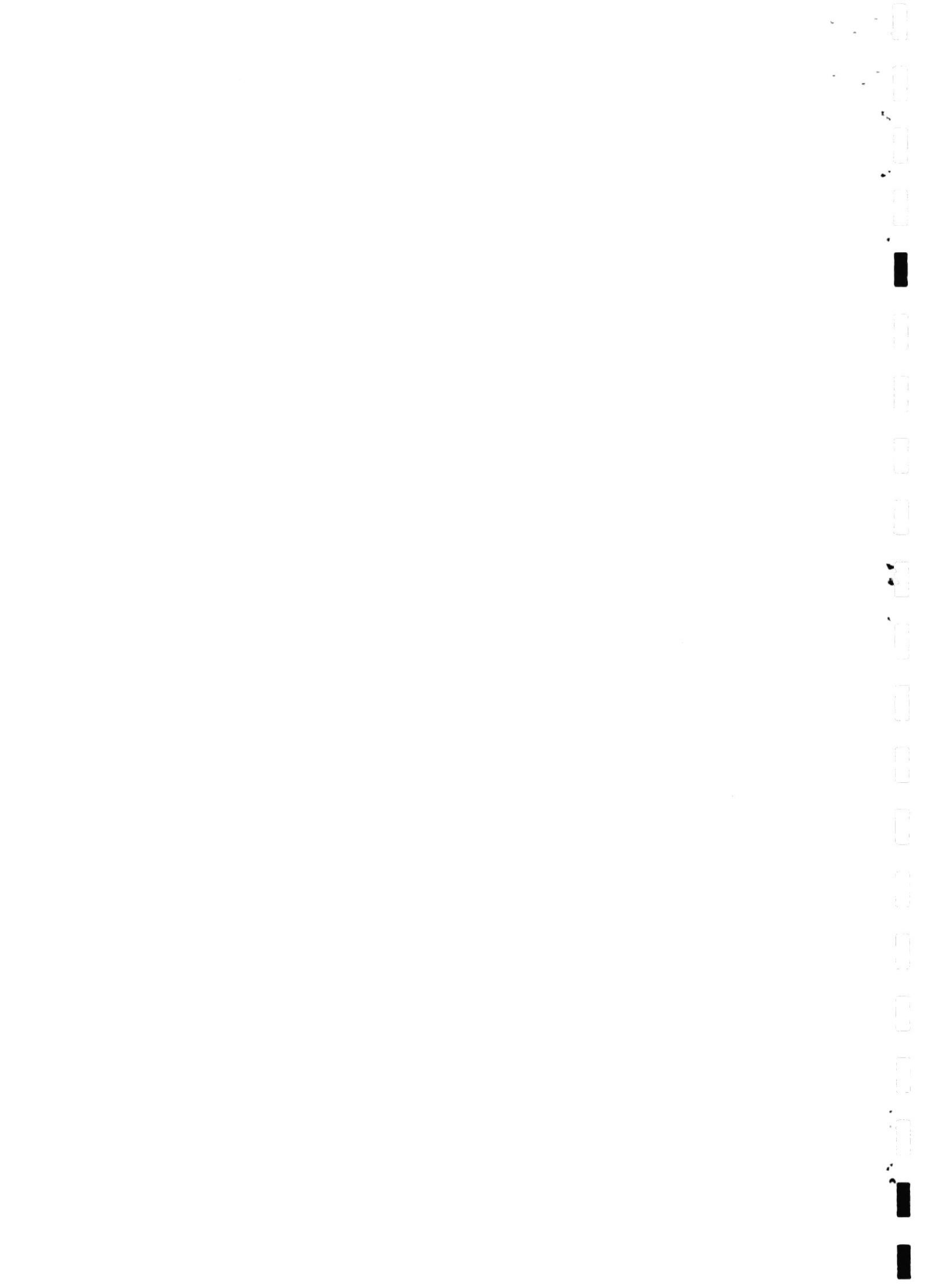


- vi) Such other matters as may be necessary to consider in the circumstances.

Management undertook to engage the parent Ministry on the number of issues raised by Trustees and keep Trustees posted of all progress made in this regard.

Management would forward the draft Gazette notice to the parent Ministry for the Hon. Minister to execute and gazette in accordance with Section 19 (1) (b) of the Hotels and restaurant Act.

Trustees noted the progress made in this matter.





ANNEX 6

THE KENYA GAZETTE

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NAIROBI, 9th April, 2010

Price Sh. 50

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GAZETTE NOTICE NO. 3475

THE WATER ACT
(No. 8 of 2002)
THE WATER SERVICES TRUST FUND
APPOINTMENT

IN EXERCISE of the powers conferred by Section 83 of the Water Act, 2002, the Minister for Water and Irrigation appoints—

PERIS TOBIKO

to be Trustee of the Water Services Trust Fund, for a period of three (3) years, with effect from 6th April, 2010.

Dated the 30th March, 2010.

C. K. NGILU,
Minister for Water and Irrigation.

GAZETTE NOTICE No. 3476

THE WATER ACT
(No. 8 of 2002)
THE LAKE VICTORIA NORTH WATER SERVICES BOARD
APPOINTMENT

IN EXERCISE of powers conferred by Section 51 of the Water Act, 2002, the Minister for Water and Irrigation appoints—

Martin Rogers—(Chairman),

Members:

Permanent Secretary, Office of Deputy Prime Minister and
Ministry of Finance,
Permanent Secretary, Office of Deputy Prime Minister and
Ministry of Local Governments,
Permanent Secretary, Ministry of Water and Irrigation,
Joel K. Tinnet,
Harry Wamubeyi,
Joyce N. Othunoi,
Michael C. Lugalia,
Lorna L. Kimaiga,

to be members of the Board of Directors of Lake Victoria North Water Services Board, for a period of three (3) years, with effect from 6th April, 2010.

Dated the 30th March, 2010.

C. K. NGILU,
Minister for Water and Irrigation.

GAZETTE NOTICE NO. 3477

THE EDUCATION ACT
(Cap. 211)
AUTHORITY TO EXAMINE

IN EXERCISE of the powers conferred by section 21 (b) of the Education Act, the Minister for Higher Education, Science and Technology authorizes the Kenya School of Monetary Studies, Registration Number MRTT/PC/258/98 to examine and award the following Diplomas and Certificates:

Diploma in Business Science with the following options—

- Banking and Financial Services.
- Islamic Financial Services.
- Organizational Development.
- Business Information Technology.
- Microfinance.
- Finance.

Dated the 12th March, 2010.

S. J. KOSGEI,
Minister for Higher Education, Science and Technology.

GAZETTE NOTICE No. 3478

THE HOTELS AND RESTAURANTS ACT
(Cap. 494)
APPROVAL

IN EXERCISE of the powers conferred by section 19 (1) (b) of the Hotels and Restaurants Act, the Minister for Tourism approve that Catering and Tourism Development Levy Trustees establish, equip and control Ronald Ngala Utalii Academy for training persons for employment in the hotels and restaurants.

Dated the 25th March, 2010.

NAJIB BALALA,
Minister for Tourism.

GAZETTE NOTICE No. 3479

MINISTRY OF EAST AFRICAN COMMUNITY
APPOINTMENT

IT IS notified that the Minister for East Africa Community has appointed—

EDWARD GACAU KARIUKI

as a member of the Task Force on the East African Community Common Market Legal Reforms, for a period of 45 days with effect from 23rd February, 2010.

Dated the 30th March, 2010.

A. J. KINGI,
Minister for East African Community.

GAZETTE NOTICE No. 3480

THE KENYA MEDICAL TRAINING COLLEGE ACT
(Cap. 261)

APPOINTMENT

IN EXERCISE of the powers conferred by section 9 (B) of the Kenya Medical Training College Act, the Minister for Medical Services appoints—

Noor Mohammed Ali (Dr.),
Nicodemus Hongo Orongo (Dr.),
Felicita Nactu Olchurie,

to be members of the Kenya Medical Training College Board of Management, with effect from 25th March, 2010.

Dated the 25th March, 2010.

A. NYONG'O,
Minister for Medical Services.

GAZETTE NOTICE No. 3481

THE VALUERS ACT
(Cap. 532)

APPOINTMENT

IN EXERCISE of the powers conferred by section 1 (a) of the schedule of Valuers Act, the Minister for Lands appoints—

ANTHONY MATENGE ITUI

to be the Chairman of the Valuers Registration Board, for a period of three (3) years, with effect from 1st July, 2009.

Dated the 30th March, 2010.

JAMES ORENGO,
Minister for Lands.

ANNEX 7

Date



**REQUEST FOR PROPOSALS
CONSULTANCY SERVICES FOR CONSTRUCTION OF
RONALD NGALA UTALII COLLEGE (RNUC) IN KILIFI**

The Catering and Tourism Development Levy Trustees (CTDLT) intends to engage a consortium of consultants for design, documentation, supervision and contract management of the proposed Ronald Ngala Utalii College in Kilifi following the Gazette Notice No. 3478 of 9th April, 2010.

CTDLT therefore invites Proposals from consortia of reputable firms led by an architect who has successfully undertaken similar construction project. The consortia should be constituted of firms registered with the relevant professional registration boards and should make submissions that will enable CTDLT evaluate their capability to undertake the assignment. The assignment involves the design of a training and hospitality institution. The consortia must show evidence that they have experience in both Institutional and Hotel projects. The consortia will comprise professional firms in the following disciplines;

- i. Architecture and Interior Design,
- ii. Civil and Structural Engineering,
- iii. Building, Mechanical and Electrical Engineering Services and
- iv. Quantity Surveying.

Only submissions meeting the criteria below and any other requirement as outlined in the RF document, which each firm must demonstrate by producing relevant evidence, will be considered

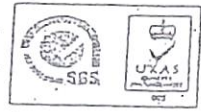
- 1) Copies of original documents defining the constitution or legal status, place of registration and principal place of business.
- 2) Financial status of the firms.
- 3) Capability with respect to personnel and equipment to be used in this consultancy.
- 4) Successful experience and past performance in execution of projects of varying complexity.
- 5) Current projects being undertaken both at design and construction stages.
- 6) Information regarding any litigation, current or during the last five years, in which each firm is involved, the parties concerned and disputed amount.

A complete set of proposal documents may be obtained from CTDLT Procurement office, NHIF Building, Parking Towers, 5th floor on Ragati Road during normal working hours (between 8.30 a.m. - 1p.m. & 2p.m. - 4.30p.m.). Upon payment of a non-refundable fee of Kshs. 5,000.00 in cash or Bankers cheque.

Firms should submit their proposals in sealed envelopes clearly marked with the words "CONSULTANCY SERVICES FOR CONSTRUCTION OF RONALD NGALA UTALII COLLEGE (RNUC) IN KILIFI - RFP NO. CTDLT/003/2010 - 2011" and addressed to:

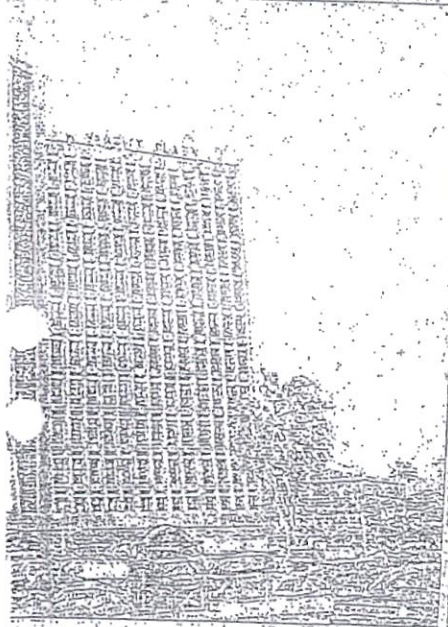
The Chief Executive Officer,
Catering & Tourism Development Levy Trustees
NHIF Building, Parking Tower, 5th Floor
P. O. Box 46987 - 00100, Nairobi
Tel. No.: 020 - 2714900/1/2
Fax No.: 020 - 2714911
Email: info@ctdl.co.ke

Or should be deposited in the Tender Box at the offices of Catering & Tourism Development Levy Trustees, NHIF Building, Parking Tower 5th floor so as to be received on or before 18th March, 2011.



CTDLT IS ISO 9001:2008 CERTIFIED

**UNIVERSITY
DEAN, ACADEMIC AFFAIRS**



**2011 ACADEMIC YEAR APRIL 2011 INTAKE
ADMISSION**

Foundation of excellence in the field of Education, admissions for our school-based programmes due to Homa Bay Town Learning Centre. Application

Entry Elements	Tuition Fee (Kshs)	Offered at
OR Seniors: Upper secondary recognized Senate and class degree must years	80,000	Kisumu City Campus College: School Based
OR Seniors: Upper secondary recognized Senate and class degree must years	236,700	Homa Bay Town Learning Centre: School Based

Entry Elements	Tuition Fee (Kshs)	Offered at
OR Seniors: Upper secondary recognized Senate and class degree must years	80,000	Kisumu City Campus College: School Based
OR Seniors: Upper secondary recognized Senate and class degree must years	236,700	Homa Bay Town Learning Centre: School Based

For further information contact the Dean, Academic Affairs, the office of the Dean, Homa Bay Town Learning Centre, and payable at banks as indicated below:

Homa Bay Town Learning Centre
Co-operative Bank of Kenya
No. 01129019524801, Homa Bay
Branch of Co-operative Bank Countrywide
University website: www.maseno.ac.ke

For Breaking News Updates

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NEWS

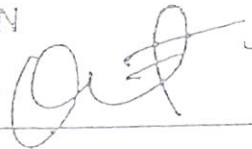

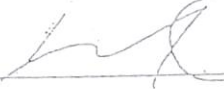


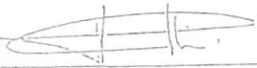




ANNEX 7



ANNEX 8

The Technical Evaluation Committee, after careful evaluation found Bidder No. 9 M/s Baseline Architects Ltd to have presented the most responsive bid. Given the foregoing, the Technical Evaluation Committee recommends that Baseline Architects Ltd, P. O. Box 39928, Parklands, Nairobi (00623) be considered for the award of the consultancy services for the Design, Documentation, Supervision, and Contract Management of the Proposed Ronald Ngala Utalii College (RA-JC).

Technical Evaluation Prepared by:

NAME	POSITION	SIGN
Mr. Willis Ondiek	Chairman	
Ms Christine Sitawa	Secretary	
Mr. Kariuki Muturi	Member	
Mr. David Wainaina	Member	
Mr. Isaiah Rutto	Member	
Mr. Collins Kipkosgei	Member	
QS.Kibet K. Kamingoi	Member	
Arch. M. Nguuvi	Member	
Eng. W.D.K Ngumo	Member	
Eng. D.N. Munyingi	Member	

Dated this 30th Day of March 2012

ANNEX 8



ANNEX 9



Supporting Quality Service

PRE-QUALIFICATION OF CONTRACTORS AND SUB-CONTRACTORS FOR CONSTRUCTION OF THE PROPOSED RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY - A Vision 2030 Project

Background

The Catering and Tourism Development Levy Trustees (CTDLT) was established as a body corporate under the Hotels and Restaurants Act, Cap 494 Laws of Kenya. CTDLT wishes to pre-qualify contractors and sub-contractors for construction and equipping of the proposed Ronald Ngala Utalii College in Kilifi County. The overall goal of the project is to establish facilities for the training of students in different cadres in the hospitality industry, thereby enhancing the overall capacity of the industry in Kenya and the region. This is a flagship project in the Tourism Industry under Vision 2030.

Scope

The proposed project will comprise of the erection, completion and equipping of the college facilities which will include: Administration Block, Tuition Block, Nursery and Primary School, Multi-Purpose Hall, Library, Students' Centre, Kitchen/Dining Hall, Workshops, Laundry Block, Students' Hostels, Sports Centre and Staff Accommodation together with all necessary site works. The total area of the buildings will be approximately 88,000m².

The following are the categories for which prospective contractors, sub-contractors and suppliers may apply either individually or as a consortium under one Main Contractor:-

- a) Main Building Works - Ref.No.CTDLT/MW/a
- b) Specialized Works/Sub-Contractors and Suppliers:-
 - i) General Electrical Installations - Ref.No.CTDLT/SW/b/(i)
 - ii) Plumbing, Drainage and Fire Fighting Installation - Ref. No.CTDLT/SW/b/(ii)
 - iii) Refrigeration, Air Conditioning and Mechanical Ventilation - Ref.No.CTDLT/SW/b/(iii)
 - iv) Kitchen Equipment, Liquid Petroleum Gas and Laundry Equipment Installations - Ref.No.CTDLT/SW/b/(iv)
 - v) Sports, Sauna, Steam and Gym Equipment Installations - Ref.No.CTDLT/SW/b/(v)
 - vi) Fire Detection and Alarm Systems Installation - Ref. No.CTDLT/SW/b/(vi)
 - vii) Security Access Control, CCTV, Fire Detection and Alarm Installation - Ref.No.CTDLT/SW/b/(vii)
 - viii) Standby Generator Installation - Ref.No.CTDLT/SW/b/(viii)
 - ix) PABX Equipment, Data and Telephone Instrument, Structured Cabling, Computer Networking, LAN, WAN Internet and Building Management Systems Installations - Ref.No.CTDLT/SW/b/(ix)
 - x) Solar Systems Installation - Ref.No.CTDLT/SW/b/(x)
 - xi) Furniture, Furnishings and Interior Works - Ref. No.CTDLT/SW/b/(xi)
 - xii) Public Address, Video Conferencing and Multi-lingual Systems Installations - Ref.No.CTDLT/SW/b/(xii)
 - xiii) Lifts Installation - Ref.No.CTDLT/SW/b/(xiii)
 - xiv) Waste Water Management and Disposal - Ref. No.CTDLT/SW/b/(xiv)
 - xv) Rain Water Harvesting, Water Storage and Booster Pump Installations - Ref.No.CTDLT/SW/b/(xv)
 - xvi) Power Transformers, HV and LV Switch Board, Distribution Boards and Power correction Equipment - Ref.No.CTDLT/SW/B/(xvi)
 - xvii) Water Treatment and Swimming Pool Filtration Plant Installation - Ref.No.CTDLT/SW/b/(xvii)
 - xviii) Boiler Systems and Incinerators Installation - Ref. No.CTDLT/SW/b/(xviii)
 - xix) Borehole Drilling and Equipment Installation - Ref. No.CTDLT/SW/b/(xix)

The pre-qualification information required shall include but not limited to the following duly certified documents:-

A. Mandatory Requirements

- i) Copies of original documents defining the constitution

or legal status, place of registration and principal place of business and written power of attorney of the signatory.

- ii) Audited Accounts and Financial Statements for the last three years.
- iii) Valid Registration to operate in Kenya (if International Firm)
- iv) Compliance to Statutory Taxes including VAT.
- v) Compliance to Statutory Deductions including N.S.S.F. and N.H.I.F.
- vi) A declaration that the bidder is not under suspension by the Public Procurement Oversight Authority
- vii) Must provide proof of Ministry of Public Works Registration for the current year (2012/2013) clearly indicating category of Registration.

B. Other Requirements

- i) Total monetary value of construction work performed for each of the last five years.
- ii) Experience in works of a similar nature and size for each of the last five years and details of work under way or contractually committed and names and addresses of clients and consultants who may be contacted for further information on these contracts.
- iii) Major items of construction equipment proposed to carry out the contract and that an undertaking that they will be available for the contract.
- iv) Qualifications and experience of key site management and technical personnel for the contract.
- v) Evidence of adequacy of working capital for this contract (access to line(s) of credit and availability of other financial resources).
- vi) Authority to seek references from firm's bankers.
- vii) Information regarding any litigation (both court and arbitration cases) current or during the last five years, in which the firm is involved, the parties concerned and disputed amount.
- viii) Duly signed letter of application for Pre-Qualification.
- ix) Detailed arrangement of Partnership and/or Consortium where applicable.
- x) A firm may NOT associate with other firms submitting application for pre-qualification since such association shall lead to disqualification.

Firms that do not meet these requirements need not apply since due diligence will be undertaken and will form part of the evaluation process.

Firms may obtain the pre-qualification documents from the offices of Catering and Tourism Development Levy Trustees at NHIF Building, Parking Tower, 5th Floor, and Procurement Office during normal working hours (8.30 a.m. - 4.30 p.m.) upon payment of a non-refundable fee of Kshs.5, 000 and Kshs. 2,000 in cash or bankers cheque for main contractor and sub-contractors.

The document duly completed should be clearly marked "PRE-QUALIFICATION FOR CONSTRUCTION OF THE PROPOSED RONALD NGALA UTALII COLLEGE" (insert reference number of the relevant category) and address to:-

The Chief Executive Officer
Catering and Tourism Development Levy Trustees
NHIF Building, Parking Tower, 5th Floor
P.O. Box 46987 - 00100
NAIROBI

Applications should be deposited at the Tender Box at the Catering & Tourism Development Levy Trustees on or before Friday 14th December 2012 at 12.00 noon. Bids shall be opened thereafter and bidders are invited to attend.



CTDLT IS ISO 9001:2008 CERTIFIED

ANNEX D



URGENT



REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

P O BOX 30007 - 00100
NAIROBI

Ref. Conf.71/03/TY.(59)

Phyllis P. Kandie (Mrs)
Cabinet Secretary
Ministry of East African Affairs, Commerce
And Tourism
Teleposta Towers
NAIROBI

Ps cct
The contract already awarded is for the college. The hotel shall be developed through PPP.
Please reply to Treasury to present anomaly in their comments raised to present Cabinet as per comments dated June 9, 2014.
Presented to Cabinet 10 JUL 2014
CS

Dear

Phyllis,

CABINET MEMORANDUM FOR THE ESTABLISHMENT OF RONALD NGALA UTALII COLLEGE AND HOTEL

We have reviewed the above Cabinet Memorandum and we would like to make the following observations.

Firstly, we agree on the rationale and justification of the project and especially its contribution to the tourism industry in the country in the context of the National Tourism Strategy 2013-2018. Secondly, we note that one of the objectives of the Cabinet memo is to seek Cabinet endorsement of the reviewed scope of works and subsequent financial implications of the proposed Ronald Ngala Utalii College (the training component). This is the largest component of the project and is being undertaken by the Government through your Ministry.

The contract for this component was awarded for a sum of Kshs.8.96 billion in June 2013. However, the component has experienced significant delays related to prioritization and subsequent funding. We also note that the component has been rationalized and phased in a manner that will enable sufficient funds to be prioritized within the Ministry's budget.

The second objective of the Cabinet Memo is to seek approval for the implementation of the hotel component through the PPP Framework. However, the PPP approval process has not been



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followed as defined in the PPP Act 2013. Nevertheless, we continue to believe that the project can be implemented in a PPP framework as advised in our letter Ref. RES.118/13/01/ (18) dated December 19, 2013 (copy attached).

In view of the foregoing, we make the following recommendations:-

The Ministry can proceed to implement the hotel component whose contract has already been awarded and is being rationalized. Considering the funding amounts involved, this component should not wait as it will need to be phased within the ministry's MTEF budget.

Moreover, implementing this component now will give a strong positive signal to the private sector that the government will indeed go ahead with the project. With enhanced certainty of the project, private sector risks will be minimized and this will not only attract more private sector interest but will also give the Government an upper hand in negotiating the PPP component.

Regarding the PPP component, the Ministry should follow the procedure as outlined in the PPP ACT, 2013 and finally, the Ministry should ensure that the rationalized training component is prioritized within its MTEF budget. ...

Taking into account these considerations, the Cabinet Memo has been signed with the understanding that our comments will be taken into account. Please find attached herewith the signed Cabinet Memorandum for your further necessary action.

Yours

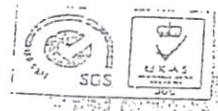
Sincerely,


HENRY K. ROTICH
CABINET SECRETARY/NATIONAL TREASURY

Copy to:

Mr. Francis Kimemia, EGH
Secretary to the Cabinet
State House
NAIROBI

Encls.



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Certified.

FOR

ESTABLISHMENT OF RONALD NGALA UTALII COLLEGE AND
HOTEL

1.00 PURPOSE

The purpose of this Cabinet Memorandum is to request the cabinet to endorse the reviewed scope of works and subsequent financial implications of the proposed Ronald Ngala Utalii College.

The second purpose is to seek approval for implementation of the Hotel component of the project through Public Private Partnership framework.

2.00 BACKGROUND

a) Kenya Utalii College

In 1975, the Government of Kenya through Catering Levy Trustees and the Government of Switzerland set up Kenya Utalii College as a tourism training centre of excellence. The College was run by Trustees until 1987 when the then Hon. Minister for Tourism in exercise of powers conferred by Section 29(1) of the Hotels and Restaurants Act (now repealed) gazetted the College as an autonomous state corporation. Since its establishment, the college has remained the only national tourism training institution in the country.

b) Demand for Human Resource in the Tourism and Hospitality Industry

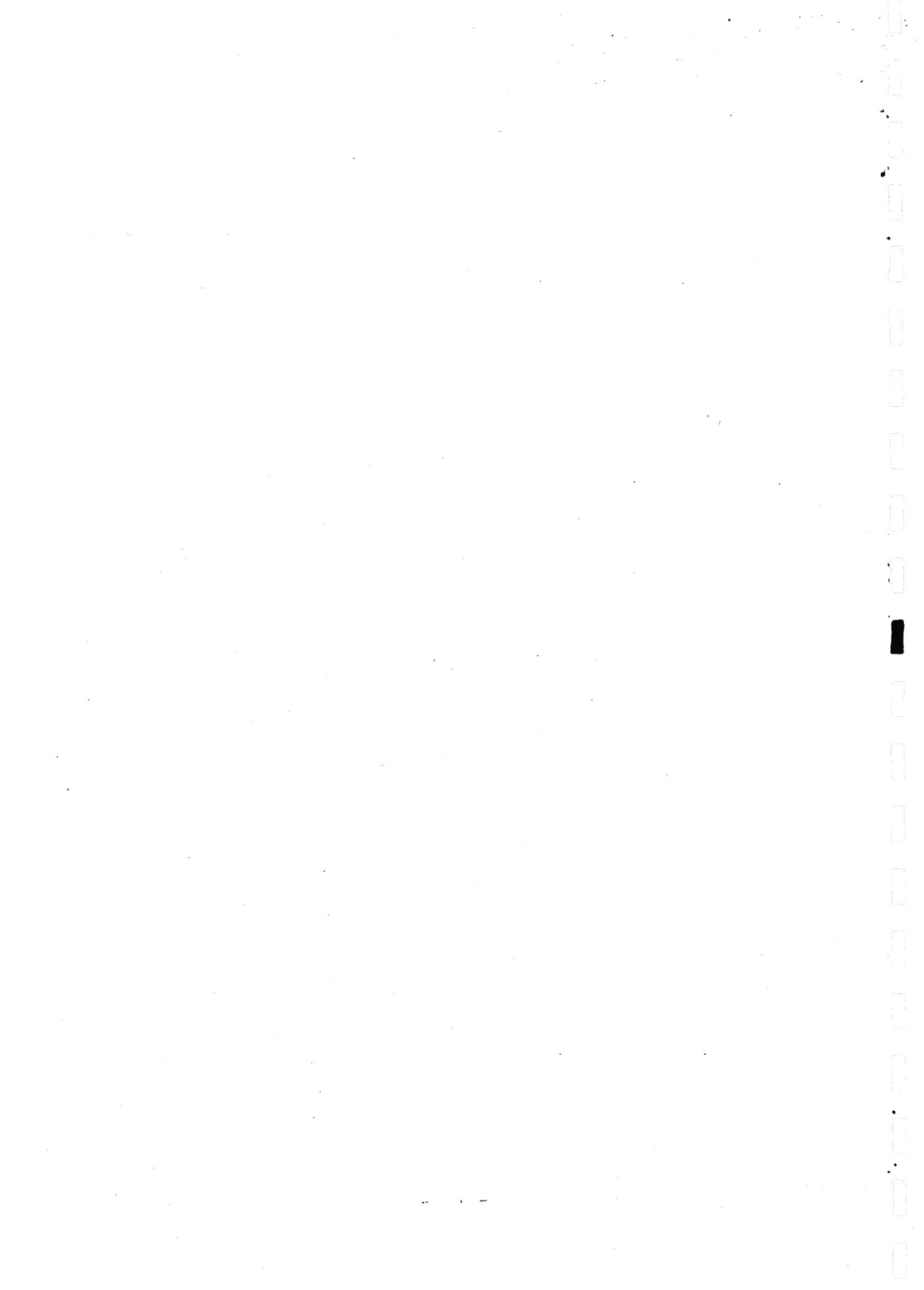
In the past twenty years, the tourism industry has grown exponentially. Tourist arrivals now top 1 million visitors while annual industry earnings are in excess of Kshs 100 billion. This growth has seen an increase in the number of players, tourism establishments and demand for human resource for the sector. This demand cannot be met by Kenya Utalii College which graduates 500 students every year.

c) Establishment of 2nd National Tourism Training Institution

The Government made a deliberate move to establish the second national tourism training institution at the Coast. The college would not only complement Kenya Utalii College in training in the traditional areas but it would also specialize in training in new areas of hospitality, tourism, ecotourism, cruise tourism and entrepreneurship development; including vocational job training and Training of Trainers (TOT) Programmes. All these new areas were meant to position Kenya as a leading tourism destination in the model envisaged under Kenya Vision 2030.

The need for the 2nd national training institution has been given attention since mid 1990s. In February 1996, the Cabinet had approved the same vide minute No. 30/96 but due to lack of funds, the project was not implemented.

This matter was deliberated upon by stakeholders and eventually was taken up by the Ministry of Tourism. The Cabinet, in its meeting of 13th September 2007, again approved the establishment of the college, to be known as Ronald Ngala Utalii College, at a cost of Kshs 1.95 billion. The Project would be undertaken in four phases at an estimated Kshs 500 Million per phase per year.



... college would be owned and managed by (a) the parcel of land L.R. NO. 30237/4 in Kilifi. Catering and Tourism Development Levy Trustees (the legal predecessor of the Tourism Fund) would be the implementing agency. The land was donated by Vipingo Estates Group in the 80's with the condition that the land shall "solely be used for the establishment of the Coast Branch of Kenya Utalii College". The title deed for the land is now held in trust by the Tourism Fund pending full development of the college together with formation of its own Board of Trustees /Management.

e) Presidential Directive

On 27th August 2008, H.E. the President met tourism industry stakeholders during the final opening of the refurbished Mombasa Continental Hotel at Shanzu, North Coast. The industry stakeholders made a number of requests to the President but of note, they requested that the Government should fast track the establishment of a tourism training centre of excellence at the Coast.

Further to the Cabinet Resolution and further to the directive by H.E. the President, the Ministry of Tourism put in place mechanisms aimed at establishing the new College, as the second tourism training institution, to be known as Ronald Ngala Utalii College.

The Ministry noted at the time that the Hotels and Restaurants Act Section 19(1)(b) authorized CTDLT to "*establish, equip and control of institutions for training of persons for employment in the hotels and restaurants.*"

f) Board of Trustees Resolution

The Board of Trustees made a resolution in line with Section 19(1)(b) of the Act to establish the College. This decision was gazetted by the Hon. Minister of Tourism vide Gazette Notice Number 3478 dated 25th March 2010 and published in the Kenya Gazette of 9th April 2010. The Hon. Minister further appointed the Board of Trustees for the new College.

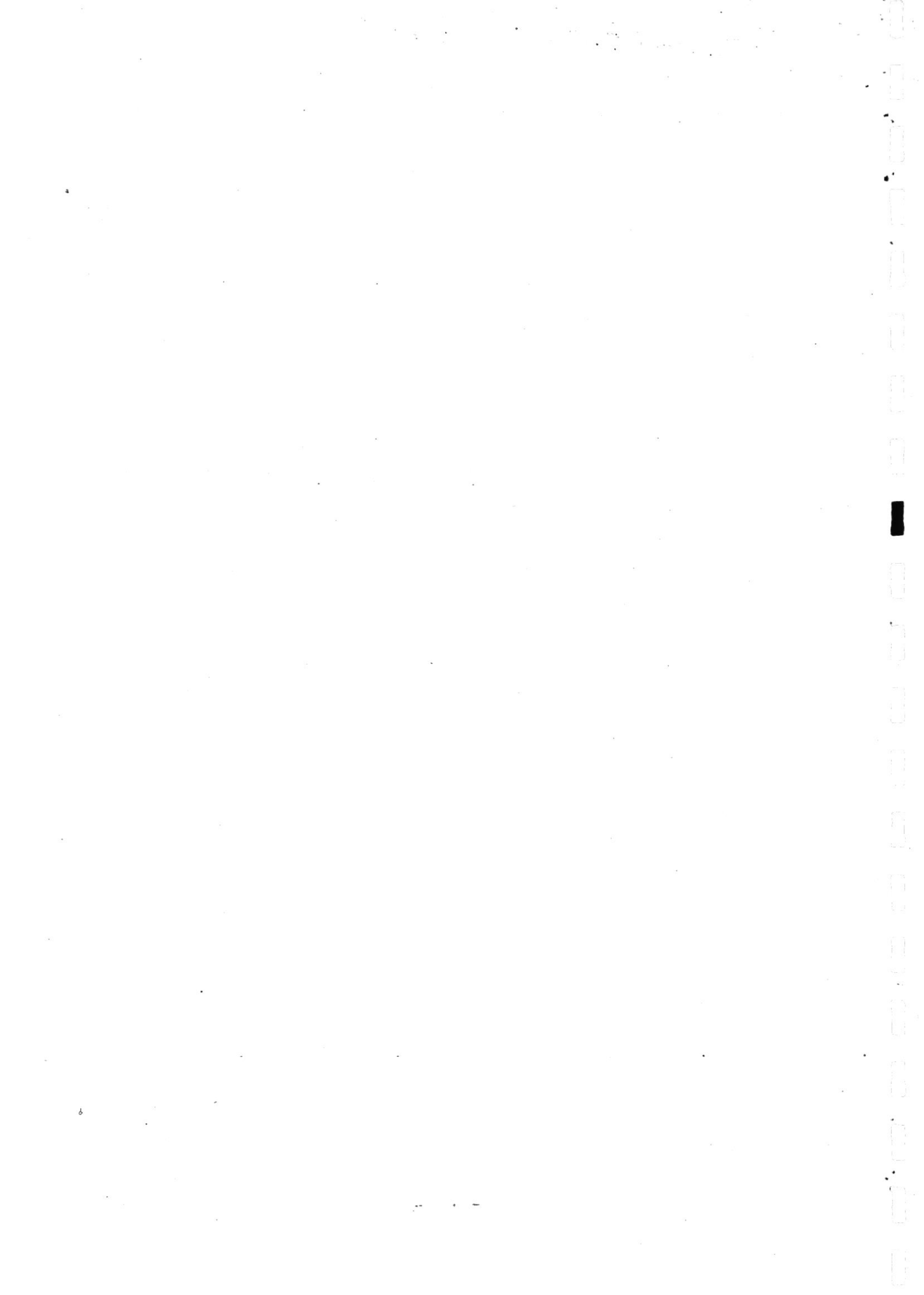
It should be noted that preceding the Cabinet Resolution of 2007, the Ministry of Tourism and the Ministry of Public Works had been engaged in the development of initial design and drawings for the College.

