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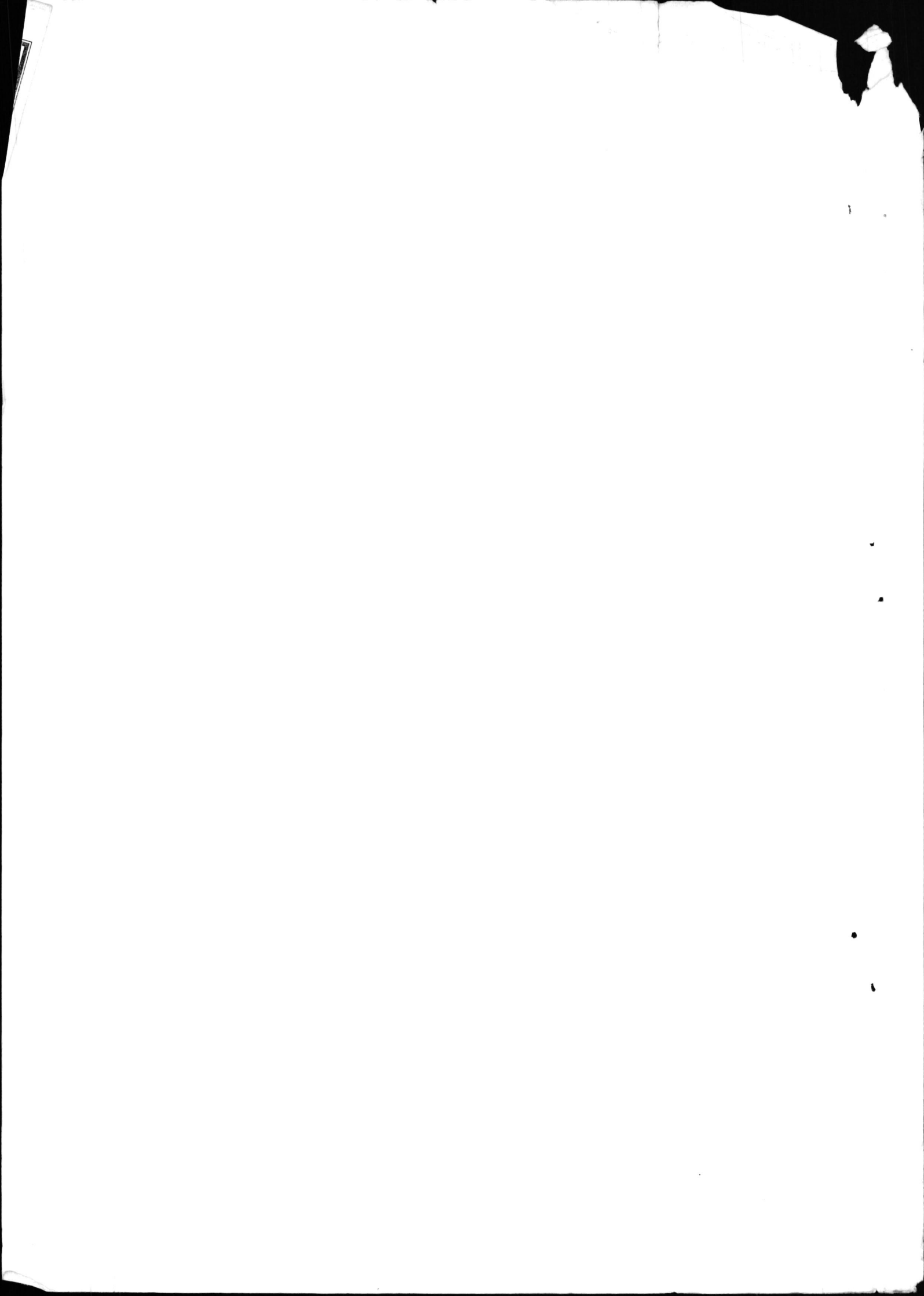
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REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT-FOURTH SESSION

REPORT
OF THE SELECT COMMITTEE ON EQUAL
OPPORTUNITY

ON
THE RECRUITMENT OF THE MANAGING DIRECTOR,
KENYA BUREAU OF STANDARDS

December, 2010



1.0 PREFACE

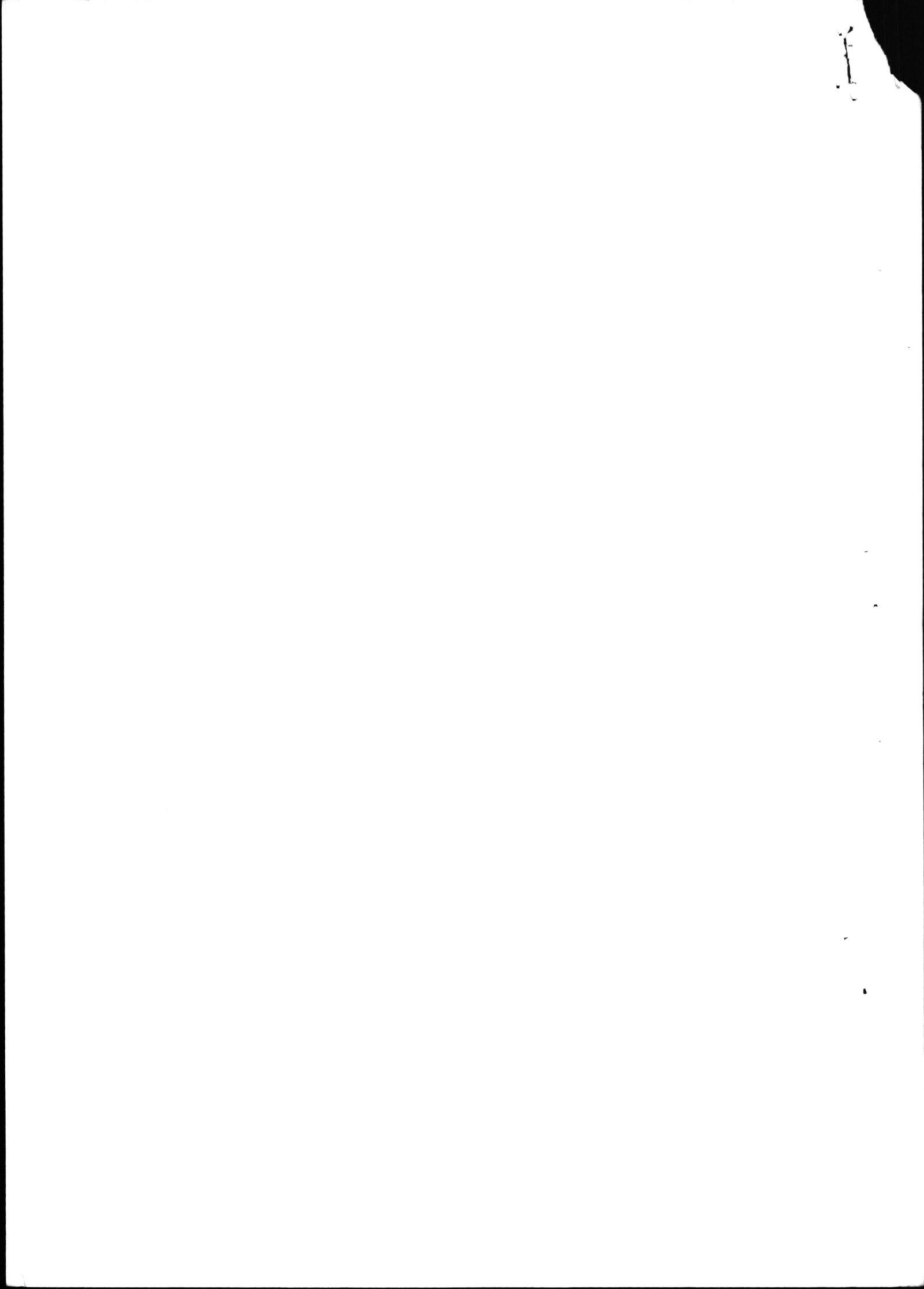
Mr. Speaker Sir, on behalf of the Members of the Select Committee on Equal Opportunity, I would like to take this Opportunity to present to the House, the Committee's Report on the recruitment of the Managing Director, Kenya Bureau of Standards.

