

for tabling
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

PUBLIC INVESTMENTS COMMITTEE

PROGRESS REPORT ON THE INQUIRY INTO THE PROPOSED TAKEOVER OF
JOMO KENYATTA INTERNATIONAL AIRPORT BY KENYA AIRWAYS

Directorate of Committee Services
The National Assembly
Parliament Buildings, Continental House, Room 402
NAIROBI

FEBRUARY, 2019

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ABBREVIATIONS AND ACRONYMS

JKIA	Jomo Kenyatta International Airport
KAA	Kenya Airports Authority
KQ	Kenya Airways
MP	Member of Parliament
MoTIHUD	Ministry of Transport, Infrastructure, Housing and Urban Development
OAG	Office of the Auditor General
PIC	Public Investments Committee
PIIP	Privately Initiated Investment Proposal
PPDA	The Public Procurement and Disposal Act, 2005
PS	Permanent Secretary

CHAIRMAN'S FORWARD

The Public Investments Committee is one of the Watchdog Committees of the House established under Standing Order 206 and mandated 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; to ensure probity, efficiency and effectiveness in the use of public funds. This ensures implementation of Article 229(8) of the Constitution of Kenya, 2010 on reports laid before the House by the Auditor- General which provides that *"Within three months after receiving an audit report, Parliament shall debate and consider the report and take appropriate action"*.

The Public Investment Committee's inquiry into the proposed takeover of Jomo Kenyatta International Airport (JKIA) by the Kenya Airways (KQ) was initiated during the Committee's examination of audited accounts of Kenya Airports Authority for the Financial Years 2013/2014 through to 2016/2017. It came to the Committee's knowledge that KQ owes KAA more than Kshs. 3.8 Billion. After holding preliminary meetings with the Authority and concerned of the viability of the proposed merger between KAA and KQ, the Committee resolved to request the Auditor General to conduct a Special Audit on the matter to enable the Committee to objectively understand the said process and its implications to the taxpayer. The Committee learned that during procurement of transaction advisers, the KAA went for restricted tendering instead of competitive tendering.

The Committee has so far held meetings with the Management of the KAA and proposes to meet the following entities in a bid to get to the bottom of the matter:

- i. The Kenya Airports Authority Board of Directors;
- ii. The immediate former Principal Secretary for Transport, Prof. Paul Maringa, CBS;
- iii. The Principal Secretary for Transport, Ms. Esther Koimett, CBS;
- iv. The Managing Director, Kenya Airways;
- v. The Solicitor General;
- vi. The Public Procurement Regulatory Authority;
- vii. The Kenya National Audit Office.

In its inquiry, the Committee will seek to establish whether the Privately Initiated Investment Proposal (PIIP) is being carried out in accordance with the statutory provisions of the Public Private Partnership Act; whether due diligence was carried out to ensure the commercial prudence of the transaction so as to protect the interest of Kenya Airports Authority and the general public, whether the process of procuring the services of a transactional advisor by KAA was carried out in accordance with the Public Procurement and Asset Disposal Act 2015, and finally whether the public will get value for money from the whole process.

This progress report contains the submissions by the Kenya Airports Authority management who appeared before the Committee; preliminary observations and findings as well as preliminary recommendations arising from the Committee's inquiry so far.

On behalf of the Public Investments Committee, and pursuant to Standing Order 199(6), it is my pleasant duty and honour to present this progress report on the Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport by Kenya Airways for debate and adoption.

HON. ABDULLSWAMAD SHARRIF NASSIR, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE.

EXECUTIVE SUMMARY

Genesis of the matter

The inquiry by the Public Investment Committee into the proposed takeover of Jomo Kenyatta International Airport (JKIA) operations by Kenya Airways (KQ) began as an incidental matter during the examination of audited accounts of the KAA. KAA had received a Privately Initiated Investment Proposal (PIIP) from KQ which broadly envisages a 30 year concession framework under which Kenya Airways will seek, through a Special Purpose Vehicle (SPV), to manage and develop JKIA at a fee (concession fee) leaving KAA to manage all other Kenyan airports and airstrips.

Concerned of the possible financial risk that would accompany any move by Kenya Airports Authority to give up the management of JKIA which generates 83% of its revenue and the also aware KQ had been going through a lot of financial crisis in the recent past the Committee could not envisage a situation whereby a loss-making and private entity could take over and prudently manage a profitable government entity.

In its inquiry, the Committee seeks to establish, as per Standing Order 206(6)(c), whether:

- a) There is value for public funds in the proposed project;
- b) The project is affordable and financially prudent given the nature of the strategic assets at stake; and
- c) The Kenya Airports Authority, a financially healthy State Corporation and the general public are insulated from any risks that may arise from the transaction.

COMMITTEE'S PRELIMINARY OBSERVATIONS AND FINDINGS

1. The matter of JKIA take over by the KQ was initiated by the Cabinet and Communicated to the KAA on 29th May, 2018, the Cabinet, through a Cabinet Memorandum (CAB 18/28) by the then Principal Secretary State Department of Transport. The said resolution from KQ has neither been seen by the KAA nor the Committee.
2. The rationale for the proposed transaction, as given by government, was to implement Government policy which seeks consolidation of key aviation assets to realize significant operational efficiencies and synergies, restoration of the aviation sector's regional and international competitiveness, protection of JKIA's regional

hub status, improved diversification and utilization of JKIA resources and support for KQ's turnaround.

3. Kenya Airports Authority is a profit-making State Corporation while Kenya Airways has been posting losses in their most recent financial statements yet the latter proposes to take over the management of Jomo Kenyatta International Airport from the former.
4. As of February 2019, Kenya Airways owes a debt of approximately Kshs. 3.8 Billion to Kenya Airports Authority.
5. KQ initiated and submitted a PIIP to KAA on 5th October 2018. Which proposal is under consideration by the KAA.
6. The procurement process for the transactional advisor was not an open tender but a restricted tender and the Authority pointed out that the decision was advised by the time constraints that would not allow for a lengthy procurement process.
7. JKIA accounts for nearly 83% of KAA's revenue and 51% of the recurrent expenditure. The Authority would therefore lose the majority of its revenue-generating asset if the takeover was to be effected.
8. Should JKIA be handed over to KQ, the arrangement will deprive KAA significant resources given that the concession fee will not significantly cover the operational costs of the remaining airports, airstrips and the head office.
9. In KQ's financial model as per the PIIP, the annual concession fee has been set at USD 28 Million (equivalent to Kshs. 2.9 Billion) in 2019, rising gradually to USD 35 Million (Kshs. 3.6 Billion) and peaking at USD 60 Million (Kshs. 6.1 Billion) in 2033.
10. In comparison, KAA's non-JKIA operations in the 2018/19 financial year amount to Kshs. 6.6 Billion in recurrent expenditure, hence leaving a shortfall of Kshs. 3.7 Billion from the concession fee of Kshs. 2.9 Billion.
11. KQ's proposal further assumes that KAA will retain all contingent liabilities including those arising from JKIA operation, a situation that would leave KAA worse off financially.
12. The proposed takeover is being rushed despite obvious risks associated with it including concerns on its financial viability and the potential loss of jobs at Kenya Airports Authority. The Authority had allegedly been given a mid-December 2018 timeline to complete the transaction as per the Board minutes.