It was on the basis of these drawings and designs that the Cabinet approval of 2007 setting the cost of the project at Kshs 1.95 billion was arrived at. These drawings and initial designs by the Ministry of Public Works were placed before the Board of the College during the 2nd Board meeting held in Mombasa on 13th December 2010.

The Board of Trustees deliberated on the design and noted that the intention to build an international centre of excellence with a strong local feel had not been met. It was proposed that the College should have a Swahili look so as to blend in the locality.

Further, the Board noted that this was an immense national project and there was need to provide basic social amenities to the local community to include a school, a hospital and recreational facilities. Accordingly, the Board resolved that they should engage a team of consultants led by an architect to redesign the College to take care of the new proposals.

Trustees put into place measures to get professionals on board to implement the Project. In accordance with the Public Procurement and Disposals Act, 2005. The Fund identified a consortium of Consultants to oversee the design and overall supervision of the Project.



RATIONALE:

The development of Ronald Ngala Utalii College is aimed at achieving the following objectives in line with the National Tourism Strategy 2013-2018:-

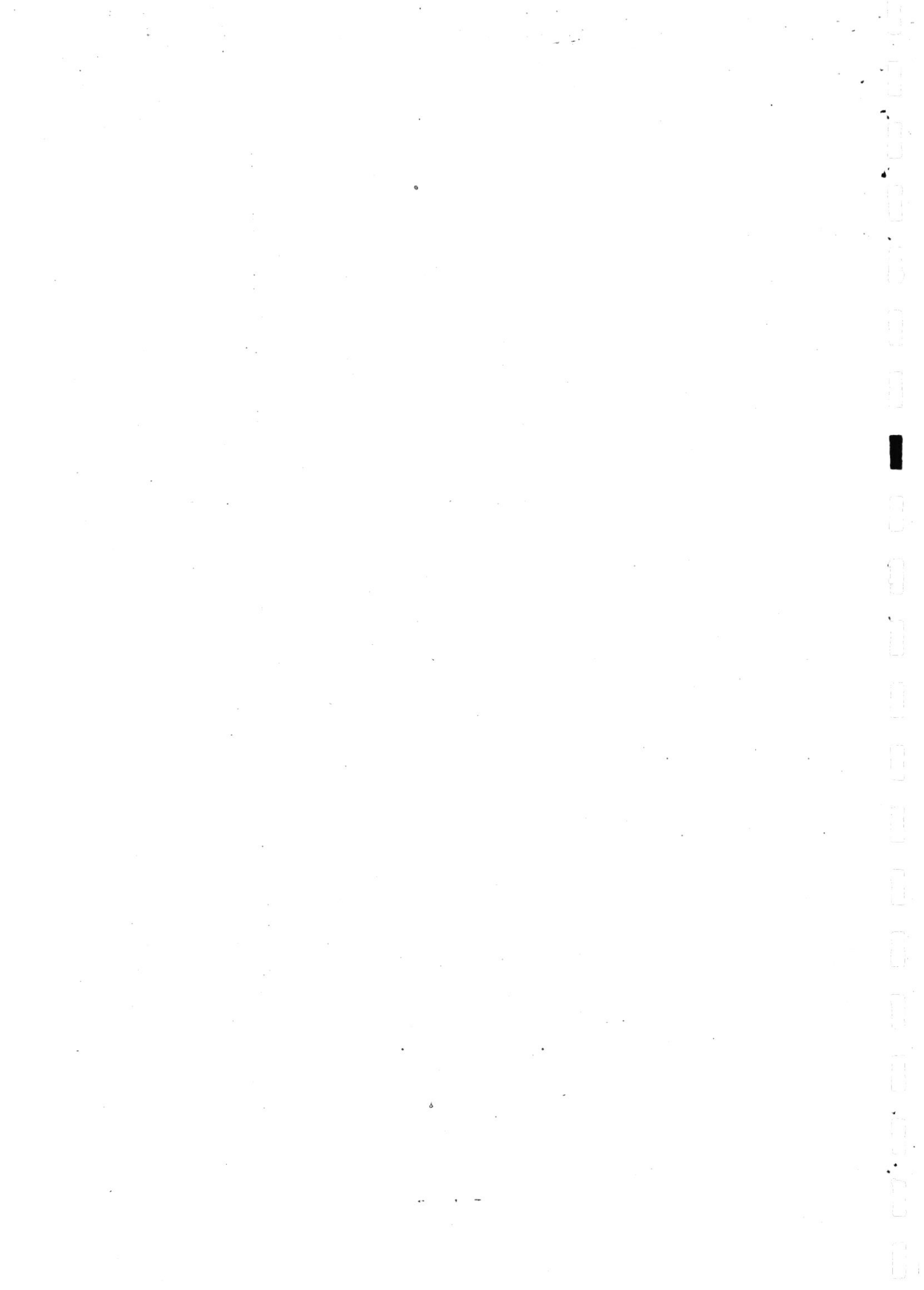
- a) To enable the Government offer more training opportunities to the tourism industry and create a Centre of Excellence in training facilities. This will benchmark and regulate the mushrooming colleges that lack requisite facilities and technical personnel.
- b) To enable the Government promote capacity building in Hospitality industry within East Africa and the wider region through liaison commitments agreed upon by the African partners in particular Nigeria, Mozambique and Ethiopia. It is gratifying to note that Qatar, through the auspices of Kenya Utalii College, has enquired for possible trained man-power to the tune of 15,000 students in their bid for hosting the World Cup in the year 2022. This shall open up employment opportunities across Africa and beyond.
- c) To enable the Government establish new programmes at the Coast in response to identifiable training needs in the industry. The Coast, being the linchpin of tourism in the country, is expected to benefit immensely since tourism can also act as a catalyst of development of the local community.
- d) To address a very big gap existing in the current tourism and hospitality training of matching both the technical and conceptual skills. The existing institutions training in hospitality are in two extremes; in terms of either too much knowledge and less skills more prevalent in universities and other colleges or too much skill and less knowledge as is the case at Kenya Utalii College.
- e) To further decongest the existing facilities at the Kenya Utalii College, which was built way back in 1975, and offer extended courses in new and emerging tourist opportunities.

THE PROJECT COMPONENTS AND COSTINGS

The consortium developed the designs, outline maps, drawings, bills of quantities and documents to facilitate the tendering process. The proposed development will provide both full time residential and part time training. In addition to infrastructure, the training facilities will entail use of a hotel as an application facility (teaching laboratory).

The college is expected to achieve the desired overall expansion of training facilities with the initial student capacity of 1,000 but with the ability to expand up to a full time student population of 3,000 to serve the East African Region. It should also be expandable to a full fledged university of up to 5,000 students in a well planned and stepped upgrading system. Out of the 60 acres of land available, 40 acres have been set aside for the college.

The Hotel component is proposed to be a 5-star Hotel run commercially but also serving as a laboratory for the students. It will not only be comparable to other best hotels at the Coast, but will also be benchmarked against international hotels in terms of standards, facilities and amenities. The hotel will also play an important role of revenue generation besides providing practical exposure to the trainees. The hotel component has been planned on 20 acres.



component is to be implemented.

5.00 ANALYSIS OF THE PROBLEM

As pointed out above, this is a Kenya Vision 2030 Flagship Project that was approved to be financed by the National Treasury. There has, however, been a major review on the project since 1996 when it was approved by the Cabinet for the first time, and 2007 when it was approved for the 2nd time.

a) Initial Scope of Works

The initial concept, sketch designs and drawings had proposed college facilities for a student population of 400 with the possibility of expansion. The facilities were estimated to cost Kshs 1.95 billion in the year 2007 as per table 1 (*Attachment I*). It is to be noted that the same table shows that the current costs (year 2014) would be Kshs 3.25 billion if the initial scope had not been reviewed from an estimated area of 31,000m². The revised figures have taken into account price escalation at 7½% p.a. in the building industry over the last seven years.

b) Tendered Scope of Works

The tendered scope of works, at Kshs 8.96 billion, were based on the revised proposals as indicated in section 2.00 (f) of this memo.

Table 2 (*Attachment II*) shows that the main facilities (Administration Block, Tuition Block, Library, Kitchen/Dining Hall, Hostels and Staff Houses) have not only increased in area, but there are also other additional facilities that were not in the initial concept. These are; Multi-Purpose Hall, Sports Complex, Primary and Nursery Schools, Workshops, Dispensary and ancillary buildings (Laundry and Boiler Rooms, Transformer House, Fire Station etc). The revised total area, at 94,000m², is three times the initial area of 31,000m².

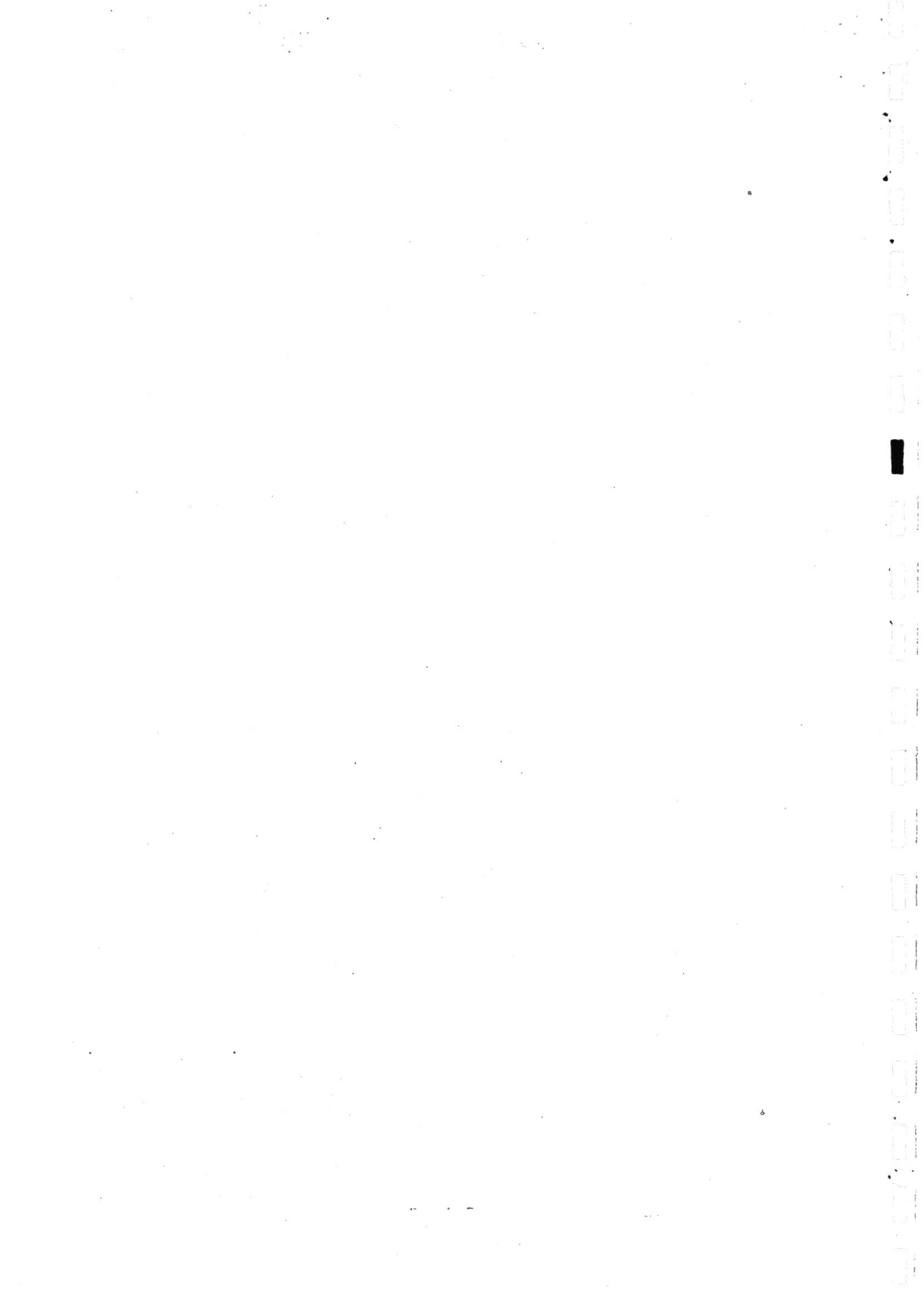
The variance in cost was therefore mainly because of the lapse in time, since 2007, when it should have been implemented, and the changed scope to include new proposals befitting a modern institution that can be expanded to a fully fledged University as per Board of Trustees' resolutions cited elsewhere.

In compliance with regulations, it is imperative that these reviews and project rationalization be brought to Cabinet for further consideration. The rationalization is intended to downscale the project for budgetary reasons.

c) Project Rationalisation and Reduced Scope of Works

Due to current economic austerity measures, it is agreed that, even though the works were tendered and awarded at Kshs 8.96 billion, the project must be rationalized with a view to downscaling it through a number of ways, namely:-

- i) Omission of basement parking in Administration Block and entire omission of Primary and Nursery Schools. This will realize as saving of Kshs 0.246 billion.
- ii) Reduction of 4No. Blocks of Students' Hostels, initially planned to house 1,200 students, to 2No. and reduction of Staff Houses from 108No. to 36No. This will realize a saving of Kshs 1.273 billion.
- iii) Change of specifications and substitution of some components, finishes and items in all the works. This will realize a saving of Kshs 0.170 billion.
- iv) Omission of supply items such as furniture, furnishings, computers, software, UPS installations and interior design works etc. This will yield a saving of Kshs 0.653 billion.



- v) Reduction of prime cost sums for untendered electrical and mechanical works and reduction of Provisional sums for price escalation and contingencies by about 55%. This will give a saving of Kshs 1.352 billion.
- vi) Proportionate reduction of some common items in the preliminaries and external works bills. This gives a saving of Kshs 0.346 billion.

These measures have the overall effect of reducing the contract sum by Kshs 4.04 billion to Kshs 4.92 billion as shown in table 3 (*Attachment III*). It is to be noted that the revised area for the rationalized project is now 63,908m². Consequently, the contract period will also be reduced proportionately from 154 weeks, as tendered, to 128 weeks.

The scaled down project will have to be negotiated between the parties and an addendum to the contract be prepared to reflect these changes. The addendum shall then be signed by the contracting parties.

d) Financing and Phasing Programme

In the project financial appraisal, the consultants have advised that the project can take three years to complete and be handed over but release of retention money and payment of final accounts can spill over into the fourth year (2017/2018). The annual financial requirement will thus average to Kshs 1.23 billion.

The contract for the construction of the project was awarded and the contractor has been on site since June 2013 to date. Substantial work has been done although no payment has been honoured due to insufficient allocation.

In the current financial year (2013/2014), Tourism Fund requested for Kshs 600 million from Treasury and Kshs 547.2 million was allocated.

According to the revised cash flow projections, an average of Kshs 125 million is now required on monthly basis to meet the contractual obligations. Already, mobilization fees, work done and materials on site have been certified at more than Kshs 600 million in the last nine months.

5.00

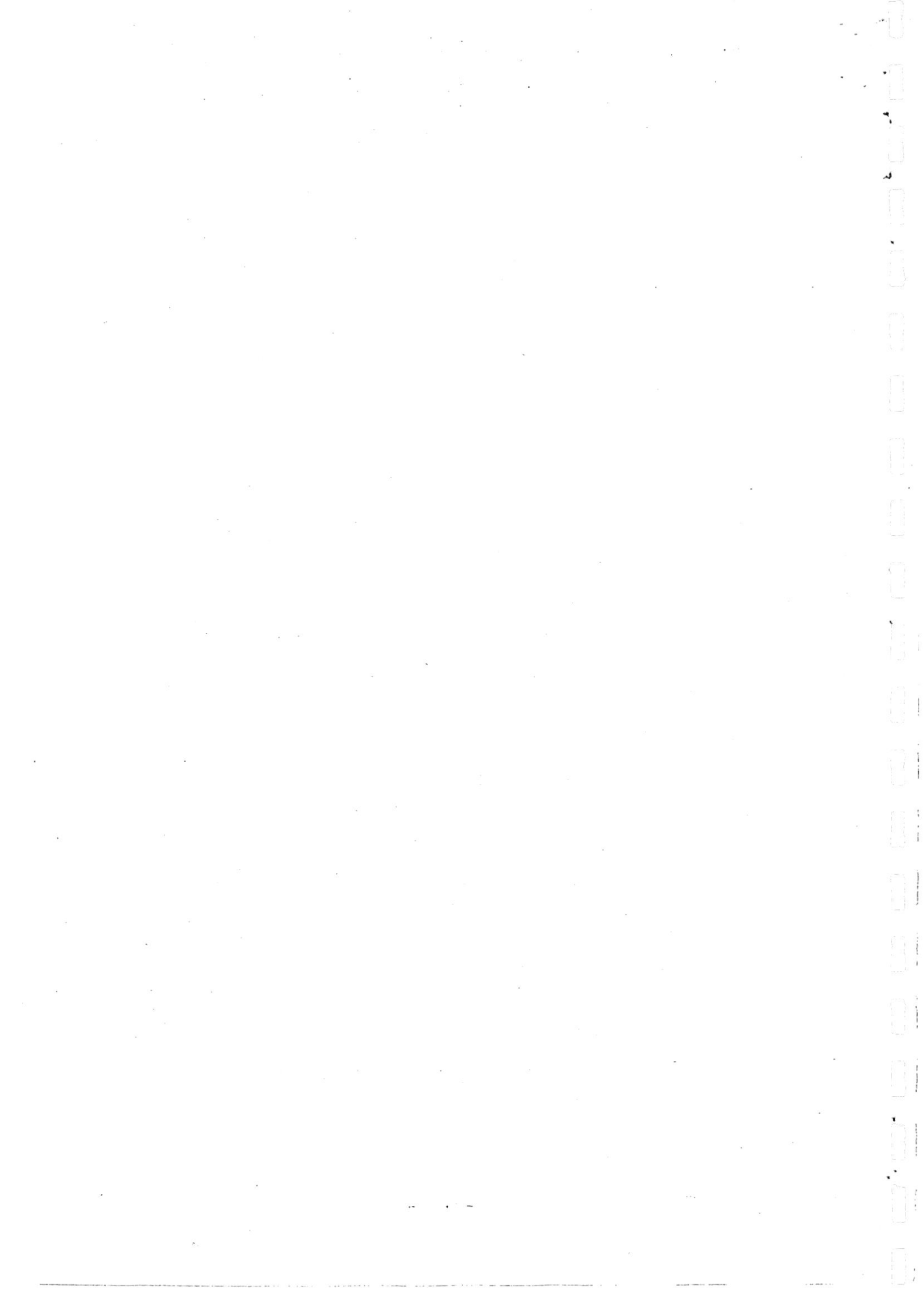
THE WAY FORWARD

Since inception, Ronald Ngala Utalii College has been a jointly funded project by the National Treasury and Tourism Fund. A total of Kshs 347 million has been set aside by the National Treasury while Tourism Fund has contributed Kshs 232 million from her internal resources towards initial project requirements.

In view of the foregoing and considering the joint funding mechanism already in place, it would be imperative for the two parties involved to fund the project with the National Treasury bearing the cost of construction while Tourism Fund meets professional fees.

For the development to be functional as designed and viable as per feasibility studies, it is proposed that the students' hostels, staff accommodation, supply items and other necessary facilities that have been proposed for omission due to cost cutting measures, be re-instated and funded by the Tourism Fund, as and when funds become available.

Since the hotel component is to be run commercially under PPP, its construction financing will not come from the National Treasury nor from the Tourism Fund, but from the private investor(s) who will bear the greater financial burden and risk.



REQUESTS TO CABINET

Cabinet is, therefore requested to consider the contents of this memorandum and direct as follows:

- a) The Cabinet Secretary Ministry of East African Affairs, Commerce and Tourism to implement the revised project with a view to improve competitiveness in the tourism and trade sectors.
- b) The National Treasury allocates Kshs 1.23 billion annually for four years with effect from financial year 2014/2015 and the Tourism Fund to allocate Kshs 0.50 billion respectively.
- c) The Hotel component, as a teaching laboratory to the college, and the requisite hostels and staff housing that may arise due to possible expanded capacity, to be implemented under Public Private Partnership framework.

submitted by:-

Mrs. Phyllis J.K. Kandie
Cabinet Secretary for East African Affairs,
Commerce and Tourism

Date:- 26th June 2014

countersigned:-

Mr. Henry K. Rotich
Cabinet Secretary for National Treasury

Date:- 9th July 2014

Description of Facilities	Total Area	Previous Estimated Costs (Year 2007)	Current Estimated Costs (Year 2014)
Administration Block	972m ²	34,932,342.00	58,232,214.00
Tuition Block	2,750m ²	98,831,216.00	164,751,637.00
Kitchen / Dining hall	2,396m ²	85,108,942.00	143,543,606.00
Library	1,128m ²	40,538,768.00	67,578,126.00
Student Centre	506m ²	18,184,942.00	30,314,298.00
2No. Student Hostel Blocks for 400 Students	5,360m ²	192,631,024.00	321,115,917.00
5No. 2-BR Maisonettes	1,750m ²	62,892,592.00	104,841,951.00
6No. 2-BR Flats	2,365m ²	84,994,846.00	141,686,408.00
Related Site Works		179,500,000.00	299,226,500.00
Electrical/Mechanical Services		180,000,000.00	300,060,000.00
Contingencies/Provisional Sums		111,000,000.00	185,037,000.00
TOTALS for Phase I	17,227m ²	1,089,614,680.00	1,816,387,657.00
<i>dd</i>			
Phase II	13,603m ²	860,385,320.00	1,434,262,329.00
TOTALS	30,830m ²	1,950,000,000.00	3,250,649,986.00

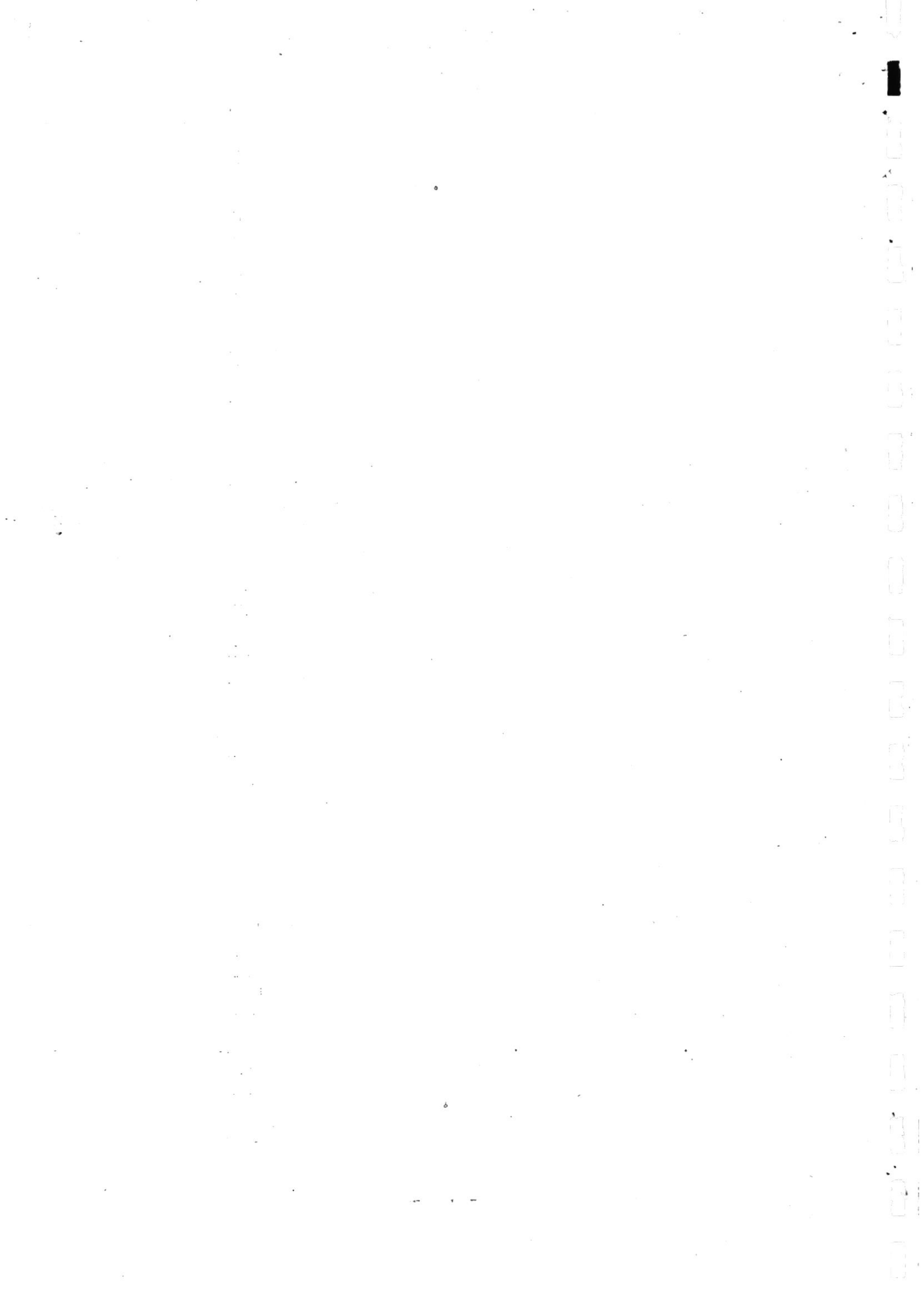
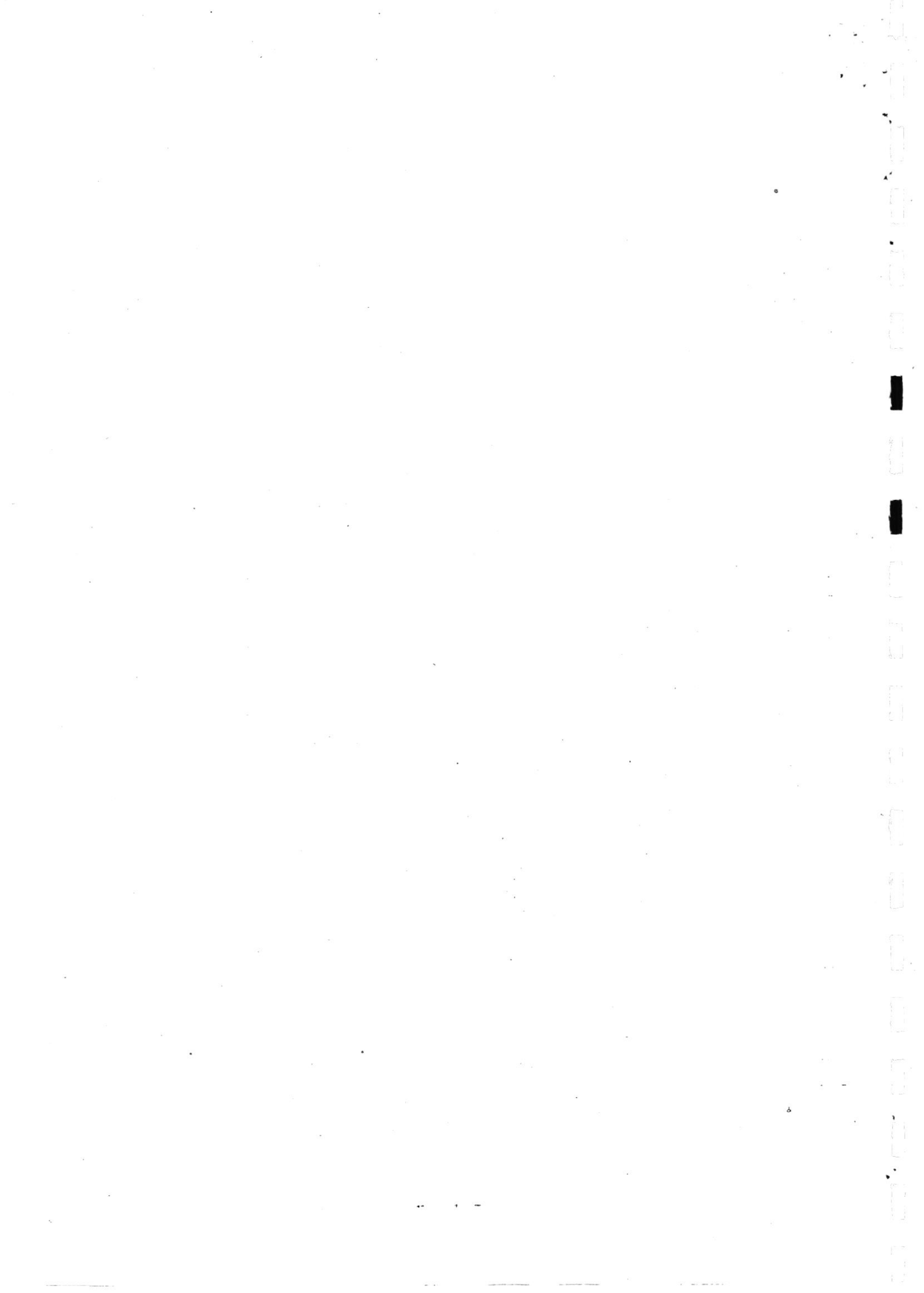
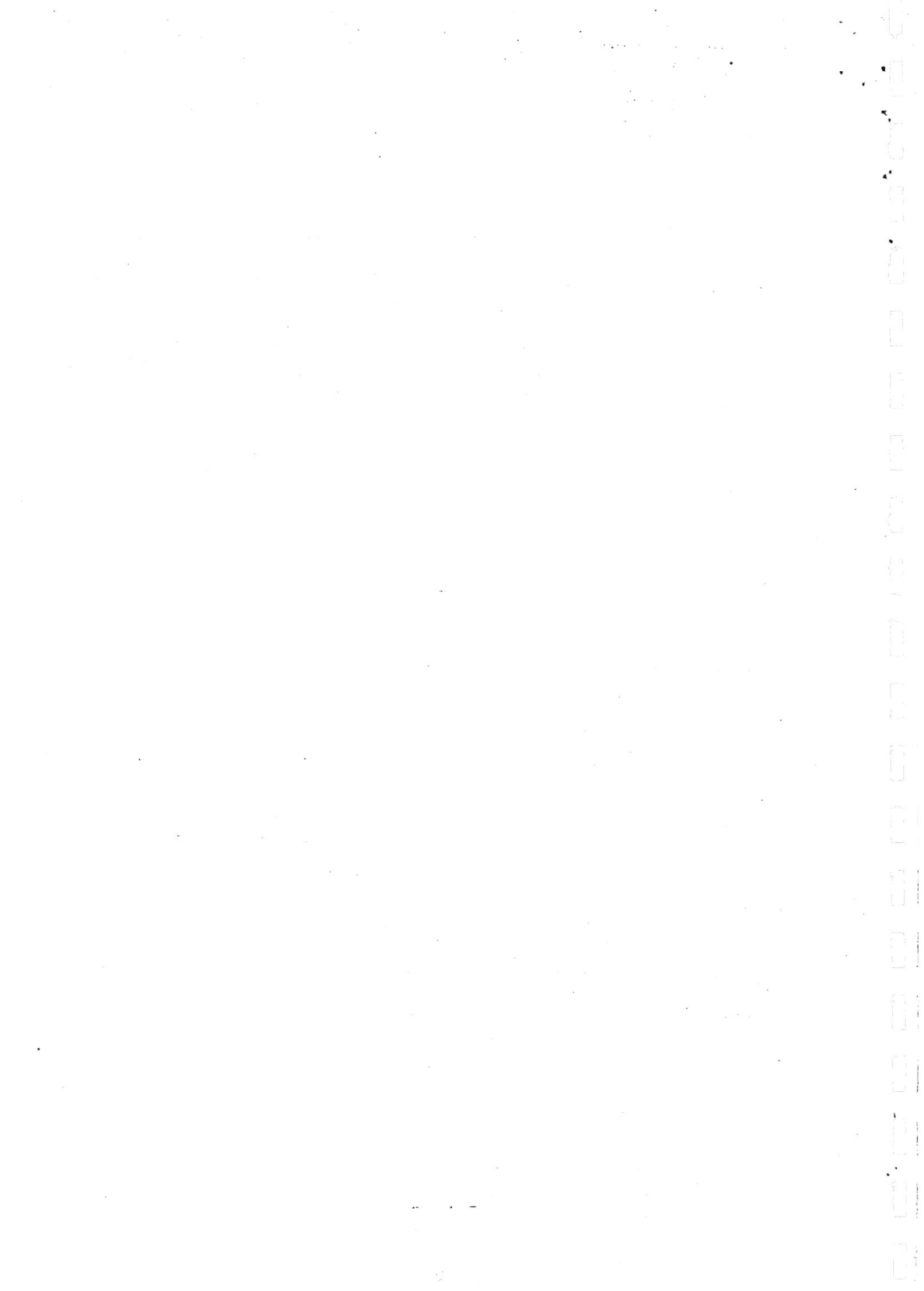


Table 2 – Tendered Scope of Works (Student Capacity: 1,000 Expandable to 3,000 Students)

	Description of Facilities	Total Area	Tendered Amounts (2013)
1.	Administration Block	5,700m ²	313,123,281.00
2.	Tuition Block (Twin)	20,400m ²	1,120,651,744.00
3.	Kitchen / Dining hall	4,000m ²	219,735,636.00
4.	Library	4,200m ²	230,722,418.00
5.	Students' Centre	2,200m ²	120,854,600.00
6.	Sports Complex	1,700m ²	93,387,645.00
7.	Multi-Purpose Hall	3,000m ²	164,801,727.00
8.	Workshops Block	660m ²	36,256,380.00
9.	Primary and Nursery Schools	4,140m ²	227,426,383.00
10.	Laundry and Boiler Rooms	600m ²	32,960,345.00
11.	Fire Station	155m ²	8,514,756.00
12.	Transformer and Standby Generator	270m ²	14,832,155.00
13.	Sickbay and Changing Rooms	460m ²	25,269,598.00
14.	4No. Hostel Blocks for 1200 Students	29,600m ²	1,626,043,706.00
15.	18No. Maisonettes including domestic staff quarters	5,355m ²	294,171,083.00
16.	24No. 3-BR Flats	4,300m ²	236,215,809.00
17.	48No. 2-BR Flats	7,160m ²	393,326,788.00
	Related Site Works	-	508,607,927.00
18.	Electrical Works and Installations		1,631,415,405.00
	Mechanical Works and Installations		631,053,600.00
	Provisional Sums for Price Escalations and Contingencies		1,500,000,000.00
	TOTALS	93,900m²	8,961,370,908.00







ANNEX II

**MINUTES OF THE 106TH BOARD MEETING
OF CTDLT HELD ON 28TH OCTOBER 2010
AT 10.00 A.M. IN THE CTDLT BOARDROOM,
NHIF BUILDING, PARKING TOWER, 5TH
FLOOR, NAIROBI**

PRESENT

- | | | |
|-------------------------|---|---|
| Hon. Anania Mwaboza | - | Chairman |
| Mr. Saad Faraj Ahmed | - | Trustee |
| Mr. Taufiq Salim | - | Trustee |
| Mr. Martine ole Kamwaro | - | Trustee |
| Mr. Wycliffe A. Anyasi | - | Trustee |
| Mrs. Margaret Onyimbo | - | Alternate Trustee
Representing
Permanent
Secretary
Treasury |
| Mrs. Anne Musau | - | Alternate Trustee
Representing
Permanent
Secretary, Ministry
of Tourism |

SECRETARY

- | | | |
|-------------------|---|----------------------------|
| Mr. Allan Chenane | - | Chief Executive
Officer |
|-------------------|---|----------------------------|

IN ATTENDANCE

- Dr Kenneth Ombongi - Principal, Kenya
Utalii College
- Mr. Gerald K. Mwangi - Representing
Inspector General
(Corporations)
- Mr. Fredrick Orego - Chief Legal Officer

OPENING REMARKS

The Chairman called the meeting to order at 10.45 am. The meeting began with a word of prayer from Mrs. Margaret Onyimbo.