The membership of the Committee comprise of the Following:-

- (i) The Hon. Mohammed Affey, MP - **(Chairperson)**
- (ii) The Hon. Joseph Lekuton, MP - **(Vice-Chairperson)**
- (iii) The Hon. Maison Leshoomo, MP
- (iv) The Hon. Chesebe Fred Kapondi, MP
- (v) The Hon. Luka Kipkorir Kigen, MP
- (vi) The Hon Francis Chachu Ganya, MP
- (vii) The Hon. Millie Odhiambo- Mabona,MP
- (viii) The Hon. Raphael Letimalo, MP
- (ix) The Hon. Eng. Ephraim Maina, MP

The Mandate of this Select Committee as established under Standing Order No. 192 are:-

- (i) Monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of

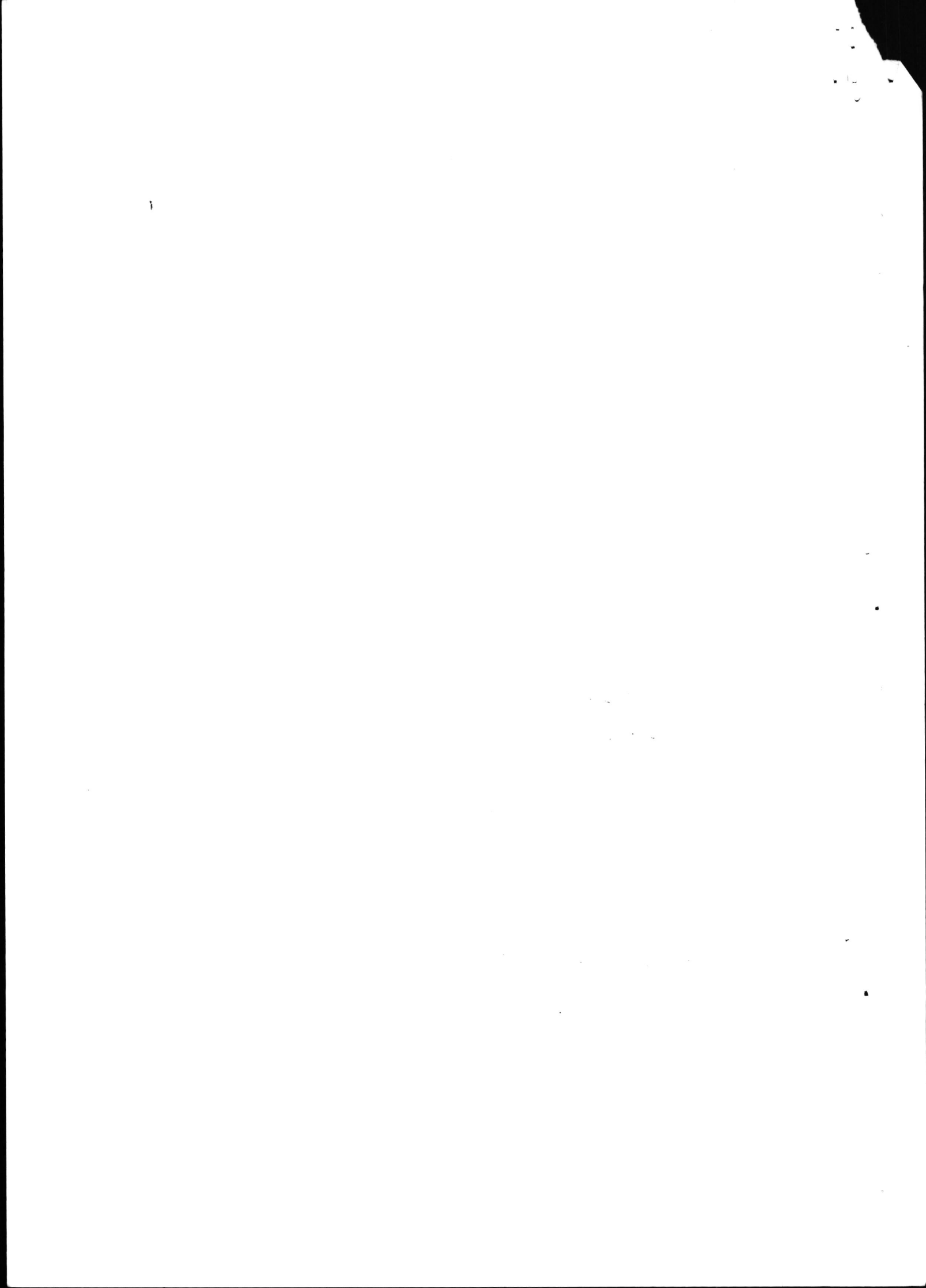


all persons including groups who are marginalized persons on the basis of gender, age, disability, health status ethnic, racial, cultural or religious background or affiliation or any other such ground;

- (ii) Investigate, inquire into and report on all matters relating to discrimination or marginalization of the groups referred to under sub-paragraph (a);
- (iii) make proposals to the House including legislative proposals for the protection, equalization of opportunities and promotion of the welfare of the groups referred to under sub-paragraph (a) and;
- (iv) examine the activities and administration of all Ministries, departments and statutory bodies in so far as they relate to the rights and welfare of the groups referred to under paragraph (a);

Mr. Speaker Sir,

The Kenya Bureau of Standards (KEBS) was established in July 1974 and falls within the Ministry of Industrialization. The Committee on Equal Opportunity, in line with its mandate which cuts across all the Ministries took up this matter arising from an impasse in the selection process for the Managing Director of the Kenya Bureau of Standards (KEBS) with a view that all Kenyans had not been given an equal opportunity.



The Committee held meetings with the following in getting facts on the matter:-

1. The Minister for Industrialization
2. The Permanent Secretary, Ministry of Industrialization
3. The National Standards Council
4. The Chief Executive, KPMG
5. The National Cohesion and Integration Commission

Mr. Speaker Sir, on behalf of the Select Committee on Equal Opportunity, I have the honour and pleasure to present the Committee's Report and recommendation on the appointment of the Managing Director, Kenya Bureau of Standards for consideration and adoption by the House.

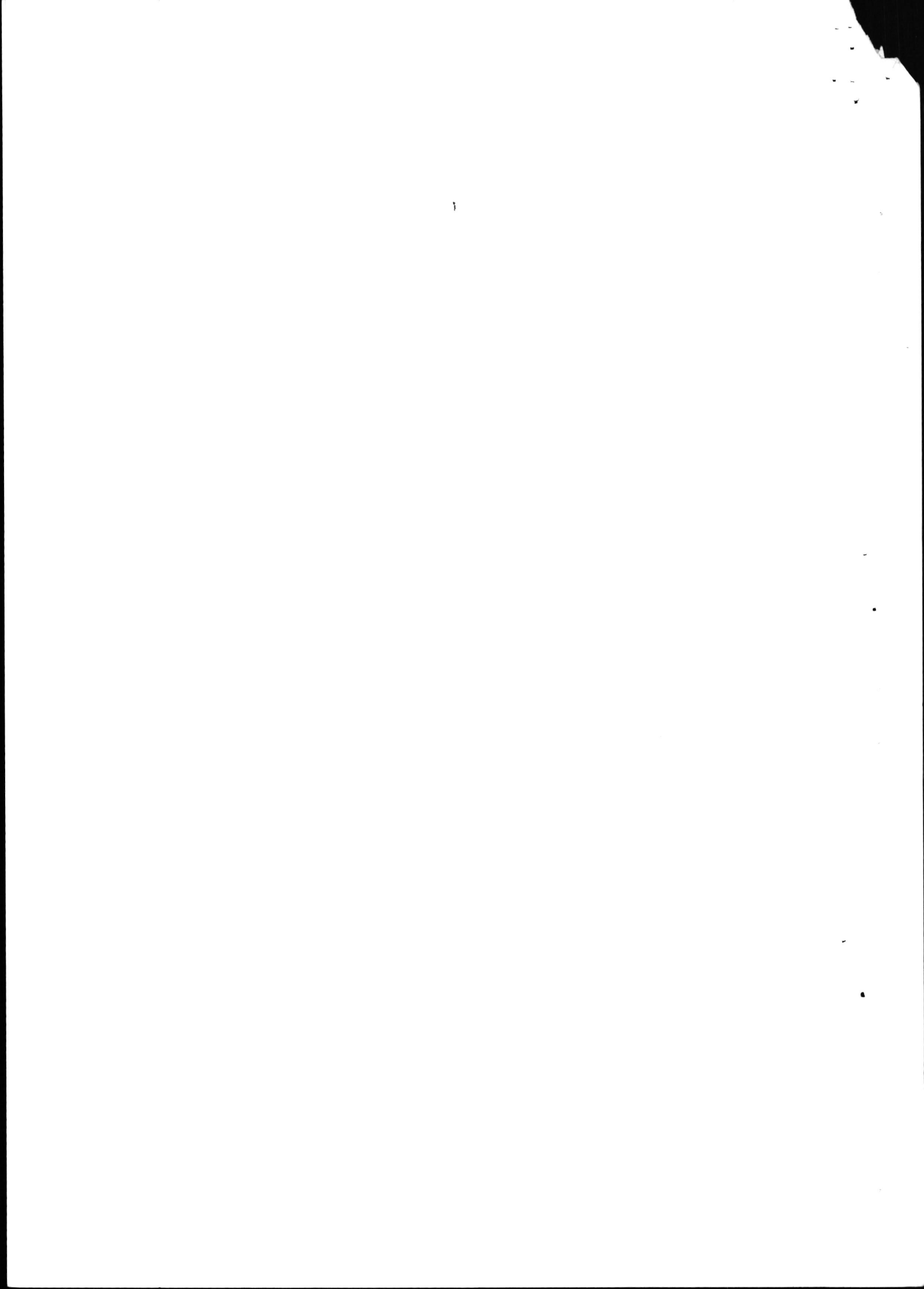
Thank you.

Signed..........

Hon. Mohammed Affey, M.P.

**Chairman,
Select Committee on Equal Opportunity.**

Date.....15/12/2010.....



2.0. INTRODUCTION

The Kenya Bureau of Standards was established in July 1974 through an Act of Parliament.

2.1. Chapter 496 of the Standards Act is an Act of Parliament to promote the standardization of the specification of commodities and to provide for the standardization of commodities and codes of practice; to established Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing...