13. There is a potential conflict of interest in the proposed takeover where the Chairperson of the KAA Board also chairs a bank which is a shareholder in Kenya Airways, the entity that proposes to take over the airport. The Chair of the KAA Board acknowledged this during the Board's 296th sitting by stating that he is the Chairman of a bank which is a big shareholder in KQ. He however stated that he would put this conflict aside and focus on KAA.
14. Staff based at the Kenya Airports Authority had sought legal action in court to stop the proposed takeover of JKIA operations by Kenya Airways.
15. Subsequent to the PIIP; the KCAWU have instituted court proceedings questioning the prudence and procedural fairness of the whole process. The matter is pending in court.

Preliminary Recommendations

Given the risks associated with the transaction involving the transfer of a strategic state asset, the hurried manner in which it is being implemented, the potential conflict of interest and redundancy at KAA occasioned by the proposed takeover, the Committee recommends that:

1. All engagement between the Kenya Airports Authority and Kenya Airways regarding the Privately Initiated Investment Proposal on the takeover of JKIA operations should be pended until the Committee inquiry is concluded and the House pronounces itself on the matter.
2. The Office of the Auditor General should expedite the requested Special Audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face if the takeover is implemented and the procurement process for the services of the transaction advisor.

1.0 PREFACE

1.1 COMMITTEE MANDATE

The Public Investments Committee is one among three watchdog/investigatory committees of the House established under Standing Order (S.O.) 206 and is responsible for the examination of the working of public investments on the basis of their audited reports and accounts. It is mandated to:

- i. examine the reports and accounts of the public investments;
- ii. examine the reports, if any, of the Auditor General on the public investments; and
- iii. 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;

In carrying out its mandate, the Committee is guided by the National Assembly Standing Orders; the Constitution of Kenya; the National Assembly (Powers and Privileges) Act (Cap. 6); the State Corporations Act (Cap. 446); the Public Procurement and Disposal Act, 2005; the Public Procurement and Disposal Regulations, 2006; the Public Procurement and Assets Disposal Act, 2015; the Public Finance Management Act, 2012; the Public Private Partnership Act, 2013; the Public Audit Act 2003, and the Public Audit Act, 2015 among others.

1.2 COMMITTEE MEMBERSHIP

The Committee on Public Investments as constituted by the House in December 2017 comprises of the following Members: -

- (1) Hon. Abdullswamad Sharraf Nassir, MP - Chairperson
- (2) Hon. Ahmed Abdisalan Ibrahim, MP - Vice- Chairperson
- (3) Hon. (Dr.) Chrisantus Wamalwa Wakhungu, CBS, MP
- (4) Hon. Raphael Bitta Sauti Wanjala, MP
- (5) Hon. Justus Kizito Mugali, MP
- (6) Hon. John Muchiri Nyaga, MP
- (7) Hon. Joash Nyamache Nyamoko, MP
- (8) Hon. (Prof.) Mohamud Sheikh Mohammed, MP

- (9) Hon. Babu Owino Paul Ongili, MP
- (10) Hon. Gladys Nyasuna Wanga, MP
- (11) Hon. James Githua Kamau Wamacukuru, MP
- (12) Hon. Mary Wamaua Waithira Njoroge, MP
- (13) Hon. Mohamed Hire Garane, MP.
- (14) Hon. Omar Mohamed Maalim Hassan, MP
- (15) Hon. Paul Kahindi Katana, MP
- (16) Hon. Purity Wangui Ngirici, MP
- (17) Hon. Rashid Kassim Amin, MP
- (18) Hon. Zachary Kwenya Thuku, MP

1.3 COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| (1) Mr. Evans Oanda | - | Senior Clerk Assistant |
| (2) Mr. Mohamed Boru | - | Third Clerk Assistant |
| (3) Mr. Thomas Ogwel | - | Fiscal Analyst |
| (4) Ms. Marlene Ayiro | - | Legal Counsel |
| (5) Ms. Sharon Rotino | - | Research Officer III |
| (6) Ms. Noelle Chelagat | - | Media Relations Officer III |
| (7) Ms. Winnie Atieno | - | Audio Recording Officer |
| (8) Mr. Alex Mutuku | - | Senior Serjeant-At-Arms |

1.4 JUSTIFICATION OF THE INQUIRY

Pursuant to its mandate under Standing Order 206(6)(c) of *examining , 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*; and while examining the Reports of the Auditor General on the accounts of Kenya Airports Authority, the Public Investments Committee commenced investigations into

the matter of the proposed takeover of JKIA operations by Kenya Airways due to the possible financial risk that would accompany any move by KAA to give up the management of an asset which generates 83% of its revenue. In its inquiry into the matter, the Committee is guided by provisions of Section 61 of the Public Private Partnership Act regarding the process of undertaking a PIIP. The Committee sought to establish whether:

- (a) There is value for public funds in the proposed project;
- (b) The project is rational and financially prudent given the nature of the strategic assets at stake; and
- (c) The Kenya Airports Authority, a financially healthy State Corporation and the general public are insulated from any risks that may arise from the transaction.

1.5 COMMITTEE PROCEEDINGS

In its inquiry into the matter, the Committee has so far held a total of three sittings in which it has met with the Kenya Airports Authority Management. It further proposes to meet the following witnesses in the course of the inquiry:

- (a) The Kenya Airports Authority Board of Directors;
- (b) The immediate former Principal Secretary for Transport, Prof. Paul Maringa, CBS;
- (c) The Principal Secretary for Transport, Ms. Esther Koimett, CBS;
- (d) The Managing Director, Kenya Airways;
- (e) The Solicitor General;
- (f) The Public Procurement Regulatory Authority; and
- (g) The Kenya National Audit Office among others

2.0 CHAPTER TWO

2.1 INTRODUCTION

The Kenya Airports Authority (KAA), is a state Corporation established under section 3 of the KAA Act No. 3 of 1991. The Kenya Airways PLC on the other hand is a Private Company with close to 50% shareholding from the Government of Kenya.