The Chairman then invited Trustees to deliberate on the matters at hand.

MIN.1/2010: ADOPTION OF AGENDA

Trustees considered the Agenda as circulated.

Mr. Wycliffe Anyasi proposed that the Agenda be adopted. The proposal was seconded by Mrs. Anne Musau.

The Agenda was adopted as drawn and circulated.

MIN.2/2010: CONFIRMATION OF MINUTES OF:

a) 105th Board Meeting held on 27th July, 2010:

Trustees considered the Minutes page by page.

It was noted that the name of Trustee Mr. Ahmed was wrongly spelled in paragraph 2 of page 4.

The minutes were proposed by Mrs. Anne Musau and seconded by Mr. Ahmed.

The Minutes were confirmed as a true record of the 105th Board Meeting held on 27th July 2010.

b) **Special Board Meeting held on 17th August, 2010:**

Trustees considered the Minutes page by page.

It was noted that the name of Mr. Christopher Ombega had been wrongly indicated as Mr. Charles Ombega in paragraph 1 of page 4.

Further, it was noted that Mr. Taufiq Salim's name had been omitted from the list of members of the Finance Committee.

Further, it was noted that the meeting had resolved that due to his experience in human resource practice, Mr. ole Kamwaro may be invited to attend the Staff and Technical Committee from time to time if his expertise was required.

The Minutes were proposed by Mr. Salim and seconded by Mr. ole Kamwaro.

The Minutes were confirmed as a true record of the Special Board Meeting held on 17th August 2010.

Trustees considered the Minutes page by page.

The Minutes were proposed by Mr. Anyasi and seconded by Mr. Ahmed.

The Minutes were confirmed as a true record of the Special Board Meeting held on 21st September 2010.

MIN.3/2010: MATTERS ARISING

a) **Composition of Board Committees**

Trustees recalled that during the Special Board Meeting held on 17th August, 2010, they reconstituted various Committees of the Board.

Management informed Trustees that the Chairman had formally appointed Members to Committees as follows:-

Staff and Technical Committee

1.	Mr. Taufiq Salim	Chairman
2.	Mr. Wycliffe Anyasi	Member
3.	Mr. Saad Faraj Ahmed	Member
4.	Mrs. Anne Musau	Member
5.	Mrs. Margaret Onyimbo	Member
6.	Mr. Gerald Mwangi	Member
7.	Mr. Allan Chenane	Secretary

Finance Committee

1.	Mr. Martine ole Kamwaro	Chairman
2.	Mr. Wycliffe Anyasi	Member
3.	Mrs. Anne Musau	Member
4.	Mrs. Margaret Onyimbo	Member
5.	Mr. Gerald Mwangi	Member
6.	Mr. Allan Chenane	Secretary

Audit Committee

1.	Mr. Saad Faraj Ahmed	Chairman
2.	Dr. Kenneth Ombongi	Member
3.	Mrs. Anne Musau	Member
4.	Mr. Gerald Mwangi	Member
5.	Two Heads of Departments	Members
6.	Head of Internal Audit	Secretary

Trustees noted that Mr. Salim had not been included in the list of members of the Finance Committee. Management would rectify this position so that the Chairman may issue a formal letter of appointment.

Trustees noted the report.

b) **Corporate Social Responsibility**

Management reported that subsequent to Trustees approval, they sponsored the following events:

- Marienga Primary School in the sum of Kshs.300,000;
- Five tons of sugar to the Muslim Community at the Coast at a total cost of Kshs.480,000;
- Lurende R.C. Primary School in the sum of Kshs.500,000; and
- Vikwatani Junda Water Project in the sum of Kshs.302,950.

Trustees noted the report but directed Management that in the future we should take advantage of the publicity that comes with such donations. Management assured Trustees that since the Corporate Affairs Manager had now reported necessary arrangements would be made in this regard.

c) **Performance Contract for the period 2010/2011**

Trustees recalled that during the 105th Board Meeting, Management had reported that the negotiations and vetting processes for the Performance Contract for the period 2010/2011 had been finalized and Management was awaiting communication from the parent Ministry on the date for the signing of the Contract.

a) **Corporate Affairs Department**

The Corporate Affairs Manager Mr. Yassin Ismail reported to work on 1st September, 2010 and was currently setting out activities for the department.

Trustees approved the following:

- Mrs. Patricia Ondeng, Senior Personal Secretary, Nairobi Branch was promoted to the position of Senior Corporate Affairs Officer, Job Group 5; and
- Mr. John Mutua, Senior Levy Clerk, Nairobi Branch be seconded to the department and promoted to the position of Assistant Corporate Affairs Officer, Job Group 8.

b) **Finance Department**

Trustees approved the following changes:-

- i) Ms. Norah Mukuna was transferred from the Finance to Procurement as Senior Store Woman in Job Group 9;
- ii) Mr. Nahashon Oenga was promoted to Position of Assistant Accountant in Job Group 8; and

- iii) Mr. Ben Kiplabat was transferred to replace Ms. Mukuna in the Cash Office, Nairobi branch. He was promoted to Job Group 9 to the position of Senior Accounts Clerk.

There being no other business to transact, the meeting closed at 1.46 p.m. with a word of prayer.

Minutes confirmed by Board of Trustees



Signed.....

Chairman

Date 27th JANUARY 2011

DAILY NATION
Thursday February 16, 2012

EXPRESSIONS OF INTEREST FOR THE FORMULATION OF FRAMEWORK FOR THE DEVELOPMENT OF TOURISM PRODUCTS AND SERVICES

The Catering and Tourism Development Levy Trustees (CTDLT), is a state corporation in the Ministry of Tourism and is established pursuant to the provisions of the Hotels and Restaurants Act. The Ministry of Tourism has continuously sought to modernize the legal, administrative, governance and policy framework for the tourism and hospitality industry. This saw the enactment of the Tourism Act, 2010. The Act seeks, inter alia, to provide for the development, management, marketing and regulation of sustainable tourism and tourism related activities and services. The Act specifically empowers the legal successors to CTDLT to finance the development of tourism products and services in Kenya. To this end, CTDLT wish to engage a consortium of consultants to undertake a study and formulate the framework for the financing and development of tourism products and services in the country.

CTDLT therefore invites interested consortium of consultants who are experienced and qualified to submit their Expressions of Interest to carry out consultancy services.

The consortia should be constituted of firms or individuals and should make submissions that will enable CTDLT to evaluate their capability to undertake the assignment. The assignment involves Comprehensive Kenya's Tourism Product Assessment, Evaluation of Options and Setting of Priorities for Kenya's Tourism Product Development and Management and Facilitation and Oversight to ensure comprehensive implementation of Tourism Product Development Proposals, Initiatives and Plans and any requisite collaterals and incidentals.

The consortia will comprise professionals in the following disciplines:

- i. Destination Management;
- ii. Hospitality Development;
- iii. Wildlife and Environmental Management;
- iv. Tourism Business and Strategy Development;
- v. Tourism Resources Planning and Development; and
- vi. Development Finance.

Only submissions meeting the criteria below and any other requirement as outlined in the Terms Of Reference (TORs) document, which each consortium must demonstrate by producing relevant documentary evidence will be considered;

- a) List of names and CVs of key personnel and evidence of their professional background.
- b) Professional Indemnity.
- c) Information regarding any current litigation which the submitting consortium and the individuals constituting the same may be involved in.
- d) Copies of PIN, VAT, Tax Compliance Certificates.
- e) Past and current consultancy projects, client(s) reference, monetary value.
- f) Indication of the physical location of Consultant's office.
- g) Any other relevant information.

A complete set of TOR documents may be obtained from CTDLT Procurement Office, NHIF Building, Parking Towers, 5th Floor, Ragati Road during normal working hours (between 8.30 a.m. - 1p.m. and 2p.m. - 4.30p.m.).

The consortia should submit their Expressions of Interest in sealed envelopes clearly marked with the words "EXPRESSIONS OF INTEREST FOR THE FORMULATION OF FRAMEWORK FOR THE DEVELOPMENT OF TOURISM PRODUCTS AND SERVICES, EOI NO. CTDLT/001/2011-2012".

NB: Only those who qualify will be invited to submit Technical and Financial proposals.

RE - ADVERTISEMENT

REQUEST FOR PROPOSALS - CONSULTANCY SERVICES FOR CONSTRUCTION OF RONALD NGALA UTALII COLLEGE (RNUC) IN KILIFI

The Catering and Tourism Development Levy Trustees (CTDLT) intends to engage a consortium of consultants for design, documentation, supervision and contract management of the proposed Ronald Ngala Utalii College in Kilifi County following the Gazette Notice, No. 3478 of 9th April, 2010.

CTDLT therefore invites Proposals from a consortium of reputable firms led by an architect who have successfully undertaken similar construction project.

The consortia should be constituted of firms registered with the relevant professional registration boards and should make submissions that will enable CTDLT to evaluate their capability to undertake the assignment. The assignment involves the design of a training and hospitality institution. The consortia will comprise professional firms in the following disciplines:

- i. Architecture and Interior Design,
- ii. Civil and Structural Engineering,
- iii. Building, Mechanical and Electrical Engineering Services and
- iv. Quantity Surveying.
- v. Environment Specialist

Only submissions meeting the criteria below and any other requirement as outlined in the RFP document, which each firm must demonstrate by producing relevant documentary evidence will be considered;

- 1) Copies of original documents defining the constitution or legal status, place of registration and principal place of business.
- 2) Financial status of the firms.
- 3) Capability with respect to personnel and equipment to be used in this consultancy.
- 4) Successful experience and past performance in execution of projects of varying complexity.
- 5) Current projects being undertaken both at design and construction stages.
- 6) Information regarding any litigation, current or during the last five years, in which each firm is involved, the parties concerned and disputed amount.

A complete set of proposal documents may be obtained from CTDLT Procurement office, NHIF Building, Parking Towers, 5th floor on Ragati Road during normal working hours (between 8.30 a.m. - 1p.m. & 2p.m. - 4.30p.m.), upon payment of a non-refundable fee of Kshs. 5,000.00 in cash or Bankers cheque.

NB: Those who had bought the previous RFP document and are still interested in participating will be issued with the RFP document free of charge.

Firms should submit their proposals in sealed envelopes clearly marked with the words "CONSULTANCY SERVICES FOR CONSTRUCTION OF RONALD NGALA UTALII COLLEGE (RNUC) IN KILIFI COUNTY - RFP NO. CTDLT/003/2011 - 2012"

Addressed to: The Chief Executive Officer
Catering & Tourism Development Levy Trustees
NHIF Building, Parking Tower, 5th Floor
P. O. Box 46987 - 00100, Nairobi
Tel. No.: 020 - 2714900/1/2, Fax No.: 020 - 2714911
Email: info@ctdlit.co.ke

Or should be deposited in the Tender Box at the offices of Catering and Tourism Development Levy NHIF Building, Parking Tower 5th floor so as to be received on or before 1st March, 2012 at 12 noon.



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EXHIBIT - 3

ANNEX 13

From the desk of
Hon. Danson Mwakulegwa Mwazo, MP
Minister of Tourism

HON/MIN/ADM/02

27th March, 2013

H. E. Hon. Mwai Kibaki, CGH, MP
President and Commander-in-Chief of the
Armed Forces of the Republic of Kenya
State House
NAIROBI

Your Excellency,

RE: RESIGNATION FROM BEING CABINET MINISTER

I hereby wish to thank you most sincerely on my own behalf and on behalf of my family for appointing me to the position of Minister for Tourism of the Republic of Kenya.

It was the highest mark in my career as a public servant and I was humbled, encouraged and equally challenged by your confidence in me to serve your government and my fellow Kenyans in the capacity.

Allow me to confirm that I have benefited immensely from the wealth of experience as Minister of Tourism as well as enjoyed the immense challenges that came with the position. It also gave me unrivalled opportunity to demonstrate my managerial skills in administration of an important driver of the economy in tourism and was able to put to good use the skills and experience I had gained in the private sector.

During my tenure, tourism showed immense potential stability and growth which as a ministry we exploited especially both domestically and internationally as well as focused on reforms that will be the pillar for growth of Tourism sector. This included the gazettelement and operationalization of the Tourism Act, which was first of its own, bringing the management of the tourism sector under one legal regime.

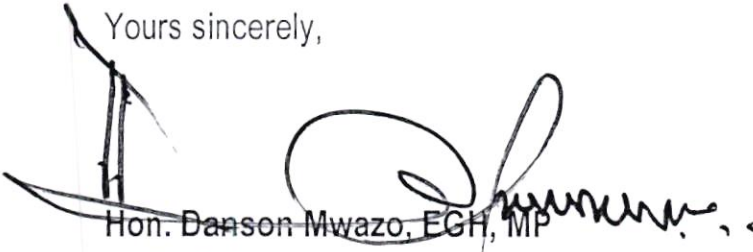
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Sir, as I resign the position of the Minister for Tourism, I wish to thank you for your leadership that gave cabinet and me the liberty in exercising my functions with humility and zeal.

I have been elected as the Senator for Taita Taveta County and look forward to the new challenges with appreciation from wealth of experience afforded by the appointment to the position of Minister for Tourism.

God bless you Your Excellency, God bless Kenya.

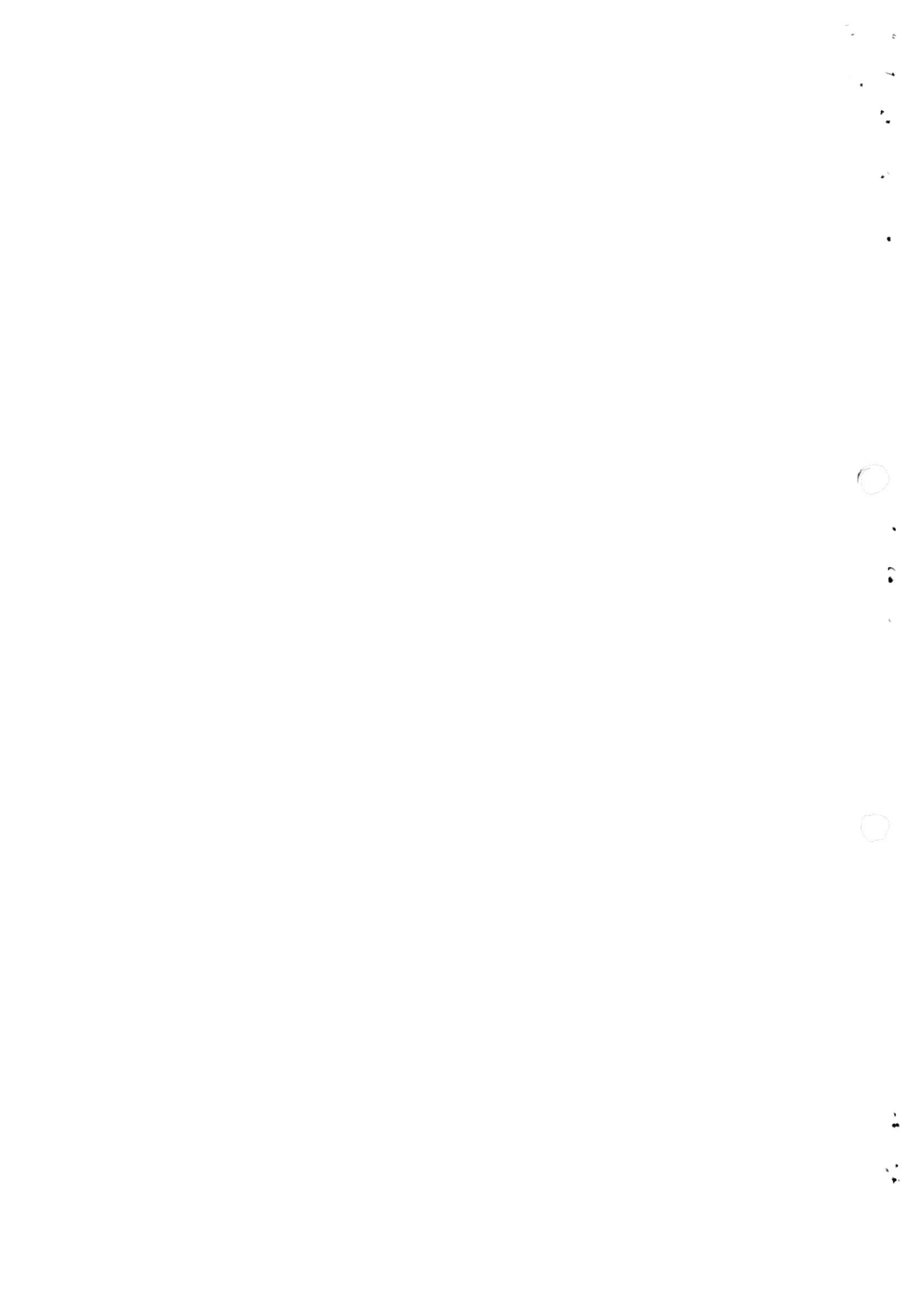
Yours sincerely,



Hon. Danson Mwazo, EGH, MP
MINISTER

C.C. The Rt. Hon. Raila A. Odinga, EGH, MP
Prime Minister of Kenya
Prime Minister's Building
NAIROBI

Amb. Ruth Solitei
Permanent Secretary
Ministry of Tourism
Utalii House
NAIROBI





MINISTRY OF TOURISM

MEETING NOTES – MEETING BETWEEN HON DANSON MWAZO AND MADAM RUTH SOLITEI- PERMANENT SECRETARY.

1) MINISTRY ISSUES

- **Resolve** the Suspension of **Dr. Nelson Githinji**- Tourism Secretary
- **Reorganize** the Department of Tourism and review the roles of departmental heads to improve service delivery.
- **Reorganize** of departments and senior staff to bring efficiency in service delivery.
- **Review** Staff welfare issues and propose ways of Motivating the Ministry staff including those in regional offices (Corporate wear, Transport, retreat,

2. PARASTATALS UNDER THE MINISTRY

a) Kenya Tourism Board (KTB)

- Marketing Development Representatives (MDRS) contracts have expired and require urgent review and conclusion
- Confirmation / Appointment of a Substantive Marketing Director
- Restructuring of KTB to create Strategic business Units to sustain the growth and put greater Emphasis on Brand Management (Sports, Culture, Cruise, Safari, Beach

b) Kenya Utalii College (KUC)

- Follow up on Renovation of the Utalii Hotel- New Gym
- Reorganization of top leadership to bring in new blood and competency.
- Resolve the claim by Mwakai Sio
- Discuss with Treasury on the KUC loan

c) Catering and Tourism Development Levy Trustees (CTDLT)

- Follow up on Levy Regulations Gazettement to comply with 2011 Tourism Act
- Legal fees payable to Kithi and Co Advocates.
- Follow up on Projects- Construction of Ronald Ngala Utalii College- Kilifi
- Construction of CTDLT HeadQuarters

d) Bomas of Kenya Limited

- Integrity probe on Chair and CEO
- **Projects**- Boundary and demarcation,
- Follow up on Preparation of EOI documents for Convention Centre and 5 - Star Hotel.

e) Kenyatta International Conference Centre (KICC)

- Resolve Title Deed issues with Ministry of lands
- Reorganization of Top leadership- Review of Contract of current CEO



- Renovation of KICC and follow up on bids for setting up of a revolving restaurant
- Follow up on preparation of EOI bid documents for KICC hotel and parking
- Follow up on Construction of Convention Centre's in Kisumu and Mombasa
- Review Kenya's Meetings Incentives Conferences and Events (MICE) strategy and explore options of growth.

f) Kenya Tourist Development Corporation (KTDC)

- Review CEO's Contract
- Review privatization options for KTDC hotels (Hilton, Intercontinental Nairobi)
- Review performance of KTDC properties (Sunset, Kakamega Golf, Kabarnet, Mombasa Beach)
- Renovation of Utalii House
- Follow up on Convention Centre project in Mombasa

3) The 2011 Tourism Act

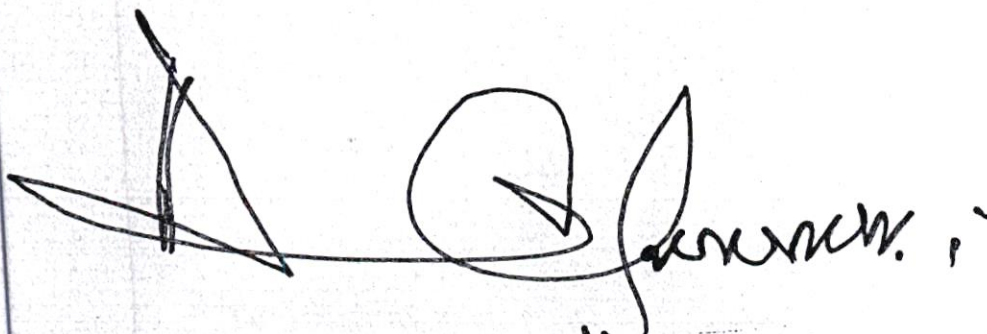
- Appointment of Board Members- AG to gazette rules and clarify on way forward
- Operationalization of Tourism Regulatory Authority (Staffing, Infrastructure)
- Rebranding of Parastatals in the Ministry to reflect new mandate provided in the act.
- Follow up on Gazettment of the Tourism Crisis Committee

4) Winding up of Tourism Trust Fund

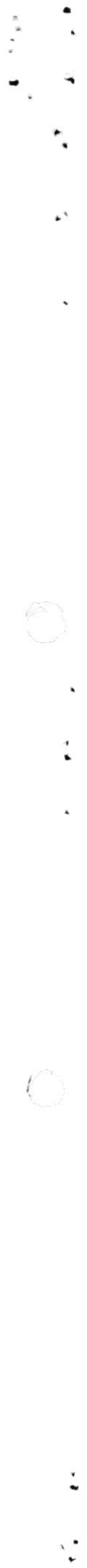
- Audit of Projects funded and response to Parliamentary question.

5) UNWTO- STEP PROJECTS

- Follow up on current projects- issue contracts to grantees
- Pursue more projects for the country.



27th March, 2013





THE KENYA GAZETTE

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NAIROBI, 20th July, 2012

Price Sh. 50

GAZETTE NOTICE No. 10224

THE STATE CORPORATIONS ACT

(Cap. 446)

CATERING AND TOURISM DEVELOPMENT LEVY TRUSTEES

APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (a) of the State Corporations Act, I, Mwai Kibaki, President and Commander-in-Chief of the Kenya Defence Forces of the Republic of Kenya, appoint—

ANTHONY WAHOME

to be Chairman of the Catering and Tourism Development Levy Trustees, for a period of three (3) years.

Dated the 20th July, 2012.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 10225

THE STATE CORPORATIONS ACT

(Cap. 446)

KENYA UTALII COLLEGE

APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (a) of the State Corporations Act, I, Mwai Kibaki, President and Commander-in-Chief of the Kenya Defence Forces of the Republic of Kenya, appoint—

GERSON MISUMI

to be Chairman of the Kenya Utalii College, for a period of three (3) years.

Dated the 20th July, 2012.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 10226

THE STATE CORPORATIONS ACT

(Cap. 446)

HOTELS AND RESTAURANTS AUTHORITY

APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (a) of the State Corporations Act, I, Mwai Kibaki, President and Commander-in-

Chief of the Kenya Defence Forces of the Republic of Kenya, appoint—

KILLIAN LUGWE

to be Chairman of the Hotels and Restaurants Authority, for a period of three (3) years.

Dated the 20th July, 2012.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 10227

THE STATE CORPORATIONS ACT

(Cap. 446)

BOMAS OF KENYA

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1)(e) of the State Corporations Act, the Minister for Tourism appoints—

Mohamed Abdalla Salim
Anastacia Wakesho
Collins Omondi Haggai
Gideon Ndambuki – Churchill
Elizabeth Zani Wachira
Immanuel Ichor Imana

to be Board Members of Bomas of Kenya, with effect from 20th July, 2012, and revokes the appointment of—

Doris N. Mutta (Dr.)
Khamis M. Muyanya
Waheed S. Bawazir
Abdullaham Rizik
Moses J. K. Ndwiga

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE No. 10228

THE STATE CORPORATIONS ACT

(Cap. 446)

CATERING AND TOURISM DEVELOPMENT LEVY TRUSTEES

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

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Gideon Solonka Kilakoi
Amina Kasinga
Beryl Lillian Okumu
Kepha Bosire
Khadija Ahmed Abdalla (Dr.)

to be Board Members of Catering and Tourism Development Levy Trustees, with effect from 20th July, 2012, and revokes the appointment of—

Abdikadir Omar
Taufiq Salim Mohamed
Martin ole Kamwaro
Wycliffe Anyasi
Faraj Ahmed

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10229

THE HOTELS AND RESTAURANTS ACT

(Cap. 494)

HOTELS AND RESTAURANTS AUTHORITY

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Cap. 494 of the Hotels and Restaurants Act, the Minister for Tourism appoints—

Apollo Mwalemu Nzano
Hazel Koitaba
Paul R. Ichang
Patricia Awori
Anthony Ngunga
Walter Reif
Nev Jiwani
Jamine M. K. Madara

to be Board Members of Hotels and Restaurants Authority, with effect from 20th July, 2012, and revokes the appointment of—

Peter Ngori
Naomi Cidi
Mohamed Gakinya
Robert Celine
John Cleave
Ali Dida
Said Ali

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10230

THE STATE CORPORATIONS ACT

(Cap. 446)

KENYATTA INTERNATIONAL CONFERENCE CENTRE

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

Granton Samboja
Adan Wachu
Njoroge Kagwe
Sereya P. Leseni
William E. K. Ohonde
Kimuma Kosida George

to be Board Members of Kenyatta International Conference Centre, with effect from 20th July, 2012, and revokes the appointment of—

Sakina Dianga
Mohammed H. Ahmed
Nuria Diko Wario
Teresia Maina
Hilda Wambui Mugo

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10231

THE STATE CORPORATIONS ACT

(Cap. 446)

KENYA SAFARI LODGES AND HOTELS

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

Vincent Watti
Dorah Waruiru
Vincent Mwalenga Mwakima
Nassie Ali Said

to be Board Members of Kenya Safari Lodges and Hotels, with effect from 20th July, 2012 and revokes the appointment of—

John Abungu (Dr.)
Mohammed Shaiya
Anthony Getambu (Dr.)
Fred Rukunga

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10232

THE STATE CORPORATIONS ACT

(Cap. 446)

KENYA TOURIST BOARD

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6(1)(e) of the State Corporations Act, the Minister for Tourism appoints—

Mahmoud Jan Mohamed
Susan Githuku
Joseph Kibuchi Kimani
Paul Tergat
Martin Dunford
Zainab Abdalla

to be Board Members of Kenya Tourist Board, with effect from 20th July, 2012, and revokes the appointment of—

Anne Wanyoike
Patricia Ithau
Mohan Chandra
Abdul Samji
Julius Kipngetch
David Stogdale

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10233

THE STATE CORPORATIONS ACT

(Cap. 446)

THE KENYA TOURIST DEVELOPMENT CORPORATION ACT

(Cap. 382)

KENYA TOURIST DEVELOPMENT CORPORATION

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

Shellina Popat
Bramwell Simiyu
John Mwazemba Mwadui
Maria Kagai Ligaga
Fatma Mohamed Achoki



Andrew Agak
Mary Mugure Mutugi
Junet Sheikh Nuh Mohamed

to be Board Members of Kenya Tourist Development Corporation, with effect from 20th July, 2012, and revokes the appointment of—

Hilda Mawanda
Al-Hajj Yussuf M.K. Murigu
Abdulah Ibrahim Ali (Dr.)
Abdilalim Saleh
George Abungu (Dr.)
Anthony Getambu (Dr.)
Flora Nkaduda Godo
Tejpal Bedi
Abdo Mohamed Bahajj

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10234

THE STATE CORPORATIONS ACT

(Cap. 446)

KENYA UTALII COLLEGE

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

Lucy Makumbi – Macridis
Manuel Mwambacha Kitololo
John Akama (Prof.)

to be Board Members of Kenya Utalii College, with effect from 20th July, 2012, and revokes the appointment of—

Peter Ngori
Rukia Rashid
Mike Macharia

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.

GAZETTE NOTICE NO. 10235

THE STATE CORPORATIONS ACT

(Cap. 446)

THE KENYA TOURIST DEVELOPMENT CORPORATION ACT

(Cap. 382)

KENYA TOURIST DEVELOPMENT CORPORATION

APPOINTMENT AND REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by Section 6 (1) (e) of the State Corporations Act, the Minister for Tourism appoints—

CAROLINE MUTOKO

to be Board Chairman of Kenya Tourist Development Corporation, with effect from 20th July, 2012, and revokes the appointment of—

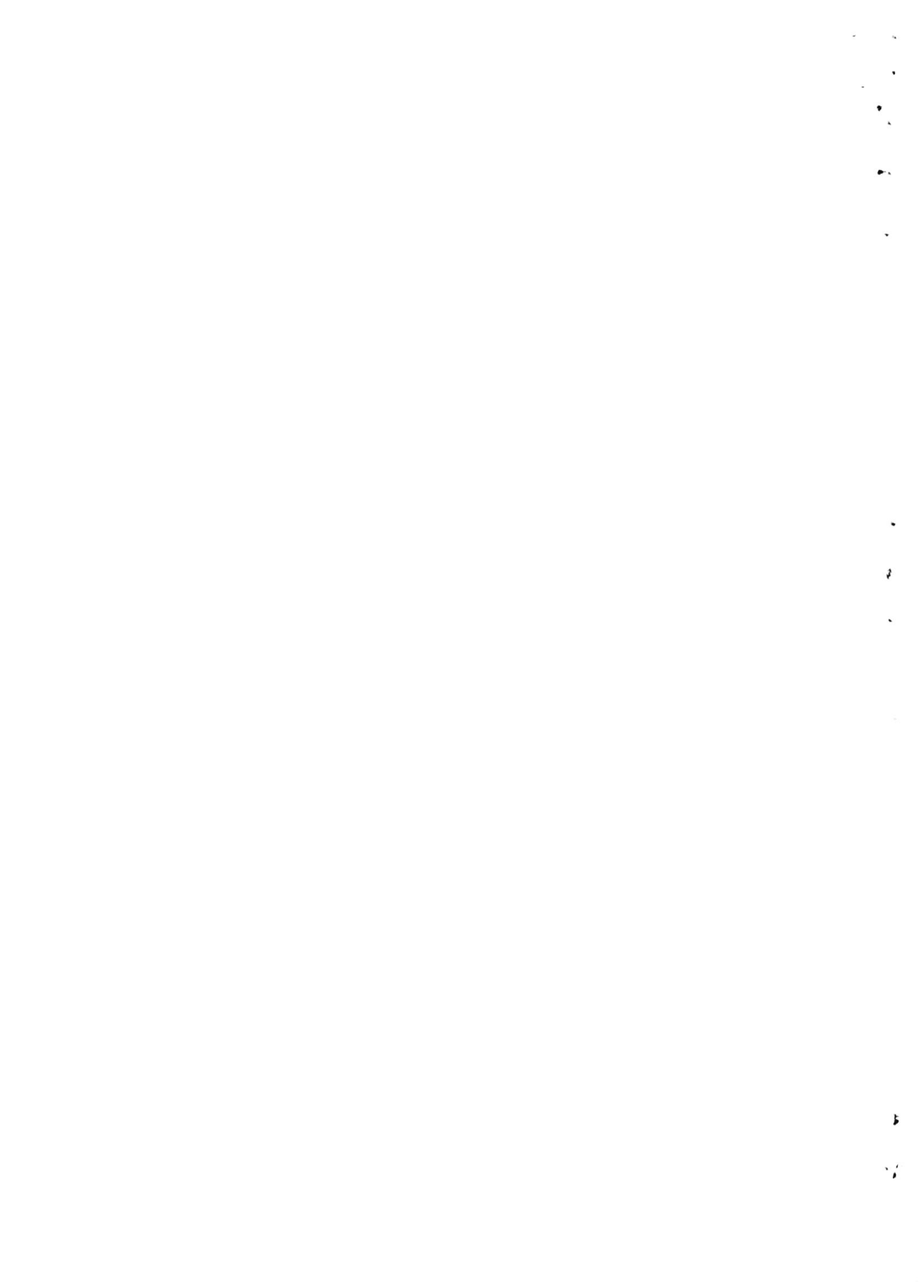
MOHAMED SHAIYA

Dated the 19th July, 2012.

DAN MWAZO,
Minister for Tourism.