2.2. Section 6(1) establishes the National Standard Council.

Part (2) of that section states that the Council shall subject to the provisions of subsection

(3) consist of the following members;

(a) A chairman appointed by the Minister;

(b) A secretary who shall be the Director of the Bureau;

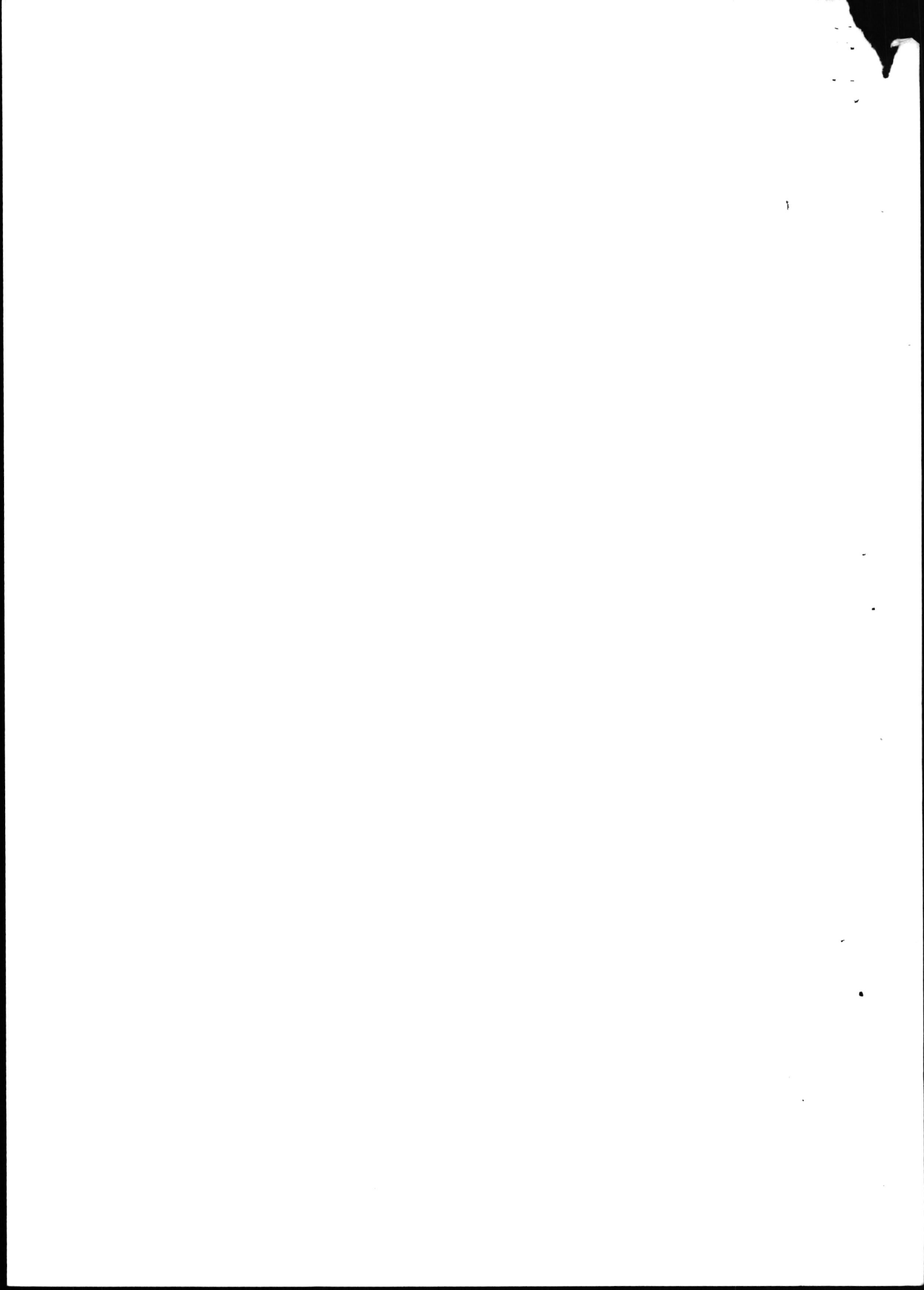
(c) Not more than seven persons appointed by the Minister who shall be public officers;

(d) Not more than eight persons appointed by the Minister who shall possess knowledge of industrial or commercial standards or other matters likely to be of assistance to the Bureau.

2.3. Section 7 (i) provides that the Council shall have power – (b) to advise and obtain advice from the Minister in regard to any matter within his purview under this Act;

(c) To formulate matters of policy for the purpose of providing general or specific guidance to the Institute for the better performance of its functions under this Act;

(d) To do all things necessary for the better carrying out of the provisions and purposes of this Act except whether otherwise provided.



3.0. RECRUITMENT PROCESS

- 3.1.** The position of Managing Director, Kenya Bureau of Standards fell vacant when the Managing Director was removed from the office due to inappropriate conduct. In accordance with the mandate conferred to the National Standards Council, on 21st December, 2009, the council initiated a recruitment process, and hence agreed to engage an external human resource firm to help in the exercise. Through a competitive process KPMG was awarded the contract at a cost of **Kshs.1, 500,000/=** with a down payment of 40%.
- 3.2.** KPMG was mandated to carry out the short listing of 14 Candidates and later provide the council with 6 names. Instead the KPMG submitted 4 names and 2 for comparative purposes which were questioned by the Board. This raised some disagreements prompting the Board to demand for the full list and details of all the applicants, which KPMG declined to give. This led to a stalemate resulting to the non-payment of the 60%.
- 3.3.** In the submissions to the Committee, the Chief Executive, KPMG informed the members of an attempt by the Minister to interfere with the process by sending emissaries to his staff, however the two affidavits submitted to support the claim contradict one another.
- 3.4.** In consultation with the Ministry the Council embarked on a fresh recruitment process which was to be done by the Board itself. Rules and guidelines of the process were agreed upon by the members with the interview having 70% oral and 30% written interview. It was also agreed that the written examination was to be marked by an external

examiner. The council formed an adhoc committee to shortlist and code all the candidates.

- 3.5.** The council advertised the position in the Nation and Standard newspapers at a cost of **Kshs.1,794,659.00/=**
- 3.6.** The council shortlisted 15 candidates including 3 from the Kenya Bureau of Standards. 11 candidates turned up for the interview held between the 14th and 15th September 2010. The marks were then tallied from number 1 to 11 awaiting the scores from the written interview. The council agreed that the first 5 candidates were material for the job.
- 3.7.** Disagreements in the council developed when the written scores came in with some members wanting only the top 5 candidates to be subjected to the external examiners marks while others wanted the whole list of the 11 candidates. At this stage there was no agreement on what criterion to be used to get the three names to be forwarded to the Minister for selection.
- 3.8.** The Minister received an unsigned report from an adhoc committee giving names and scores of the first five candidates with the following scores as follows:-

1. Abdi Kadir Omar Aden	70%
2. Eva Adega Oduor	66%
3. John Mtuta Mruttu	64%
4. Joseph K. Kosgey	62%
5. Eng. Michael Ochieng Owino	53%

After consideration, the Minister felt that the board had not reached a final vetting conclusion and then selected candidate number four (Joseph K. Kosgey) as the new MD for Kenya Bureau of Standards.

3.9. The recruitment exercise of the new Managing Director cost the Council a total of **Kshs.16,528,519.55/=**, with **Kshs.15,990,401.55** in allowances of the Board members, having paid KPMG a down payment of **Kshs. 538,118.00/=**.

4.0 COMMITTEE'S OBSERVATIONS

- The Committee was concerned that the advertisement notice did not give Kenyans sufficient time to apply and also observed that there was lack of an equal opportunity to gender.
- In its deliberations after gathering information from all the parties the committee unanimously agreed that the Minister and the Permanent Secretary have contradictory views which endanger the operation of the institution considering that the Managing Director reports to the Permanent Secretary. In the present scenario the appointed MD has no official appointing letter.
- The Committee in its findings noted that the score sheets from the Board and the ones used by the Minister having been received from the adhoc committee were different. The committee also noted that the report to the Minister was not signed and so not authentic.
- The National Standards Council may not have had the capacity to carry out the recruitment task.
- The advertisement of the position did not clarify if the people who worked for KEBS were eligible to apply or not leading to subjecting the candidates to a futile exercise.
- The National Standard Council misled and misinformed the Minister by giving two different lists of nominees one forwarded by the Chairman of the council through the Permanent Secretary and another by some members of the Adhoc Committee.

5.0 COMMITTEE'S RECOMMENDATIONS

- 5.1.** That the advertisements be specific on the requirements and the people eligible for the position to avoid subjecting others to a futile process, especially if the applicants include the staff at Kenya Bureau of Standards.
- 5.2.** The Committee recommends that due to irredeemable disagreements among the board Members, the Minister and the Permanent Secretary on the process and the outcome, the board to be dissolved with immediate effect and the Minister undertakes afresh recruitment process for the post of Managing Director Kenya Bureau of Standards.
- 5.3.** The Committee met the National Cohesion and Integration Commission deliberated its findings and attached are the Commission recommendations for the house.
- 5.4.** The Committee recommends further investigation regarding the prudent use of taxpayer's money **14,195,742.35** which was used in the recruitment exercise.