2.2 PRIVATELY INITIATED INVESTMENT PROPOSAL (PIIP)

The Kenya Airports Authority) on October 3, 2018 received a Privately Initiated Investment Proposal from Kenya Airways PLC requesting that the Airline be granted a concession to operate, maintain and develop the Jomo Kenyatta International Airport. In the PIIP, KQ proposed to form a special purpose vehicle specifically dedicated to operating, managing and developing JKIA for a period of 30 years (the Concession). An SPV is a company incorporated within Kenya by the successful bidder the sole purpose of which is to execute the public private partnership contract awarded.

The proposed agreement will result in KQ operating, maintaining, developing, constructing, upgrading, modernising, financing and managing JKIA. The objective of the arrangement is to ensure efficiency of both JKIA and Kenya Airways operations by central management to leverage on possible synergies.

2.3 GENERAL PROVISIONS CONCERNING PUBLIC PRIVATE PARTNERSHIPS

The Public Private Partnerships Act (PPP Act) provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government through concession or other contractual arrangements and established the institutions that regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects.

Section 18 requires a contracting authority that intends to finance, operate, equip or maintain an infrastructure facility or provide a service to enter into a project agreement with any qualified private party for the financing, construction, operation, equipping or maintenance of the infrastructure or development facility or provision of the service of the Government in accordance with the provisions of the PPP Act. To this end a contracting authority may, where it considers it appropriate, designate its assets for the use by a private party, in relation to, and for the duration of a project on such terms and conditions as the contracting authority shall consider

appropriate. The different types of public private partnership arrangements that may be entered into are listed under the second schedule to the Act including, management contracts, leases, concessions, build-own-operate-transfer schemes, Build-Own-Operate scheme, build-lease-transfer scheme, build-transfer and operate, develop-operate and transfer, rehabilitate-operate-and -transfer, rehabilitate-own- and operate and finally a land swap.

Section 20 sets out matters of the contracting authority should assess prior to a PPP arrangement including-

- (a) technical issues;
- (b) legal, regulatory and technical frameworks;
- (c) institutional and capacity status;
- (d) commercial, financial and economic issues; and
- (e) such other issues as the Cabinet Secretary may stipulate.

Section 24 requires the approval of projects by the PPP Committee established under section 4 of the Act which then considers and makes its recommendations to Cabinet for approval as a national priority list. The Public Partnership Unit, which is the secretariat of the PPP Committee is required to publish the national priority list of projects approved.

Under section 26, a contracting authority which intends to enter into a project agreement with a private party shall confirm that the private party has—

- (a) the financial capacity to undertake the project;
- (b) the relevant experience in undertaking projects of a similar nature; and
- (c) the relevant expertise to undertake the project.

The third schedule to the Act provide a guide on the minimum contractual obligations required to be specified in a project agreement. Upon approval of the project proposal by the PPP committee, the contracting authority is required to undertake a feasibility study to be approved by the PPP committee as per section 33 and 35 to consider-

- (a) the technical requirements of the project;
- (b) the legal requirements to be met by the parties to the project;
- (c) the social, economic and environmental impact of the project; and

- (d) the affordability, value for money and public sector comparator for the project as prescribed in the regulations made under this Act.

Section 16 provides for the establishment of a private partnership node by a contracting authority that intends to enter into a private public partnership arrangement with a private party. The node is to be headed by the accounting officer of the contracting authority and its functions include, *inter alia*, identifying and prioritize projects as per set guidelines, preparing and appraising each project agreement to ensure legal regulatory, social and economic and commercial viability.

Under section 29, the Act stipulates that unless otherwise provided under the Act, all projects shall be procured through a competitive bidding process guided by the principles of transparency, free and fair competition and equal opportunity. This exception is set out under Part 8 of the Act that deals with Privately Initiated Investment Projects (PIIP), which is “a proposal that is originated by a private party without the involvement of a contracting authority and may include information that enables a complete evaluation of the proposal as if it were a bid”.

Section 61 of the PPP Act permits a contracting authority to consider such a project by negotiations without subjecting the proposal to competitive procurement process if-

- (a) there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical: Provided that the circumstances giving rise to the risk of disruption were not foreseeable by the contracting authority or the result of an unreasonable failure to act by the contracting authority;
- (b) the costs relating to the intellectual property in relation to the proposed design of the project is substantial;
- (c) there exists only one person or firm capable of undertaking the project, maintaining the facility or providing the service or such person or firm has exclusive rights over the use of the intellectual property, trade secrets or other exclusive rights necessary for the construction, operation or maintenance of the facility or provision of the service; or
- (d) there exists any of the circumstance as the Cabinet Secretary may prescribe.

Before commencing negotiations with a private party under PIIP the contracting authority is required to –

- (a) prescribe a criteria against which the outcome of negotiations shall be evaluated;
- (b) submit the proposal to the unit for consideration and recommendation;
- (c) upon obtaining the recommendations of the unit, apply for and obtain approval from the Committee to negotiate the contract; and
- (d) conduct the negotiations and award the tender in accordance with the prescribed process in the regulations to this Act.

A contracting authority shall not consider a project for procurement under this model unless it is satisfied that—

- (a) the project shall provide value for money (*meaning that the undertaking of a public function by a private entity under a PPP shall result in a net benefit accruing to a contracting authority defined in terms of cost, price, quantity, quality, timeliness or risk transfer*);
- (b) the project shall be affordable; and
- (c) the appropriate risks are transferred to the private party

Section 66 provides that the contracting authority may, on the request the project company, second such number of employees as may be necessary for purposes of undertaking the project either on the same or improved terms of service. Those seconded employees are deemed to be employees of the company subject to its direction and control.

Under section 67, the law provides for establishment of a Petition Committee to receive and consider any complaints and petitions submitted by a private party during the process of tendering or entering into a project agreement.

2.4 COURT MATTERS RELATING TO THE PIIP.

The Kenya Airports Authority (KAA) filed a case in the Employment and Labour Relations court against the Kenya Aviation Workers Union (KAWU) seeking a temporary injunction to restrain the union from participating in a strike pending hearing and determination of the application. The workers were opposed to the proposed takeover of JKIA by the KQ PLC. The court on 5th February, 2019 ordered that the strike notice be suspended and the dispute be subjected to conciliation committee to be constituted by the Cabinet Secretary, Labour and Social Protection. The parties are required to report progress on the matter within 60 days.