MINUTES



MINUTES OF THE 21ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 31ST MARCH 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. Dr. Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Adan Mohammed Nooru, MP
6. Hon. Wafula Wamunyinyi, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. John Olago Aluoch, MP
9. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
10. Hon. Dorcas Kedogo, MP
11. Hon. Abdullswamad Sheriff Nassir, MP
12. Hon. Beatrice Nkatha Nyaga, HSC, MP
13. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
14. Hon. Cornelly Serem, MP
15. Hon. Irungu Kang'ata, MP
16. Hon. Korei Ole Lemein, MP
17. Hon. John Muchiri Nyaga, HSC, MP
18. Hon. John Ogutu Omondi, MP
19. Hon. Mary Sally Keraa, MP
20. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

21. Hon. Francis Mwanzia Nyenze, EGH, MP
22. Hon. (Eng). John Kiragu, MP
23. Hon. Bernard Munywoki Kitungi, MP

ABSENT WITHOUT APOLOGY

24. Hon. Elias Bare Shill, MP
25. Hon. Franklin Mithika Linturi, MP
26. Hon. Ejidius Njogu Barua, 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. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II
5. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. John Musheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge

- Accountant I

MIN.NO./PIC/159/2016:

PRELIMINARIES

Chair called the meeting to order at ten minutes past ten o'clock and requested Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP to read the Prayer.

The Committee observed with concern that Mr. Cherutoi has been acting as CEO since April 2015 following the stepping aside of his predecessor Mr. Allan Chenane who was adversely mentioned in the Presidential Report on Corruption related cases, tabled in Parliament in March 2015. His contract also expired in August 2015.

The Committee also observed that in the absence of a substantive Board to appoint him, Ms. Phyllis Kandie, former Cabinet Secretary, Ministry of Tourism and EAC Affairs appointed him in acting capacity. A civil case challenging his appointment as Head of Finance in 2014 was heard and dismissed by the High Court.

MIN.NO./PIC/160/2016:

EVIDENCE BY THE TOURISM FUND

Mr. Joseph Cherutoi, the Tourism Fund Acting Chief Executive Officer accompanied by Ms. Margret Njoka (Deputy Head of Finance), Mr. Joram Omondi (Acting Procurement Manager) and Mr. David Wainaina (Accountant Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial years 2012/2013 and 2013/2014 and the procurement process of the contractor and consultants for Ronald Ngala Utalii College in Kilifi County.

MIN.NO./PIC/161/2016:

EVIDENCE ON THE FINANCIAL STATEMENTS OF THE TOURISM FUND FOR 2012/2013 AND 2013/2014 FINANCIAL YEARS.

The Committee deferred taking of evidence on the Report of the Auditor General on financial statements of the Fund for FY 2012/2013 and 2013/2014 to allow more time for submission of the FY 2014/2015 Report to Parliament.

MIN.NO./PIC/162/2016:

PROCUREMENT PROCESS OF THE CONTRACTOR AND CONSULTANTS FOR RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

The Ag. Chief Executive Officer informed the Committee as follows: - THAT

1. The Tourism Fund, formerly the Catering and Tourism Development Levy Trustees (CTDLT) initiated construction of the proposed Ronald Ngala Utalii College whose overall goal was to establish facilities for training of students in different cadres in the hospitality industry thereby enhancing the overall capacity of the industry in the region. The project was regarded as a flagship project in the tourism industry under Vision 2030.

2. The tendering process involved procurement of the main contractor to carry out the main works for the proposed project and consultants for architecture and design, civil and structural engineering, building, mechanical and electrical engineering and quantity surveying services.
3. The procurement of the contractor was done through prequalification of the contractors via an advertisement dated 23rd November 2012. Six contractors were shortlisted and prequalified from the process.
4. The prequalified contractors namely Njuca Consolidated Company Ltd, Epco Builders Ltd, Dinesh Construction, Cementers Ltd, China Jiangxi International Ltd and Mulji Devraj & Bros Ltd were invited to submit tenders for execution and completion of the contract via invitation letters dated 18th February 2013.
5. Evaluation and Tender committees were appointed in line with the Public Procurement and Disposal Act to evaluate the tenders.
6. The tender Committee on the recommendations from the Tender Evaluation Committee awarded the contract for the Construction of the Ronald Ngala Utalii College to M/s Mulji Devraj & Bros, the most responsive evaluated bidder at a contract sum of Kshs. 8,961,370,998 for a contract period of 154 weeks.
7. The award was made on the 11th April 2013.
8. The Commencement date was 26th June 2013 while the completion date is scheduled for 19th June 2018 with a contract period of 60 months from the date of commencement.

MIN.NO./PIC/163/2016: PROCUREMENT OF PROJECT CONSULTANTS

1. Procurement of the consultants was done through open tender where an invitation was advertised in the 'Daily Nation Newspaper' on 16th February 2012 in line with the Public Procurement and Disposal Act, 2005.
2. An Evaluation Committee was appointed thereafter to evaluate the tenders.
3. Of the Sixteen (16) firms that submitted bids, five (5) qualified for evaluation following the criteria set out in the Request for Proposal documents.
4. The tender was awarded to a consortium led by Baseline Architects Ltd. The Contract was awarded on 4th April, 2012.

MIN.NO./PIC/164/2016: CURRENT STATUS OF THE PROJECT

From the progress report, the amount of works done on the site is estimated at 30% as at 1st March, 2016. It is hoped that the works will be at 50% by the end of the current financial year.

MIN.NO./PIC/165/2016: COST VARIATIONS FROM THE INITIAL CONTRACT

The tendered scope of works awarded to Mulji Devraj amounted to Kshs. 8,961,370,893.

Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at Kshs. 8.96 billion, the project must be rationalized with a view to downscaling it to a tenable level through a number of ways which included;

- (i) Omission of basement parking in administration block
- (ii) Omission of primary and nursery school,
- (iii) Reduction of the number of block of students hostels,
- (iv) Reduction of staff houses,
- (v) Change of specifications and substitution of some components like finishes,
- (vi) Omission of supply items such as furniture, furnishings, computers installations,
- (vii) Proportionate reduction of some common items in the preliminaries and external works; and
- (viii) Reduction of prime cost sums for untendered items.

The measures had an overall effect of reducing the contract sum by Kshs. 4.04 billion to Kshs. 4, 923,005,669. The scaled down project was negotiated between the parties involved and an addendum signed to reflect these changes. This was done through a consultative process and a Cabinet Memo signed to that effect.

MIN.NO./PIC/166/2016: TOTAL PROJECT COST

The total project cost amounts to Kshs. 4, 923,005,669 which comprises of main works, electrical works services and installations, mechanical works services and installations, provisional sums for joinery and fixtures.

COMMITTEE OBSERVATIONS

The Committee observed that:

1. There was no feasibility study conducted by the Ministry prior to initiating the Project and that due diligence was not carried out. The management also failed to produce documentary evidence that the Project is one of Vision 2030 flagship projects.
2. The project was initially approved at a cost of Kshs 1.48 billion to accommodate 600 students but failed to kick off immediately and was later expanded to accommodate 3,000 students at a cost of Kshs 8.9 billion which thereafter escalated to Kshs. 10 billion due to change of specifications then downscaled to a cost of Kshs.4.9 billion
3. The Board resorted to use of restricted tendering to procure the consultants from the prequalified suppliers in the disguise of urgency of the project contrary to Section 29 of the Public Procurement and Disposal Act, 2005 which states that for each procurement, the procuring entity shall use open tendering.
4. The consultants were procured to provide drawings, quantity surveying services, structural and civil engineering services and supervision of works based on the original project value of Kshs. 8.9 billion despite the project having been downscaled

5. Works done by the Consultants up to tender stage amounts to 75% of the contract based on Kshs. 8.9 billion while supervised works will be paid 25% based on the Kshs. 4.9 billion.
6. Two members of the Consortium of consultants procured (i.e Baseline Architects and Ujenzi Consultants) sat in the Tender Evaluation Committee contrary to Section 26 (3) Public Procurement and Disposal Act, 2005

Committee Observations/ Way Forward

The Committee directed the Management to provide the following information:-

1. Information on how the project was conceived, concept paper and feasibility studies done on the project, if any.
2. Documentary evidence detailing chronology of the entire procurement process of both the consultants and the Contractor;
3. Chronology of variations on designs, scope of works and capacity of the projects including the letter from the Head of Public Service, Board minutes on the change of specifications, discussion between the Tourism Fund Board and the Ministry of Tourism.
4. The amount paid to both the contractor and the consultants for the works done so far;
5. Contracts signed between the Fund and the consortium of consultants;
6. Justification for using the Architects and Quantity Surveyors Act Cap 525 in procuring the consortium of consultants and not the Public Procurement and Disposal Act, 2005.

The Committee also to resolved undertake an inspection visit to Utalii College in Kilifi County on 19th April, 2016.

MIN. NO./PIC/167/2016:

ANY OTHER BUSINESS

No other business arose.

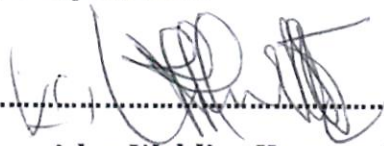
MIN. NO./PIC/168/2016:

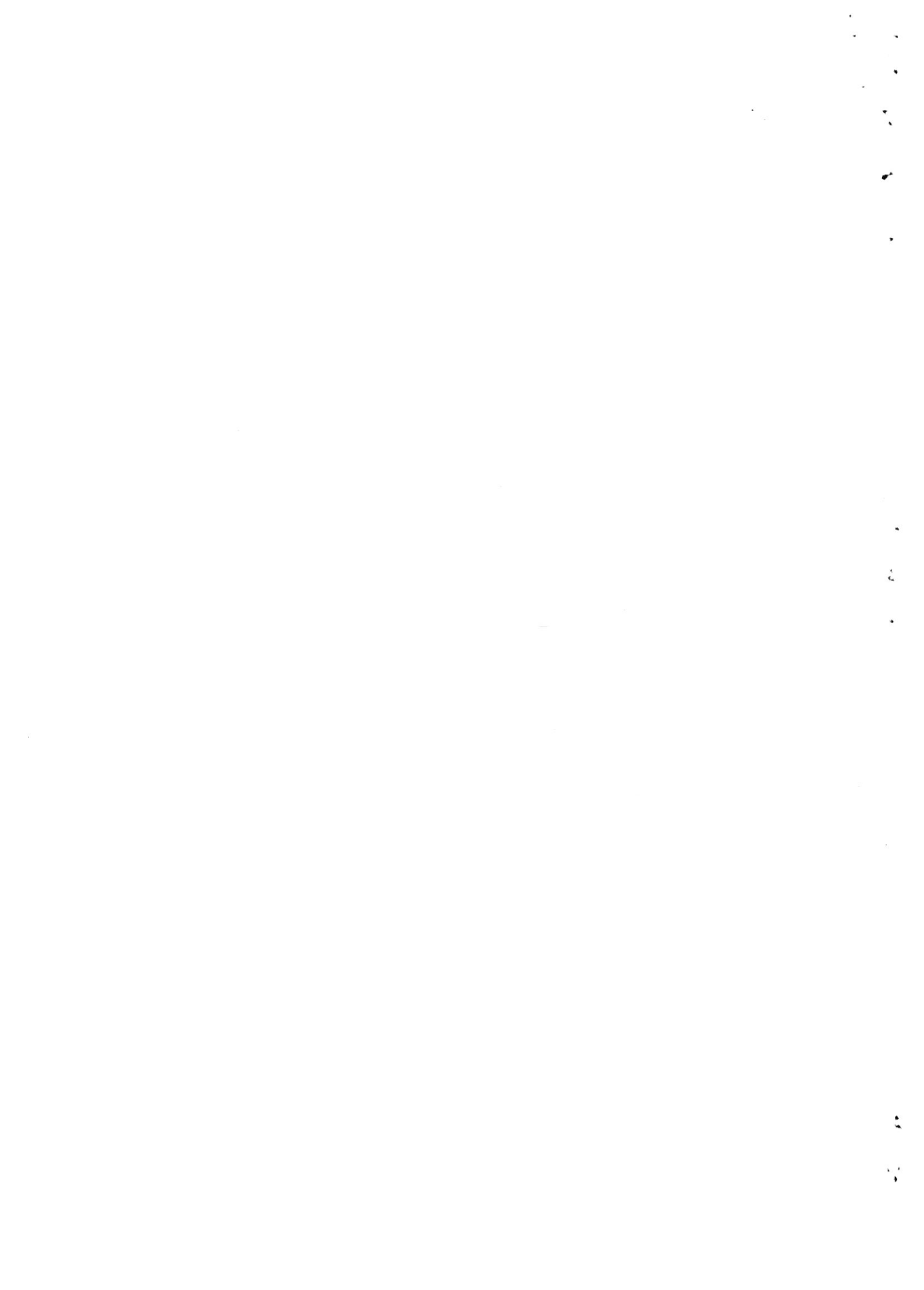
ADJOURNMENT

There being no other business, the meeting was adjourned at 12:02pm until 10:00am on Tuesday, 5th April, 2016.

Signed.....

Date.....


Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)



MINUTES OF THE 23RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 5TH APRIL 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 12:00 NOON

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. (Eng). John Kiragu, MP
10. Hon. Dorcas Kedogo, MP
11. Hon. Bernard Munywoki Kitungi, MP
12. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
13. Hon. Cornelly Serem, MP
14. Hon. Irungu Kang'ata, MP
15. Hon. Korei Ole Lemein, MP
16. Hon. John Ogutu Omondi, MP
17. Hon. John Muchiri Nyaga, HSC, MP
18. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

19. Hon. Francis Mwanzia Nyenze, EGH, MP
20. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
21. Hon. Adan Mohammed Nooru, MP
22. Hon. Elias Bare Shill, MP
23. Hon. Abdullswamad Sheriff Nassir, MP
24. Hon. Beatrice Nkatha Nyaga, HSC, MP ✓
25. Hon. Mary Sally Keraa, MP

ABSENT WITHOUT APOLOGY

26. Hon. Ejidius Njogu Barua, 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. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II
5. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. John Musheba - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. D. M. Musheba - Inspector

THE NATIONAL TREASURY

Mr. John Munge - Accountant

MIN.NO./PIC/176/2016: PRELIMINARIES

The Chair called the meeting to order at two minutes past noon.

MIN.NO./PIC/177/2016: EVIDENCE BY MULJI DEVRAJ AND BROTHERS LTD COMPANY

Mr. Mahendra Halai, Director Mulji Devraj and Brothers Ltd Company appeared before the Committee to adduce evidence on the procurement process of the consultants for the Ronald Ngala Utalii College in Kilifi County.

MIN.NO./PIC/178/2016: PROCUREMENT OF THE CONTRACTOR OF THE MAIN WORKS FOR THE PROPOSED RONALD NGALA UTALII COLLEGE

Mr. Mahendra Halai informed the Committee that;

1. The procurement of the contractor was done through prequalification of the contractors in November 2012. Mulji Devraj & Brothers Ltd Company was prequalified to tender for the contract of the main works of the Project.
2. Mulji Devraj & Brothers Ltd Company and other prequalified tenderers were invited to submit a tender for execution and completion of the project via letter dated 18th February 2013 Ref. CTDTL/CONF/2/8.
3. The Company tendered for the contract at a total cost of Kshs. 8,961,370,998 and after evaluation it won the tender and was notified of the tender award on 11th April 2013 via a letter Ref No. TF/CONF/2/8/9(178).
4. The Contract Agreement for the construction of the proposed works was signed on 14th May, 2013 between the Tourism Fund and Mulji Devraj & Brothers Ltd wherein the employer shall pay the contractor Kshs. 8,961,370,998 at the times and manner specified in the contract.
5. The Tourism Fund was to appoint the consultants for consultancy services for the Project who shall include quantity surveyor, the architect and the engineers.

MIN.NO./PIC/179/2016: SCOPE OF WORKS DONE UP TO 31-03-2016

1. The commencement date of the contract was 26th June 2013 while the completion date

is scheduled to be 19th June 2018, with a contract period of 60 months from the date of commencement.

2. The works commenced on 20th June 2013 and performed as per the required standards and specifications.
3. However, the works were suspended due to non-payment on 24th April, 2014. Part of the payment was made and immediately resumption of works commenced on 1st November 2014 with a new completion date scheduled to be 31st October 2017 with a period of 44 months from the date of recommencement.
4. Due to the second addendum of the contract, the scope of works was reduced to Kshs. 4,923,005,699 and phased into two phases in order to cope with the employer's budget. Some aspects of the contract were phased out by the procuring entity.

MIN.NO./PIC/180/2016:

PAYMENT CERTIFICATE ISSUED

1. The Company has so far issued 13 approved payment certificates totaling Kshs. 1,263,031,460.04.
2. Of the 13 payment certificates, only 7 have been honoured by the procuring entity by making a payment of Kshs. 698,153,090.95 including an earlier advance payment of Kshs 307,004,441 that was paid to the Company for mobilization and commencement of the works.
3. Payments have not been paid strictly as per the certificates issued by the Company.

MIN.NO./PIC/181/2016:

**INTEREST ON ACCRUED OVERDUE
ACCCOUNTS**

As at 9th November 2015 the total interest accrued on outstanding payments was Kshs. 180,504,764.24.

COMMITTEE OBSERVATIONS

The Committee observed that:-

1. The proposed works have stalled due to the failure of the Tourism Fund to ensure timely payment of the contractor in accordance with the terms and conditions stipulated in the Contract.
2. The certificates remaining unpaid beyond the period for honouring certificates continue attracting interest at commercial banks lending rates which may further escalate the cost of the project;
3. Some works were omitted from the contract when the scope of the project was reduced and as a result, the contractor may claim reimbursement of the profit he would have made had he carried out the omitted works;

Additional Information to be submitted

The Committee requested Mulji Devraj and Brothers Company to provide the following

additional information:-

1. A comprehensive analysis of the payments received from Tourism Fund and all pending bills;
2. Analysis of interest charged on delayed payments in respect of the works done or materials supplied;
3. Any claims made to the Fund as a result of reduction of the scope of works.

MIN. NO./PIC/182/2016:

ANY OTHER BUSINESS

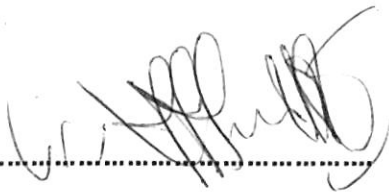
No other business arose.

MIN. NO./PIC/183/2016:

ADJOURNMENT

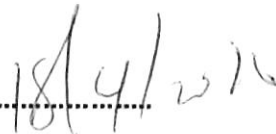
There being no other business, the meeting was adjourned at 1:00 pm until 2:30 pm same day.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....



**MINUTES OF THE 39TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY, 11TH MAY, 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. Dr. Oburu Oginga, MGH, MP
4. Hon. Wafula Wamunyinyi, MP
5. Hon. Sammy Silas Komen Mwaita, MP
6. Hon. John Olago Aluoch, MP Hon. (Dr.)
7. Paul Nyongesa Otuoma, EGH, MP
8. Hon. Beatrice Nkatha Nyaga, HSC, MP
9. Hon. Bernard Munywoki Kitungi, MP
10. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
11. Hon. Korei Ole Lemein, MP
12. Hon. John Ogutu Omondi, MP
13. Hon. (Eng.) John Kiragu, MP

APOLOGIES

14. Hon. Francis Mwanzia Nyenze, MP
15. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
16. Hon. Johana Kipyegon Ngeno, MP
17. Hon. Dorcas Kedogo, MP
18. Hon. Cornelly Serem, MP
19. Hon. Irungu Kang'ata, MP
20. Hon. Abdullswamad Sheriff Nassir, MP
21. Hon. Elias Bare Shill, MP
22. Hon. Franklin Mithika Linturi, 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. Jackson Musheba - Manager, Audit

THE NATIONAL TREASURY

- Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

- Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/292/2016: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock and the prayer said.

MIN/PIC/293/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/294/2016: EVIDENCE BY FORMER TOURISM FUND CHIEF EXECUTIVE OFFICER

Mr. Allan Chenane, the former Chief Executive Officer of the Tourism Fund appeared before the Committee to adduce evidence on the procurement process for the construction of Ronald Ngala Utalii College, a project under the Tourism Fund.

1. The Committee observed that the submission by Mr. Chenane bore the letter head of Tourism Fund yet he was no longer an employee of the Fund. The Committee noted the anomaly but allowed Mr. Chenane to make reference to it but he was instructed to submit a signed copy of his own testimony.
2. Mr. Chenane informed the Committee that the first attempt to establish the Ronald Ngala Utalii College was mooted by the Government through the Ministry of Tourism in mid-1990. Vide Cabinet Minute 30/1996 dated 1st February, 1996, the Government granted an approval for the establishment of the College.
3. This approval was not implemented due to the lack of funds. The communication in relation to the approval is dated 29th March, 1996.
4. The matter was revisited in the year 2007, when the Cabinet adopted a second resolution to establish the College. This is vide Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September, 2007.
5. In the second Memorandum, it was resolved that the Project would be funded by the Treasury at an estimated cost of Kshs. 1.948 billion. The project implementation would be overseen by the Ministry of Tourism and was expected to be completed in four years. The finances would be disbursed in tranches of Kshs. 500 million per year.

6. The process of implementing the 2nd Cabinet Memorandum was not initiated immediately. It was vide a letter dated 19th March 2010 that the Ministry of Tourism communicated the decision to set up the College in accordance with the resolution. The Ministry informed the then CTDLT that a decision had been reached at the policy level that trustees should establish the college to be known as Ronald Ngala Utalii College, pursuant to the provisions of the Hotels and Restaurants Act.
7. The matter was considered by the Board of CTDLT during its 104th Board Sitting held on 24th March, 2010. Trustees deliberated on the subject and noted *inter alia*, that Section 19 of the Hotels and Restaurants Act provides as follows:- 1 (b) *To establish, equip and control such establishments for the training of persons for employment in hotels and restaurants as the Minister may approve.*
8. The Trustees resolved to establish the College as evidenced by 104th Board Meeting. The trustees also resolved that a Management Board, reporting to the latter be appointed to oversee implementation of these resolutions. The Board was appointed on various dates.
9. The Minister granted an approval to the Trustees' resolution as per Gazette Notice No. 3478 of 9th April 2010.
10. In the period preceding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works had developed the initial concept paper and design works of the college.
11. As per the Concept Paper, the project would constitute the following:-
 - (a) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (b) Training and demonstration facilities including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary school, health centre, library and recreational facilities;
 - (c) A five star hotel complex that would serve as a training laboratory for the College besides being run as a commercial hotel enterprise to address sustainability issues at the College;
 - (d) In addition, the College would be structured to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship as set out in the Cabinet Memorandum of 2007.

Consultations on the Project Scope and Design

1. Further to the resolution by the Board of Trustees during the 104th Board Meeting, there were certain developments that informed the final design for the project.
2. On 13th December 2010, the Management Board of the Ronald Ngala Utalii College at their Board meeting held in Mombasa and attended by the then Hon. Minister for Tourism and the Permanent Secretary resolved that the initial design and concept paper for the College required to be updated.
3. The meeting observed that the initial designs and project proposal done by the Ministry of

Public Works were undertaken in 2005 and nearly 5 years had elapsed since then. In the meantime, costs had escalated and the amount then estimated at Kshs. 1.948 billion or thereabouts needed to be reviewed to take into account the lapse of time.

4. The concept paper and design only provided for a student capacity of 600 students. This would not be adequate to cater for the new training areas that the industry required especially cruise tourism, refresher courses for the those already employed in the industry, entrepreneurship, training of trainers. It was resolved that an initial capacity of 1000 which would be increased over the years would be a good start.
5. The Board further noted that the designs and the drawings failed to adopt a coastal architecture in terms of culture, weather elements and local materials. The Board pointed out the vision of the Ministry and industry is for an international standard's facility and centre of excellence in hospitality training which would also encompass local architecture.
6. Moreover, when H.E the President met tourism stakeholders on 27th August 2008 during the official opening of the Mombasa Continental Hotel at Shanzu, one of the issues discussed was the College. In the forum, it was agreed that the establishment of the new College should not only be fast-tracked but it should also be a Regional Centre of Excellence.
7. In view of the foregoing, a policy decision was taken that the initial design undertaken by the Ministry of Public Works should be used only as a guide. CTDLT was tasked with bringing on board a team of independent consultants who would be procured in accordance with the procurement laws. The consultant would redesign the College taking into consideration the issues above and vision of the Board and industry in general.

Procurement of the Project Consultants

1. Further to the foregoing, the Trustees put in place measures to procure professionals to implement the project. In accordance with the Public Procurement and Disposal Act, 2005 and the Regulations thereof the Fund identified a consortium of consultants to oversee design and overall supervision of the project.
2. Vide advertisement carried out in the daily newspapers, trustees invited qualified firms to submit proposals for considerations. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors.
3. The proposals were evaluated with technical assistance from the Ministry of Public Works.
4. The successful consortium is led by the firm of Baseline Architects as the lead consultant and Ujenzi Consultants as the quantity surveyors. Other members of the consortium are Armitech Consultants as structural engineers, Westconsult as electrical/ mechanical engineers, Geomeasures Ltd as surveyors and PKF Consultants as environmental impact assessment experts.
5. From the onset, the consultants were procured using standard tender documents provided for by the Public Procurement Oversight Authority.
6. In the process of identifying the consultants, CTDLT would only evaluate proposals based on

technical aspects. The financial evaluation would be guided by the scale of fees set out in the Architects and Quantity Surveyors Act.

7. After the award of the tender to the consortium on 4th April, 2012, one unsuccessful bidder M/s Gitutho Associates lodged an appeal with the Public Procurement Administrative Board on 17th April, 2012, the appeal was heard and dismissed via ruling dated 11th May, 2012 there by allowing the process to proceed.

Final Designs

1. The consortium developed the designs, outline maps, bill of quantities and necessary documents to facilitate the tendering process. In their estimates, the project would cost Kshs. 8.5 billion with a margin error for revision at 10%.
2. The Fund carried out an advertisement calling out for qualified contractors to submit bids to carry out the construction works. The tendering process was carried out in accordance with the procurement laws and M/s Mulji Devraj and Brothers Ltd emerged to have submitted the most responsive bid. The firm had a quotation of Kshs. 8.9 billion. This was within the engineer's estimate for the project and they were also found to possess the requisite technical experience for the project.

Rationalization of the Project

1. In 2013, consultations at top Government levels informed the decision to review and down scale the project culminating in the Cabinet Memo of 9th July, 2014 which gave guidance on the continued implementation of the project that's now ongoing.
2. The project which is apparently a Kenya Vision 2030 Flagship Project, would be financed by the National Treasury. The National Treasury at the time had advised that the financing model for the five-star hotel, as a component of the whole project, would be undertaken within the Public Partnership Framework. The total cost of the project works was 8.9 billion as per the bills of quantities and the bid by Mulji Devraj and Brothers Ltd. The cost of consultancy services in accordance with the Architects and Quantity Surveyors Act would be 16% of the total construction cost. This works out to be Kshs. 1.4 billion making the total project cost at Kshs. 10.3 billion.
3. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at Kshs. 8.96 billion, the project must be rationalized with a view of downsizing the total cost through possible ways while ensuring the project would still be functional and achieve its mandate.
4. The review was done in consultations with parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all auxiliary proposed developments and retaining only the functional components.
5. The total construction cost would be scaled down to 4.93 billion. The National Treasury will provide the costs of construction while Tourism Fund will pay for the professional services.

This culminated in the signing of Cabinet Memo dated 9th July, 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier.

Committee Observations

1. The Committee observed that there was no Cabinet approval for the variation of the project cost from Kshs 8.96 billion to Kshs 4.93 billion as stated by the witness. There was only correspondence between the Cabinet Secretary for National Treasury and the Cabinet Secretary for Tourism which did not count as a Cabinet approval.
2. Mr. Allan Chenane was suspended as the CEO of Tourism Fund in March 2015 due to procurement related matters in the construction of an office block along Valley Road in Nairobi.

Committee Resolution

The Committee resolved to recall the witness once he re-submits a signed copy of his statement.

MIN. NO./PIC/295/2016: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/296/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 10:50am. The next meeting will be held on Wednesday 11th May, 2016 at 11:00am.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....

MINUTES OF THE 40TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 11TH MAY 2016 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:00 AM

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. Wafula Wamunyinyi, MP
5. Hon. Sammy Silas Komen Mwaita, MP
6. Hon. John Olago Aluoch, MP Hon. (Dr.)
7. Paul Nyongesa Otuoma, EGH, MP
8. Hon. Beatrice Nkatha Nyaga, HSC, MP
9. Hon. Bernard Munywoki Kitungi, MP
10. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
11. Hon. Korei Ole Lemein, MP
12. Hon. John Ogutu Omondi, MP
13. Hon. (Eng). John Kiragu, MP

APOLOGIES

14. Hon. Francis Mwanzia Nyenze, MP
15. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
16. Hon. Johana Kipyegon Ngeno, MP
17. Hon. Dorcas Kedogo, MP
18. Hon. Cornelly Serem, MP
19. Hon. Irungu Kang'ata, MP
20. Hon. Abdullswamad Sheriff Nassir, MP
21. Hon. Elias Bare Shill, MP
22. Hon. Franklin Mithika Linturi, 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. Charles Atamba - Research Officer III
4. Ms. Clarah Kimeli - Legal Counsel II
5. Mr. Abdi Salat - Senior Sergeant-At-Arms
6. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. Jackson Musheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/297/2016: PRELIMINARIES

The Chair called the meeting to order at four minutes past eleven O'clock.

MIN/PIC/298/2016: EVIDENCE BY TOURISM FUND BOARD OF TRUSTEES. ON THE PROCUREMENT PROCESS FOR THE CONSTRUCTION OF THE RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

Hon. Henry Kosgey, Chair, Tourism Fund Board accompanied by Board members Mr. Zephaniah Angweye, Ms. Carolyne Nganga, Mr. Kiprop Chirchir, Mr. Caleb Kositany, Mr. Wallace Mark and Ms. Julie Scott appeared before the Committee to adduce evidence on procurement process for the construction of the the Ronald Ngala Utalii College in Kilifi County.

The Chair of the Board Hon. Henry Kosgey informed the Committeethat: -

Historical Background

1. In 1975 the Government of Kenya through the then Catering Levy Trustees (CLT) and the Government of Switzerland through the Lausanne School of Tourism set up the Kenya Utalii College (KUC). KUC was established as a regional centre of excellence in training for the tourism and hospitality industry. The College was run by CLT until 1987 when the then Minister for Tourism in exercise of powers conferred by Section 29 (1) of the Hotels and Restaurants Act gazetted KUC as an independent state corporation. In so doing the Minister gazetted the Hotels and Restaurants (Kenya Utalii College) Regulations, 1987 No. 317 of 1987.
2. In the intervening period, the tourism and hospitality industry grew to become a key pillar in Kenya economic planning and KUC became a premier training institution with high standards of training for the sector. KUC has since trained nearly forty thousand (40,000) personnel who are employed both locally and internationally. The industry has grown progressively leading to increased demand for training. Studies show that demand for tourism training in Kenya now stands at 100,000 per year. This has seen concerted efforts by the Government and the private sector to stem the ever growing demand. There are currently some 500 institutions training from the

industry. It is against this backdrop that the Government sought to establish a second national tourism and hospitality training institution at the Coast.

3. The setting up of a second national tourism and hospitality training institution was in recognition of the critical role that the Coast region plays in the tourism industry. The then Ministry of Tourism christened the new institution Ronald Ngala Utalii College. The institution would be national in character but very coastal in design and general outlook.

The Policy Framework

4. The first attempt to establish the College was mooted by the Government through the Ministry of Tourism in mid-1990. Vide **Cabinet Minute 30/1996 dated 1st February 1996**, the Government granted an approval for the establishment of the College.

This approval was not implemented due to the lack of funds. The communication in relation to the approval dated 29th March 1996.

The matter was revisited in the year 2007, when the Cabinet a second resolution to establish the College. This is vide Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September 2007.

5. In the second memorandum, it was resolved that the Project would be funded by the Treasury at an estimated cost of Kshs. 1.948 billion. The project implementation would be overseen by the Ministry of Tourism and was expected to be completed in four years. The finances would be disbursed in tranches of Kshs. 500 million per year.
6. The process of implementing the 2nd Cabinet Memorandum was not initiated immediately. It was vide a letter dated 19th March 2010 that the Ministry of Tourism communicated the decision to set up the College in accordance with the resolution. The Ministry informed the then CTDLT that a decision had been reached at the policy level that trustees should establish the college to be known as Ronald Ngala Utalii College, pursuant to the provisions of the Hotels and Restaurants Act.
7. The matter was considered by the Board of CTDLT during its 104th Board Sitting held on 24th March, 2010. Trustees deliberated on the subject and noted *inter alia*, that Section 19 of the Hotels and Restaurants Act provides as follows: - 1 (b) *To establish, equip and control such establishments for the training of persons for employment in hotels and restaurants as the Minister may approve.*
8. The trustees resolved to establish the College as evidenced by 104th Board Meeting. The trustees also resolved that a Management Board, reporting to the latter be appointed to oversee implementation of these resolutions. The Board was appointed on various dates.

The Minister granted an approval to trustees' resolution as per Gazette Notice No. 3478 of 9th April 2010.

Laying the Framework for Project Implementation/Feasibility study

9. In the period preceding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works had developed the initial concept paper and design works of the college.
10. As per the Concept Paper, the project would constitute of the following: -
 - (a) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (b) Training and demonstration facilities including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary school, health centre, library and recreational facilities;
 - (c) A five star hotel complex that would serve as a training laboratory for the College besides being run as a commercial hotel enterprise to address sustainability issues at the College;
 - (d) In addition, the College would be structured to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship as set out in the Cabinet Memorandum of 2007.

Consultations on the Project Scope and Design

11. Further to the resolution by the Board of Trustees during the 104th Board Meeting, there were certain developments that informed the final design for the project.

On 13th December 2010, the Management Board of the Ronald Ngala Utalii College at their Board meeting held in Mombasa and attended by the then Hon. Minister for Tourism and the Permanent Secretary resolved that the initial design and concept paper for the College required to be updated.
12. The meeting observed that the initial designs and project proposal done by the Ministry of Public Works were undertaken in 2005 and nearly 5 years had elapsed since then. In the meantime, costs had escalated and the amount then estimated at Kshs. 1.948 billion or thereabouts needed to be reviewed to take into account the lapse of time.
13. The concept paper and design only provided for a student capacity of 600 students. This would not be adequate to cater for the new training areas that the industry required especially cruise tourism, refresher courses for the those already employed in the industry, entrepreneurship, training of trainers. It was resolved that an initial capacity of 1000 which would be increased over the years would be a good start.
14. The Board further noted that the designs and the drawings failed to adopt a coastal architecture in terms of culture, weather elements and local materials. The Board pointed out the vision of the Ministry and Industry is for an international standard's facility and centre of excellence in hospitality training which would also encompass local architecture.