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MINUTES OF THE TWENTY NINTH SITTING OF THE
COMMITTEE ON EQUAL OPPORTUNITY HELD ON TUESDAY,
26TH OCTOBER, 2010 IN CONFERENCE ROOM, 2ND FLOOR,
CONTINENTAL BUILDING AT 9.00 A.M

PRESENT

Hon. Mohammed Affey, M.P. - (Chairman)
Hon. Joseph Lekuton, M.P. - (Vice-Chairman)
Hon. Luka Kigen, M.P.
Hon. Chachu Ganya, M.P.
Hon. Maison Leshoomo, M.P.
Hon. Millie Odhiambo, M.P.

ABSENT WITH APOLOGY

Hon. Raphael Letimalo, M.P.
Hon. Ephraim Maina, M.P.
Hon. Fred Chesebe Kapondi, M.P.

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Hon. Rachel Shebesh, M.P.

IN ATTENDANCE - MINISTRY OF INDUSTRIALIZATION

Hon. Henry Kosgey - Minister for Industrialization

KENYA NATIONAL ASSEMBLY

Ms. Rose Mudibo - Committee Secretary
Mr. Abdullahi Aden - Third Clerk Assistant

MIN. NO.120/ 2010

PRAYER AND INTRODUCTION

The meeting was called to order at 9.30 a.m. with a word of prayer. The Chairman then introduced the Members of the Committee to the Minister.

MIN. NO.121/ 2010

BRIEFING BY THE CHAIRMAN

The Chairman briefed the Minister on the Mandate of the Committee under Standing Order 192 and

why he had been invited to meet the Committee highlighting the issue of the recruitment of the Managing Director of Kenya Bureau of Standards.

MIN. NO.122/ 2010

BRIEFING BY THE MINISTER

The Minister informed the Committee that the recruitment of the Managing Director of the Kenya Bureau of Standards began on 21st December, 2009 after the former MD was sacked in public interest. The following steps were then taken by the National Standards Council (NSC):-

- Between 15th March to 21st May, the NSC contracted a consulting firm, KPMG to carry out initial process having won the tender at Kshs1,495,000/=.
- That the advertisement attracted 115 applicants and 14 were shortlisted for an interview.
- KPMG then informed the Board that they wanted to interview another 7 additional applicants which meant an additional cost of Kshs.500,000/=.
- Upon receipt of the final report the NSC requested the original documents for the audit but KPMG declined to surrender the same. Because of this and other reasons the NSC terminated the contract and resolved to restart the process afresh.
- In consultation with the Ministry, the NSC was permitted to undertake the process of the recruitment on 5th August 2010.
- The position was re-advertised on 2nd and 17th August 2010 in the Standard and Nation dailies and KEBs website with a deadline of 2nd September 2010.
- The re-advertisement attracted 74 applicants and 15 candidates were short listed.
- The interview was split into both oral 70% and written 30% and the candidates coded. An external examiner was contracted to mark the written examination.
- Out of the eleven candidates, the board cleared the first five candidates fit for the job
- On 16th September 2010 the board was to do further vetting to be left with three candidates

who were to be forwarded to the Minister for consideration.

- On 16th September 2010, the Chairman of the Board changed his mind and decided that the board goes with the first three candidates. The board then set up an adhoc committee to prepare a report recommending the first three and forward the same to the Minister. Eight members out of thirteen members reacted to that decision in contrary on the same day.
- The Minister received the names of the first three candidates from the Chairman recommending the same.
- The Minister also received a report from the adhoc committee giving a list of the first five candidates and the marks they attained in the interview. Simultaneously, he received a protest note from eight council members including one of the adhoc committee members claiming that the council was not in agreement of the way the process had been conducted.
- The Minister informed the Committee that due to the wrangles amongst the board members, he was of the opinion that candidate number four (Joseph K. Kosgey) was qualified, but still gave the council a chance to deliberate on the matter. Going by the guidelines on terms and conditions of service for state corporations, chief executive officers, chairmen and board members, management staff and unionisable staff on page 16 gives guidelines of the salary scale he had to make a decision on the matter.
- That the Chairman of the Board went to the press on the matter even though the board was to meet on the 6th October, 2010 while the Minister continued to get from different quarters.

MIN. NO.123/2010

COMMITTEE'S CONCERNS

The Committee not having been satisfied raised the following concerns to the Minister:-

- Were the candidates given a chance to accept the offered salary?
- Were all Kenyans who applied given an equal opportunity?

- Did the Minister ever meet the Board to know the cause of the wrangles?
- Why the lady (Eva Adegga Oduor) was not considered and when did her integrity issues come up.
- The Committee wanted to know if the Minister felt that the Board Members were people of integrity and had the capacity to carry out the recruitment process.
- Did the Minister ever see the letter of Mr. Aden claiming that he was flexible on his remuneration considering that he wanted to come back home.
- Was the Permanent Secretary for any particular candidate?

MIN. NO.124/2010

MINISTERS RESPONSE

The Minister gave the following reasons which made him reach his decision:-

- That after analyzing and eliminating on account of salary and agreement by the Board that they needed new blood to head the institution.
- That having given the Board another chance to meet on the 6th October 2010, they again disagreed prompting the Minister to exercise his powers as the appointing authority.
- The Minister stated that the Board had been working very well until this particular incident.
- The Minister stated that Mr. Aden had accepted a salary of Kshs.900,000/= from 1.084,000.
- The Minister claimed that he never got an answer as to why the employees of Kenya Bureau of Standards were not advised not to apply for the job.
- The Minister's opinion is that the Chairman of the Board scuttled the whole process and since he was the appointing authority he then exercised his powers.

MIN. NO.125/2010

COMMITTEES RECOMMENDATIONS

The Committee observed that there were too many loopholes in the whole process and agreed to call other players involved and agreed to call the Minister if need be.

MIN. NO. 126/2010

ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 10.55a.m

SIGNED:.....*Alfy*.....

(CHAIRPERSON)

DATE:.....*16/11/2010*.....

MINUTES OF THE THIRTIETH SITTING OF THE
COMMITTEE ON EQUAL OPPORTUNITY HELD ON
TUESDAY, 26TH OCTOBER, 2010, IN THE COMMITTEE
ROOM ON 2ND FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

The Hon. Mohamed Abdi Affey, M.P. (Chairman)

The Hon. Luka Kigen, M.P.

The Hon. Francis Chachu Ganya, M.P.

The Hon. Fred Chesebe Kapondi, M.P.

The Hon. Maison Leshoomo, M.P.

ABSENT WITH APOLOGY

The Hon. Joseph Lekuton, M.P. - (Vice Chairman)

The Hon. Ephraim Maina, M.P.

The Hon. Millie Odhiambo, M.P.

The Hon. Raphael Letimalo, M.P.

IN ATTENDANCE - PERMANENT SECRETARY MINISTRY OF

INDUSTRIALIZATION

Dr. (Eng.) Karanja Kibicho - Permanent Secretary

Mr. Erastus N. Kiruri - NSC Member representing the
Permanent Secretary

KENYA NATIONAL ASSEMBLY

Ms. Rose Mudibo - Secretary

Mr. Abdullahi Aden - Clerk Assistant

MIN NO. 127/2010

PRAYER

The Chairman called the meeting to order at
11.15 a.m. followed by a word of prayer.

MIN NO. 128/2010

INTRODUCTION

The Chairman introduced the Members of the Committee to the delegation and gave the Permanent Secretary a chance to do the same of the accompanying delegation.

MIN NO. 129/2010

BRIEFING BY THE CHAIRMAN

The Chairman welcomed the Members of the Committee and the delegation from the Ministry of Industrialization. The Chairman also took the delegation through the mandate of the Committee and why the meeting had been called highlighting the issue of the recruitment of the Managing Director, Kenya Bureau of Standards.

MIN NO. 130/2010

BRIEFING BY THE PERMANENT SECRETARY

The Permanent Secretary informed the Committee that he joined the Ministry in June 2010 and found the process of recruitment having been started in March, 2010. He stated the following steps were undertaken by the council and the Ministry:-

- That KPMG was contracted by the National Standards Council to assist in the recruitment on 18th March, 2010.
- The Contract was later cancelled due to some disagreements between the board and KPMG leading to the Board to re-advertise for the position in the daily newspapers.
- Interviews were to be carried out both in written and oral.
- That the council felt some interference from elsewhere.
- That all the 15 candidates and the board members were coded and that during the written examinations no names were given.
- The Board then got a credible person to assist in marking of the written examination.
- That he addressed the Council on integrity and had a problem with the 50/ 50 marks

- The PS also noted that in normal similar circumstances the council forwards three names to the Minister who then communicates to the Permanent Secretary to gazette and do an appointment letter to the appointee.

MIN NO.131/2010

COMMITTEES CONCERNS

The Committee raised the following concerns to the Permanent Secretary:-

- The Committee needed to know how much was spent on the whole process of recruitment.
- Was the Minister advised by the council at any point?
- What was the origin of the report sent to the Minister?
- Was the council competent enough to handle the recruitment process?