On 15th February 2019, the Kenya Aviation Workers Union filed a Constitutional Petition in the High Court under a certificate of urgency against the Kenya Airports Authority, Kenya Airways, the Cabinet Secretary for Transport and Infrastructure, the Cabinet Secretary for Treasury and Another on the proposed agreement between Kenya Airways (KQ) and (KAA) regarding the operation, maintenance, development, construction, upgrade, modernization, financing and management of Jomo Kenyatta International Airport (JKIA) based on a Public Private Partnership (PPP) model. The petitioners raised the following issues among others:

- (a) Inadequate public participation in the entire process;
- (b) The fate of KAA staff upon completion of takeover had not been addressed;
- (c) Whether KQ would pay KAA Kshs. 4 Billion owed to KAA after take over;
- (d) Possibility of anti-competitive practices arising from KQ collecting fees from other airlines using the JKIA;
- (e) Whether KQ was the right entity to manage JKIA given the former's intrinsic financial problems;
- (f) There was no feasibility study done and that the project will satisfy the public and that it is justifiable;
- (g) There was no feasibility study showing that KAA will meet its prior financial obligations and pay off loans that are guaranteed by the government;
- (h) The transaction was in breach of the Public Private Partnership (PPP) Act;
- (i) The KAA hired consultants to advise on the project in an environment of secrecy and confidentiality in breach of the Public Procurement and Asset Disposal Act, 2015; and,
- (j) Parliament should pronounce itself on the matter before completion of the deal.

Prayers sought by KAWU

The Petitioners sought conservatory orders to stay the implementation of any decision regarding acquisition, takeover and privatization of JKIA by KQ or concerning any arrangement under the PPP Act pending hearing and determination of the application.

3.0 CHAPTER: EVIDENCE

3.1 EVIDENCE SUBMITTED BY THE KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Fred Odawo (General Manager, Engineering Services), Mr. Patrick Chonde (Finance Manager) and Ms. Angela Tilitei (Communication Manager) appeared before the Committee on 12th and 21st February, 2019 to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2015/2016.

He informed the Committee as follows:

- (1) On 29th May, 2018, the Cabinet, through a Cabinet Memorandum (CAB 18/28) granted in-principle approval to Kenya Airways (KQ) and Kenya Airports Authority (KAA) to develop and subsequently engage in a framework that will lead to the optimization of operations of Jomo Kenyatta International Airport (JKIA).
- (2) In a letter dated 19th June, 2018, the Principal Secretary (PS), State Department of Transport issued instructions to KAA and KQ to proceed with the implementation of the Cabinet directive.
- (3) On 5th October, 2018, the Authority received a Privately Initiated Investment Proposal from KQ. The PIIP is anchored on the Public Private Partnership (PPP) Act, 2013 and broadly envisages the following transaction structure:
 - (a) A 30-year concession framework under which KQ will seek, through a Special Purpose Vehicle (SPV) to manage and develop JKIA at a fee (concession fee) leaving KAA to manage all other Kenyan airports and airstrips;
 - (b) Inclusion of JKIA's aviation infrastructure in the concession as will be enumerated in the Project Agreement upon conclusion of due diligence;
 - (c) Engagement by the Concessionaire of an external Airport Advisor to implement solutions and airport management best practices; and
 - (d) KQ committing to meet minimum investment requirements as shall be negotiated with KAA.

- (4) The rationale for the proposed transaction, as given by government, was to implement Government policy which seeks consolidation of key aviation assets to realize significant operational efficiencies and synergies, restoration of the aviation sector's regional and international competitiveness, protection of JKIA's regional hub status, improved diversification and utilization of JKIA resources and support for KQ's turnaround.
- (5) According to Government, KQ accounts for over 40% of KAA's business and revenues. KQ and KAA therefore have a symbiotic relationship which could be enhanced for the benefit of Kenya's aviation sector through closer collaboration with KAA. The Authority therefore supports an engagement with KQ that will result in the optimization of the country's aviation assets and this has been the basis for accepting to evaluate the proposal as a basis for forging a mutually regarding partnership.
- (6) The Authority proceeded to seek guidance from the National Treasury on how to deal with the matter and received communication to the effect that they should consider the proposal.
- (7) Kenya Airports Authority was assessing the proposed takeover and has invited the public to submit their views on the matter.
- (8) On 18th November 2018, Kenya Airports Authority tendered for the services of a transactional advisor to carry out due diligence on the technical, financial and legal implications of the proposed takeover.
- (9) The transaction advisor would assist in developing a negotiating criterion for the Authority based on the information and gaps identified from the due diligence process.
- (10) The Authority had not taken a position on the proposed takeover but would await the report from the transactional advisor and the feedback from the public before pronouncing its position.

4:0 CHAPTER 4: COMMITTEE PRELIMINARY OBSERVATIONS

- (1) The matter of JKIA take over by the KQ was initiated by the Cabinet and Communicated to the KAA on 29th May, 2018, the Cabinet, through a Cabinet Memorandum (CAB 18/28) by the then Principal Secretary State Department of Transport. The said resolution from KQ has neither been seen by the KAA nor the Committee.
- (2) The rationale for the proposed transaction, as given by government, was to implement Government policy which seeks consolidation of key aviation assets to realize significant operational efficiencies and synergies, restoration of the aviation sector's regional and international competitiveness, protection of JKIA's regional hub status, improved diversification and utilization of JKIA resources and support for KQ's turnaround.
- (3) Kenya Airports Authority is a profit-making State Corporation while Kenya Airways has been posting losses in their most recent financial statements yet the latter proposes to take over the management of Jomo Kenyatta International Airport from the former.
- (4) As of February 2019, Kenya Airways owes a debt of approximately Kshs. 3.8 Billion to Kenya Airports Authority.
- (5) KQ initiated and submitted a PIIP to KAA on 5th October 2018. Which proposal is under consideration by the KAA.
- (6) The procurement process for the transactional advisor was not an open tender but a restricted tender and the Authority pointed out that the decision was advised by the time constraints that would not allow for a lengthy procurement process.
- (7) JKIA accounts for nearly 83% of KAA's revenue and 51% of the recurrent expenditure. The Authority would therefore lose the majority of its revenue-generating asset if the takeover was to be effected.
- (8) Should JKIA be handed over to KQ, the arrangement will deprive KAA significant resources given that the concession fee will not significantly cover the operational costs of the remaining airports, airstrips and the head office.
- (9) In KQ's financial model as per the PIIP, the annual concession fee has been set at USD 28 Million (equivalent to Kshs. 2.9 Billion) in 2019, rising gradually to USD