15. Moreover, when H.E the President met tourism stakeholders on 27th August 2008 during the official opening of the Mombasa Continental Hotel at Shanzu, one of the issues discussed was the College. In the forum it was agreed that the establishment of the new College should not only be fast-tracked but it should also be a Regional Centre of Excellence.
16. In view of the foregoing, policy decision was taken that the initial design undertaken by the Ministry of Public Works should be used only as a guide. CTDLT was tasked with bringing on board a team of independent consultants who would be procured in accordance with the procurement laws. The consultant would redesign the College taking into consideration the issues above and vision of the Board and industry in general.

Procurement of the Project Consultants

17. Further to the foregoing, trustees put in place measures to procure professionals to implement the project. In accordance with the Public Procurement and Disposal Act, 2005 and the Regulations thereof the Fund identified a consortium of consultants to oversee design and overall supervision of the project.

Vide advertisement carried out in the daily newspapers, trustees invited qualified firms to submit proposals for considerations. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors.

18. The proposals were evaluated with technical assistance from the Ministry of Public Works.
19. The successful consortium is led by the firm of Baseline Architects as the lead consultant and Ujenzi Consultants as the quantity surveyors. Other members of the consortium are Armitech Consultants as structural engineers, Westconsult as electrical/ mechanical engineers, Geomeasures Ltd as surveyors and PKF Consultants as environmental impact assessment experts.
20. From the onset the consultants were procured using standard tender documents provided for by the Public Procurement Oversight Authority.

In the process of identifying the consultants, CTDLT would only evaluate proposals based on technical aspects. The financial would be guided by the scale of fees set out in the Architects and Quantity Surveyors Act.
21. After the award of the tender to the consortium on 4th April, 2012, one unsuccessful bidder M/s Gitutho Associates lodged an appeal with the Public Procurement Administrative Board on 17th April, 2012, the appeal was heard and dismissed via ruling dated 11th May, 2012 thereby allowing the process to proceed.

Designs

22. The consortium developed the designed, outline maps, bill of quantities and necessary documents to facilitate the tendering process. In their estimate the project would cost Kshs. 8.5 billion with a margin error for revision at 10%.

23. The Fund carried out an advertisement calling out for qualified contractors to submit bids to carry out the construction works. The tendering process was carried out in accordance of the procurement laws and M/s Mulji Devraj and Brothers Ltd emerged to have submitted the most responsive bid. The firm had a quotation of Kshs. 8.9 billion. This was within the engineer's estimate for the project and they were also found to possess the requisite technical experience for the project.

Rationalization of the Project

24. In 2013, consultations at top Government levels informed the decision to review and down scale the project culminating in the Cabinet Memo of 9th July 2014 which gave guidance on the continued on the continued implementation of the project that's now ongoing.

25. The project is Kenya Vision 2030 Flagship Project, would be financed by the National Treasury. The National Treasury at the time had advised that the financing model for the five-star hotel, as a component of the whole project, would be undertaken within the Public Partnership Framework. The total cost of the project works was 8.9 billion as per the bills of quantities and the bid by Mulji Devraj and Brothers Ltd. The cost of consultancy services in accordance with the Architects and Quantity Surveyors Act would be 16% of the total construction cost. This works out to be Kshs. 1.4 billion making the total project cost at Kshs. 10.3 billion.

26. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at Kshs. 8.96 billion, the project must be rationalized with a view of downsizing the total cost through possible ways while ensuring the project would still be functional and achieve its mandate. The review was done in consultations with parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost would be scaled down to 4.93 billion. The National Treasury will provide the costs of construction while Tourism Fund will pay for the professional services. This culminated in the signing of Cabinet Memo dated 9th July, 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier.

Title ownership of the Land

27. The College and the hotel would be constructed on sixty acre parcel of land L.R No. 5052/4 in Kilifi. The land was donated by Rea Vipingo Estates Group in the 80's with the condition that the land shall be used for the establishment of the Coast Branch of Kenya Utalii College. The title deed was as is in the name of Kenya Utalii College.

On 13th March, 2012, Kenya Utalii College wrote to the Fund informing her of no objection to transfer the land to the then CTDLT now Tourism Fund. The Fund appointed Kithi & Co. Advocates to spearhead the process.

28. Kenya Utalii College had not paid land rates dating back to 80's amounting to Kshs, 17,912,989 at the time of applying for the transfer. The amount was negotiated and an amount of Kshs. 13,000,000 was agreed which has since been paid and the Fund is awaiting clearance certificate from Kilifi County Government to pave way for the title transfer.

Current Status of the Project

29. Currently the project has progressed and construction is ongoing as evidenced by the latest report of February 2016.

Financial Status

30. The project is financed jointly by the National Treasury and the Tourism Fund as agreed in the Cabinet Memorandum of 2014. The National Treasury should allocate Kshs. 1.23 billion annually for 4 years with effect from 2014/2015 financial year and Tourism Fund to allocate Kshs. 0.50 billion.

Further the Hotel component is intended to be a teaching laboratory to the college to be implemented under Public Private Partnership at the appropriate time.

31. As at 21st April 2016, a total of Kshs. 3, 076, 082, 181 has been paid out from the National Treasury disbursements and Fund's internal sources.

No.	Payee	Treasury Funds	Tourism Fund Funds	Total
1.	Consultants			
2.	Baseline Architects	312,863,775	403,226,460	716,090,235
3.	Ujenzi Consultants	222,092,576	287,048,000	509,140,576
4.	West Consult	88,568,623	26,312,000,	114,880,623
5.	Armitech Consultants	112,618,646	26,360,000,	138,978,646
6.	Mulji Devraj & Bros	1,312,612,892	235,510,717	1,548,123,609
7.	Geomeasures	1,650,260	-	6,502,600
8.	PKF Consultants	6,565,892	-	6,565,892
9.	Kithi & Co. Advocates	-	34,800,000	34,800,000
10.	NEMA	-	1,000,000	1,000,000
Total		2,061,825,004	1,014,257,177	3,076,082,1181

COMMITTEE OBSERVATIONS

The Committee observed that:-

1. A concept paper was prepared for establishment of the Kenya Utalii College Coast Branch; however, no feasibility studies were undertaken before establishing the College.
2. The establishment of the Ronald Ngala Utalii College had no legal backing since it was a diversion of the Kenya Utalii College Coast Branch which was established under the Tourism Act. The College is yet to obtain its corporate status.

3. That in March 2010, the Ministry of Tourism requested the Tourism Fund to take over the project; a decision that was suspect and unprocedural as it was a circumvention of the Cabinet Memo establishing the College under the Ministry of Tourism.
4. The establishment of the Kenya Utalii College, Coast Branch was done through a Cabinet Memorandum Ref. OP.CAB.58/4A dated 13th September 2007, at a cost of Kshs. 1.95 billion. There was no evidence of another Cabinet Memo to establish Ronald Ngala Utalii College at an escalated cost of Kshs. 8.9 billion in 2010. This was done through a Gazette Notice No. 3478 of 9th April 2010 by the then Minister for Tourism.
5. Further, the Cabinet never deliberated any Cabinet Memo to endorse the variation of the Kshs. 4.9 billion rationalized and downscaled project incorporating Public Private Partnership approach to establish a hotel on 9th July 2014.
6. The project is 37% complete based on report from the Clerk of Works however as at 18th April, 2016 and a total of Kshs. 3,152,444,635 have already been paid to the Contractor and the Consultant which represents 64% of the total cost of the revised project. There is therefore no assurance that the project will be completed within the budget consequently it may result to loss of public funds taking into account the accruing interest for unpaid bills.

The Committee directed the Board to put in place remedial measures control escalation of costs of the project.

MIN/PIC/299/2016:

ANY OTHER BUSINESS

No other business arose.

MIN/PIC/300/2016:

ADJOURNMENT

There being no other business, the meeting was adjourned at 12:40pm. The next meeting will be held at 1:00pm.

Signed.....

Date.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairperson)

**MINUTES OF THE 42ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY, 11TH MAY, 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 4:00 P.M.**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Wafula Wamunyinyi, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Korei Ole Lemein, MP
10. Hon. John Ogutu Omondi, MP

APOLOGIES

11. Hon. Francis Mwanzia Nyenze, MP
12. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
13. Hon. Dr. Oburu Oginga, MGH, MP
14. Hon. Johana Kipyegon Ngeno, MP
15. Hon. Dorcas Kedogo, MP
16. Hon. Bernard Munywoki Kitungi, MP
17. Hon. (Eng.) John Kiragu, MP
18. Hon. Cornelly Serem, MP
19. Hon. Irungu Kang'ata, MP
20. Hon. Abdullswamad Sheriff Nassir, MP
21. Hon. Elias Bare Shill, MP
22. Hon. Franklin Mithika Linturi, 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. Jackson Musheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/306/2016: PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past four O'clock and the prayer said.

MIN/PIC/307/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/308/2016: EVIDENCE BY FORMER BOARD OF TRUSTEES OF THE TOURISM FUND

Mr. Martin Ole Kamwaro, a former Board Member of the Tourism Fund accompanied by fellow former Board Members Ms. Amina Kasinga and Mr. Abdulqadir Omar appeared before the Committee to adduce evidence on the procurement process for the construction of Ronald Ngala Utalii College, a project under the Tourism Fund.

The Committee observed that the submission by the former Board Members was similar to that of the former CEO of the Tourism Fund, Mr. Allan Chenane and the one submitted by the current Board of Trustees.

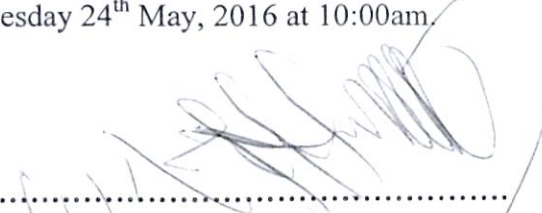
The Committee resolved to have the former Board Members submit signed individual statements by 25th May, 2016, recounting the circumstances under which the procurement process for the construction of Ronald Ngala Utalii College was undertaken.

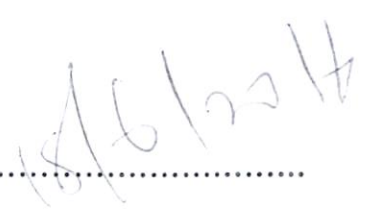
MIN/PIC/309/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/310/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 4:30pm. The next meeting will be held on Tuesday 24th May, 2016 at 10:00am.

Signed.....


Date.....


Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

**MINUTES OF THE 43RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 24TH MAY 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 10:00 AM**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - **Chairperson**
2. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
3. Hon. Franklin Mithika Linturi, MP
4. Hon. Adan Mohammed Nooru, MP
5. Hon. (Eng). John Kiragu, MP
6. Hon. Beatrice Nkatha Nyaga, HSC, MP
7. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
8. Hon. Cornelly Serem, MP
9. Hon. Irungu Kang'ata, MP
10. Hon. Irungu Kang'ata, MP
11. Hon. John Muchiri Nyaga, HSC, MP
12. Hon. John Ogutu Omondi, MP
13. Hon. Korei Ole Lemein, MP
14. Hon. Mary Sally Keraa, MP

ABSENT WITH APOLOGY

15. Hon. Anthony Ichung'wah Kimani, MP - **Vice Chairperson**
16. Hon. Francis Mwanzia Nyenze, EGH,
17. Hon. Dr. Oburu Oginga, MGH, MP
18. Hon. Wafula Wamunyinyi, MP
19. Hon. Sammy Silas Komen Mwaita, MP
20. Hon. Elias Bare Shill, MP
21. Hon. John Olago Aluoch, MP
22. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
23. Hon. Abdullswamad Sheriff Nassir, MP
24. Hon. Dorcas Kedogo, MP
25. Hon. Bernard Muniyoki Kitungi, MP
26. Hon. Eng. Stephen Ngare, MP
27. Hon. Johana Kipyegon Ngeno, MP
28. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE:

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Philip Lekarkar - Clerk Assistant III
2. Mr. Mohamed Boru - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II
5. Mr. Abdi Salat - Senior Sergeant-at-Arms
6. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. George Nashon Otieno - Senior Manager, Audit
3. Mr. Jackson Msheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/311/2016: PRELIMINARIES

The meeting started at twelve minutes past ten o'clock with a prayer.

MIN/PIC/312/2016: ADMINISTRATION OF OATH

The witnesses were put under oath pursuant to Article 125 (2) (a) of the Constitution of Kenya.

MIN/PIC/313/2016: EVIDENCE BY TOURISM FUND FORMERTENDER COMMITTEE MEMBERS ON THE CHRONOLOGY OF EVENTS IN THE PROCUREMENT PROCESS OF THE MAIN CONTRACTOR FOR THE RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

The Tourism Fund former Tender Committee members Mr. Charles Okeyo (Former Chair), Ms. Margaret Njoka (Former Vice- Chairperson), Ms. Margaret Njoka (Former Vice Chairperson), Ms. Norah Mukuna (Former Secretary), Mr. Samuel Ngari, and Ms. Nancy Siboe appeared before the Committee to adduce evidence on the procurement process of the main Contractor for the Ronald Ngala Utalii College in Kilifi County

The former Chairman Mr. Charles Okeyo informed the Committee that:-

1. The former Tender Committee members of the who were appointed to undertake the procurement of the main Contractor for the Ronald Ngala Utalii College in Kilifi County were:-

- (i) Mr. Charles Okeyo - Former Chairman
- (ii) Ms. Margaret Njoka - Former Vice Chairman
- (iii) Mr. Samuel Ngari - Former Member
- (iv) Mr. David Wainaina - Former Member
- (v) Mrs. Patricia Ondeng - Former Member
- (vi) Ms. Nancy Siboe - Former Member
- (vii) Mr Willis Ondiek - Former Member
- (viii) Ms. Norah Mukuna - Former Secretary

Tender Advertisements

2. Project contractors were procured through the prequalification method where tender notices were advertised in the Daily Nation newspaper on November 23rd 2012 in line with Section 51 of the Public Procurement and Disposal Act 2005 and Regulation 38 of the Public Procurement and Disposal Regulations 2006.

Tender Opening –Prequalification

3. A tender opening Committee was duly appointed by the accounting officer as provided for in Section 60(1) of the Public Procurement and Disposal Act 2005. The appointed Committee opened the tender on the 11th January 2013 in the presence of bidders who chose to attend.

Evaluation of Prequalification Bids

4. An evaluation committee was appointed by the Accounting officer on the 18th of January 2013 to undertake the evaluation exercise in line with Section 66(1) of the Public Procurement and Disposal Act 2005 and Regulation 46 of the Public Procurement and Disposal Regulations 2006. The committee undertook the exercise and submitted their report in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006.

Tender Award

5. The Tourism Fund Tender Committee duly constituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations 2006 sat on the 15th of February 2013 and deliberated on the Evaluation Report and adopted the recommendations made by the evaluation committee by approving a list of six firms to be invited to quote for the main works. This was in line with Section 66(4) of the Public Procurement and Assets Disposal Act 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Invitation of successful Bidders to Quote

The pre-qualified six bidders were invited to submit their proposals on the 18th February in line with Section 56 (1), (2) and Section 57 (1) of the Public Procurement and Disposal Act 2005. The bidders were expected to submit their proposals by 11th March 2013.

Tender Opening

A tender committee was duly appointed by the accounting officer as provided for in Section 60(1) of the Public Procurement and Assets Disposal Act 2005. The appointed Committee opened the tender on the 21st March 2013 in the presence of the bidders who chose to attend.

Evaluation of Tenders

6. An evaluation committee comprising of technical experts from the Ministry of Public Works was appointed by the accounting officer on the 3rd April 2013 to undertake the evaluation exercise in line with Section 66(1) of the Public Procurement and Disposal Act 2005 and Regulation 46 of the Public Procurement and Disposal Regulations 2006. The Committee

undertook the exercise and submitted their report in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006.

Tender Award

7. The Tourism Fund Tender Committee duly constituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations 2006 and an observer from the Architectural Association of Kenya (AAK) pursuant to Regulation 12(8) of the Public Procurement and Disposal Act sat on the 11th of April 2013 and deliberated on the evaluation and made an award to **M/s Mulji Devraj & Brothers** in line with Section 66(4) of the Public Procurement and Asset Disposal Act 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Notification to Bidders

8. All participating bidders were duly notified of the results of the tender process in line with Section 67 of the Public Procurement and Disposal Act 2005.

Budgetary Considerations in the Award

9. Having procured the consultants and all the processes having commenced, TF continued to participate in the Medium Term Framework (MTEF) processes for the Budget preparation. This was done through active participation at the Ministerial sector groups and ultimately ministerial budget. Through this process, RNUC was allocated a total of 600 million in the budget for the financial year 2013/14 and a further sh. 2 Billion in the budget for 2014/15.

COMMITTEE OBSERVATIONS

The Committee observed that:-

1. The Catering and Tourism Development Levy Trustees (CTDLT) placed an advertisement in the newspapers of 23rd November, 2012 inviting tenderers for prequalification for construction of the proposed Ronald Ngala Utalii College as a Vision 2030 project yet the project is not listed as one the Vision 2030 projects.
2. The Ronald Ngala Utalii College (RNUC) project tendered for by the former Catering and Tourism Development Levy Trustees (CTDLT) illegally replaced the Kenya Utalii College, Coast Branch as no Cabinet approval was obtained. RNUC was approved by the Cabinet vide Memo Ref. OP. Cab.58/4A dated 13th September, 2007. Thus the CDLT and the Ministry of Tourism breached the Cabinet Memo, a legal instrument that established the Kenya Utalii College, Coast Branch.
3. The Tender Committee tendered, evaluated bids and awarded the contract for the Construction RNUC project for contractual value of Kshs. 8,961,370,998 billion. The project was later inflated to Kshs.10.4 billion then scaled down to Kshs. 4,923,005.
4. At the time of procuring the project contractor, the procuring entity did not establish the availability of funds to undertake the project; thus it breached Section 26 (2) (a) of the

Procurement and Disposal Act, 2005 which states that:- *All procurement shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan;*

MIN/PIC/314/2016:

EVIDENCE BY TOURISM FUND FORMER TENDER COMMITTEE MEMBERS ON THE CHRONOLOGY OF EVENTS IN THE PROCUREMENT PROCESS OF THE CONSULTANTS FOR THE RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

The Tourism Fund former Tender Committee members Mr. Eden Odhiambo (Former Chair), Ms. Margaret Njoka (Former Vice- Chairperson), Mr. George Njoroge, Ms. Ruth Sande and Ms. Nancy Siboe appeared before the Committee to adduce evidence on the procurement process of the consultant for the Ronald Ngala Utalii College in Kilifi County.

PROCUREMENT OF THE CONSULTANT OF THE MAIN WORKS FOR THE PROPOSED RONALD NGALA UTALII COLLEGE

1. The former Chairman; Mr. Eden Odhiambo informed the Committee that the Tender Committee members who were appointed to undertake the procurement of the consultant for the Ronald Ngala Utalii College in Kilifi County were:-

(i)	Mr. Eden Odhiambo	Former Chairman
(ii)	Ms. Margaret Njoka	Former Vice Chairperson
(iii)	Ms. Ruth Sande	Former Member
(iv)	Ms. Nancy Siboe	Former Alternate Member
(v)	Mr. George Njoroge	Former Member
(vi)	Ms. Florah Ngonze	Former Member

Policy Direction Implemented by the Members

2. In the 104th Board Meeting held on 24th March, 2010 under AOB, the Board deliberated on Establishment of RNUC (Minute 8). The Trustees recalled that Kenya Utalii College was established in 1975 as a pioneer institution for training persons in the hotels and restaurants business. They also noted that Tourism had been established as one of the key pillars of Vision 2030. Management was engaged to draft a Gazette notice for the Hon. Minister to execute and gazette in accordance with Section 19(1)(b) of the Hotels and Restaurants Act.
3. In a Special Board Meeting held on 19th April 2010, Trustees were informed by Management that subsequent to the resolution, communication had been sent to the parent Ministry on 25th March 2010 and a gazette notice had been signed approving the establishment of the College. The notice was published on 9th April 2010 as Gazette Notice No. 3478.
4. Management received a letter from PS Ref. No. MT/12/8 dated 7th April 2010, reporting that Treasury had set aside Ksh. 300 Million to be utilized in the project in the financial year 2010/11. The Board noted that the amount in the Concept Paper was approximately Ksh. 1.95 Billion.

5. In the 105th Board Meeting, Trustees proposed a skeletal staff to be seconded to the College consisting of 4 members of TF staff, 2 members of KUC and 2 members from the parent Ministry. The proposal was submitted to the Ministry for further guidance. The Board gazetted by Hon. Minister on 12th February 2010 was also adopted.
6. In the 106th Board Meeting, it was noted that vide Gazette Notice No. 9109 of 6th August 2010, the Hon Minister had appointed board members of the college. Vide a letter dated 10th September 2010, the PS Tourism authorized trustees to open an account for the College.
7. In a Special Board Meeting held on 9th December 2010, the RNUC gazetted Board was inaugurated by the Hon. Minister Najib Balala. It was noted that the college's first Board Meeting was held on 2nd December 2010 and TF Board was represented by the CEO.
8. In the 107th Board Meeting held on 27th January 2011, Management informed the Trustees that the RNUC Board held various meetings on 13th December 2010, 10th January and 17th January 2011 during which the board reiterated on the need to fast track the process of putting up the college.
9. In particular, requests were made by the College Board to Tourism Fund on the design and construction of the college which included procurement structure to procure for the services of a consortium of private consultants to carry out the designs, drawings and construction of the college. The Board deliberated and resolved to use its procurement structures as established under the Public Procurement and Disposal Act 2005 and regulations thereof.
10. In the 108th Board Meeting held on 28th April 2011, Management informed the Board that they had sought guidance from PPOA on 23rd February 2011 and were advised to initiate a fresh procurement process by open tender. The process of advertisement commenced from then on until the awards were made.

Construction of the Tender Committee

11. The above members were appointed to serve in the Tender Committee on various dates in accordance with the PPOA Act 2005 Section 26(5).

Tender Advertisement

12. Project consultants were procured through the open tender method where tender notices were advertised as tender number **CTDLT/003/2011-2012** on both the Daily Nation and the Standard newspapers on February 16th 2012 in line with Section 51 of the Public Procurement and Disposal Act 2005 and Regulation 38 of the Public Procurement and Disposal Regulations 2006.

Tender Opening

13. A tender opening Committee was duly appointed by the accounting officers as provided for in Section 60(1) of the Public Procurement and Disposal Act 2005. The appointed committee opened the tender on 1st March 2012 in the presence of bidders who chose to attend.

Evaluation of Tenders

14. An evaluation committee was appointed by the Accounting Officer to undertake the evaluation exercise in line with Section 66(1) of the Public Procurement and Disposal Act 2005 and Regulation 46 of the Public Procurement and Disposal Regulations of 2006. The committee undertook the exercise and submitted their report in line with Regulation 51 of the Public Procurement and Disposal Regulations 2006. In addition, the Ministry of Public Works Officials were invited during the exercise in order to give professional advice.

Tender Award

15. The Tourism Fund committee duly instituted as per Regulation 10(1) of the Public Procurement and Disposal Regulations 2006 sat on the 4th of April 2012 and deliberated on the evaluation report and made an award to **M/s Baseline Architects** in line with Section 66(4) of the Public Procurement and Asset Disposal Act 2005 and Regulation 11(1) of the Public Procurement and Disposal Regulations 2006.

Notification to Bidders

16. All participating bidders were duly notified of the results of the tender process in line with Section 67 of the Public Procurement and Disposal Act 2006.

In the 112th Special Board Meeting held on 18th April 2012, Management informed Trustees that the Tender was awarded and notification sent out to the winning firm; Baseline Architects Ltd.

Budgetary Considerations in the Award

17. Since the year 2009, the Ministry of Tourism had in conjunction with The National Treasury set aside funds meant for the construction of the College. In particular, in the year 2011, CTDLT, now Tourism Fund, received a total of Kshs.43 million which had been released earlier on but not utilized. In the financial year 2011/12, a total of Kshs. 190 million was received making a total of Kshs. 233 million. By the time of the award on 4th April 2012, these funds had already been availed to the TF by the parent Ministry to cater for the initial project costs. A further provision had been made by the Ministry of Tourism of Kshs. 80 million for the subsequent year's budget 2012/13.

Possible Challenges

18. The challenge that the Committee experienced was in the context of the procurement laws where one of the unsuccessful consulting bidders sought review of the award from the Public Procurement Administrative Review Board. However, the Board dismissed the case

COMMITTEE OBSERVATIONS

The Committee observed that:-

1. The award letter of the contract for consultancy services awarded to Baseline Architects did not specify scale of fees for professional services that were applicable;
2. The tender committee did not provide any evidence that it approved the use of Request for Proposal method for procurement process for the consultancy services or that the process was initiated with Expression of Interest as provided for in Section 78 of the Public Procurement and Asset Disposal Act 2005;
3. Whereas the Contract for the main works was scaled down from Kshs. 8,961,370,998 to Kshs. 4,923,005, the consultancy fee was not scaled down proportionately as a result cost of consultancy is highly inflated.
4. The procuring entity engaged in the procurement of consultancy services without sufficient funds being set aside in the budget. This was a breach of Section 26(6) of the PPDA, 2005.

Way Forward

The Committee directed the tender Committee to submit the following documents by 31st May, 2016.

1. Evaluation report on the tendering process for both the contractor and the consultancy services;
2. Letter from the National Treasury granting the Fund approval to proceed with the project at a cost of Kshs. 8.9 billion
3. Letter of award of the tender to Baseline Architects for provision of consultancy services
4. Terms of reference of the tender committees
5. Budgetary provisions for the project for every financial year since its inception

MIN/PIC/315/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/316/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:20am until 11:40am same day.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....

**MINUTES OF THE 44TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 24TH MAY 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 11:40 AM**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
3. Hon. Franklin Mithika Linturi, MP
4. Hon. Adan Mohammed Nooru, MP
5. Hon. (Eng). John Kiragu, MP
6. Hon. Beatrice Nkatha Nyaga, HSC, MP
7. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
8. Hon. Cornelly Serem, MP
9. Hon. Irungu Kang'ata, MP
10. Hon. John Muchiri Nyaga, HSC, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Korei Ole Lemein, MP
13. Hon. Mary Sally Keraa, MP

APOLOGIES

14. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
15. Hon. Francis Mwanzia Nyenze, EGH,
16. Hon. Dr. Oburu Oginga, MGH, MP
17. Hon. Wafula Wamunyinyi, MP
18. Hon. Sammy Silas Komen Mwaita, MP
19. Hon. Elias Bare Shill, MP
20. Hon. John Olago Aluoch, MP
21. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
22. Hon. Abdullswamad Sheriff Nassir, MP
23. Hon. Dorcas Kedogo, MP
24. Hon. Bernard Munywoki Kitungi, MP
25. Hon. Eng. Stephen Ngare, MP
26. Hon. Johana Kipyegon Ngeno, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE:

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Philip Lekarkar - Clerk Assistant III
2. Mr. Mohamed Boru - Clerk Assistant III
3. Mr. Charles Atamba - Research Officer III
4. Ms. Clara Kimeli - Legal Counsel II
5. Mr. Abdi Salat - Senior Sergeant-at-Arms
6. Ms. Rose Ometere - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Obed Chweya - Senior Manager, Audit
2. Mr. George Nashon Otieno -Senior Manager, Audit
3. Mr. Jackson Msheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/317/2016: PRELIMINARIES

The meeting commenced at forty minutes past eleven o'clock with a prayer.

MIN/PIC/318/2016: ADMINISTRATION OF OATH

The witness Mr. Dominic Motanya Otengo was put under oath pursuant to Article 125 (2) (a) of the Constitution of Kenya.

MIN/PIC/319/2016: EVIDENCE BY MR. DOMINIC MOTANYA OTENGO; DIRECTOR BASELINE ARCHITECTS LTD ON THE PROCUREMENT OF THE CONSULTANTS FOR THE RONALD NGALA UTALII COLLEGE

Mr. Dominic Motanya Otengo; Director Baseline Architects appeared before the Committee to adduce evidence on procurement of the consultants for the Ronald Ngala Utalii College in Kilifi County, scope of works done and payment of fee notes and interest accrued on payments as at 18th April, 2016.

He informed the Committee as follows:

1. That the tendering process for the project consultants of the Ronald Ngala Utalii College in Kilifi County was an open process through the advertisements carried out in the daily press. The Client invited qualified firms to submit proposals for consideration.
2. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors. The advertisement dated 4th March 2011 and a notice of extension dated 14th March 2011 were both carried out in the daily press.
3. Baseline Architects Limited in the consortium of Ujenzi Consultants, Armitech Consulting Engineers and West Consult Consulting Engineers submitted their bid which was evaluated with others.
4. On 4th April 2012, Baseline Ltd was notified that they had won the tender and advised that the contract would be signed at an appropriate time.
5. After the award, there was an appeal to Public Procurement Oversight Authority by one M/s Githutho and Associates on April, 17, 2012. The appeal was subsequently dismissed.

They later appealed to the High Court and the judge upheld the ruling of the Public Procurement Oversight Authority.

Baseline subsequently signed the contract on 25th May, 2012

Scope of Works

6. As per the advertisement the consultant was to provide consultancy services for the design of the proposed Ronald Ngala Utalii College in the following areas: -
 - (i) Architecture and Interior Design;
 - (ii) Civil and Structural Engineering;
 - (iii) Building, Mechanical and Electrical Engineering Services and;
 - (iv) Quantity Surveying.
7. As at 18th April, 2016, Baseline Ltd had done and completed all pre-contract services that include tender documents in form of drawings and details which constitute 75% of the architectural services. The consortium is currently doing supervision works on site.

Payment of fee notes and interest accrued on payments as at 18th April, 2016

8. The payment of fee notes received from the Tourism Fund as at 18th April, 2016 is as follows: -

Consultant	Fees/Amount Due Inclusive of Taxes & Interest (Ksh)	Fees/Amount Paid Inclusive of Taxes & Interest (Ksh)	Interest Accrued (Ksh)
Baseline Architect Ltd	845,316,027.14	678,590,235	195,304,204.05

COMMITTEE OBSERVATIONS

The Committee observed the following: - THAT

1. There is no proof that the procurement process for the consultancy services started with Expression of Interest as provided for in Section 78 of the Public Procurement and Disposal Act, 2005.
2. The letter of award of the contract for Consultancy services for Ronald Ngala Utalii College to Baseline Architects Ltd had no tender/contract amount, as it should ordinarily be the case. This amount provided room for manipulation of the tender sum and exposed public funds to ineligible charges not agreed upon.
3. Baseline Architects Ltd participated in Technical Evaluation of the bids in which it participated as a bidder; which amounts to conflict of interest
4. The calculations of the contract sum for consultancy services payable to Baseline Architects were based on the original project contract amount of Kshs. 8.96 billion and were not revised downwards during scaling of the scope of works of the project to a cost of Kshs. 4.9 billion.

5. The fees paid so far to Baseline Architects of Kshs 678,590,235 is higher than the fees paid to the main contractor which indicates that the Company was paid ineligible payments

Way Forward

1. The Committee directed the Director, Baseline Architects Ltd to provide the following information by 6th June, 2016: -
 - i) Profile of the Company, Certificate of Registration, directors and staff establishment and its relationship with other firms in the consortium;
 - ii) Chronology of events of the procurement process for the consultancy services for RNUC by Baseline Architects; including the full disclosure made by the consortium during the tendering process and copy of award of the tender
 - iii) Copies of fee notes raised by Baseline Architects Ltd detailing the amount of money charged against the services provided and works done.
 - iv) Breakdown of monies paid to the other members of the consortium and any other sub-contractor under baseline Architects;
 - v) Copies of tax returns made to Kenya Revenue Authority;
 - vi) Certificate of Completion of the Phase I of the project from the relevant government agencies;
 - vii) List of all parastatal projects/contracts that Baseline Architects is providing consultancy services for; including status of the projects, fees paid, pending bills, any variations on the projects, letter of certification for completion of the works and success rate of the projects.
2. The Committee also resolved to invite Mr. Dominic Otengo, Ministry of Public Works officials and a representative of the Architectural Association of Kenya during its inspection visit to Ronald Ngala Utalii College in Kilifi to be undertaken at a date to be proposed later.

MIN/PIC/320/2016:

ANY OTHER BUSINESS

No other business arose.

MIN/PIC/321/2016:

ADJOURNMENT

There being no other business, the meeting was adjourned at 12:40pm. The next meeting will be held at 2:30pm same day.

Signed.....

Date.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairperson)

**MINUTES OF THE 45TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 24TH MAY, 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 12:30 P.M.**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Wafula Wamunyinyi, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Korei Ole Lemein, MP
10. Hon. John Ogutu Omondi, MP
11. Hon. Franklin Mithika Linturi, MP
12. Hon. Mary Sally Keraa, MP
13. Hon. (Eng.) John Kiragu, MP

ABSENT WITH APOLOGY

14. Hon. Francis Mwanzia Nyenze, MP
15. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
16. Hon. Dr. Oburu Oginga, MGH, MP
17. Hon. Johana Kipyegon Ngeno, MP
18. Hon. Dorcas Kedogo, MP
19. Hon. Bernard Munywoki Kitungi, MP
20. Hon. Cornelly Serem, MP
21. Hon. Irungu Kang'ata, MP
22. Hon. Abdullswamad Sheriff Nassir, MP
23. Hon. Elias Bare Shill, MP
24. Hon. Adan Mohammed Nooru, MP
25. Hon. John Muchiri Nyaga, HSC, 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. George Nashon Otieno - Senior Manager, Audit
3. Mr. Jackson Msheba - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/324/2016: PRELIMINARIES

The Chairperson called the meeting to order at thirty five minutes past twelve O'clock.

MIN/PIC/325/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/326/2016: EVIDENCE BY FORMER BOARD OF TRUSTEES OF THE TOURISM FUND

Ms. Amina Kasinga and Mr. Abdulqadir Omar, former Board Members of the Tourism Fund appeared before the Committee to adduce evidence on the procurement process for the construction of Ronald Ngala Utalii College, a project under the Tourism Fund.

The two former Board Members submitted sworn affidavits on their recollection of the procurement process for the construction of Ronald Ngala Utalii College.

MIN/PIC/327/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/328/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:50pm. The next meeting will be held on Wednesday, 25th May, 2016 at 10:00am.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....