MIN NO.132/2010

PERMANENT SECRETARY'S RESPONSE

The Committee was informed as follows:-

- That the KPMG contract was for Kshs.1,400,000/= having paid 40% and agreed to pay the remainder upon completion of the job.
- Advertisement in Daily Nation and Standard of half page each cost approximately half a million Kenya shillings.
- The PS informed the Committee that candidate number four and five were never decoded and so they were not known.
- On advising of the Minister the PS claims that even before receiving the report from the council he had done the appointment.
- It was noted that the adhoc committee report that the Minister acted upon was a loose sheet not signed by any members.
- On competence to recruit the committee was informed that the council underwent training on how to do the same by the Public Service Commission.

MIN NO. 133/2010

COMMENTS FROM THE COMMITTEE

The Committee resolved to meet with the other parties involved in order to make an informed decision.

MIN.NO. 1134/2010

ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 12.30 p.m.

SIGNED:.....
(CHAIRPERSON)

DATE:.....

Atty

16/11/2010

MINUTES OF THE THIRTY FIRST SITTING OF THE COMMITTEE ON
EQUAL OPPORTUNITY HELD ON THURSDAY, 28TH OCTOBER, 2010 IN
SMALL DINING, MAIN PARLIAMENT BUILDINGS AT 9.00 A.M.

PRESENT

Hon. Mohammed Affey, M.P. - (Chairman)
Hon. Joseph Lekuton, M.P. - (Vice-Chairman)
Hon. Luka Kigen, M.P.
Hon. Chachu Ganya, M.P.

ABSENT WITH APOLOGY

Hon. Raphael Letimalo, M.P.
Hon. Ephraim Maina, M.P.
Hon. Fred Chesebe Kapondi, M.P.
Hon. Maison Leshoomo, M.P.
Hon. Millie Odhiambo, M.P.

IN ATTENDANCE - KPMG EAST AFRICA

Mr. Josphat Mwaura

KENYA NATIONAL ASSEMBLY

Ms. Rose Mudibo - Committee Secretary
Mr. Abdullahi Aden - Third Clerk Assistant

MIN. NO. 135/ 2010 PRAYER AND INTRODUCTION

The meeting was called to order at 9.15 a.m. with a word of prayer. The Chairman introduced the Members of the Committee to the C.E.O., KPMG.

MIN. NO. 136 /2010 BRIEFING BY THE CHAIRMAN

The Chairman briefed Mr. Mwaura on the Mandate of the Committee under Standing Order 192 and why he had been invited to meet the Committee highlighting the issue of the recruitment of the Managing Director of Kenya Bureau of Standards.

MIN. NO.137/ 2010 BRIEFING BY THE C.E.O

The C.E.O of KPMG informed the committee as follows:-

- That on the 19th January 2010, KPMG submitted a proposal to the recruitment of the MD Kenya bureau of Standards through a competitive process.
- That on 22nd January KPMG was advised by KEBS that they had got the job and on 16th February they entered into negotiations and

had a contract with KEBS to assist in the recruitment process.

- Work commenced on 19th March 2010 and worked closely with the National Standards Council.
- That the role of KPMG was to carry out the preliminary selection and recommend suitable candidates to the NSC.
- A total of 115 applications were received and 14 candidates shortlisted for initial interviews in consultation with the NSC.
- Noted that the candidate who has been appointed was not one of the candidates that had been shortlisted for interview and was never interviewed by KPMG.
- The 14 shortlisted candidates were further short listed to 9 who went through additional selection processes to arrive at the final candidates recommended to the NSC for consideration and final selection.
- KPMG gave a full list of all the candidates who had applied and submitted the scores of the 14 candidates.
- Vide a letter dated 12th July, 2010, from the council, KPMG was informed that the final report they had submitted had been tabled at a meeting of the National Standards Council held on the same day and adopted. The council in the letter asked for the list of all the 115 applicants together with their applications to be sent to the Chairman's office by 14th July, 2010.
- That on 13th July, 2010 KPMG responded stating that that was not within the terms they provided recruitment services sighting confidentiality.
- That the contract between KPMG and the council expired on 22nd of July.
- On 28th July, 2010 KPMG received a letter purporting to terminate the contract on grounds that they had failed to deliver on contractual obligations.
- KPMG responded on 29th July, 2010 pointing out that they had delivered, received confirmation from the NSC that their report had been adopted, and that the contract had since elapsed.

- Contract cost 1.5 million having been paid a down payment of 40% and were still in negotiations for the balance.
- Early in the recruitment process, Mr. Mwaura had been informed by the former Permanent Secretary in the Ministry of Industrialization that there were attempts to interfere with the process and that KPMG should ensure that the highest standards of professionalism and integrity were maintained in the process.
- KPMG assured the PS that the process was secure from any external interference and this had been demonstrated by the other public sector recruitments that they had done sighting KRA and more recently for the Interim Independent Electoral Commission.
- The C.E.O. claimed that emissaries had been sent to some of the KPMG members of staff having been sent by the Minister for Industrialization.

MIN. NO.138/2010

COMMITTEE'S CONCERNS

- At what point did the issues begin.
- Did KPMG ever inform the council about the interference by the Minister?
- Can Mr. Mwaura substantiate that the Minister was interfering with the process.

MIN.NO. 139/2010

C.E.O.'S RESPONSE

Mr. Mwaura informed the Committee that he never informed the council of the interference. Mr. Mwaura agreed to bring his staff to substantiate his claims of the interference.

MIN. NO. 140/2010

ADJOURNMENT

There being no other business, the meeting was adjourned at 10.30 a.m.

SIGNED.....
(CHAIRMAN)

DATE:.....
16/11/2010

MINUTES OF THE THIRTY SECOND SITTING OF THE
COMMITTEE ON EQUAL OPPORTUNITY HELD ON
THURSDAY, 28TH OCTOBER 2010, IN THE SMALL DINING,
MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

The Hon. Mohamed Abdi Affey, M.P. (Chairman)

The Hon. Luka Kigen, M.P.

The Hon. Francis Chachu Ganya, M.P.

The Hon. Millie Odhiambo, M.P.

ABSENT WITH APOLOGY

The Hon. Joseph Lekuton, M.P. - (Vice Chairman)

The Hon. Ephraim Maina, M.P.

The Hon. Raphael Letimalo, M.P.

The Hon. Fred Chesebe Kapondi, M.P.

The Hon. Maison Leshoomo, M.P.

IN ATTENDANCE - BOARD OF MANAGEMENT, KENYA BUREAU OF

STANDARDS.

Dr. Karanja Thiong'o	-	Chairman
Mr. John Kaurra	-	Member
Mrs. Mary Ng'eny	-	Member
Mr. Adan Mohammed	-	Member
Maj. Rt. Gabriel Wakasyaka	-	Member
Mr. Martin Gumo	-	Treasury Representative
Mr. John Bor	-	Treasury Representative
Mr. Edward Ngige	-	State Corporations Rep
Mr. Francis Odero	-	Member
Mr. Geoffrey Mahinda	-	Member
Mr. Erastus Kimuri	-	PS Industrialization Rep
Mr. Julius Koring'ura	-	Secretary

Dr. Jacinta Wasike

- Member

KENYA NATIONAL ASSEMBLY

Ms. Rose Mudibo - Secretary

Mr. Abdullahi Aden - Clerk Assistant

MIN NO. 141/2010

PRAYER

The Chairman called the meeting to order at 11.15 a.m. followed by a word of prayer.

MIN NO. 142/2010

INTRODUCTION

The Chairman introduced the Members of the Committee to the delegation and gave the Chairman of the Board a chance to do the same.

MIN NO. 143/2010

BRIEFING BY THE CHAIRMAN

The Chairman welcomed the Members of the Committee and the Board Members. The Chairman also took the delegation through the mandate of the Committee and why the meeting had been called highlighting the issue of the recruitment of the Managing Director, Kenya Bureau of Standards.

MIN NO. 144/2010

BRIEFING BY THE CHAIRMAN OF THE BOARD

The Chairman informed the Committee of the State Co-operations Act, the Standard Act (1987) and the guidelines (2004) given by the Head of the Civil Service sighting the councils powers.

- That KPMG was contracted by the National Standards Council to assist in the recruitment on 18th March, 2010.
- The Contract was later cancelled due to some disagreements between the board and KPMG leading to the Board to re-advertise for the position in the daily newspapers in consultation with the Ministry.
- That instead of giving the board 8 names KPMG gave only 6 names and declined to

give any other information to the board and advised the board that 2 were for comparative purposes leaving the board with only 4.

- The Chairman explained that the council needed the full list to check on matters of gender and regional balancing.
- That the Council decided to terminate the services of KPMG and carry out the process by itself.
- That the Council advertised the position in the daily newspapers and the KEBS website.
- The board received 74 applications and shortlisted 15 while 11 attended the interviews which were carried out in two days in the presence of the Permanent Secretary.
- That all the communication to the Minister was done through the Permanent Secretary.
- Both applicants and the board members were coded during the exercise.
- The Council then agreed that the first five candidates were to move to the next stage.
- The Council decided to do further vetting of the five candidates when later the Chairman decided that they go on merit and forward the first three names.
- That at this point the PS noted the contradicting views of the members of the council.
- That the council never got the opportunity to scrutinize the original certificates of the candidates.
- The Committee was informed that they did not know the origin of the report given to the Minister of the first five candidates containing wrong information with different scores.

MIN NO.145/2010

COMMITTEES CONCERNS

The Committee raised the following concerns to the Board:-

- The Committee needed to know why the council did not go for another firm to help in the process.
- Was the council competent enough to carry out the task?
- Were all Kenyans given an equal opportunity to the job advertised?