35 Million (Kshs. 3.6 Billion) and peaking at USD 60 Million (Kshs. 6.1 Billion) in 2033.

- (10) In comparison, KAA's non-JKIA operations in the 2018/19 financial year amount to Kshs. 6.6 Billion in recurrent expenditure, hence leaving a shortfall of Kshs. 3.7 Billion from the concession fee of Kshs. 2.9 Billion.
- (11) KQ's proposal further assumes that KAA will retain all contingent liabilities including those arising from JKIA operation, a situation that would leave KAA worse off financially.
- (12) The proposed takeover is being rushed despite obvious risks associated with it including concerns on its financial viability and the potential loss of jobs at Kenya Airports Authority. The Authority had allegedly been given a mid-December 2018 timeline to complete the transaction as per the Board minutes.
- (13) There is a potential conflict of interest in the proposed takeover where the Chairperson of the KAA Board also chairs a bank which is a shareholder in Kenya Airways, the entity that proposes to take over the airport. The Chair of the KAA Board acknowledged this during the Board's 296th sitting by stating that he is the Chairman of a bank which is a big shareholder in KQ. He however stated that he would put this conflict aside and focus on KAA.
- (14) Staff based at the Kenya Airports Authority had sought legal action in court to stop the proposed takeover of JKIA operations by Kenya Airways.
- (15) Subsequent to the PIIP; the KCAWU have instituted court proceedings questioning the prudence and procedural fairness of the whole process. The matter is pending in court.

5.0 CHAPTER 5: COMMITTEE'S PRELIMINARY RECOMMENDATIONS

Given the risks associated with the transaction involving the transfer of a strategic state asset, the hurried manner in which it is being implemented, the potential conflict of interest and redundancy at KAA occasioned by the proposed takeover, the Committee recommends that:

1. All engagement between the Kenya Airports Authority and Kenya Airways regarding the Privately Initiated Investment Proposal on the takeover of JKIA operations should be postponed until the Committee inquiry is concluded and the House pronounces itself on the matter.
2. The Office of the Auditor General should expedite the requested Special Audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face if the takeover is implemented and the procurement process for the services of the transaction advisor.

Sign

Date.....

HON. ABDULLSWAMAD SHARRIF NASSIR, MP - CHAIRPERSON

PUBLIC INVESTMENT COMMITTEE

1. The first part of the paper is devoted to a general discussion of the problem.

2. In the second part, we shall consider the case of a single particle.

3. The third part is devoted to the case of a system of particles.

4. In the fourth part, we shall consider the case of a continuous medium.

5. The fifth part is devoted to the case of a system of continuous media.

6. In the sixth part, we shall consider the case of a system of particles and continuous media.

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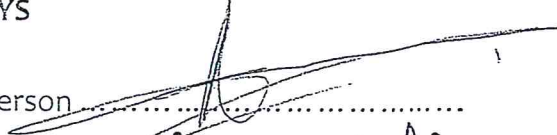
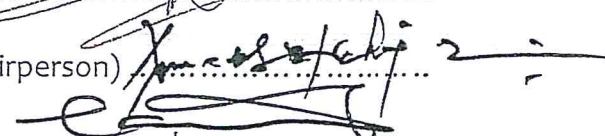
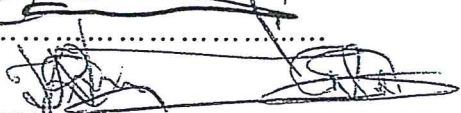
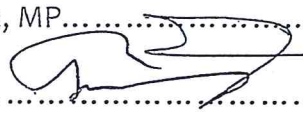
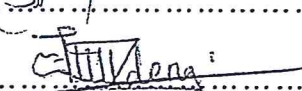
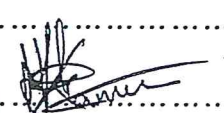
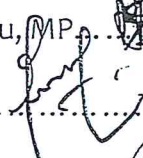
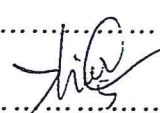
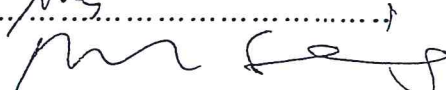
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ADOPTION OF THE PROGRESS REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE
INQUIRY INTO PROPOSED TAKEOVER OF JOMO KENYATTA INTERNATIONAL AIRPORT BY
KENYA AIRWAYS

1. Hon. AbdullswamadSharraf Nassir, MP Chairperson.....
2. Hon. Ahmed Abdisalan Ibrahim, MP (Vice- Chairperson).....
3. Hon. Dr. ChrisantusWamalwaWakhungu, MP.....
4. Hon. Raphael BittaSautiWanjala, MP.....
5. Hon. Justus Kizito Mugali, MP.....
6. Hon. John MuchiriNyaga, MP.....
7. Hon. JoashNyamacheNyamoko, MP.....
8. Hon. Paul Kahindi Katana, MP.....
9. Hon. Purity WanguiNgirici, MP.....
10. Hon. Omar Mohamed Maalim Hassan, MP.....
11. Hon. Gladys NyasunaWanga, MP.....
12. Hon. James Githua Kamau Wamacukuru, MP.....
13. Hon. Zachary KwenyaThuku, MP.....
14. Hon. Babu Owino Paul Ongili, MP.....
15. Hon. Mohamed Hire Garane, MP.....
16. Hon. Mary WamauaWaithira Njoroge, MP.....
17. Hon. (Prof.) Mohamud Sheikh Mohammed, MP.....
18. Hon. Rashid Kassim Amin, MP.....

KENYA NATIONAL ASSEMBLY

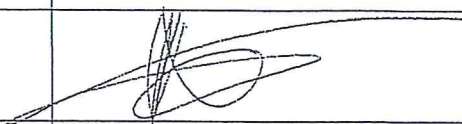
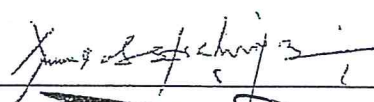
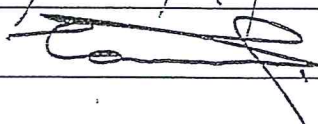
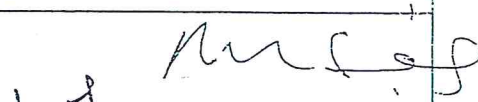
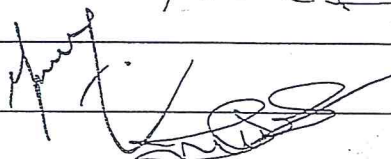
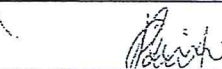
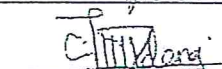
PUBLIC INVESTMENTS COMMITTEE