**MINUTES OF THE 46TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 25TH MAY, 2016 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 10:00 A.M.**

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Francis Mwanzia Nyenze, EGH, MP
3. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. Franklin Mithika Linturi, MP
6. Hon. John Muchiri Nyaga, HSC, MP
7. Hon. Elias Bare Shill, MP
8. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. Cornelly Serem, MP
11. Hon. Korei Ole Lemein, MP
12. Hon. John Ogutu Omondi, MP

APOLOGIES

13. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
14. Hon. Adan Mohammed Nooru, MP
15. Hon. Sammy Silas Komen Mwaita, MP
16. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
17. Hon. Bernard Munywoki Kitungi, MP
18. Hon. Mary Sally Keraa, MP
19. Hon. Abdullswamad Sheriff Nassir, MP
20. Hon. (Eng.) John Kiragu, MP
21. Hon. Dorcas Kedogo, MP
22. Hon. John Olago Aluoch, MP
23. Hon. Wafula Wamunyinyi, MP
24. Hon. Johana Kipyegon Ngeno, MP
25. Hon. Irungu Kangata, 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. George Otieno Nashon - Senior Manager, Audit
2. Mr. Jackson Musheba - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Representative of Inspector General (Corporations)

MIN/PIC/329/2016:

PRELIMINARIES

The meeting started at fifteen minutes past ten o'clock with a prayer.

MIN/PIC/330/2016:

EVIDENCE BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Mr. Maurice Juma, the Director General, Public Procurement Regulatory Authority accompanied by Mr. Peter Wangai (Procurement Compliance Officer) appeared before the Committee to adduce evidence on the procurement process for the construction of Ronald Ngala Utalii College, a project under the Tourism Fund.

The Director General informed the Committee as follows: -

THAT

1. The establishment of a branch of Kenya Utalii College (KUC) was first communicated by the Ministry of Tourism to the Principal of the KUC vide Cabinet Memoranda dated 29th March, 1996. The approval was not implemented due to lack of funds.
2. The matter was re-visited in 2007 when a second approval of the Cabinet was granted vide Cabinet Memoranda dated 13th September, 2009 which directed that KUC Coast Branch be established and the Minister for Finance to avail the necessary funds which were estimated at Kshs. 1.948 billion. The project implementation was to be overseen by the Ministry of Tourism.
3. By a letter dated 19th March, 2010, the Ministry of Tourism communicated the decision of the Ministry to establish Ronald Ngala Utalii College to Catering & Tourism Development Levy Trustee (CTDLT) pursuant to Catering Levy Trustee Fund Act.
4. In its second meeting held on 13th December, 2010, the CTDLT Board resolved that the initial design and concept paper for the College that had been prepared in 2005 by the Ministry of Public Works required to be updated. CTDLT was tasked to bring on board independent consultants to re-design the College. The consultants were to be procured in accordance with the procurement law.

PROCUREMENT PROCESS

The procurement process was undertaken in two levels; i.e. procurement of consultants and procurement of main works.

i) Procurement of Consultancy Services

Advertisement and Tender Opening

1. The tender for procurement of consultancy services for design, documentation, supervision and contract management was advertised on 4th March, 2011 in the Standard Newspaper. The initial closing/opening date was 18th March, 2011 but was extended to 25th March, 2011 at 11.00 a.m. vide tender notice dated 14th March, 2011. However, this procurement process was terminated by the Procuring Entity due to lapse of time for evaluation as the matter was under investigation by the Kenya Anti-Corruption Commission.
2. The tender was re-advertised in the Daily Nation Newspaper on 16th February, 2012. The deadline for submission of tenders was 1st March, 2012 at 12.00 noon. Tenders were opened in the presence of bidders' representatives on 1st March, 2012 by a tender opening committee comprising of Patrick Terer, Fredrick Bwire and Wilfred Cheruiyot.
3. The committee was appointed by the Accounting Officer vide memo Ref: CTDLT/CONF/2/8/VOL.VII (31) of 1st March, 2012. The tender opening committee prepared tender opening minutes which showed that the following sixteen (16) firms responded:
 - a. AAKI Consultants
 - b. Scope Design Systems
 - c. Batiment Group
 - d. Symbion (K) Ltd
 - e. Diaspora Design Build Ltd
 - f. Mruttu Salmann & Associates
 - g. Maestro Architects Ltd
 - h. Gitutho Associates & Consulting Architects
 - i. Baseline Architects Limited
 - j. A D Design
 - k. Tej Architects
 - l. Conte Design Team
 - m. Tectura International
 - n. Moposis Architects & Interiors Ltd
 - o. Planning Systems Services Ltd
 - p. Kenchuan Architects

Evaluation

4. Evaluation was conducted by a committee comprising of Willis Ondiek, Christine Sitawa, Kariuki Muturi, David Wainaina, Isaiah Ruto, Collins Kipkosgei, Arch. M. Nguuri, Qs. Kibet K. Kamingoi, Eng. W. D. K. Ngumo and Eng. D. N. Munyingi. It was conducted in two stages, preliminary and technical evaluation.

Preliminary Evaluation

5. Preliminary evaluation was done in three (3) stages; first to determine whether bidders submitted the required number of bids; Batiment Group Ltd were disqualified at this stage.
6. Secondly, the composition of the consortium where Scope Design Systems, Symbion (K) Ltd, Diaspora Design Build Ltd, AAKI Consultants, Maestro Architects Ltd, A D Design, Tectura International, Morphosis Architects & Interiors Ltd and Kenchuann Architects Ltd were disqualified.
7. Thirdly, responsiveness to the following mandatory requirements:
 - (i) notarized copy of certificate of business registration/incorporation
 - (ii) notarized copy of current and valid tax clearance certificate
 - (iii) notarized copy of VAT registration
 - (iv) statement of no conflict of interest
 - (v) Declaration that bidder is not under suspension by PPOA
 - (vi) Affidavit
 - (vii) Proof of works not less than one billion within the last five years
 - (viii) Declaration that bidder will not be involved in corruption or fraudulent practices
 - (ix) Disclosure on place of business
 - (x) Litigation history.
8. The following five (5) firms passed preliminary evaluation and proceeded to technical evaluation:
 - (i) Mruttu Salmann & Associates
 - (ii) Gitutho Associates & Consulting Architects
 - (iii) Baseline Architects Limited
 - (iv) Tej Architects
 - (v) Planning Systems Services Ltd

Technical Evaluation

9. Technical Evaluation was based on:

(i) Specific experience and Adequacy of methodology	-	40
(ii) Qualification and Competence of key personnel	-	60
10. Based on the evaluation report, the following four (4) bidders passed technical evaluation stage having score above the cut-off score of 75%:

(i) Mruttu Salmann & Associates	-	78.08%
(ii) Gitutho Associates & Consulting Architects	-	87.89%
(iii) Baseline Architects Limited	-	89.79%

(iv)Tej Architects - 82.46%

11. Planning System Services scored 60.7% and were therefore disqualified since they did not attain the cut-off score of 75%.
12. Based on the above information, the evaluation committee recommended that Baseline Architects Limited be considered for the award of the tender for consultancy services for design, documentation, supervision and contract management for the proposed Ronald Ngala Utalii College. The evaluation report is dated 30th March, 2012 and was signed by all members.

Award and notification

13. In its meeting No.TC/79/2011-2012 held on 4th April, 2012, the tender committee concurred with the recommendation of the evaluation committee and awarded the tender to Baseline Architects Limited. The award was communicated vide letters dated 4th April, 2012. The minutes were confirmed on 20th April, 2012.

Request for review

14. The award was challenged at the Public Procurement Administrative Review Board (the Board) by Gitutho Associates under Review No.14/2012 of 17th April, 2012. The Board, in its ruling dated 11th May, 2012 dismissed the request for review and allowed the procurement process to continue.

Contract

15. The Procuring Entity and the successful bidder, the consortium of Baseline Architect Ltd, Ujenzi Consultants, Armitech Consulting Engineers, Westconsult Consulting Engineers, Geomeasures Surveyors Ltd and PKF Consulting Ltd, with Baseline Architects Ltd being the lead consultants, entered into written contract dated 25th May, 2012.
16. According to Clause 6 of the contract, the terms of payments were as follows:
 - (i) Architects-scale of fees for professional services as provided under the Architects and Quantity Surveyors Act, Cap 525, Laws of Kenya.
 - (ii) Quantity Surveyors - scale of fees for professional services as provided under the Architects and Quantity Surveyors Act, Cap 525, Laws of Kenya.
 - (iii) Civil and Structural Engineers-scale of fees for professional services as provided by the Association of Consulting Engineers of Kenya under Registration of Engineers Act, Cap 530, Laws of Kenya.
 - (iv) Mechanical and Electrical Engineers-scale of fees for professional services as provided by the Association of Consulting Engineers of Kenya under Registration of Engineers Act, Cap 530, Laws of Kenya.
 - (v) Land Surveyors - scale of fees for professional services as provided under the Surveyors Act, Cap 299, Laws of Kenya.

WEAKNESSES IN THE PROCUREMENT PROCESS FOR CONSULTANCY SERVICE

1. Whereas Section 26(3) of the Public Procurement and Disposal Act, 2005 required all procurements to be within the approved budget of a procuring entity and be planned through annual procurement plan, the procurement plan that was presented to us by the Procuring Entity did not have the estimated cost of the subject procurement.
2. In its meeting held on 4th April, 2012 that awarded the tender, the tender committee noted that “the award was based on the technical proposal submitted by the winning firm, who were to be invited for negotiation on the basis of scale of fees for professional services”. It is not clear whether the Procuring Entity indeed negotiated with the consultants taking into consideration that notification of award was done vide letters Ref: CTDLT/CONF/2/8 VOL.VII (43-58) dated 4th April, 2012 which was the same day the tender committee awarded the tender. It is imperative to note that Clause 2.8 of the Request for Proposal document provided that the contract will be awarded following negotiation.
3. The award letter did not specify the scale of fees for professional services that were applicable.
4. The following bid documents were not availed for review by the entity:
 - a) Batiment Group
 - b) Diaspora Design Group Ltd
 - c) Tej Architects
5. Whereas the consultants were to be remunerated through scale of fees for professional services as indicated in the tender committee minutes that awarded the tender, the tender document was silent on how the consultants were to be paid.
6. Although the evaluation report indicated the scores allocated by each member of the evaluation committee, the individual scores sheets that were prepared by the individual evaluators were not availed. Therefore, it could not be ascertained whether each member of the evaluation committee evaluated the tender independently before sharing their analysis as required by Regulation 16(6) of the Public Procurement and Disposal Regulations, 2006.
7. A review of the evaluation report shows the following weaknesses:
 - (a) The bid by the consortium of Baseline Architects Ltd, included Geomeasures Surveyors Ltd. However, it was noted from the evaluation report that their bid was not evaluated. It is further noted from the contract document that they were one of the contracted consultants.
 - (b) A sample check on evaluation report for the consortium of Mruttu Salmann and Associates and Baseline Architects Ltd were evaluated as not having submitted Notarized Certificate of Registration/Incorporation, Notarized Tax clearance certificate and Notarized VAT registration certificate. This was contrary to the review since the said bidder had submitted the documents having been notarized as appropriate.
 - (c) Table 3 of the evaluation report on consortium composition assessment shows that M/s Scope Design Systems and M/s Diaspora Design & Build Ltd were indicated to have

provided all the necessary consultants. However, they were declared non-responsive at the preliminary evaluation stage on this indicator.

- (d) Three evaluators scored Mruttu Salmann & Associates zero (0) mark on the requirement of similar works. However, a review of their bid document that was submitted to us by the Procuring Entity showed that they had provided a list of various similar projects they had supervised in the past such as the contract with Sport Stadia Management Board for architectural planning, design and contract administration worth Kshs. 3.2 billion. Further, other evaluators scored the bidder on this requirement. This affected the overall score of the bidders since the evaluation committee computed the final score by averaging the scores given by each evaluator.
- (e) The scoring of bidders was not objective. For instance similar works supervised was assigned 1.5 marks for a maximum of 6 assignment supervised totaling to 9 marks. It is noted that from the evaluation some bidders were assigned scores that were not multiples of 1.5.
- (f) There is no proof that the Procurement Process for Consultancy started with Expression of Interest as envisaged by Section 78 of the Public Procurement and Disposal Act, 2005. Further, there was no proof that the tender committee approved use of Request for Proposal method without going through the expression of interest.
- (g) There was unfairness in the evaluation process as the criteria was not used uniformly.

PROCUREMENT OF MAIN WORKS

1. The procurement process was initiated through a prequalification process whereby the bidders who passed prequalification were invited to submit detailed tender documents.

Advertisement and Tender Opening

2. The tender for procurement of prequalification of contractor and sub-contractors for construction of the Proposed Ronald Ngala Utalii College was advertised on 23rd November, 2012 in the Standard Newspapers. The opening/closing date was 14th December, 2012 at noon.
3. Tenders were opened on 11th January, 2013 as per the tender opening minutes. The tender opening committee comprised of John Mutua, Susan Wanjohi, Aaron Kokita and Wilfred Cheruiyot. The tender opening committee prepared tender opening minutes and the responses were as shown below:
 - a) China Jianxi International Kenya Ltd
 - b) Larsen & Toubro Ltd
 - c) Mulji Devraj & Brothers Ltd
 - d) China Overseas Engineering Group Co. Ltd
 - e) Njuca Consolidated Co. Ltd
 - f) EPCO Builders Ltd
 - g) Dinesh Construction Ltd

- h) Spencon Kenya Ltd
- i) Cementers Ltd
- j) Portco Construction (Africa)
- k) China Machinery Engineering Corporation
- l) NK Brothers Ltd
- m) Tulsi Construction Ltd

Evaluation

4. The evaluation committee was appointed by the Accounting Officer vide letter Ref: CTDLT/CONF/2/12/ (53-55) dated 27th March, 2013 and 3rd April, 2013. The committee comprised of Edward Kisali, David Komu Mwangi, Muturi Kariuki, Collins Kipkosgei, Asinet Abila, Jared Otiato, Qs S.M. Mutuma, Arch. Fredrick K. Koech, QS. Bernard K. Sang.

5. According to the evaluation report, evaluation was conducted in two stages, preliminary and technical, and was based on the following criteria:
 - a) Copies of original document defining the constitution/legal status, place of registration and principal place of business and power of Attorney
 - b) Audited Account and financial statement for the last three years
 - c) Valid registration to operate in Kenya for international firms
 - d) Compliance to statutory taxes including VAT.
 - e) Compliance to statutory deduction including NSSF and NHIF
 - f) Declaration that the bidder is not under suspension under PPOA
 - g) Proof of Ministry of Public Works Registration for the current year 2012/2013.
 - h) Total monetary value of construction work performed in the last five (5) years
 - i) Experience in works of similar nature and size in the last five years, detail of work under way/contractually committed and names and address of clients
 - j) Major items of construction equipment.
 - k) Qualification and experience of management and technical personnel
 - l) Financial statements e.g. profit and loss account/statements and auditors reports for the last three years.
 - m) Evidence of adequate working capital e.g. access to line(s) of credit
 - n) Authority to seek references from tenderers bankers.
 - o) Information regarding litigation history for the last five years
 - p) Proposal for sub-contracting components of the works amounting to more than 10% of

the contract sum.

A summary of the evaluation for main works and other sub-contracts is as follows:

Main works

1. Preliminary

The following four bidders were disqualified for failure to meet some of the mandatory requirements:

- i. Larsen and Toubro Limited
- ii. Spencorn Kenya Limited
- iii. Portco Construction (Africa)
- iv. China Machinery Engineering Corporation

2. Technical Evaluation

The summary of technical evaluation is as follows:

S.no	Bidders name	Technical score
1.	China Jiangxi International Kenya Ltd	79
2.	Mulji Devraj and Brothers Ltd	87
3.	China Oversea Engineering Group Co. Ltd	69
4.	Njuca Company Ltd	78
5.	EpcO Builders Limited	86.5
6.	Dinesh Construction	79
7.	Cementers Limited	75
8.	N K Brothers	69
9.	Tulsi Construction Ltd	37

3. Recommendation of the Evaluation Committee

In view of the above China Overseas Engineering Group Co. Ltd, N K Brothers and Tulsi Construction Ltd were disqualified for failing to attain the cut off score of 75%. The other bidders (China Jiangxi International Kenya Ltd, Mulji Devraj and Brothers Ltd, Njuca Company Ltd, EPCO Builders Ltd, Dinesh Construction and Cementers Limited) qualified for the second stage of the procurement process (main works) and the evaluation committee recommended them to be invited to tender.

4. TC approval of prequalified firms and invitation to tender for Main Works

In its meeting held on 15th February, 2013, the tender committee concurred with the recommendations of the evaluation committee and adopted its recommendations.

Prequalified bidders were notified that they were successful and further invited to bid for the main works. This notification/invitation was contained in letters Ref. CTDLT/CONF/2/8/dated 18th February, 2013. Notification letters for the firms that were unsuccessful were not availed.

The invitation letters required the bidders to submit their bids by 11th March, 2013 at 12.00 noon. The opening date was extended to 14th March, 2013 vide letter Ref: CDLT/CVONF/2/8(141) dated 20th February, 2013. The opening was further extended to 21st March, 2013 at 12. 00 noon vide letter Ref: CTDLT.CONF/2/8 VOLL.VII of 12th March, 2013.

5. Tender Opening

Tenders were opened on 21st March, 2013 by a committee comprising of Erastus Karanja, David Ogutu, Aaron Kokita and Rodah Cherutich. The bids received were as follows:

No.	Bidder's Name	Bid price (Kshs)
1.	Cementers Ltd	10, 928, 957, 640.00
2.	Mulji Devraj and Brothers Ltd	8, 961, 370, 998.00
3.	Njuca Consolidated Co. Ltd	9, 115, 000, 000.00
4.	EPCO Builders Ltd	8, 833, 755, 242.00
5.	China Jiangxi International Kenya Ltd	8, 462, 639, 707.00

6. Evaluation

Evaluation was conducted in three stages; i.e. preliminary, technical and financial.

i. Preliminary evaluation

This was based on the following mandatory requirements:

- a) Submission of tender in the stipulated format
- b) Tender security of Kshs. 10 million
- c) Signing of the tender by authorized person/power of attorney
- d) Tender validity
- e) Submission of all documents and information
- f) Bidder must be a company registered in Kenya under the Company's Act.

All the five (5) bidders were responsive and therefore proceeded to the technical evaluation.

ii. Technical evaluation

Technical evaluation was done in two stages i.e.

- (a) Evaluation on responsiveness of tenders; and

(b) Deviation from quantity surveyor's estimate.

The minimum score under responsiveness was 75%. Cementers Ltd did not meet the cut-off score and were therefore disqualified from further evaluation.

The remaining four (4) bidders passed the second part of the evaluation on deviation from the estimate.

A summary of the combined technical scores was as follows:

No.	Bidder	weighted technical score
1.	China Jiangxi International Kenya Ltd	65
2.	EPCO Builder Ltd	72.45
3.	Mulji Devraj & Brothers	75.33
4.	Njuca Consolidated Co. Ltd	64.67

In view of the above, three (3) bidders qualified for financial evaluation. Njuca Consolidated Co. Ltd was disqualified. Based on the documents that were submitted by the Procuring Entity, there was no cut-off score and therefore it was not clear how the decision to disqualify Njuca Consolidated Co. Ltd was arrived at.

iii. Financial Evaluation

This involved correction of arithmetic errors and computation of financial score. Three (3) bidders, China Jiangxi International Kenya Ltd, EPCO Builder Ltd and Mulji Devraj & Brothers, were considered in this stage. The results of financial evaluation are as summarized below:

No.	Bidder	financial score
1.	China Jiangxi International Kenya Ltd	20
2.	EPCO Builder Ltd	19.16
3.	Mulji Devraj & Brothers	18.90

The combined technical and financial scores was as follows:

No.	Bidder	combined technical and financial scores (5)
1.	China Jiangxi International Kenya Ltd	85
2.	EPCO Builder Ltd	90.95
3.	Mulji Devraj & Brothers	93.24

In view of the above, the evaluation committee recommended the award of the tender to Mulji

Devraj & Brothers at their tender sum of Kshs. 8, 961, 370,998.00 having scored the highest combined score of 93.24%.

7. Tender Award and notification

In its meeting held on 11th April, 2013, the tender committee concurred with the recommendation of the evaluation committee and awarded the tender to Mulji Devraj & Brothers.

Notification of award was done through letter Ref: TF/CONF/2/8/ (178-182) dated 12th April, 2013.

8. Contract

The Procuring Entity and Mulji Devraj & Brothers Ltd entered into a contract on 14th May, 2013. The contract was for construction works of the Proposed Ronald Ngala Utalii College at a contract sum of Kshs. 8, 961, 370, 998.00.

9. Scaling down the Scope of the Project

According to the tender committee minutes of the meeting No.TC/32/2013-2014 held on 20th August, 2014, the committee noted as follows:

- a) Contractor moved to site in June, 2013 and substantial work falling under Phase I had been done and certified for payment.
- b) The project was to be funded by National Treasury. However, in December, 2013, National Treasury issued a letter notifying the Procuring Entity of the budget constraints, hence impossibility of funding the entire project in its current scope.
- c) Tourism Fund embarked on a process to rationalize the project and the Project Consultants gave the following alternatives for scaling down the project:

No	alternative	projected savings (Billions)
1.	Omission of basement parking in administration block and entire omission of primary and nursery school	0.246
2.	Reducing student hostels and staff houses by 50%	1.160
3.	change of specifications including substituting components and finishes	0.170
4.	Omission of supply of furniture, furnishing, computers, software, UPS installations and interior design works.	0.653
5.	Reducing prime cost sum and provisional sum for untendered electrical and mechanical works and price escalation and contingencies by 50% respectively	1.140
6.	Proportionate reduction of some common items in the preliminaries and external works bills.	0.346
Total Projected Savings		3, 715, 000, 000.00

- a) The proposal for scaling down the project was approved vide a Cabinet Memo dated 9th July, 2014.
- b) The contract period was to be reduced from 154 to 128 weeks.
- c) The scaling down of the project was to be negotiated with the contractor, Tourism Fund and Consultant and addendum to be issued.

10. Revision of Contract

- (a) The first addendum to the contract was issued on 14th May, 2013 and among other things, extended the contract period from 154 weeks (36 months) to 60 months. It also introduced Sectional Completion of the project into five (5) phases. The first phase was estimated to take twelve (12) months at a cost of Kshs. 1.9 billion. Further, CTDLT was to grant the contractor an advance payment of 10% of builder's works.
- (b) The Procuring Entity and Mulji Devraj & Brothers Ltd signed a second addendum on 25th August, 2014 reducing the contract sum from Kshs. 8, 961, 370, 998.00 to Kshs. 4, 923, 005, 000.00 based on the revised scope of the project.

1. SUB-CONTRACTS

The Procuring Entity also processed tenders for sub-contracts alongside the tender for main works. A summary of the tenders received/opened for various categories were as follows:

S/N O	Category	Number of responses
1.	General Electrical Installation	9
2.	Plumbing, drainage and firefighting installation	3
3.	Refrigeration, Air conditioning and mechanical installation	3
4.	Kitchen equipment, liquid petroleum gas and Laundry equipment installation	1
5.	Sports, Sauna, steam and Gem equipment installation	1
6.	Solar water heating	1
7.	CCTV, access control, fire detection and alarm equipment installation	3
8.	Stand by generator installation	6
9.	PABX equipment, data and telephone instrument, structured cabling, computer networking LAN, WAN, internet works, building management system installations	6

	Solar street light installation	1
11.	Furniture and furnishings	1
12.	public address and conference equipment installation	3
13.	Lifts installation	2
14.	Waste water management and disposal installation	1
15.	Rain water harvesting, water storage and booster pump installation	1
16.	Transformers HV and LV switch board, distribution boards and power factor correction equipment's installation	56
17.	Borehole drilling and equipment installation	1

Evaluation

A summary of the evaluation is as indicated below:

(i) General Electrical Installation

a) Preliminary

Out of the nine (9) bidders who participated, the following three (3) bidders were disqualified for failure of meeting some mandatory requirements:

- i. Jogra Electrical (K) Ltd
- ii. Projects Electrical Limited
- iii. Glama Electrical and Mechanical Co. Ltd

b) Technical Evaluation

The other six (6) bidders qualified for technical evaluation. The summary of technical evaluation is as bellow:

S.no	Bidders name	Technical score
1.	Contemporary Electrical Enterprises Ltd	78
2.	Central Electricals International	86.25
3.	Sawarn Singh and Sons	36
4.	Power Group Technologies Ltd.	60
5.	Relcon Power System	52.75
6.	Philafe Engineering Ltd	59

In view of the above Sawarn Singh and Sons, Power Group Technologies Ltd., Relcon Power System and Philafe Engineering Ltd were disqualified for failing to attain the cut off score of 75%. Two (2) bidders qualified in this category.

(ii) Stand By Generator Installations

This category attracted six (6) bidders of whom the following two bidders were disqualified for failure of meeting some mandatory requirements:

- i. Project Electrical Ltd
- ii. Mantrac Kenya Limited

The other four (4) bidders qualified for technical evaluation. The summary of technical evaluation is as bellow:

S.no	Bidders name	Technical score (%)
1.	Philafe Engineering Ltd	69
2.	Ants Electrical Contractors & Engineering	78
3.	Sawarn Singh and Sons	36
4.	Central Electricals International	80

In view of the above, Sawarn Singh and Sons and Philafe Engineering Ltd were disqualified for failing to attain the cut off score of 75%. Ants Electrical Contractors & Engineering and Central Electricals International qualified for the next stage of the procurement process.

(iii) PABX Equipment, Data and Telephone Instrument, Structured Cabling, Computer Networking LAN, WAN, Internet Works, Building Management System Installations

Out of the six (6), the following two (2) firms were disqualified at the preliminary evaluation stage since they did not meet some of the mandatory requirements:

- (i) Conquer Technologies Ltd
- (ii) Dynotronics Co. Ltd

The other four (4) firms were considered in the technical evaluation. The results were as follows:

S/No.	Bidders name	Technical score (%)
1.	Philafe Engineering Ltd	65
2.	Ants Electrical Contractors & Engineering	62
3.	Uni Data System Ltd	68
4.	Servtel Communications Ltd	54.5

Based on the above information all the bidders were disqualified at the technical evaluation stage since none of them met the cut-off score of 75%.

(iv) Transformers HV and LV Switch Board, Distribution Boards and Power Factor Collection Equipment's Installation

Five (5) bidders, Project Electrical Ltd, Contemporary Electrical Enterprises, Philafe Engineering Ltd, Central Electrical International and Power Group Technology Ltd submitted bids for this category. All of them passed preliminary evaluation and were therefore subjected to the technical evaluation.

A summary of the technical evaluation was as follows:

S/No.	Bidders name	Technical score (%)
1.	Project Electrical Ltd	35
2.	Contemporary Electrical Enterprises	84
3.	Philafe Engineering Ltd	66
4.	Central Electrical International	85
5.	Power Group Technology Ltd	75

In view of the above, Project Electrical Ltd and Philafe Engineering Ltd were disqualified for failing to attain the cut-off score of 75% and the rest qualified for the next stage.

(v) CCTV, Access Control, Fire Detection and Alarm Equipment Installation

Three (3) bidders namely Dyntronics Co. Ltd, Servtel Communication Ltd and Contemporary Electrical Enterprises responded. They all passed preliminary evaluation and qualified for technical evaluation.

A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Dyntronics Co. Ltd	32
2.	Servtel Communication Ltd	57
3.	Contemporary Electrical Enterprises	84

Only one bidder, Contemporary Electrical Enterprises, met the cut-off score of 75%.

(vi) Plumbing, Drainage and Firefighting Installation

Three (3) bidders namely Trident Plumbers Ltd, Aqua Plumbing Co. Ltd and Volcanic Plumbing Works responded to this category. They all passed preliminary evaluation and qualified for technical evaluation.

A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Trident Plumbers Ltd	56
2.	Aqua Plumbing Co. ltd	91
3.	Contemporary Electrical Enterprises	68.5

Only one bidder, Aqua Plumbing Co. Ltd, met the cut-off score of 75%.

(vii) Public Address and Conference Equipment Installation

Three (3) bidders namely Sevtel Communications Ltd, Avtech Systems Ltd and Pillar Audio Visual Services participated in the subject category. They all passed preliminary evaluation and qualified for technical evaluation.

A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Sevtel Communications Ltd	62
2.	Avtech Systems Ltd	76
3.	Pillar Audio Visual Services	36.5

Only one bidder, Avtech Systems Ltd, met the cut-off score of 75%.

(viii) Refrigeration, Air Conditioning and Mechanical Installation

Three (3) bidders namely Unicool International, Viotech Ltd and Climate Engineering Works Ltd responded. They all passed preliminary evaluation and qualified for technical evaluation.

A summary of the technical evaluation is as follows:

S/No.	Bidders name	Technical score (%)
1.	Unicool International	91
2.	Viootech Ltd	47
3.	Climate Engineering Works Ltd	54

Only one bidder, Unicool International, met the cut-off score of 75%.

(ix) Other Sub- Contracts

The other nine (9) Sub-Contracts that attracted less than three bidders were not evaluated. The committee observed that no competitive tendering can result from this number of respondent as it would amount to single sourcing, they consequently decided that further analysis of these bids

would serve no purpose.

Recommendation of evaluation committee on Sub- Contract works

The Committee recommended that all the sub-contracts be re-advertised through open tender method.

Further the committee recommended that related sub-contract works be amalgamated with view of reducing the categories of sub- contracts and the evaluation criteria be reviewed.

Tender Committee Adjudication of the Sub-contracts

The TC adopted the recommendation of the evaluation committee to re-advertise all the sub-contracts.

WEAKNESSES IN THE PROCUREMENT PROCESS FOR MAIN WORKS

1. Whereas the closing/opening of tender was supposed to be on 14th December, 2012 at 12.00 noon, the opening minutes indicate that opening of tenders was done on 11th January, 2013. There was no documentary evidence that were presented to us to demonstrate that the tender opening was extended.
2. The following persons participated in the evaluation of the tender but their appointment letters were not availed:
 - a) Maureen Chacha
 - b) James Owak
 - c) Nahason Oenga
 - d) Kepha K. Osoro
 - e) Michael Mudhune
3. The tender opening committee allocated identification numbers to the bids during the tender opening. However, the committee did not sign the forms of tender as provided by Section 60 (7) (b) of the Act.
4. The evaluation committee considered three bidders in the financial evaluation stage who had the highest technical score and dropped Njuca Consolidated without a justification. The reasons for disqualifying M/s Njuca Consolidated Co. Limited at technical stage of evaluation for main works could not be ascertained
5. Notification letters for the unsuccessful bidders for prequalification process for main works were not availed. It could not therefore be verified whether notification was done and communicated to all bidders in accordance Section 67 of the Act.
6. The evaluation committee corrected arithmetic errors but there were no records to demonstrate that the Procuring Entity sought concurrence from the bidders as required by Section 63 of Public Procurement and Disposal Act, 2005. It is of importance to note M/s EPCO Builders Limited lodged a request for review with Public Procurement Administrative Review Board Application No. 15/2013 dated 12th April, 2013 against CTDLT for having

corrected arithmetic errors established in his document without notifying the bidder. However, the application was not heard and determined since EPCO Builders Ltd withdrew the request for review on 8th May, 2013 and the Review Board therefore marked the request for review withdrawn and accordingly allowed procurement process to proceed. Correction of arithmetic errors was also done to the bid document of M/s China Jiangxi International Kenya Ltd and no evidence of informing the bidder was availed.

7. The Procuring Entity did not furnish us with a blank copy of the tender document for prequalification and for the main works that were issued to the bidders. In the circumstance, it was not possible to verify whether the evaluation criteria were set out in the bid documents pursuant to Section 52(3) (j) of the Public Procurement and Disposal Act, 2005. It was also not possible to verify whether the evaluation was conducted using the said criteria pursuant to Section 66(2) of the Act and Regulation 5(4) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
8. It was noted that evaluation was based on the requirements that were in the advertisement notice. However, the criteria in the advert did not have scores whereas the technical evaluation as contained in the report had scores.
9. The original bid document of the successful bidder M/s Mulji Devraj & Brothers Ltd. was not availed. The copy of the document availed for review was incomplete since the Form of Tender and the grand summary page of the BQ were not attached. Therefore we could not ascertain the tender value as quoted against what was awarded.
10. The content of the 1st Addendum alluded to over pricing of items in the preliminaries section of the BQ for successful bidder. It is purported that the overpricing was noted by the evaluation team and reported to tender committee. However, minutes of deliberation of the same were not availed. Accordingly we note from the same addendum, the overpricing was not adjusted rather payment was to be staggered in all the phase, i.e. 20% to be paid in phase one(1) and 80% to be spread across the other phases.
11. The attachment 1 of the 2nd Addendum on cost analysis and summary of bill of reduction, Option 2- table 3, provided for prime costs. However, there was a provision in the Appendix to Conditions of Contract that the sub-contracts for electrical works and services; and Mechanical Works and Services were to be engaged by the Employer on site.
12. The procurement process for various sub-contracts was terminated by the Procuring Entity but were not reported to the Authority as provided by Section 36 (7) of the Act and PPOA Circular N0.4/2009. It is important to note that Tourism Fund procured related sub-contract works in the financial year 2014/2015 and the same were reported to the Authority under contract awards for contracts valued at Kshs. 5,000,000 and above.

Committee Observations

1. Whereas the contract for main works was scaled down from Kshs. 8,961,370,998.00 to Kshs. 4,923,005,669.00, the Consultancy Fee which was calculated at 16% (1.437 billion) of the main works contract was not scaled down proportionately. Had the contract for consultancy Services been scaled down based on the reduced scope of the main works, the consultancy fee

would have been Kshs. 787,680,907.00 calculated at 16% of scaled down contract sum of Kshs. 4, 923, 005, 669.00.

2. The main contractor and sub-contractors were paid a total of Kshs. 1,624,486,063.00 while the consultants were paid a total of Kshs. 1,527,958,572.00. Based on these figures, it shows that the consultants were paid the entire amount of the original contract sum for their consultancy fee which should not have been the case since the project had been scaled down.
3. From the payment schedule, it was indicated that four (4) sub-contractors (Central Electricals, Volcanic Plumbing, Master Power Systems and Extranet Communications) were paid a total of Kshs. 96,362,454.00. However, the procurement process that resulted to the engagement of these sub-contractors could not be ascertained since the entity had terminated the procurement process for sub-contractors.
4. Based on the Cabinet Approval of 2007, that the Treasury was to release funds in tranches of Kshs. 500 million for a period of four years, it would have been prudent for the Procuring Entity to implement the project in a multi-year procurement planning cycle through a multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005.
5. The Ministry of Tourism and Public Works developed the initial concept paper and design works which informed the Cabinet to approve Kshs. 1.948 billion for the college which was to be released by The National Treasury in tranches Kshs. 500,000,000.00 per annum for four years. However, in its meeting held on 13th December, 2010, the Board of Ronald Ngala Utalii College resolved that the initial design and concept paper for the College required to be updated.
6. The Board tasked Catering & Tourism Development Levy Trustee to procure a consultant to re-design the college. The new design and scope of work resulted to the increase in the cost of the project. No records were availed by the Procuring Entity to demonstrate that the Management Board sought for concurrence and approval from the Cabinet for extra funding of the project.
7. The actual contract sum for the project is likely to go beyond the contracted sum due to economical changes in the market during the implementation of the contract.
8. The procurement process for the consultancy services and main works had weaknesses as outlined above.
9. The amendment of the contract was not done in accordance with Section 47 of the Act and Regulation 31 of the Public Procurement and Disposal Regulations, 2006 read together with Regulation 9 of the Public Procurement and Disposal (Amendment) Regulations, 2013. It was noted that the original contract was scaled down from Kshs. 8, 961, 370, 998.00 to Kshs. 4, 923,005,669.00 with an option of re-instating the omitted works if funds become available.