MIN NO.146/2010

BOARD'S RESPONSE

The Committee was informed as follows:-

- That the Council in consultation with the Ministry they felt it was fair to carry out the process on its own.
- The Committee learnt that the council members went through training on recruitment which enabled them to carry out the task.
- That the advertisements were put in the daily newspapers and the website to reach all Kenyans at large.

MIN.NO. 147/2010

ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 1.00 p.m.

SIGNED:.....
(CHAIRPERSON)

DATE:.....

MINUTES OF THE THIRTY THIRD SITTING OF THE COMMITTEE ON
EQUAL OPPORTUNITY HELD ON TUESDAY 2ND NOVEMBER 2010 IN
COMMISSION ROOM PARLIAMENT BUILDINGS AT 10:00AM.

PRESENT

Hon: Mohammed Affey, M.P (Chairman)

Hon: Luka kipkorir Kigen, M.P

Hon: Raphael Lakalei Letimalo, M.P

ABSENT WITH APOLOGY

Hon: Chesebe Fred Kapondi, M.P

Hon: Francis Chachu Ganya, M.P

Hon: Millie Odhiambo- Mabona, M.P

Hon: Joseph Lekuton, M.P (Vice-Chairman)

Hon: Maison Leshoomo, M.P

Hon: Ephraim Maina, M.P

KENYA NATIONAL ASSEMBLY

Abdullahi Aden - Third Clerk Assistant

Rose Mudibo - Protocol Officer

National Cohession and Interaration Commission.

Mzalendo Kibunja - (Chairman)

Hassan Nooor - Commissioner

Alice Nderiritu - Commissioner

The Chairman took the Commissioners on the mandate of the Committee on equal opportunities.

MIN NO. 148/2010 Commission Chairman

The Commission Chairman presented its report on the Appointment of the Managing Director Kenya Bureau of Standards to the Committee on equal opportunity and the following were their observations.

- *Independent body formed to conduct another interview for the top fifteen names, the interviews to be conducted by the Ministry of Public Service. It is not necessarily discrimination when a Minister appoints a person from his/her ethnic Community to a senior position, however given the past practices in this regard, the process to such an eventuality must be seen transparent and open.*
- *The process was not procedural and therefore no substantive Managing Director for Kenya Bureau of Standards.*
- *Discrimination by the state along ethnic lines is outlawed under section 24 (4) of the constitution and section 7 of the national Cohesion and integration act.*
- *That the real facts surrounding the issue (KEBS MD) be made public to diffuse the direction or misdirection in public that ethnic concerns continue to guide governance in this Country.*

MIN NO. 149/2010 COMMITTEE RESOLUTIONS

- The Committees mandate on equal opportunity to all Kenyans on gender, race, and disabilities in any appointment to any position in the government to be transparent and equally accessible.
- That the report will form part of the Committees recommendation.
- That the Committee wants to know whether tribalism was there in the appointment of KEBS Managing Director.

MIN NO. 150/2010 ADJOURNMENT

There being no other business for discussion, the Chairman adjourned the meeting at 1:15 P.m.

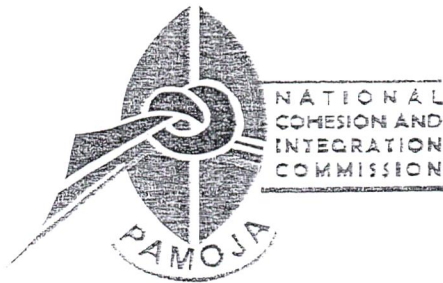
SIGNED: *Aley*

CHAIRPERSON

DATE..... *16/11/2010*



Fact
Finding
Report
on the
KEBS MD
selection



November 2

2010

[The process, issues and recommendations of the Cohesion Commission, following their findings on the MD selection process by the NSC at KEBS.]

Report and
Recommendations

MATTER IN FACT-FINDING

In a Matter of the selection of a new Managing Director for the Kenya Bureau of Standards

Hearings: October 21, 25, 26 and 28, 2010

FACT-FINDING RECOMMENDATION

Appearances By:

Name:	Designation:
Dr. (Eng) Karanja Kibicho	Permanent Secretary, Ministry of Industrialization
Dr. Karanja Thiong'o	Chairman of the NSC Board
Mr. Abdi Duale	Board Member NSC
Mr. Martin Gumo	"
Mr. Francis Odero	"
Mr. Erastus Kimuri	"
Mr. Nderitu Mureithi	Assistant Minister, Ministry of Industrialization
Hon. Henry Kosgei, EGH	Minister for Industrialization
Mr. Julius Koringura	Board Member NSC
Mrs. Mary Ngeny Chepkemboi	"
Mr. John Kaurra	"
Mr. Adan Mohammed	"
Mr. Thomas Bor	"
Mr. Geoffrey Mahinda	"
Mj. Rtd Gabriel Wakasyaka	"
Mr. Josphat Mwaura	CEO, KPMG

1. STATEMENT OF PROCEDURE

- 1.1. This matter arises out of an impasse in the selection process for the Managing Director (MD) of the Kenya Bureau of Standards (KEBS) within the membership of the National Standards Council otherwise also referred to in this report as the Board and the subsequent disagreement between the Minister for Industrialization on the one side, and the Assistant Minister for Industrialization and the Permanent Secretary in the Ministry for Industrialization on the other hand, on the appointment of the new MD. The existing impasse and the public disagreement has led to a public outcry on apparent sustained ethnic overtones in public appointments culminating in receipt of a complaint by the National Cohesion and Integration Commission (NCIC- hereinafter the Cohesion Commission).
- 1.2. Pursuant to the receipt of a complaint the matter was submitted to a Panel of Fact-finders selected by and from among the Cohesion Commission Commissioners to look into the matter. The Panel conducted hearings on October 21, October 25, October 26, and October 28, 2010 in Nairobi, Kenya. During the course of these hearings, the parties had an opportunity to present positions and to tender supportive documentation. At the conclusion of the hearings, the fact-finders deliberated on their individual analysis and opinions of the respective positions presented by the parties who presented at the hearings. The Panel analyzed all the supportive documentation tendered in the course of the fact finding. Having had an opportunity to review the record, the Fact-finders prepared their recommendations which were deliberated at a full Cohesion Commission sitting and final recommendations adopted.
- 1.3. This writing is a reflection of the recommendations adopted by the Cohesion Commission. Either or both divides of the impasse may publicize this report beginning 10 days after it is issued if they wish to do so, and a majority of the Commissioners of the Cohesion Commission agree that this report should be made available to the public.

2. ISSUES

1. Did discrimination along ethnic lines interfere with the MD selection process by the NSC?
2. Was the action by the Minister for Industrialization dictated by ethnic favoritism?
3. Is ethnicity a key issue for consideration in the instance?

3. RELEVANT STATUTORY LANGUAGE

3.1. Fact-finding panel; hearings, investigations and inquiries; powers

The panel shall, within 10 days after its selection, meet with the parties and consider their respective positions. The panel may make additional inquiries and investigations, hold hearings, and take other steps which it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel may issue notices requiring the attendance of witnesses and the production of evidence. The Minister, Assistant Minister, Permanent Secretary, Chairman of the Board and NSC Board members as well as KPMG authorized representatives shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

3.2. Findings of fact and advisory recommended terms of settlement; submission to parties and to public;

The Cohesion Commission shall make findings of fact and make recommendations, which recommendations shall be advisory only. Any findings of fact and recommendations shall be submitted in writing to the parties privately before they are made public. The panel, subject to the direction of the Cohesion Commissioners meeting, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

4. BACKGROUND

4.1. Chapter 496 - Standards Act which has 1974-07-12 as its commencement date, is an Act of Parliament to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing.....

Section 6 (1) establishes a council of the Bureau by the name of the National Standards Council.

Part (2) of that section states that the Council shall, subject to the provisions of subsection (3), consist of the following members -

- (a) a chairman appointed by the Minister;
- (b) a secretary who shall be the Director of the Bureau;
- (c) not more than seven persons appointed by the Minister who shall be public officers;

(d) not more than eight persons appointed by the Minister who shall possess knowledge of industrial or commercial standards or other matters likely to be of assistance to the Bureau

Section 7 (1) provides that the Council shall have power - (b) to advise and obtain advice from the Minister in regard to any matter within his purview under this Act;
(c) to formulate matters of policy for the purpose of providing general or specific guidance to the Institute for the better performance of its functions under this Act;
(d) to do all things necessary for the better carrying out of the provisions and purposes of this Act except where otherwise provided.

- 4.2. The Kenya Bureau of Standards (KEBS) was established in July 1974. The KEBS Board of Directors is known as the National Standards Council (NSC). It is the policy-making body for supervising and controlling the administration and financial management of the Bureau. The Managing Director is the Chief Executive responsible for the day-to-day administration of the Bureau within the broad guidelines formulated by the NSC. KEBS mission is to provide internationally recognized standards, measurements and conformity assessment solutions that meet customer needs.
- 4.3. On 03 Sep 2009 the then Managing Director KEBS was removed from office in public interest having been accused of inappropriate conduct. Prior to his removal, the NSC/Board had over a long period of time been in the process of negotiating his salary, which was high above the stipulated wage regulations for his position, with the Ministry of State for Public Service (formerly DPM). Upon his removal one..... was appointed acting Managing Director.
- 4.4. On 21st Dec 2009 the Board initiated the process of recruitment of a new MD. The minutes dated 15th March 2010 indicate agreement by the Board to assign the process to an external human resource firm for purposes of transparency and accountability.
- 4.5. KPMG was awarded the contract on the basis of their excellent technical presentation. Their financial bid was rather high as compared to other shortlisted bidders but it was agreed that they depicted the best placed firm to undertake the task.
- 4.6. According to the details contained in the contract dated..... the express conditions were that KPMG shortlist the best 14 candidates and thereafter present 6 names to the NSC Board for interview purposes.