MEMBERS ATTENDANCE REGISTER

WITNESS: PS, TRANSPORT & ADOPTION OF STATUS REP

DATE: 26/02/2019

TIME 10 AM

	NAME	SIGNATURE
1.	The Hon. Abdullswamad Sheriff Nassir, MP (Chairman)	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP (Vice-Chairman)	
3.	The Hon. Chrisantus Wamalwa Wakhungu, MP	
4.	The Hon. John Muchiri Nyaga, M.P	
5.	The Hon. Raphael Bitta Sauti Wanjala, MP	
6.	The Hon. Gladys Wanga, MP	
7.	The Hon. (Prof.) Mohamud Sheikh Mohammed, MP	
8.	The Hon. Mary Wamaua Njoroge, MP	
9.	The Hon. Purity Wangui Ngirici, MP	
10.	The Hon. Rashid Kassim Amin, MP	
11.	The Hon. Thuku Zachary Kwenya, M.P	
12.	The Hon. Omar Mohamed Maalim Hassan, MP	
13.	The Hon. Justus Kizito, MP	
14.	The Hon. James Kamau Githua Wamacukuru, M.P	
15.	The Hon. Joash Nyamache Nyamoko, MP	
16.	The Hon. Babu Owino Paul Ongili, MP	
17.	The Hon. Paul Kahindi Katana, MP	
18.	The Hon. Mohamed Hire Garane, M.P.	

REPUBLIC OF KENYA

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Fax: +254-020-2243694

E-mail: clerk@parliament.go.ke



Clerk's Chambers

National Assembly

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI, Kenya

When replying please quote

NATIONAL ASSEMBLY

Ref.NA/DCS/PIC/2019/012

21st February, 2019

FCPA Edward Ouko, CBS

Auditor General

Office of the Auditor General

NAIROBI

Dear *FCPA Ouko*

RE: PUBLIC INVESTMENTS COMMITTEE – REQUEST FOR A SPECIAL AUDIT

The Public Investments Committee is established pursuant to Standing Order No. 206, and is mandated to among others, examine the reports and accounts of public investments as submitted by the Auditor-General and also examine whether the affairs of public investments are being managed in accordance with sound financial or business principles and prudent commercial practices. Article 229 of the Constitution of Kenya also mandates Parliament to consider the Report of the Auditor General.

The Committee is in the process of inquiring into the proposed takeover of Kenya Airport Authority's Jomo Kenyatta International Airport by Kenya Airways. At its sitting held on Thursday 21st February, 2019, the Committee resolved to request you to undertake a special audit at the Kenya Airports Authority with respect to the following:

1. The Privately Initiated Investment Proposal by Kenya Airways to operate, maintain, develop, construct, upgrade, modernize, finance and manage the Jomo Kenyatta International Airport;
2. The risks that Kenya Airports Authority and the public is exposed to from this proposed takeover; and
3. The procurement process by Kenya Airports Authority for the services of a Transactional Advisor for the proposed takeover.

The Committee would appreciate if the Special Audit is completed by Monday 4th March, 2019 to enable it to conclude this matter.

Yours

A handwritten signature in dark ink, appearing to be 'J. Ndombi'.

JEREMIAH W. NDOMBI

For: CLERK OF THE NATIONAL ASSEMBLY

MINUTES OF THE 7TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 26TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
- ~~2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)~~
- ~~3. The Hon. Dr. Chrisantus Wamatwa Wakhungu, CBS, MP~~
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Justus Kizito Mugali, MP
13. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. Purity Wangui Ngirici, MP
- ~~3. The Hon. John Muchiri Nyaga, M.P~~
4. The Hon. Gladys Wanga, MP
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant III |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

MIN/PIC/026/2019: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/027/2019: CONFIRMATION OF MINUTES

1. Minutes of the 1st sitting held on 7th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Rashid Kassim, MP and seconded by Hon. Justus Kizito, MP.

2. Minutes of the 2nd sitting held on 7th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Zachary Thuku, MP and seconded by Hon. Rashid Kassim, MP.
3. Minutes of the 3rd sitting held on 12th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Ahmed Abdisalan, MP and seconded by Hon. Abdullswamad Sharrif Nassir, MP, MP.
4. Minutes of the 4th sitting held on 14th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Rashid Kassim, MP and seconded by Hon. Justus Kizito, MP.
5. Minutes of the 5th sitting held on 19th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Zachary Thuku, MP and seconded by Hon. Justus Kizito, MP.
6. Minutes of the 6th sitting held on 21st February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Prof. Mohamed Sheik Mohamed, MP

MIN/PIC/028/2019: ADOPTION OF THE PROGRESS REPORT ON THE INQUIRY INTO PROPOSED TAKEOVER OF JOMO KENYATTA INTERNATIONAL AIRPORT BY THE KENYA AIRWAYS

The Committee went through the draft report and adopted it unanimously. The secretariat was asked to process it for tabling.

MIN/PIC/029/2019: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

26/02/2019

MINUTES OF THE 6TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 21ST FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gladys Wanga, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Mohamed Hire Garane, M.P.
13. The Hon. Joash Nyamache Nyamoko, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP
15. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

1. The Hon. Alfred Keter, MP
2. The Hon. Moses Kuria, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Clerk Assistant III |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Ms. Doreen Karani | - | Legal Counsel |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------|
| 1. Mr. Boniface Muli | - | Director, Audit |
| 2. CPA Henry Nyandwaki | - | Deputy Director, Audit |
| 3. Mr. George Otieno Nashon | - | Manager, Audit |
| 4. Mr. Josiah Oyuko | - | Manager, Audit |

MIN/PIC/022/2019: PRELIMINARIES

The Chairperson called the meeting to order at two minutes past ten O'clock followed by a word of prayer.

MIN/PIC/023/2019: EVIDENCE BY THE KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Patrick Wanjuki (General Manager, Procurement & Logistics), and Ms. Angela Tilitei (Communication Manager) appeared before the Committee to adduce evidence on the proposed takeover of Jomo Kenyatta International Airport by Kenya Airways.