Way Forward/Committee Resolutions

The Committee resolved as follows:

1. To invite Batinent Group, Diaspora Design Group and Tej Architects to provide further

information on the procurement process for the consultancy service.

2. To invite the Public Procurement Administrative Review Board (the Board) to adduce evidence on the tender award challenged by Gitutho Associates under Review No.14/2012 of 17th April, 2012.
3. To seek information from the Registrar of Companies on the directorship of the companies under the Baseline Consortium.
4. To request the Director General to submit the following additional information:
 - i. A properly annexed version of the presentation submitted to the Committee;
 - ii. A list of documents requested from the Tourism Fund which were not submitted to his office;
 - iii. An indication of measures that would be taken against the Tourism Fund for refusal to submit requested documents.

MIN/PIC/331/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/332/2016: ADJOURNMENT

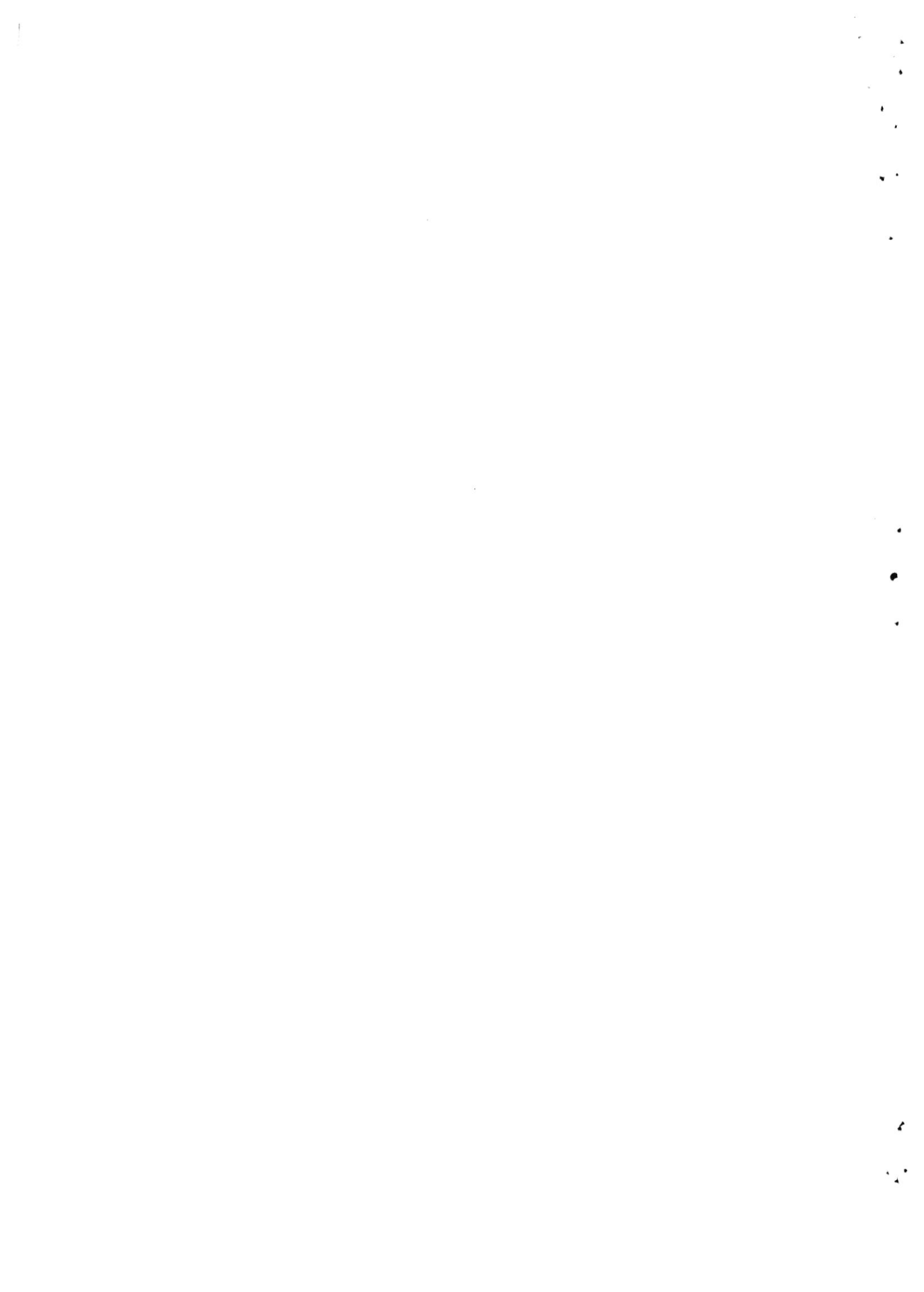
There being no other business, the meeting was adjourned at 12:40 pm. The next meeting will be held on Wednesday, 25th May, 2016 at 2.30pm.

Signed.....

Date.....18/6/2016

Hon. Adan Wehliye Keynan, CBS, MP

(Chairman)



MINUTES OF THE 47TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 25TH 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. Francis Mwanzia Nyenze, EGH, MP
3. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. Adan Mohammed Nooru, MP
6. Hon. Franklin Mithika Linturi, MP
7. Hon. John Muchiri Nyaga, HSC, MP
8. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. Cornelly Serem, MP
11. Hon. John Ogutu Omondi, MP
12. Hon. Korei Ole Lemein, MP
13. Hon. (Eng.) Stephen Ngare, MP
14. Hon. Johana Kipyegon Ngeno, MP

APOLOGIES

15. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
16. Hon. Elias Bare Shill, MP
17. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
18. Hon. John Olago Aluoch, MP
19. Hon. Sammy Silas Komen Mwaita, MP
20. Hon. Bernard Munywoki Kitungi, MP
21. Hon. Mary Sally Keraa, MP
22. Hon. Abdullswamad Sheriff Nassir, MP
23. Hon. (Eng.) John Kiragu, MP
24. Hon. Dorcas Kedogo, MP
25. Hon. Wafula Wamunyinyi, MP
26. Hon. Irungu Kangata, MP
27. Hon. Onesmus Muthomi Njuki, 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. George Otieno Nashon - Senior Manager, Audit
2. Mr. Jackson Musheba - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Dominic Katiku - Inspector

MIN/PIC/333/2016:

PRELIMINARIES

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

The Chairperson informed the Cabinet Secretary that the Ag. CEO of Tourism Fund had guided witnesses in their submissions to the Committee and cautioned against interfering with the Committee's work. The Cabinet Secretary regretted that this had happened and asked the Ag. CEO of the Fund to leave the meeting, noting that he had all the information he required to make his submission to the Committee. The Cabinet Secretary further noted that he'd follow up on the matter with the Ag. CEO after the meeting.

MIN/PIC/334/2016:

EVIDENCE BY THE MINISTRY OF TOURISM

Hon. Najib Balala, the Cabinet Secretary for Tourism accompanied by Mrs. Fatuma Hirsi Mohamed (Principal Secretary), Mr. Joseph Cherutoi (Ag. CEO, Tourism Fund) Mr. Kevin Njuki (Economist) and Mr. Daudin Abdullahi (Technical Adviser) appeared before the Committee to adduce evidence on the procurement process for the construction of Ronald Ngala Utalii College, a project under the Tourism Fund.

The Cabinet Secretary informed the Committee as follows: -

THAT

MIN/PIC/335/2016:

PROJECT CONCEPTUALIZATION

1. The Government of Kenya through the Catering Levy Trustees (CLT) and the Government of Switzerland through Lausanne School of Tourism set up the Kenya Utalii College (KUC) as a centre of excellence in training for the Tourism and Hospitality industry in 1975.
2. In 1987, The Minister of Tourism in exercise of his power conferred by section 29(1) of the Hotels and Restaurant Act, gazetted KUC as an independent state corporation in the Legal Notice No.317 of 1987.
3. The idea of setting up a second national tourism and hospitality institution at the coast was mooted in 1996 due to the increased demand that stood at 100,000 per

year then and in recognition of the critical role played by tourism in the region.

4. The Cabinet through vide Cabinet Minute 30/1996 dated 1st February 1996, gave the approval for the establishment of a branch of the Kenya Utalii College at the Coast.
5. During the fifth meeting of the Cabinet held on 13th September 2007, the Ministry obtained a subsequent approval (Ref OP.CAB.58/4A) as follows:
 - a. *Directed that Kenya Utalii College, Coast Branch be established at the Rea Vipingo site or any other suitable site*
 - b. *the Ministry of Finance to avail the necessary funds*
6. The Rea Vipingo Sisal Estate donated sixty (60) acres of land (LR50525/1) to KUC for the establishment of the College.
7. The total project cost was Kshs. 1.948 Billion to be undertaken in 4 phases at an estimate cost of Kshs. 500 Million per phase/year.
8. The implementation of the 2nd Cabinet directive was not effected immediately until 19th March, 2010 when the Ministry wrote to *the Catering and Tourism Development Levy Trustee (CTDLT) formerly CLT* and asked them to establish the Ronald Ngala Utalii College.
9. The letter was premised, *inter alia*, by section 19 (1) (b) of the Hotels and Restaurant Act that provides for the Trustees to:
 - a) *To establish, equip and control such establishments for the training of persons for employment in the hotels and restaurants as the Ministry may approve.*
10. The Trustees resolved to establish the College during their 104th Board Meeting held on 24th March, 2010 and also resolved that a management board be appointed to oversee its implementation.
11. The Hon. Minister granted an approval for the CTDLT to establish, equip and control Ronald Ngala Utalii Academy as per the Trustee's resolution and it was subsequently gazetted as per Gazette notice 3478 of 9th April, 2010.
12. The Ronald Ngala Utalii Academy management board members were also appointed on various dates as per the gazette notices: No. 9109 (dated 27th July,

2010), No. 13027 (dated 19th October, 2010) and No.13210 (dated 29th October, 2010).

MIN/PIC/336/2016:

PROJECT IMPLEMENTATION

Scope of Work

Original-Kshs. 1.95 Billion in year 2005	Updated-Kshs. 8.96 Billion in year 2013
<ul style="list-style-type: none"> • College facilities for 400 students • Administration block - 972m² • Tuition block - 2,750m² • Kitchen/Dining hall - 2,396m² • Library - 1,128m² • Student Centre - 506m² • 2 Student Hostel blocks - 5,360m² • 5 -2BR maisonettes - 1,750m² • 6-2BR flats - 2,365 m² <p>Total for Phase I - 17,227 m² Total for Phase II - 13,603 m²</p> <p><u>GRAND TOTAL - 30,830 M²</u></p>	<ul style="list-style-type: none"> • College facilities for 1200 students • Administration block - 5700m² • Tuition block(Twin) - 20,400m² • Kitchen/Dining hall - 4,000m² • Library - 4,200m² • Student Centre - 2,200m² • 4 Student Hostel blocks - 29,600m² • 18-2BR maisonettes - 5,355m² • 48-2BR flats - 7,160m² <p><i>Additions</i></p> <ul style="list-style-type: none"> • Sports Complex - 1,700 m² • Multi-purpose hall - 3,000 m² • Primary and Nursery School - 4,140 m² • Fire station - 155m² • Laundry and boiler room - 600m² • Transformer and stand-by generator - 270m² • Sickbay and changing rooms - 460m² • 24-3BR flats - 4,300m² <p><u>GRAND TOTAL - 93,930 M²</u></p>

Procurement

Consultancy Services for Design, Documentation, Supervision and Contract

Management for RNUC -CTDLT/003/2011-2012

1. 16th February, 2012 - Requests for Proposals advertised in Daily Nation.
2. 1st March, 2012 - Opening of Bids.
3. 4th April, 2012 - CTDLT Tender committee awarded the tender to M/s Baseline Architects to undertake the consultancy having scored the highest mark of 89.79%.
4. 17th April, 2012 - Gitutho Associates appeals to Public Procurement Administrative Review Board against the award of tender to M/s Baseline Architects by CTDLT.
5. 11th May, 2012 - Review Board dismissed the appeal and ruled that the procuring entity followed the due process in award of the tender.
6. Consultancy fee was to be 16% of the total contract sum/project cost of the successful bidder Kshs. 8,961,370,998 as governed by Architects and Quantity Surveyors Act which amounted to Kshs.1, 433,819,359.68.

Prequalification of Contractors and Sub-Contractors for Construction of the Proposed RNUC

1. 23rd November, 2012 - Prequalification of Contractors and Sub-Contractors for Construction was advertised.
2. 14th January, 2013 - Opening of the bids.
3. 18th February, 2013 - CTDLT pre-qualified 6 firms after attaining the pass mark of 75% to submit tenders to undertake the main works for the proposed RNUC.
4. 21st March, 2013 - tenders were opened with only 5 out of the 6 who were pre-qualified.
5. 11th April, 2013 - CTDLT Tender committee awarded the contract to M/s Mulji Devraj & Brothers which was ranked first with the highest combined technical and financial score at 93.24%.
6. 14th May, 2013 - Contract was signed with Mulji Devraj & Brothers for Kshs. 8,961,370,998 and for 48 months.
7. As a result, the professional consultancy fee amount of 16% of the contract sum became Kshs. 1,433,819,359.68.

8. 23rd June, 2013 - Contract sum was reduced from Kshs. 8,961,370,998 to Kshs. 4,923,005,699 as per the revised bills of quantities and contract duration extended to be 60 months (ending 19th June, 2018).

Project Status

Currently, the RNUC is at 35% completion and Kshs. 3,152,444,635 has been paid.

MIN/PIC/337/2016: GOVERNANCE FRAMEWORK AND LEGAL STATUS

The following are the necessary governance framework and legal status with regards to the project:

1. Cabinet approvals through Cabinet Minute 30/1996 dated 1st February 1996 and the subsequent approval in the fifth meeting of the Cabinet held on 13th September, 2007 (Ref OP.CAB.58/4A).
2. Presidential Directive, *Ref OP/CAB/26/1/3A* dated 26th September, 2008 for establishing a centre of excellence at the coast to enhance the training capacity in the tourism industry.
3. Gazettement of the Ronald Ngala Utalii Academy establishment through CDTLT as per section 19 (1) (b) of the Hotels and Restaurant Act in the *Gazette notice 3478 of 9th April, 2010*.
4. Appointment and gazettement of the Ronald Ngala Utalii Academy management board members as per the gazette notices: No. 9109, No. 13027 and No.13210 all of 2010.
5. The project was taken over by the Tourism Fund when the Tourism Act 2011 came into effect and the Hotels and Restaurant Act was repealed.

MIN./PIC/338/2016: JUSTIFICATION FOR THE VARIATIONS

1. In 2010, Ronald Ngala Utalii Academy management board held a meeting on 13th December, 2010 and resolved that an independent consultant to review the design and concept note for the project (done by the Ministry of Public Works) to cater for the time lapse of 5yrs, make it have a Swahili look and also expand its capacity in order to effect the presidential directive ref *OP/CAB/26/1/3A* dated 26th September, 2008 for establishing a centre of excellence in the training of tourism

been based on the recommendations of the Cab Memo of 9th July, 2014.

RNUC Schedule of Payments as at 18th April 2016

PAYEE	FEEs CHARGED+ INTEREST PENALTIES CHARGED (A)	INTEREST + PENALTIES CHARGED (B)	FEEs CHARGED (A-B)	AMOUNT PAID	BALANCE
MULJI DEVRAJI	1,703,676,229.01	326,804,830.00	1,376,871,399.01	1,624,486,063.00	79,190,166.
CONSULTANTS					
BASELINE ARCHTECTS	845,316,027.14	195,304,204.05	650,011,823.09	716,090,235.00	129,225,791
UJENZI CONSULTANTS	708,957,686.03	193,073,426.93	515,884,259.10	509,140,576.00	199,817,110
WEST CONSULT	167,075,820.29	63,044,836.89	104,030,983.40	114,880,623.00	52,195,197.
ARMITECH LTD	218,660,400.37	99,670,233.35	118,990,167.02	138,978,646.00	79,681,754.
GEOMEASURES	6,502,600.00		6,502,600.00	6,502,600.00	
PKF CONSULTING	6,565,892.00		6,565,892.00	6,565,892.00	
KITHI & CO. ADVOCATES	34,800,000.00		34,800,000.00	34,800,000.00	
NEMA	1,000,000.00		1,000,000.00	1,000,000.00	
TOTAL	3,692,554,654.84	877,897,531.22	2,814,657,123.62	3,152,444,635.00	540,110,018
TOTAL AMOUNT FROM TREASURY				2,138,187,458.00	
TOTAL AMOUNT FROM TOURISM FUND				1,014,257,177.00	

Breakdown of the Source of Funding as at 18th April 2016

PAYEE	TREASURY FUNDS	TF FUNDS	TOTALS
MAIN CONTRACTOR			
MULJI DEVRAJI	1,312,612,892	235,510,717	1,548,123,609
SUB-CONTRACTORS			
CENTRAL ELECTRICALS	40,000,000	-	40,000,000
VOLCANIC PLUMBING	23,000,000	-	23,000,000
MASTER POWER SYSTEMS	7,697,697	-	7,697,697
EXTRANET COMMS	5,664,757	-	5,664,757
CONSULTANTS			
BASELINE ARCHITECTS	312,863,775	403,226,460	716,090,235
UJENZI CONSULTANTS	222,092,576	287,048,000	509,140,576
WEST CONSULT	88,568,623	26,312,000	114,880,623
ARMITECH CONSULTANTS	112,618,646	26,360,000	138,978,646
GEOMEASURES	6,502,600	-	6,502,600
PKF CONSULTING	6,565,892	-	6,565,892
KITHI & CO. ADVOCATES		34,800,000	34,800,000
NEMA		1,000,000	1,000,000
Total	2,138,187,458	1,014,257,177	3,152,444,635

COMPLIANCE TO CONTRACT TERMS OF PAYMENT

Late disbursement of funds from the National Treasury has led to interest and penalties claims on overdue accounts resulting in a loss of Kshs.877, 897, 531.22. Consequently, it has led to delay in completion of the project.

MIN/PIC/340/2016:

VALUE FOR MONEY OF RNUC

1. The College will be able to cater to the increased demand for training in Tourism and Hotel that will improve the quality of service in the sector.
2. The College is scheduled to offer other courses such as cruise tourism, SMEs and Community tourism entrepreneurship courses, which will benefit the coastal community.
3. The College will be able to attract the private sector to put up the other requisite facilities through PPP approach i.e. hostels, hotel and staff.

4. The College is expected to be a regional centre of excellence as per the presidential directive of 2008 which if effectively implemented will attract students from the region.

Additional Responses

1. All Boards in Parastatals under the Ministry of Tourism were disbanded when Hon. Dan Mwazo took over as the Minister of Tourism in 2012. This was the reason why the Tourism Fund stayed without a Board for three years.
2. The Cabinet Secretary allowed the Catering and Tourism Development Levy Trustee to manage the Ronald Ngala Utalii College project due to its technical ability, given that it raises funds for tourism. It was therefore best placed to implement the project.
3. The 'Cabinet Memo' dated 9th July, 2014 referenced by the Cabinet Secretary that sought to scale down the project cost was not actually a Cabinet Memo but deliberations between two Cabinet Secretaries. The full Cabinet did not deliberate on the matter despite concurrence by the Cabinet Secretaries for Tourism and the National Treasury on the need to scale down the project. The matter therefore is still under deliberation by Cabinet.
4. The Cabinet Secretary proposed to have the college named Ronald Ngala 'Academy' as a center of excellence but he was advised by his technical officers that no Government institution bore the name 'Academy' as part of its title.
5. The Cabinet Secretary wanted to detach the coastal establishment from Kenya Utalii College hence the change of name from 'Kenya Utalii College Coast Branch' to 'Ronald Ngala Utalii College.' The name 'Ronald Ngala' was reached upon after consultations with local leaders.
6. An audit report by the National Treasury on the Ronald Ngala Utalii College concluded that the project might not realize value for money.
7. The audit further revealed that there was no justification for variation of the project cost to Kshs 10.4 Billion. The audit concluded that the project might be a possible fraud scheme that might lead to loss of public funds.
8. Kshs. 1.34 Billion had been paid out for consultancy services for work possibly not done. This should be subjected to a forensic audit with a view to possible recovery of funds.

Way Forward/Committee Resolutions

The Committee resolved as follows:

1. To invite Cabinet Secretary Phyllis Kandie and the former Principal Secretary, Dr. Ibrahim Mohamed to adduce evidence on the procurement process for the

construction of Ronald Ngala Utalii College.

2. To request the Cabinet Secretary to submit all Cabinet Memos referenced in his submission as well as annexes to documents cited.

MIN/PIC/341/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/342/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 4:20 pm. The next meeting will be held on Thursday, 26th May, 2016 at 10:00am.

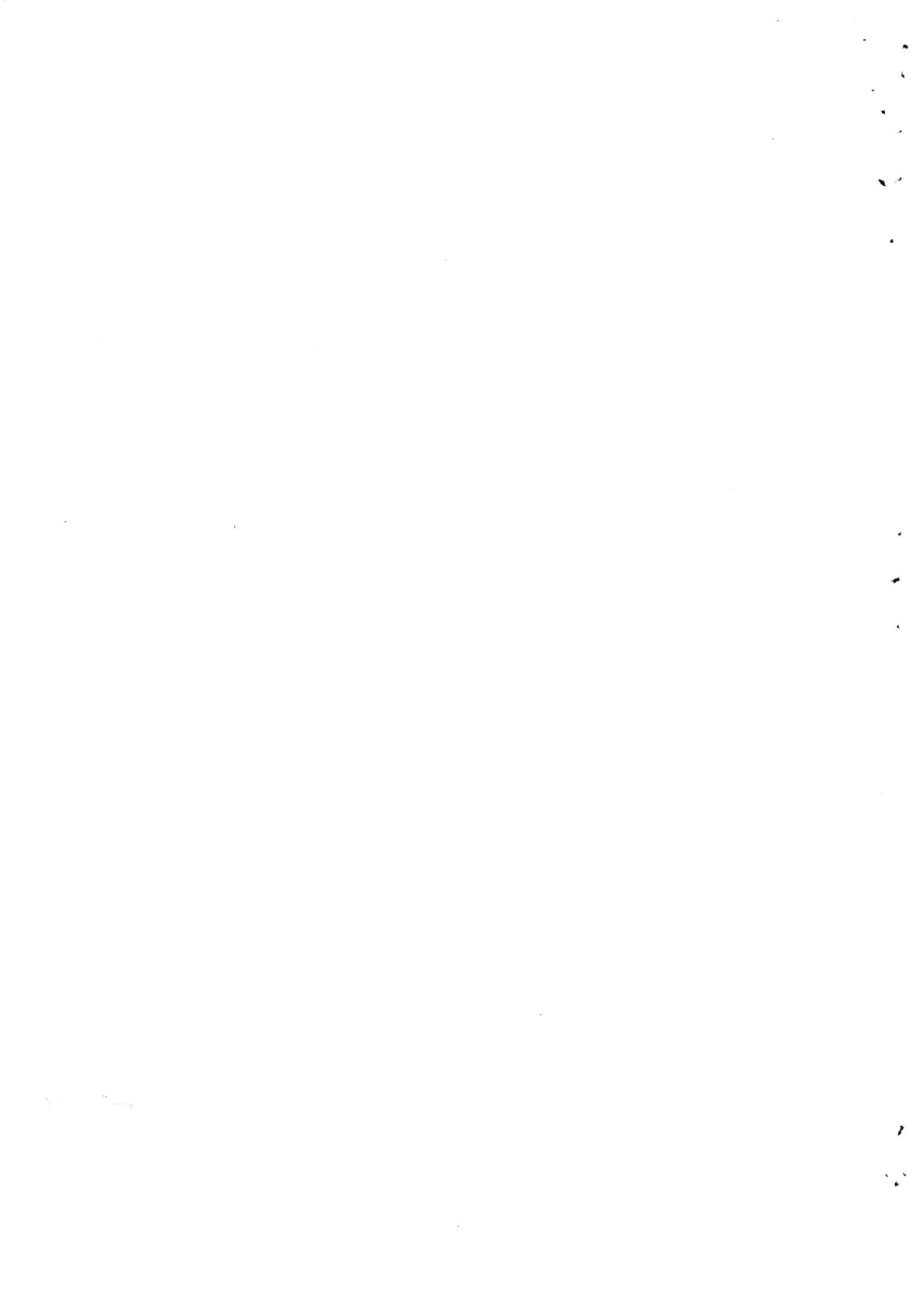
Signed.....



Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....

21/21/2016



MINUTES OF THE 62ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 28TH JULY, 2016 IN COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS AT 10:30 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Bernard Munywoki Kitungi, MP
5. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
6. Hon. John Muchiri Nyaga, HSC, MP
7. Hon. Korei Ole Lemein, MP
8. Hon. Franklin Mithika Linturi, MP
9. Hon. Irungu Kang'ata, MP
10. Hon. Mary Sally Keraa, MP
11. Hon. Adan Mohammed Nooru, MP
12. Hon. Wafula Wamunyinyi, MP
13. Hon. John Ogutu Omondi, MP
14. Hon. (Eng.) Stephen Ngare, MP
15. Hon. Dorcas Kedogo, MP
16. Hon. Cornelly Serem, MP

APOLOGIES

17. Hon. Francis Mwanzia Nyenze, EGH, MP
18. Hon. Dr. Oburu Oginga, MGH, MP
19. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
20. Hon. Onesmus Muthomi Njuki, MP
21. Hon. Johana Kipyegon Ngeno, MP
22. Hon. Sammy Silas Komen Mwaita, MP
23. Hon. Abdullswamad Sheriff Nassir, MP
24. Hon. (Eng.) John Kiragu, MP
25. Hon. Elias Bare Shill, MP
26. Hon. John Olago Aluoch, MP
27. Hon. Beatrice Nkatha Nyaga, HSC, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

OFFICE OF THE AUDITOR-GENERAL

1. Mr. David Njoka - Director, Audit
2. Mr. George Otieno Nashon - Deputy Director, Audit
3. Mr. Jackson Musheba - Manager

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MIN./PIC/451/2016: PRELIMINARIES

The meeting commenced at forty minutes past ten o'clock with a prayer.

MIN./PIC/452/2016: CONFIRMATION OF MINUTES

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

MIN./PIC/453/2016: EVIDENCE BY THE FORMER MINISTER OF TOURISM ON THE MATTER OF TOURISM FUND'S RONALD NGALA UTALII COLLEGE

Sen. Dan Mwazo, MP, the former Minister for Tourism (2012-2013) appeared before the Committee to adduce evidence on the matter of Tourism Fund's Ronald Ngala Utalii College.

He briefed the Committee as follows:

MIN./PIC/454/2016: JUSTIFICATION FOR DISBANDMENT OF THE BOARD OF TRUSTEES OF THE TOURISM FUND ON 19TH JULY 2012

By the time the former Minister made appointments to the Board, there was no substantive and duly appointed Chairman since the previous Chairman, Anania Mwaboza had resigned from his position as a Board Chairman so as to venture into politics. The Vice Chairman was then acting in the position of the Chairman.

In consultation with the Office of the President and the Office of the Prime Minister under the national Accord; the President appointed the Chairman of the said Board and in his Capacity as the Minister and with powers conferred unto him under the State Corporations Act, the former Minister reorganized the Board by making various revocations and appointments retaining some of the Board members for purposes of continuity. The Vice Chair, Amina Kasinga was retained in the said Board. This therefore ought not be seen as a disbandment but normal reorganization pursuant to powers donated to the office then under the law.

During the said time, the former Minister had also raised concerns to the Board of the Catering and Tourism Development Levy Trustee on the slow progress of the Ronald Ngala Utalii College and their headquarters despite resources having been made

available to the trustee so as to enable them establish the College and Headquarters. This failure on their part amounted to non-performance of their duties. This was a flagship project to the Ministry and country at large and used to make periodical reports to the president and Prime Minister as well as Cabinet and as such the project was heavily weighted and performance of the Board critical. *(The witness submitted a letter he wrote to the Chief Executive Officer, Catering and Tourism Development Levy Trustees and a response to the same - Exhibit 1)*

Sen. Mwazo's predecessor had in January 2012 revoked the appointment of some of the Board Members of Catering & Tourism Development Levy Trustee and replaced them with other members that he thought would properly and positively carry out the functions of the office of the Trustees. This was still within his powers and nothing outward in the exercise of his official duties.

Having found that the Trustees were not properly discharging their responsibilities and without justification for their non-performance, the former Minister together with the President and under his guidance made revocation and fresh appointments to the said Board of Trustee so as to change the manner in which the projects were being casually carried out. The Minister for Tourism had powers to revoke and appoint trustees under the Act. Although the Act does not call for any justification for the same, he informed the Committee that he did so with reasons. This practice has been ongoing since time immemorial and no justification was ever cited by other former Ministers when they revoked and made appointments to the Board. The ultimate justification however was service delivery and protecting public interest. *(The witness submitted a copy of previous gazette notices appointing and revoking appointment by the responsible Ministers - Exhibit 2)*

By the time he was leaving office, Sen. Mwazo's hand over report to the Permanent Secretary, Ms. Ruth Solitei had highlighted Ronald Ngala Utalii College as an item that needed attention. This is because this was considered a very important project and one that needed to be sustained and as such among the key items in the handover report. *(The witness submitted his resignation letter from office and a handover report at the time of leaving office - Exhibit 3)*

MIN./PIC/455/2016: REASONS FOR FAILURE TO APPOINT A NEW BOARD OF TRUSTEES TO REPLACE THE DISBANDED ONE CONTRARY TO SECTION 66, 67 AND 69 OF THE TOURISM ACT 2011

Upon the revocation of the previous board as was provided for under gazette Notice No. 10228 of 20th July 2012, the former Minister in the same notice appointed other members to the said Board. *(The witness submitted the said Gazette Notice dated 20th July 2012 - Exhibit 4).*

That as such, pursuant to the provisions of the State Corporations Act, a new Board was in place as appointed. As at 20th July 2012, the Tourism Act, 2011 was not yet in force. It should be noted that the Tourism Act, 2011 was assented to 16th September 2011 and the commencement date set for 16th September 2012.

In the circumstance, he stated that it cannot be seen that he failed to appoint a new Board pursuant to sections 66, 67 and 68 of the Tourism Act 2011 as the said sections of the Act, and the whole act in that regard was not in force and as such he could not have failed to comply with the provisions of the said Act.

At the time he made the revocations and the appointments, the former President H.E. Mwai Kibaki also made three appointments under the State Corporations Act. These included the appointments to the Chair of the Board of the Catering and Tourism Development Levy Trustees, the Kenya Utalii College and the Hotels and Restaurant Authority. *(The witness submitted copies of the Gazette Notice by the president dated 20th July 2012 - Exhibit 5)*

Further to the foregoing, all previous appointments by his predecessor were also pursuant to the State Corporations Act, he also used in doing the revocations and appointments. *(The witness submitted gazette notices by Hon. Najib Balala in January 2012 making revocations and appointment to the said Board of the Catering and Tourism Development Levy Trustees - Exhibit 6)*

It also should be noted that after the appointments were made, a case was filed at the High court challenging the appointment of the Board in July 2012 and there were stay orders given. This was Milimani Judicial Review Case Number 317 of 2012 between Abdulkadir M. Omar & 2 Others Vs. Minister for Tourism & Catering and Tourism Development Levy Trustees. No appointments could be made even after the new Tourism Act came into force in September 2012 in the pendency of this case and the same was only withdrawn in April 2013 after the former Minister had left office as the Cabinet Secretary and as such he was not available to make any Board appointments and reconstitutions under the Tourism Act, 2011. *(The witness submitted a copy of the pleadings in the said case and the communication from the Advocate acting on behalf of Catering and Tourism Development Levy Trustees updating the withdrawal of the case in April 2013 after he had left office - Exhibit 7)*

To this date, appointments and revocations are still being made by the necessary Cabinet Secretaries in their respective Ministries and as such, the revocations and appointments by the former Minister were as per the custom and entrenched in the government practice and in consonance to statutory provisions. Sen Mwazo further added that he always took advice from his superiors on how to reorganize government

corporate bodies so as to make them more responsive to government policy and serve the best interest of the Public. No interviews are conducted for Board members before appointment unlike the management, as such and more often than not, the appointment may not meet the expectations and functions as desired. This explains the constant re-organization in state corporations (*The witness submitted copies of recent gazette notices revoking appointments - Exhibit 8*)

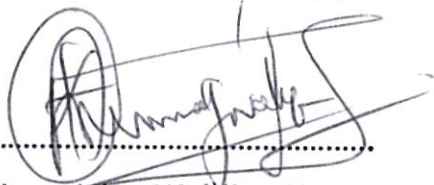

MIN./PIC/456/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/457/2016: ADJOURNMENT

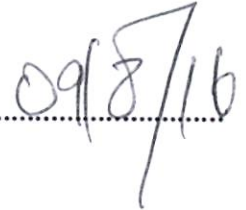
There being no other business, the meeting was adjourned at 11:25 am. The next meeting will be held on Tuesday, 2nd August, 2016 at 10:00am.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date.....





MINUTES OF THE 69TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON THURSDAY, 18TH AUGUST 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. Abdullswamad Sheriff Nassir, MP
11. Hon. Bernard Munywoki Kitungi, MP
12. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
13. Hon. (Eng.) Stephen Ngare, MP
14. Hon. Irungu Kangata, MP
15. Hon. John Ogutu Omondi, MP
16. Hon. Mary Sally Keraa, MP
17. Hon. Korei Ole Lemein, MP
18. Hon. Onesmus Muthomi Njuki, MP

APOLOGIES

19. Hon. Dr. Oburu Oginga, MGH, MP
20. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
21. Hon. Adan Mohammed Nooru, MP
22. Hon. Wafula Wamunyinyi, MP
23. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
24. Hon. (Eng.) John Kiragu, MP
25. Hon. Cornelly Serem, MP
26. Hon. Johana Kipyegon Ngeno, MP
27. Hon. John Muchiri Nyaga, HSC, MP

NATIONAL ASSEMBLY SECRETARIAT

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

OFFICE OF THE AUDITOR-GENERAL

1. Mr. George Otieno Nashon - Deputy Director, Audit

2. Ms. Jane Mutugi - Manager, Audit
3. Mr. Charles Nyaribo - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Stephen Mbatia - Chief Inspector

MIN/PIC/516/2016: PRELIMINARIES

The meeting started at twenty-one minutes past ten o'clock with a word of Prayer.