- 4.7. KPMG submitted a list of 14 candidates and as per the terms of the contract the names were coded and only the sex and region of origin were indicated.
- 4.8 In addition, KPMG submitted a list of six candidates and the list was questioned by the NSC Board members. The actual list from KPMG was of four shortlisted names. An additional 2 names were tendered upon the insistence of the Board for comparative purposes. The comparative names were persons who came close to qualifying but for various reasons were deemed unfit for the position, but seeing as the NSC insisted on the contractual obligation that 6 names be submitted, there was need to provide the additional names with the riders.
- 4.9. The Board subsequently was asked by KPMG to accept an amendment to the contractual terms so as to allow KPMG to interview an additional 7 candidates at an extra cost of about half a million Kenya shillings. Internal consultations within KEBS including with the Ministry concluded that no additional candidates be interviewed and that KPMG be asked to submit all the applications they had received to KEBS. A stale-mate arose between KPMG and the Board with the balance of the 60% fee not being offset and the full list of applicants' names never being tendered to the board. The matter remains unresolved to date.
- 4.10. A fresh recruitment process was initiated. This time the Board opted to conduct the interviews themselves. The minutes of the meeting held on 6th August 2010 indicate that a small team in the form of an adhoc committee was tasked with the responsibility of processing the applications, short-listing the best candidates and coding the names of the 15 names short-listed so that full identities of the candidates would remain unknown to the full membership of the Board. A short-listing criterion was also adopted.
- 4.11. Twelve (12) names of candidates applying from outside KEBS were shortlisted. An additional three names of candidates drawn internally (within KEBS) was added to this list so that there was a total of 15 candidates invited for interviews. The Board then developed an interviewing procedure as per minutes dated 7th September 2010. Part of the procedure dictated that the oral interviews conducted by the Board comprise 70% of the marks while written tests to be marked by an external independent marker (selected through consensus at a Board meeting of 15th September 2010) was to form 30 % of the final marks. At this point the adhoc committee that was overseeing the short-listing did note that some of the 3 shortlisted internal candidates had questions around their integrity, but for reasons of staff morale decided to interview them anyway.

- 4.12. Eleven (11) candidates attended the interviews while 4 (four) were unable to turn up on the dates. The interview dates were 14th and 15th September 2010. On the 15th of September at the close of the interviews having tallied all the marks from the oral examiners the candidates were ranked one to eleven according to their scores. At this point only 70% of the agreed total scores had been compiled. The marks from the external examiner were yet to be received.
- 4.13. Until this time, there were no major disagreements within the Board and also with the Ministry which was involved through the at times personal and at times representative representation of the PS at the meetings. At the time when this list of marks as depicting representation of the oral exams was acceptable to all concerned. The top 5 (five) candidates were identified and all were in agreement that any of the five represented MD material. It is a generally accepted fact by all parties that at this stage the difference in the marks between the top five and the candidate appearing as 6th on the list was wide enough and as such it was not anticipated that once the marks were received from the external examiner there would be a major shift in the lineup as far as the top 5 candidates was concerned.
- 4.14. When the marks from the external examiner arrived later towards the end of the day on the 15th of September, the disagreements among the Board members started. First, some members wanted only the top 5 candidates marks subjected to the external examiners test scores while some felt that all 11 candidates be so subjected. Secondly, the criteria for short-listing the three candidates whose names would then be decoded and submitted to the Minister for him to make the requisite appointment of an MD was not accepted unanimously. Some Board members felt that the top three candidates as per the scores be presented as the list from which the Minister was to make his selection. Other Board members felt that the list of 5 be discussed and all the names be analyzed by the Board before a final list of 3 could be adopted.

5. DISCUSSION

- 5.1. The process of fact-finding in this present matter is a necessary step in the procedure between the parties before either side may endeavor to achieve the ends which they are seeking. One would hope that the parties would view the process of fact-finding as more than simply a step on the road to fostering their stands, even though the results of the fact-finding are merely recommendations. The Fact-finders did make an effort to use the process as a means to offer direction to the parties to reach an agreement during the course of the fact-finding hearings, but it became abundantly clear that the position of either sides were fixed, particularly on the issue of who faulted the agreed/set process. The Fact-finders are preparing this report based on the evidence that was presented and the resolution that the evidence justifies.

- 5.2. Although the first recruitment process through KPMG stalled and did not conclude in presentation of 3 names to the Minister it is relevant in as far as it will either support or disprove allegations that the process has right from the onset been tainted with ethnic overtones aimed at favoring or distancing candidates from a particular community. KPMG was categorical that the NSC members did not make attempts to interfere with the recruitment process. In fact KPMG was impressed at the initial meetings with the members of the Board with whom they interacted and felt that it was a group that they could work with. Two senior officials within KPMG are alleged to have been approached and asked to interfere with the process. These remain allegations as this process could not allow for investigation of the allegation. However, KPMG insist that the candidates' names were never decoded and only the final 6 names submitted to the NSC were revealed. The NSC was categorical that they never did receive the names of the applicants other than the final list of names. It may be difficult to show that the Minister made or did not make any attempts to influence the process. But for the Cohesion Commission what is key is whether there is indication that there was interference to skew the process in favor of or against an ethnic group. Also in issue is whether there was attempt to tilt outcomes in favor of a particular person because of his ethnic group.
- 5.3. It would be safe to infer that the KPMG process had some issues (which could however be explained at a different appropriate forum). The Fact-finders arrive at this guided conclusion based on the fact that there would be need to confirm that the compilation of the lists at any given stage was without interference and was thoroughly completed. The indicator is that the 1st list of 14 names submitted by KPMG had one female candidate from Rift Valley. The second additional list of 7 names had one female candidate from central. The final list of 4 names submitted for interview had one female candidate from Nyanza. This raises the question as to where the final female in the list of four come from as she does not appear to have been in the list of interviewed candidates. As already stated this could probably be explained at another process.
- 5.4. If the Minister had an interest in getting a member of his ethnic community in the final shortlist then it would be safe to assume that he would have been satisfied with the final KPMG list of 4 which had among it a member of the Kalenjin community. However this process was terminated and a fresh process initiated. Thus the question as to whether 'wider' ethnic issues led to the collapse of the first recruitment attempt through KPMG is, on the face of it, an unlikely argument. In deed from the hearings it emerges that the main cause of the breakdown of that contractual relationship was failure by the two parties to conclusively agree on the details around the execution of the process. In relation to the question as to whether there was an attempt to tilt the process in favor of a particular candidate because of his ethnicity, the Fact-finders does not find that this can be substantiated. Although there were allegations of attempts by the Minister to interfere with the process, these attempts were weak at best and were subsequently according to KPMG unsuccessful and did not cause hurdles to the process. KPMG allege that the candidate preferred by the Minister was not shortlisted, neither in the original list of 14 nor in the additional list of 7. The process was generally allowed to proceed smoothly until the final hic cups emerged that led to collapse of that contractual relation.

- 5.5. The issue as to whether ethnicity was in focus at the start of the MD replacement/selection process is not disputed. The existing issues relating to transparency in the governance and management of KEBS was the core reason for the decision to submit the selection process to external expertise. It is also the reason that the names were coded during the 2nd recruitment attempt conducted by the NSC. The NSC did however ask that regions be indicated so that they would be able to ensure that the shortlisted candidates represented the face of the nation.
- 5.6. The point at which the process became flawed is a point in issue particularly so as to determine whether the break in the process was so as to skew the process in favor of a candidate from a particular ethnic community. It is apparent that the Board in its preparation for the interview process during the current recruitment had taken this in account by applying a formula that marks exceedingly above or below the mean mark would be discarded in determining the final score. The Panel determined that this would take care of the any favoritism or attempts to influence the process in any way.
- 5.7. Dissent within the Board started with the selection of the top 5 names to be cut off for subsequent determination of three names for presentation to the Minister. Some members of the Board felt strongly that the marks from the external examiners only be included to the marks of the top 5 candidates of the oral interview. Some Board members were of the opinion that the entire list of 11 candidates be subjected to aggregation after inclusion of the marks from the written test (external) examiner. Although, it is apparent that this in itself was not a major divisive issue of dissent as only candidate number 5 in the list before adding the external examiners marks moved down the list to be replaced by another candidate who was ranked between number 6-11. Majority of the Board members did at that stage agree to retain the list of five from the short-listing of the marks from the oral interviews. Although there are suspicions from both sides of the now split board that there was some interference with the process, the precautionary measures applied were accepted as sufficient to allow continuation.
- 5.8. The major issue of dissent within the Board remains the manner of selecting the top three names for submission to the Minister. Whereas some Board members were of the opinion that the candidates with the top three marks be submitted, others felt that there was need to have the entire five subjected to an agreed upon vetting process to determine the best three names. The proposed criteria for final determination was salary request, integrity report and reference check results. The final selection criterion is not in issue as all parties agreed on this. The issue in contention is whether the entire list of 5 was to be subjected to the scrutiny or only the candidates with the top three marks were to be further scrutinized. It appears to the Panel of Fact- finders that ethnic discrimination was not the main cause of dissent within the NSC at this stage. Was the underlying reason for insistence on applying the final criterion to all five so as to promote the interest of one individual? The answer to this lies in the scrutiny of the character of the individual Board members and their susceptibility to compromise.
- 5.9. On the issue as to whether the Ministers action (in appointing a new MD) was guided by ethnic favoritism either for a particular community or for a particular individual from a