He informed the Committee as follows:

1. On 29th May, 2018, the Cabinet, through a Cabinet Memorandum (CAB 18/28) granted an in-principle approval to Kenya Airways (KQ) and Kenya Airports Authority (KAA) to develop and subsequently engage in a framework that will lead to the optimization of operations of Jomo Kenyatta International Airport (JKIA).
2. In a letter dated 19th June, 2018, the Principal Secretary (PS), State Department of Transport issued instructions to KAA and KQ to proceed with the implementation of the Cabinet directive.
3. On 5th October, 2018, the Authority received a Privately Initiated Investment Proposal from KQ. The PIIP is anchored on the Public Private Partnership (PPP) Act, 2013 and broadly envisages the following transaction structure:
 - a. A 30-year concession framework under which KQ will seek, through a Special Purpose Vehicle (SPV) to manage and develop JKIA at a fee (concession fee) leaving KAA to manage all other Kenyan airports and airstrips;
 - b. Inclusion of JKIA's aviation infrastructure in the concession as will be enumerated in the Project Agreement upon conclusion of due diligence;
 - c. Engagement by the Concessionaire of an external Airport Advisor to implement solutions and airport management best practices; and
 - d. KQ committing to meet minimum investment requirements as shall be negotiated with KAA.
4. The rationale for the proposed transaction is to implement Government policy which seeks consolidation of key aviation assets to realize significant operational efficiencies and synergies, restoration of the aviation sector's regional and international competitiveness, protection of JKIA's regional hub status, improved diversification and utilization of JKIA resources and support for KQ's turnaround.
5. KQ accounts for over 40% of KAA's business and revenues. KQ and KAA therefore

have a symbiotic relationship which could be enhanced for the benefit of Kenya's aviation sector through closer collaboration with KAA. The Authority therefore supports an engagement with KQ that will result in the optimization of the country's aviation assets and this has been the basis for accepting to evaluate the proposal as a basis for forging a mutually regarding partnership.

Committee Observations

The Committee made the following observations:

1. The Committee observed that the following documents were not submitted by the Authority as requested during the previous meeting:
 - a. A copy of the Cabinet memo referenced in their submission. They stated that they only received a letter from the Principal Secretary, Transport informing them of the cabinet decision on the proposed takeover;
 - b. A copy of the Privately Initiated Investment Proposal (PIIP) by Kenya Airways. A copy of the letter forwarding the PIIP was instead submitted;
 - c. Correspondence by KAA in response to the letters by PS, Transport as well as the KQ Managing Director;
 - d. A copy of the Report by the Transactional Advisor on the proposed takeover. The Authority noted that the Report was a draft and not the final version, hence could not be shared.
2. The Chair of the KAA Board had indicated his conflict of interest during the Board's 296th sitting by stating that he is the Chairman of a bank which is a big shareholder in KQ. He however stated that he would put this conflict aside and focus on KAA.
3. The KAA Board had been apprised of the matter of the proposed takeover including the risks associated with it.
4. JKIA accounts for nearly 83% of KAA's revenue and 51% of the recurrent expenditure. The Authority would therefore lose the majority of its revenue-generating asset if the takeover was to be effected.
5. Should JKIA be handed over to KQ, the arrangement will deprive KAA significant resources given that the concession fee will not significantly cover the operational costs of the remaining airports, airstrips and the head office.
6. In KQ's financial model as per the PIIP, the annual concession fee has been set at USD 28 Million (equivalent to Kshs. 2.9 Billion) in 2019, rising gradually to USD 35 Million (Kshs. 3.6 Billion) and peaking at USD 60 Million (Kshs. 6.1 Billion) in 2033.
7. In comparison, KAA's non-JKIA operations in the 2018/19 financial year amount to Kshs. 6.6 Billion in recurrent expenditure, hence leaving a shortfall of Kshs. 3.7 Billion from the concession fee of Kshs. 2.9 Billion.
8. KQ's proposal further assumes that KAA will retain all contingent liabilities including those arising from JKIA operation, a situation that would leave KAA worse off financially.

9. KQ had attempted various interventions geared at restructuring, including engaging McKinsey but had not been successful in such attempts. There was therefore no guarantee that its proposed takeover of JKIA would work.
10. The attempt to model KQ's takeover of JKIA operations along the line of national carriers in Ethiopia and United Arab Emirates was not practical since the latter two's national airlines are fully owned by their respective States.
11. The procurement process for the transactional advisor was not an open tender but a restricted tender and the Authority pointed out that the decision was advised by the time constraints that would not allow for a lengthy procurement process.
12. The transaction advisor, MMC Africa Law, had a valid contract for the provision of service to KAA and had been paid 10% of the total contract sum.
13. KAA did not initiate the proposal. The PIIP was submitted by Kenya Airways following the Government directive. KAA was also limited in terms of offering a different strategic direction from the one proposed by KQ as the Government policy set out the end result to be achieved.
14. The Authority had allegedly been given a mid-December 2018 timeline to complete the transaction as per the Board minutes.
15. The Authority was considering the PIIP as mandated by the Public Private Partnership Act and was carrying out due diligence on the proposal. No decision had as yet been made on whether to accept or reject the proposal.

Committee Resolutions

The Committee made the following resolutions:

1. All engagement between the Kenya Airports Authority and Kenya Airways regarding the Privately Initiated Investment Proposal on the takeover of JKIA operations should cease until the Committee inquiry is concluded and the House pronounces itself on the matter.
2. The Office of the Auditor General should conduct a special audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face if the takeover is implemented and the procurement process for the services of the transaction advisor.

MIN/PIC/024/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/025/2019: ADJOURNMENT

The meeting was adjourned at twenty minutes past one O'clock.

Signed.....

Date 26/02/2019

The Hon. Abdullswamad Sharrif Nassir, MP (Chairperson)

MINUTES OF THE 5TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY, 19TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gladys Wanga, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Joash Nyamache Nyamoko, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Justus Kizito Mugali, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP
15. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE - NATIONAL ASSEMBLY

1. The Hon. Alfred Keter, MP
2. The Hon. Jude Njomo, MP
3. The Hon. Joshua Kandie, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Clerk Assistant III |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Ms. Doreen Karani | - | Legal Counsel |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Boniface Muli | - | Director, Audit |
| 2. CPA Henry Nyandwaki | - | Deputy Director, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. Francis Kabui | - | Manager, Audit |
| 5. Mr. Bernard Ngulalu | - | Inspectorate of State Corporations |

MIN/PIC/018/2019: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer. The Chairperson noted that incidental to the matter of the Authority's audited accounts was the matter of the proposed takeover of operations at Jomo Kenyatta International Airport by Kenya Airways. The Managing Director of Kenya Airports Authority was asked to appraise the Committee on the matter.

MIN/PIC/019/2019: EVIDENCE BY THE KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Fred Odawo (General Manager, Engineering Services), Mr. Patrick Chonde (Finance Manager) and Ms. Angela Tilitei (Communication Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2015/2016.