MIN/PIC/517/2016: CONFIRMATION OF MINUTES

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

**MIN/PIC/518/2016: EVIDENCE BY FORMER PRINCIPAL SECRETARY
MINISTRY OF TOURISM, DR. MOHAMMED IBRAHIM**

Mr. Mohammed Ibrahim informed the Committee as follows: -

1. Feasibility Studies and approved Cabinet Memorandum for the establishment of the Ronald Ngala Utalii College.

The Cabinet vide a Minute No. 30/96 of the meeting held on 22nd February 1996 approved the initial action to be taken to set up the College in principle.

The Cabinet Memo CAB/ (05)72 was discussed on the 5th Cabinet Meeting held on 13th September 2007 directed the Ministry of Tourism to establish Kenya Utalii College (KUC) at the Coast on the 60-acre piece of land donated by Rea Vipingo or any other site and that the Ministry of Finance avails funds for the project. The project cost was Ksh. 1.948 billion to be undertaken in 4 phases (years) at Kshs. 500 million.

The above never materialized due to delayed processes caused by Ministry returning funds back to the Treasury at the end of every financial year.

The Ministry vide a letter Ref. No. MT4/5/3, dated 19th March 2010 tasked the Catering & Tourism Development Levy Trustee (CTDLT) to establish the Ronald Ngala Utalii College (RNUC)

CTDLT Trustees resolved to establish RNUC during their 104th Board Meeting dated 24th March 2010. By Gazette Notice 3478 signed by the Hon. Minister on 25th March 2010, Ronald Ngala Utalii Academy (RNUA) was established and this appeared on the Kenya Gazette of 9th April 2010. RNUA board members were also appointed as per Kenya Gazette of 6th August 2010, 5th November 2010 and 12th February 2010.

Request for Proposals (RFPs) were advertised in the Daily Nation on 16th February 2012 and opening of the bids took place on 1st March 2012.

On 4th April 2012, the CTDLT Tender Committee awarded M/s Baseline Architects the tender to undertake the consultancy having scored the highest mark of 89.795%. Appeals ensued but they were dismissed.

Prequalification of the contractors and subcontractors for the construction of the RNUC was advertised on 23rd November 2012 and bids were opened on 14th January 2013. The Committee prequalified 6 firms to undertake the main works after attaining the 75% pass mark for the proposed RNUC.

The tenders were opened on 21st March, 2013 and only 5 out of the 6 tenderers were prequalified. The Minutes of 11st April 2013 awarded the contract to M/S Mulji Devraj & Brothers the contract after the firm was ranked first with highest scores in both technical and financial evaluation at 93.24%

On 14th May 2013 a contract was signed for 48 months between Mulji Devraj & Brothers and Tourism Fund for Kshs. 8,961,370,998.00

As a result, the professional consultancy fee amount of 16% of the contract sum became Kshs. 1, 433,818,359.68

The contract sum was later to be reduced from Kshs. 8, 961,370,893 to Kshs. 4,923,005,669 as per the revised bill of quantities and the contract duration extended to 60 months, thereby ending 19th June, 2018.

He was appointed as the Principal Secretary in the Ministry of East African Affairs, Commerce and Tourism in July 2013. By this time the contract for both the consultants and the main contractor had been awarded. The feasibility study and the necessary approvals from the government were therefore issued then before commencement of the project.

2. Chronology of reviews of the Scope of the Project the period he served as the Principal Secretary in the Ministry of Tourism

The review of the scope of the project was initiated as a result of the economic austerity measures. During the Medium Term Preparation of Budget, Treasury advised that the project cost and the timelines for implementation required quite substantial amount of funds to be allocated every year. The required funds were too high compared to the Ministry's budget.

In view of the foregoing, the Ministry was tasked to liaise with the implementing agency with a view of rationalizing the project cost but ensuring that the college remained functional after completion.

The project rationalization was done in consultations with the National Treasury. It culminated to a duly signed Cabinet Memo.

3. Justification for rationalizing and phasing of the project mid-stream and the relevant approvals

The approved budgets for the three respective years were: -

Financial year 2013/14 - Kshs. 547,987,500

Financial year 2014/15 - Kshs. 811,422,211

Financial year 2014/16 - Kshs. 687,000,000

The funds for the financial year 2015/16 had not been released by the Treasury by the time of leaving the Ministry.

4. Compliance to the terms and conditions of the Contract Agreement on the payment of the main contractor and consultants

The contract for the implementation of the College was between the Tourism Trust Fund, the consultants and the main contractor. The agency experienced challenges of complying to the terms of the contract as a result of the delays of the release of the funds.

5. Implementation of the Hotel component of the project through Public Private Partnership

The hotel component was supposed to be implemented under the public private partnership. There were no formal engagements on the hotel implementation with PPP unit during his tenure at the Ministry.

6. Value for Money on Establishment

The PS wrote to Tourism Fund on 4th March 2015 vide letter Ref No. MEAACT/PS/1A/04 requesting that they carry out an audit of the project in order to determine the value for money.

COMMITTEE OBSERVATIONS

The Committee observed that: -

1. There was no feasibility study conducted by the Ministry prior to initiating the project of more than Kshs. 8 billion thus no due diligence carried out.
2. The project was initially approved at a cost of Kshs 1.48 billion to accommodate 600 students but failed to kick off immediately and was later expanded to accommodate 3,000 students at a cost of Kshs 8.9 billion which thereafter escalated to Kshs. 10 billion due to change of specifications then downscaled to a cost of Kshs.4.9 billion.
3. The Board resorted to use of restricted tendering to procure the consultants from the prequalified suppliers in the disguise of urgency of the project contrary to Section 29 of the Public Procurement and Disposal Act, 2005 which states that for each procurement, the procuring entity shall use open tendering.
4. The consultants were procured to provide drawings, quantity surveying services, structural and civil engineering services and supervision of works based on the original project value of Kshs. 8.9 billion despite the project having been downscaled.
5. Works done by the consultants up to tender amounts to 75% the contract based on Kshs. 8.9 billion while supervised works will be paid 25% based on the Kshs. 4.9 billion.
6. The Ministry of Tourism, National Treasury and the Tourism Fund proceeded

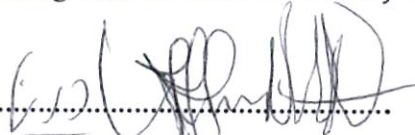
to implement the contents of a Cabinet Memorandum dated 9th July, 2014, jointly signed by CS National Treasury and CS Ministry of Tourism which was never ratified by the Cabinet and as such remains a draft.

MIN./PIC/519/2016: ANY OTHER BUSINESS

No other business arose.

MIN./PIC/520/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:00 am. The next meeting will be held on Friday 19th August 2016 at 9:30am.

Signed.....

Date.....28/9/2016

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)



MINUTES OF THE 76TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 23RD AUGUST 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. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Elias Bare Shill, MP
5. Hon. Franklin Mithika Linturi, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
8. Hon. (Eng). John Kiragu, MP
9. Hon. Bernard Munywoki Kitungi, MP
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15. Hon. (Eng.) Stephen Ngare, MP
16. Hon. Dorcas Kedogo, MP
17. Hon. Abdullswamad Sheriff Nassir, MP
18. Hon. Cornelly Serem, MP
19. Hon. Johana Kipyegon Ngeno, MP
20. Hon. Mary Sally Keraa, MP
21. Hon. Onesmus Muthomi Njuki, MP
22. Hon. Korei Ole Lemein, MP

APOLOGIES

23. Hon. Francis Mwanzia Nyenze, EGH, MP
24. Hon. Dr. Oburu Oginga, MGH, MP
25. Hon. Adan Mohammed Nooru, MP
26. Hon. Wafula Wamunyinyi, MP
27. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP

NATIONAL ASSEMBLY SECRETARIAT

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

OFFICE OF THE AUDITOR-GENERAL

1. Mr. George Otieno Nashon - Deputy Director, Audit
2. Ms. Jane Mutugi - Manager, Audit

3. Mr. Charles Nyaribo - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Stephen Mbatia - Chief Inspector

MIN/PIC/568/2016: PRELIMINARIES

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

MIN/PIC/569/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/570/2016: EVIDENCE BY AMB. RUTH SOLITEI

Amb. Ruth Solitei, the Principal Secretary in the Ministry of Foreign Affairs appeared before the Committee to adduce evidence on the matter of the Ronald Ngala Utalii College, which is the subject of an investigation by the Committee.

MIN/PIC/571/2016: HER ROLE AS PERMANENT SECRETARY IN THE CO-ORDINATION AND IMPLEMENTATION OF THE PROJECT ESPECIALLY DURING THE PERIOD OF 2012-2013, WHICH THE BOARD OPERATED WITHOUT A FULLY CONSTITUTED BOARD FOR SEVERAL MONTHS

Amb. Solitei was appointed Permanent Secretary in the Ministry of Tourism on 22nd December, 2012, but took over the office from her predecessor on or about 5th January, 2013. She served in that capacity at the Ministry until 19th June, 2013.

At the time of her tenure at the Ministry, most of the Tourism agencies had no functional Boards. This included the Catering & Tourism Development Levy Trustee (CTDLT), currently the Tourism Fund. In the absence of the Board of Trustees, the Ministry became more involved with the State Corporations under its mandate. In this case, the CTDLT would from time to time consult the Ministry on various issues under its mandate.

As Permanent Secretary, her role included policy guidance and provision of advice. An officer, who had been nominated to represent the Ministry on the CTDLT Board remained the focal point for day to day matters that required the attention of the Ministry. Advice was also sought from other departments within the Ministry, particularly from the Finance department and from without the Ministry including from the National Treasury.

On implementation and coordination of the project, the Permanent Secretary's role included receiving both verbal and written briefings and updates on the

project. Areas covered in the briefings included; the background for the establishment of the College, the components of the project, the budgetary provisions and projections, that a consultant had already been engaged to re-design the initial designs done by the Ministry of Public Works to handle various aspects of the project, that the CTDLT had in November 2012 advertised for pre-qualification of contractors and sub-contractors for construction of the proposed College.

**MIN/PIC/572/2016: SCOPE OF THE PROJECT DURING THE PERIOD
AMB. SOLITEI SERVED AS PERMANENT
SECRETARY**

The scope of the project as per the tender dated 23rd November, 2012 included erection, completion and equipping of the college facilities which included the administration block, tuition block, Nursery and Primary schools, Multi-Purpose hall, Library, Student's Center, Kitchen/Dinning Hall, Workshops, Laundry Block, Student Hostels, Sports Center and Staff accommodation together with all the site works. The total area of the building was estimated at approximately 88,000m sq.

**MIN/PIC/573/2016: JUSTIFICATION AND LEGAL BACKING FOR
CHANGE OF NAME AND TRANSFER OF SIXTY
ACRES OF LAND FROM KENYA UTALII
COLLEGE, COAST BRANCH TO RONALD
NGALA UTALII COLLEGE UNDER THE
TOURISM FUND.**

Prior to Amb. Solitei joining the Ministry, Kenya Utalii College vide letter Ref. KUC/8/4/ (903) of 13th March 2012 informed CTDLT that they had no objection to the transfer of the property to CTDLT and proposed that the transfer is carried out through a legal process.

Any further communication on this matter may have occurred after her departure from the Ministry of Tourism.

**MIN/PIC/574/2016: PROJECT STATUS AT THE TIME OF HANDING
OVER TO THE NEW PRINCIPAL SECRETARY**

- i. Consultancy Services for Design, Documentation, Supervision and Contract Management for RNUC-CTDLT/003/2011-2012 had been awarded to M/s Baseline Architects to undertake the consultancy.

The Consultancy fee was to be 16% of the total contract sum/project cost of the successful bidder Kshs. 8,961,370,998 as governed by Architects and Quantity Surveyors Act which amounted to Kshs. 1,433,819,359.68.

- ii. Prequalification of Contractors and Sub-Contractors for Construction was advertised 23rd November, 2012.
- iii. The bids for prequalification of contractors and sub-contractors for

construction had been opened at CTDLT on 14th January 2013.

- iv. The CTDLT had pre-qualified 6 bidders, who had attained the pass mark of 75% to submit tenders to undertake the main works on 18th February, 2013.
- v. Tenders had been opened on 21st March 2013 with only 5 out of the 6 who were pre-qualified.
- vi. The CTDLT Tender Committee had convened a meeting on 11th April, 2013 and awarded the contract to M/s Mulji Devraj & Brothers. The firm had the highest combined technical and financial score of 93%.
- vii. Mulji Devraj & Brothers had signed the construction contract for an estimated cost of Kshs. 8,961,370,998 on 14th May 2013.

Amb. Solitei vacated the office of Permanent Secretary, Ministry of Tourism on 19th June, 2013.

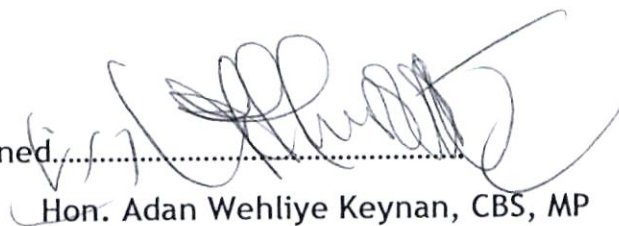
MIN/PIC/575/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/576/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:58 am. The next meeting will be held on Thursday, 25th August, 2016 at 10:00 am.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP

(Chairman)

Date.....

28/9/2016

MINUTES OF THE 75TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY, 23RD AUGUST 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. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Elias Bare Shill, MP
5. Hon. Franklin Mithika Linturi, MP
6. Hon. Sammy Silas Komen Mwaita, MP
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15. Hon. (Eng.) Stephen Ngare, MP
16. Hon. Dorcas Kedogo, MP
17. Hon. Abdullswamad Sheriff Nassir, MP
18. Hon. Cornelly Serem, MP
19. Hon. Johana Kipyegon Ngeno, MP
20. Hon. Mary Sally Keraa, MP
21. Hon. Onesmus Muthomi Njuki, MP
22. Hon. Korei Ole Lemein, MP

APOLOGIES

23. Hon. Francis Mwanzia Nyenze, EGH, MP
24. Hon. Dr. Oburu Oginga, MGH, MP
25. Hon. Adan Mohammed Nooru, MP
26. Hon. Wafula Wamunyinyi, MP
27. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP

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4. Ms. Clara Kimeli - Legal Counsel II

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2. Ms. Jane Mutugi - Manager, Audit
3. Mr. Charles Nyaribo - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Stephen Mbatia

- Chief Inspector

MIN/PIC/557/2016: PRELIMINARIES

The meeting started at thirteen minutes past ten o'clock with a word of prayer. The Cabinet Secretary excused herself for the delay in appearing before the Committee citing urgent Ministerial engagements and the need to prepare her submission since she doesn't serve in the Ministry of Tourism anymore.

MIN/PIC/558/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/559/2016: EVIDENCE BY AMB. SOLITEI

Hon. Phyllis Kandie, Cabinet Secretary for East African Community, Labour and Social Protection appeared before the Committee to adduce evidence on the matter of Ronald Ngala Utalii College, which is the subject of an investigation by the Committee.

MIN/PIC/560/2016: FEASIBILITY STUDIES AND APPROVED CABINET MEMORANDUM FOR THE ESTABLISHMENT OF RONALD NGALA UTALII COLLEGE

She informed the Committee that she took up office as Cabinet Secretary for East African Affairs, Commerce & Tourism in mid May 2013. She scheduled various briefing meetings for Heads of Departments and Parastatals between June and the end of July 2013 to familiarize herself with the programs and projects being implemented. By the time she was briefed on the activities of the Tourism Fund, the contracts for both the consultants and the main contractor had been awarded and executed.

MIN/PIC/561/2016: CHRONOLOGY OF REVIEWS OF THE SCOPE OF THE PROJECT DURING THE PERIOD SHE SERVED IN THE MINISTRY OF TOURISM

The review of the scope of the project was initiated as a result of the economic austerity measures. During the medium term preparation of the budget, Treasury advised that the project's cost and timelines for the implementation required quite substantial amount of funds to be allocated per year. The required funds were too high compared to the Ministry's budget.

Therefore in consultation with the National Treasury, the Ministry prepared a Cabinet Memo to rationalize downwards the cost of the project from the awarded contract of Kshs. 8.9 Billion to Kshs. 4.9 Billion. Essentially, this meant that the hotel component was left out in the new implementation. The

rationalizing culminated in a duly signed Cabinet Memo which the CS submitted to the Committee.

MIN/PIC/562/2016: REASONS FOR SIGNIFICANT DELAYS EXPERIENCED RELATED TO THE PRIORITIZATION AND FUNDING OF THE PROJECT

There were delays experienced in the release of funds from the Exchequer that resulted in the delay in completion of the project.

MIN/PIC/563/2016: BUDGETARY PROVISIONS AND BREAKDOWN OF FUNDS RELEASED FOR THE IMPLEMENTATION OF THE PROJECT

The approved budgets for the three respective years were as follows:

- i. FY 2013/14 - Kshs. 547,987,500
- ii. FY 2014/15 - Kshs. 811,422,211
- iii. FY 2015/16 - Kshs. 687,000,000

However, the budgetary allocation for the FY 2015/16 had not been released by the Exchequer by the time she left the Ministry.

MIN/PIC/564/2016: COMPLIANCE TO THE TERMS AND CONDITIONS OF THE CONTRACT AGREEMENT ON PAYMENT OF THE MAIN CONTRACTOR AND CONSULTANTS

The contract for the implementation of the college was between the Tourism Fund and the consultant and the main contractor. The agency experienced challenges of complying with the terms of the contract as a result of the delays of release of funds by the Exchequer.

MIN/PIC/565/2016: IMPLEMENTATION OF THE HOTEL COMPONENT OF THE PROJECT THROUGH PUBLIC PRIVATE PARTNERSHIP

The hotel component was supposed to be implemented under Public Private Partnership. There were no formal engagements on the hotel implementation with the Public Private Partnership during CS Kandie's tenure.

Committee Observations

1. The varied contract which raised the cost of the project to Kshs. 8.9 Billion was signed with Mulji Devraj as the main contractor on 14th May, 2013. The contract period was meant to be 48 months. This contract was signed just a day before CS Kandie took up office on 15th May, 2013.
2. On June 23rd, 2013, the contract was downscaled to Kshs. 4.9 Billion as per revised bills of quantities and the contract period was extended to last 60 months.

3. The correspondence between CS Kandie and the National Treasury to downscale the project cost to Kshs. 4.9 Billion did not constitute a Cabinet Memo since the Cabinet had not deliberated and acted on it. Despite this, the project was still downscaled to Kshs. 4.9 billion without Cabinet approval.
4. Despite the variation of the Project cost from Kshs. 1.9 Billion to Kshs. 8.9 Billion and downscaling to Kshs. 4.9 Billion, professional fees for the project remained constant throughout.
5. The consultant has been paid 70% of the total consultancy fee despite the limited progress of the project.

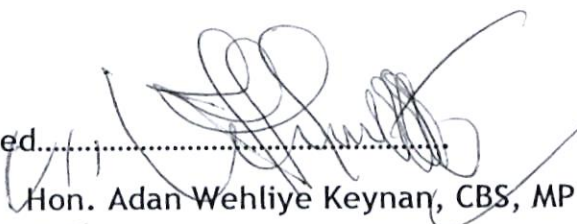
MIN/PIC/566/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/567/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:25 am. The next meeting will be held on Tuesday, 23rd August, 2016 at 11:30 am.

Signed.....



Hon. Adan Wehliye Keynan, CBS, MP

(Chairman)

Date.....

28/9/2016

MINUTES OF THE 74TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON SATURDAY, 20TH AUGUST, 2016 IN RONALD NGALA UTALII COLLEGE
IN KILIFI COUNTY AT 9:30 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Adan Mohammed Nooru, MP
4. Hon. Francis Mwanzia Nyenze, EGH, MP
5. Hon. Elias Bare Shill, MP
6. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
7. Hon. (Eng). John Kiragu, MP
8. Hon. John Olago Aluoch, MP
9. Hon. Beatrice Nkatha Nyaga, HSC, MP
10. Hon. Bernard Munywoki Kitungi, MP
11. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
12. Hon. John Ogutu Omondi, MP
13. Hon. Korei Ole Lemein, MP

APOLOGIES

14. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
15. Hon. Dr. Oburu Oginga, MGH, MP
16. Hon. Franklin Mithika Linturi, MP
17. Hon. Wafula Wamunyinyi, MP
18. Hon. Abdullswamad Sheriff Nassir, MP
19. Hon. Sammy Silas Komen Mwaita, MP
20. Hon. Dorcas Kedogo, MP
21. Hon. Cornelly Serem, MP
22. Hon. Irungu Kangata, MP
23. Hon. (Eng.) Stephen Ngare, MP
24. Hon. John Muchiri Nyaga, HSC, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

NATIONAL ASSEMBLY SECRETARIAT

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

OFFICE OF THE AUDITOR-GENERAL

1. Mr. George Otieno Nashon - Deputy Director, Audit
2. Mr. David Njoka - Director, Audit

THE INSPECTORATE OF STATE CORPORATIONS

- Mr. Dominic Katiku - Inspector

THE NATIONAL TREASURY

- Mr. John Munge - Accountant I

THE TOURISM FUND

1. Hon. Henry Kosgei - Chairperson
2. Mr. Joseph Cherutoi - Chief Executive Officer
3. Mr. Mark Gathuri - Trustee
4. Ms. Patricia Ochieng
5. Ms. Nancy Siboe
6. Mr. Ezra Mitoko
7. Mr. Ali Noor Abdillahi
8. Mr. Gerald Omondi

PROJECT CONTRACTOR - MULJI DEVRAJ & BROS

1. Mr. Pravin Halai - Mulji Devraj & Bros
2. A. Roy - Mulji Devraj & Bros
3. Mr. Joseph Owuor - Mulji Devraj & Bros Site Manager

PROJECT CONSULTANTS

1. Arch. Dominic Otengo - Baseline Architects
2. Mr. Morris Njue - Baseline Architects
3. Mr. Gideon Anjari - Baseline Architects
4. Eng. Mwema Nyamai - Armitex Consults
5. Mr. Sebby Obillo - West Consults

COUNTY GOVERNMENT OF KILIFI

1. MCA Naphthali Kombo - Chair Tourism Committee (Kilifi County Assembly)
2. MCA Baraka Ali
3. MCA Chiku Wanje
4. Mr. Alphonse Tokali - CEC Tourism
5. Mr. Mary Kabani - Director Tourism
6. Mr. William Ihia

MIN/PIC/552/2016: INSPECTION TOUR OF RONALD NGALA UTALII COLLEGE IN KILIFI COUNTY

The Committee conducted an inspection tour of the Ronald Ngala Utalii College

guided by the Management and Board of Tourism Fund and Project Consultant and Contractor. The Committee inspected the administration block, tuition blocks, dining halls, library, students centre and students' hostels.

During the tour, the Committee was informed as follows: -

1. Ronald Ngala Utalii College is Kenya Vision 2030 Flagship Project financed by the National Treasury and the Tourism Fund.
2. The construction of the College and the proposed hotel is being undertaken on sixty-acre parcel of land L.R No. 5052/4 in Kilifi County. The land was donated by Rea Vipingo Estates Group in the 80's with the condition that the land shall be used for the establishment of the Coast Branch of Kenya Utalii College only.
3. The initial concept paper and design works of the College was developed by the Ministry of Tourism in conjunction with the Ministry of Public Works in 2007.
4. As per the Concept Paper, the project would constitute of the following: -
 - (i) A training facility with an initial capacity of 600 students but with room for further expansion;
 - (ii) Training and demonstration facilities including tuition blocks, administration block, student accommodation, staff quarters, nursery and primary school, health centre, library and recreational facilities;
 - (iii) A five star hotel complex that would serve as a training laboratory for the College besides being run as a commercial hotel enterprise to address sustainability issues at the College;
3. In addition, the College would be designed to offer specialized training in the emerging fields of cruise tourism, training of trainers and entrepreneurship.
4. The location of the College was in recognition of the important role the Coast region plays in the tourism industry
5. The initial cost of the Project was Kshs. 1.948 billion that was to be funded by the Treasury. The figure was later escalated to Kshs. 8.9 billion which was occasioned by passage of time and escalation of costs before the project could be implemented.
5. The main contractor for the project is Mulji Devraj and Brothers Ltd who was awarded the tender for main works at a cost Kshs. 8.9 billion. The lead consultant is Baseline Architects and Ujenzi Consultants are the quantity surveyors. Other members of the consortium are Armitech Consultants as

structural engineers, Westconsult as electrical/ mechanical engineers, Geomeasures Ltd as surveyors.

6. The cost of consultancy services in accordance with the Architects and Quantity Surveyors Act is 16% of the total construction cost. This works out to be Kshs. 1.4 billion making the total project cost at Kshs. 10.3 billion. Both the Contractor and the consultants were on site.
7. The project was later rationalized by removing all auxiliary proposed developments and retaining only the functional components. The total construction cost was scaled down to 4.93 billion as a result of austerity measures within Government in 2013. The components of the project left out on rationalizing of the project include: - primary school, some blocks of staff houses, two hostel blocks
8. The hotel component is proposed to be undertaken under the Public Private Partnership arrangement and negotiation with potential investors are at advanced stage.

Evidence by Baseline Architects.

Architect Motanya Otengo of Baseline Ltd informed the Committee that as at April 2016, Baseline Ltd had done and completed all pre-contract services that include tender documents in form of drawings and details which constitute 75% of the architectural services. The consortium is currently doing supervision works on site.

The cost of consultancy services in accordance with the Architects and Quantity Surveyors Act would be 16% of the total construction cost.

The payment of fee notes received from the Tourism Fund as at 18th April, 2016 is Kshs. 678,590,235 while accrued interest is Kshs. 195,304,204.05

Remarks by MCA Naphthali Kombo - Chair Tourism Committee Kilifi County Government

The Chair Tourism Committee Kilifi County Government MCA Naphthali Kombo informed the Committee as follows:

1. Kilifi County Government supports the implementation of the project the project as it not only boosts the economy of the Country but that of the Kilifi County, Tourism being the backbone of the economy of Kilifi County. Thus the County is eager to see the successful completion of the project.
2. On completion the College will offer employment opportunities to the local population and market for agricultural produce from the area
3. The proposed hotel is strategically placed as it would be served by two

airports; Moi International Airport and Malindi Airport.

4. The local community embraced the project and 55% of the labourers on site are from the surrounding communities.

COMMITTEE OBSERVATIONS

The Committee observed the following: -

- (i) Tourism is an important sector in the economy of Kenya and successful completion of the project will boost the economy of the country. Thus there is need for all parties involved to work together to ensure the project is completed.
- (ii) The construction of the College appeared to have stalled and the contractor seemed to have just recently mobilized the equipment to resume construction.
- (iii) The scope of scaling down of the project from a total cost of Kshs. 8.6 billion to 4.93 billion is not commensurate with the change in cost of the project as only a few features of the project were excluded.
- (iv) The calculations of the contract sum for consultancy services payable to Baseline Architects were based on the original project contract amount of Kshs. 8.96 billion and were not revised downwards during scaling of the scope of works of the project to a cost of Kshs. 4.9 billion.
- (v) The fees paid so far to Baseline Architects of Kshs 678,590,235 is higher than the fees paid to the main contractor which indicates that the Company was paid ineligible payments.

MIN/PIC/553/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/554/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:50 pm. The next meeting will be held on Tuesday, 23rd august, 2016 at 10:00am.

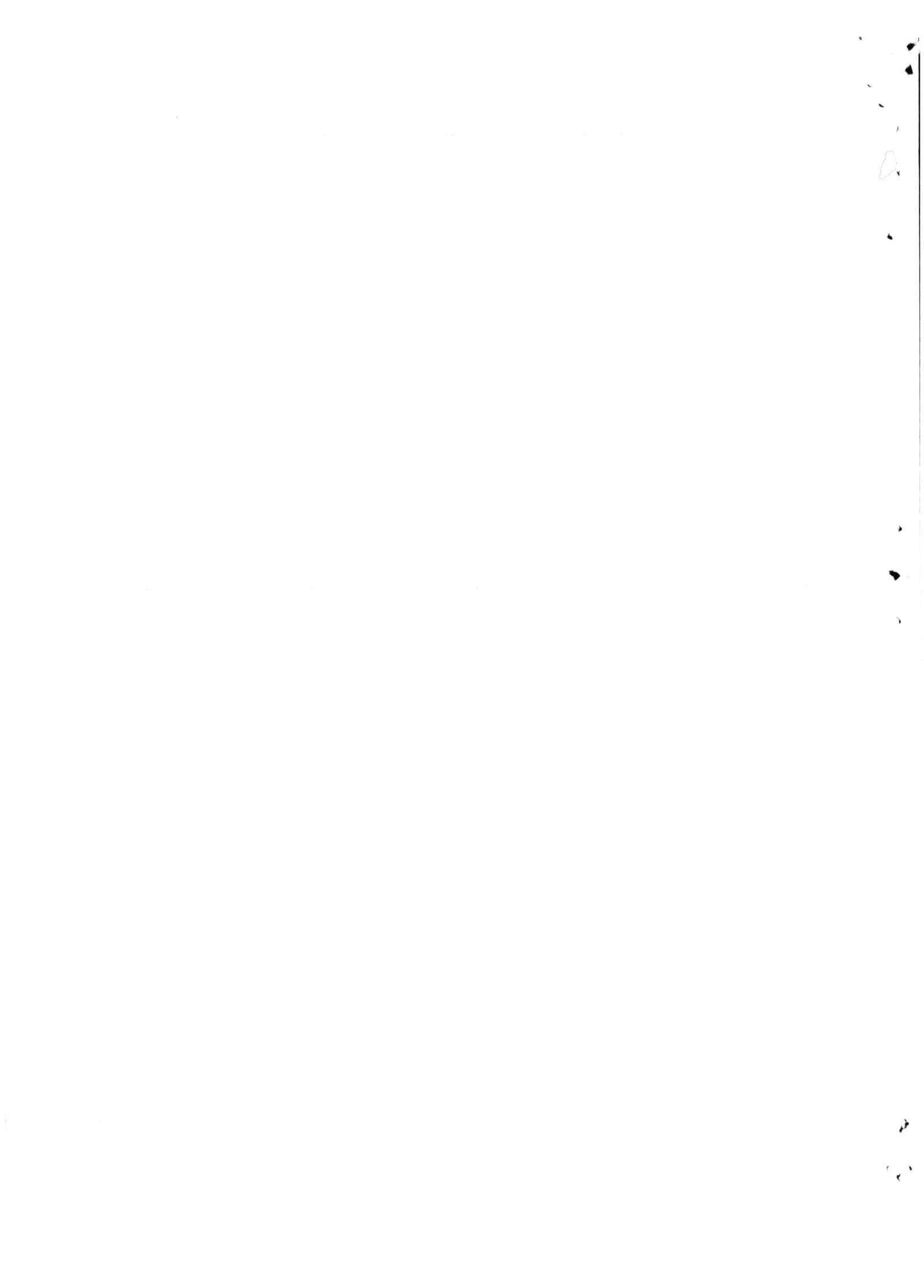
Signed.....

Hon. Adan Wehliye Keynan, CBS, MP

(Chairperson)

Date.....

28/9/2016



MINUTES OF THE 79TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 6TH 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. Dr. Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Sammy Silas Komen Mwaita, MP
6. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
7. Hon. (Eng). John Kiragu, 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. Wafula Wamunyinyi, MP
13. Hon. John Olago Aluoch, MP
14. Hon. Irungu Kangata, MP
15. Hon. John Muchiri Nyaga, HSC, MP
16. Hon. Korei Ole Lemein, MP

APOLOGIES

17. Hon. Francis Mwanzia Nyenze, EGH, MP
18. Hon. Adan Mohammed Nooru, MP
19. Hon. Elias Bare Shill, MP
20. Hon. (Eng.) Stephen Ngare, MP
21. Hon. Franklin Mithika Linturi, MP
22. Hon. Dorcas Kedogo, MP
23. Hon. Abdullswamad Sheriff Nassir, MP
24. Hon. Cornelly Serem, 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. Jackson Musheba - Manager, Audit
- 3. Mr. Andrew Kintu - Manager, Audit

THE INSPECTORATE OF STATE CORPORATIONS

Mr. Osman Mohamed - Inspector

MIN/PIC/594/2016: PRELIMINARIES

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

MIN/PIC/595/2016: CONFIRMATION OF MINUTES

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

MIN/PIC/596/2016: EVIDENCE BY CABINET SECRETARY, NATIONAL TREASURY

Mr. Henry Rotich, the Cabinet Secretary for National Treasury accompanied by Dr. Kamau Thugge (Principal Secretary, National Treasury) and Mr. John Njiraini (Commissioner General, Kenya Revenue Authority) appeared before the Committee to adduce evidence on the matter of the Excise Goods Management System (EGMS) and the matter or Ronald Ngala Utalii College.

The Cabinet Secretary informed the Committee that that the Ministry was still in the process of gathering all the necessary information to adequately respond to the queries raised by the Committee.

He subsequently sought the Committee's indulgence to defer taking evidence to allow him to compile all evidence and give appropriate response.

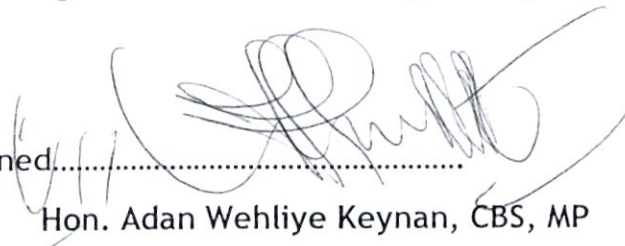
The Committee acceded to the request and directed the Cabinet Secretary to finalize on his response and re-appear before the Committee on Wednesday 7th September, 2016 at 10am.

MIN/PIC/597/2016: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/598/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 10:50 am. The next meeting will be held on Tuesday, 7th September, 2016 at 2:30 pm.

Signed.....

Hon. Adan Wehliye Keynan, CBS, MP
(Chairman)

Date..... 28/9/2016

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 Emején - 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.

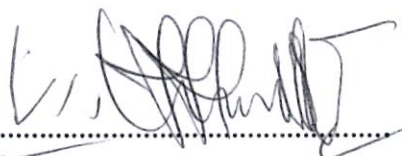
MIN/PIC/375/2016: ANY OTHER BUSINESS

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.....