He informed the Committee as follows:

1. The matter of the proposed takeover of the operations and management of Jomo Kenyatta International Airport (JKIA) by Kenya Airways was a Cabinet decision that was communicated to Kenya Airports Authority in June 2018.
2. The Principal Secretary in the State Department of Transport wrote to Kenya Airports Authority noting the rationale for the proposed takeover being the need to optimize operations at JKIA and reclaim the airports' status as aviation hub in the region. This was after the airport lost significant market share other airports in the region in the last few years.
3. In October 2018, Kenya Airports Authority received a proposal from Kenya Airways to operate, manage and develop JKIA for a concessional period of 30 years
4. The Authority proceeded to seek guidance from the National Treasury on how to deal with the matter and received communication to the effect that they should consider the proposal.
5. Kenya Airports Authority was assessing the proposed takeover and has invited the public to submit their views on the matter.
6. On 18th November, 2018, Kenya Airports Authority tendered for the services of a transactional advisor to carry out due diligence on the technical, financial and legal implications of the proposed takeover.
7. The transaction advisor would assist in developing a negotiating criteria for the Authority based on the information and gaps identified from the due diligence process.
8. The Authority had not taken a position on the proposed takeover but would await the report from the transactional advisor and the feedback from the

public before pronouncing its position.

Committee Observations

The Committee made the following observations:

1. The proposal to have Kenya Airways take over the operation and management of Jomo Kenyatta airport was a government policy that was communicated to Kenya Airports Authority through the Ministry of Transport, Infrastructure, Housing and Urban Development.
2. The project is being considered by the Kenya Airports Authority having received a proposal from Kenya Airways to take over operations of the airport through a 30-year concession.
3. The Kenya Airports Authority's Board of Directors had considered the matter of the proposed takeover and advised the management to appoint a transactional advisor who would help in carrying out the necessary due diligence.
4. The Report from the transactional advisor had identified a lot of gaps and risks that KAA faces from the proposed takeover, including loss of revenue.
5. The proposed takeover is being rushed despite obvious risks associated with it including concerns on its financial viability and the potential loss of jobs at Kenya Airports Authority.
6. There is a potential conflict of interest in the proposed takeover where the Chairperson of the KAA Board also chairs a bank which is a shareholder in Kenya Airways, the entity that proposes to take over the airport.
7. The procurement for the services of the transactional advisor was done through restricted tendering due to what the Authority cited as time constraints in going through an open tendering process.
8. As of February 2019, Kenya Airways owes a debt of approximately Kshs. 3.8 B to Kenya Airports Authority.
9. Kenya Airports Authority is a profit-making State Corporation while Kenya Airways has been posting losses in their most recent financial statements yet the latter proposes to take over the management of Jomo Kenyatta International Airport from the former.
10. Staff based at the Kenya Airports Authority had sought legal action in court to stop the proposed takeover of JKIA operations by Kenya Airways.

Committee Resolutions

The Committee made the following resolutions:

1. The Management of Kenya Airports Authority should re-appear before the Committee on Thursday 21st February, 2019 with a written submission providing a chronology of the project from conceptualization to the current status.
2. The Management should avail the following documents when re-appearing before the Committee:
 - a. A copy of the Cabinet Memo on the proposed takeover of JKIA by Kenya

Airways;

- b. Board resolutions on the matter;
- c. KAA letter to Treasury seeking guidance on the proposal;
- d. The Privately Initiated Investment Proposal from Kenya Airways;
- e. Details on the procurement process for the transactional advisor;
- f. A copy of the due diligence report by the transactional advisor;
- g. The current status of the public participation exercise for the proposed takeover.

3. The Board of Directors at Kenya Airports Authority to appear before the Committee to adduce evidence on the matter.

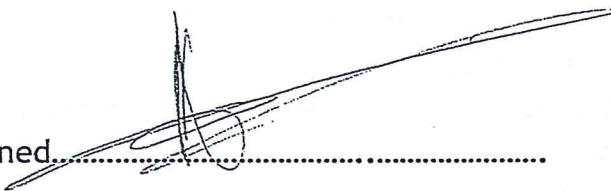
MIN/PIC/020/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/021/2019: ADJOURNMENT

The meeting was adjourned at six minutes past twelve O'clock.

Signed.....



The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date 26/07/2019

MINUTES OF THE 3RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY, 12TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Gladys Wanga, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Omar Mohamed Maalim Hassan, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Joash Nyamache Nyamoko, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant III |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Doreen Karani | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------|---|----------------|
| Mr. Joshiah Oyuko | - | Manager, Audit |
|-------------------|---|----------------|

MIN/PIC/009/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty six minutes past ten O'clock followed by a word of prayer.

MIN/PIC/010/2019: CONFIRMATION OF MINUTES

Confirmation of Minutes was deferred to the next sitting.

MIN/PIC/011/2019: SCHEDULE OF COMMITTEE BUSINESS

The Committee resolved to meet the following witnesses on the week commencing 18th February, 2019:

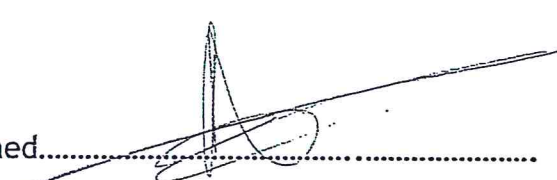
- a. 19th February, 2019 - Kenya Airports Authority on audited accounts for FY 2015/16;
- b. 21st February - Kenya Ports Authority on audited accounts for FY 2013/14 to FY 2016/17.

MIN/PIC/012/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/013/2019: ADJOURNMENT

The meeting was adjourned at five minutes past eleven O'clock.

Signed.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....26/02/2019.....

MINUTES OF THE 4TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 14TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Justus Kizito Mugali, MP
7. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Mohamed Hire Garane, M.P.
4. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Joash Nyamache Nyamoko, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant III |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Doreen Karani | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------|---|----------------|
| Mr. Joshiah Oyuko | - | Manager, Audit |
|-------------------|---|----------------|

MIN/PIC/014/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/015/2019: CONFIRMATION OF MINUTES

Minutes of the 1st sitting were confirmed as a true record of proceedings having been

proposed by The Hon. Paul Kahindi Katana, MP and seconded by The Hon. Raphael Wanjala, MP.

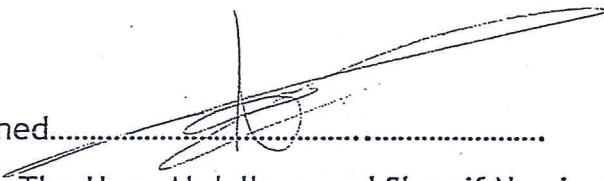
Minutes of the second sitting were confirmed as a true record of proceedings having been proposed by The Hon. John Muchiri Nyaga, MP and seconded by The Hon. Justus Kizito, MP

MIN/PIC/016/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/017/2019: ADJOURNMENT

The meeting was adjourned at five minutes past to eleven O'clock.

Signed.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....