particular ethnic group, the Fact-finders note the Ministers concern (expressed at the hearing) that the position had been unoccupied for almost one year- the period within which it was required that a substantive MD be appointed. The initial process through KPMG scuttled. This process although had been progressing well had hit a deadlock and the board was now split into two opposing sides. Neither side as constituted could procedurally complete the process. The Chairman of the NSC was on the one side with a few members, while the acting Secretary (so selected for purposes of the recruitment process- as the acting MD was a candidate and therefore could not sit through the process) was on the opposing side together with some members. Neither lists; presented by the Chairman and by the dissenting group was a presentation of the NSC as by law and through guidelines should be constituted.

- 5.10. The common factor was that the 5 names were all agreed upon. The proper presentation of the list of 3 names as by law required was in question. Applying the agreed criterion (salary expectation, integrity and reference check), the Minister ticked off names from the list of 5 until he was left with whom he considered the best suited candidate. Did he do so fairly? On the face of it, yes. The issue of the MD's salary had been a major cause of concern during the tenure of the last MD. It would have been irresponsible of the Board to offer a salary that would take them back to that position again. Was his action legally correct? He did not follow the rules to the letter. Should he have tried to reconcile the opposing sides and get them to complete the task at hand rather than hasten to appoint? It is the considered opinion of the Fact- finders that this would have been the best direction to take.

6. EMERGENT DIRECTION

- 6.1. In summary, the Fact-finders conclude that ethnic discrimination either in favor of or against a particular ethnic group or person cannot stand and that the process was largely correct and a very brief portion is left for proper conclusion of the process and that the action of the Minister in appointing a new MD is unlikely to work for the good of this key public institution. Although ethnic concerns subsisted through the process, when agreed upon procedures were adopted and applied, the findings were generally accepted. The Panel recommends procedural conclusion of the process perhaps through the intervention of an independent body (as agreed upon by all parties involved).

7. CONCLUDING REMARKS AND RECOMMENDATIONS

- 7.1. It is no secret that Kenya is a nation largely split along ethnic divisions. Negative ethnic interests led to the almost national breakdown of the governance system in 2008. The need to consciously and actively address negative ethnicity, particularly in access to public resources, was determined through the creation of a permanent commission, the National Cohesion and Integration Commission. The mandate of the Cohesion

Commission comes at an opportune time in the face of the new Constitution which lays emphasis on nation building and good leadership among others so as to promote participation by all. Perception plays a key role in promoting feelings of discrimination along ethnic lines. The hue and cry that the selection of the KEBS MD has created in the recent past indicates the extent to which ethnic consideration to public appointment continues to be an issue of concern and division in Kenya. Other than the complaints submitted to the Cohesion Commission on the issue, the threat it poses in further dividing the nation was reason enough for this fact finding.

7.2. Having considered the facts presented, the following considered recommendations are presented:-

7.2. (i) That the process be allowed to conclude procedurally. The fifteen names shortlisted for interviews be subjected to another interview process by an independent body such as Ministry of State for Public Service (former DPM). It is not necessarily discrimination when a Minister appoints to a senior position a person from his ethnic community. However given the past practices in this regard, the process to such an eventuality must be seen to have been transparent and open. Confidence in the public institutions, particularly one of such importance as the standards body is, must be sustained. Section 73 (1) (a) (iv) of the Constitution provides that the authority assigned to a state officer must promote public confidence in the integrity of the office. Nation building requires that all feel that they can participate in public leadership and that ethnic concerns will not guide their ability or inability to so participate. The NSC process was unanimously accepted and procedurally correct until the point of selection of 15 candidates for interviews. The proposed conclusive process pick up from this point.

7.2.(ii) That rules guide and limit the process of identifying an MD of KEBS and any Chief Executive of a public institution. The availability of avenues to stop and restart the selection process leaves room for manipulation. Discrimination by the state along ethnic lines is outlawed under Section 27 (4) of the Constitution and Section 7 of the National Cohesion and Integration Act. While applying other strategies to cultivate a culture of equality and nationhood, clear procedures must be adopted that will offer a check against the common tendency to discriminate. In addition, the selection process by the Council must be above board so that any of the three names presented to the Minister is generally acceptable as MD.

7.2.(iii) That operative guideline is provided for criteria of person qualified for selection to the boards of public institutions. The boards of public institutions play a key and important in offering direction to the management of these institutions. Persons who hold such positions must be persons of integrity and not susceptible to manipulation. The principles of Section 232 of the Constitution must reflect in such criterion.

7.2. (iv) That the real facts surrounding this issue (KEBS MD selection process) be made public to diffuse the direction or misdirection in public that ethnic concerns continue to guide governance in this country. It is important that public discussions be informed so that the path that the country is adopting of non discrimination along ethnic lines not be skewed by misinformed assumptions.

7.2.(v) That clear guidelines be developed to direct the implementation of action within public institutions to address ethnic representation imbalances in the workforce. Section 7 (2) of the National Cohesion and Integration Act requires than no more than a third of the staff at an institution be from one ethnic group. Kenya must move from having institutions whose workforce appears to represent only one community. However clear mind must be had to the importance that competence plays in ensuring effective execution of the mandate of the institution.

Signatures

Dr. Mzalendo Kibunjia, Chairman

Mary Onyango, Vice Chairperson

Comm. Dr. Ahmed Yassin

Comm. Alice Nderitu

Comm. Fatuma Mohamed

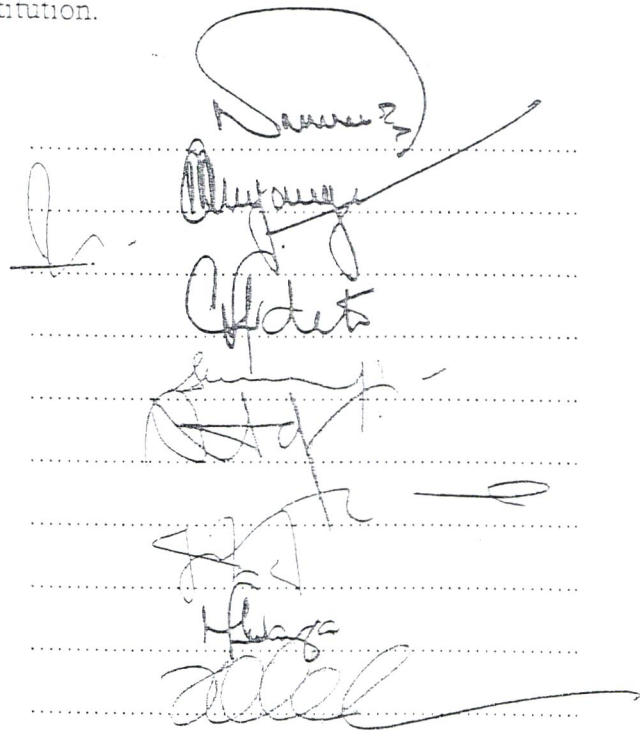
Comm. Halakhe Waqo

Comm. Jane Kiano

Comm. Rev. Lawrence Bomet

Comm. Milly Lwanga

Sec. Hassan Mohamed

The image shows a series of handwritten signatures on a dotted line background. The signatures are arranged vertically, corresponding to the list of names on the left. From top to bottom, the signatures are: a large, stylized signature for Dr. Mzalendo Kibunjia; a signature for Mary Onyango; a signature for Comm. Dr. Ahmed Yassin; a signature for Comm. Alice Nderitu; a signature for Comm. Fatuma Mohamed; a signature for Comm. Halakhe Waqo; a signature for Comm. Jane Kiano; a signature for Comm. Rev. Lawrence Bomet; a signature for Comm. Milly Lwanga; and a signature for Sec. Hassan Mohamed.

Date: 2/11/10



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“CONFIDENTIAL & LEGALLY PRIVILEGED”

Hon. Amb. Mohammed Affey
Chairman
Parliamentary Committee on Equal Opportunities
Clerk's Chambers
National Assembly, Parliament Buildings
Nairobi

Our ref: K024/DK95310001/jm/ik

4 November 2010

Dear *Hon Affey,*

Recruitment of Managing Director of Kenya Bureau of Standards

Further to my appearance before the committee on 28 October 2010, please find the documents requested by the committee confirming:

- 1 The contractual terms under which KPMG was retained by KEBS to provide assistance in the recruitment for the position of Managing Director. Please find attached a copy of the contract and engagement letter, together with the relevant correspondence on contract revision and agreement on report delivery date of 12 July 2010 and contract end date of 22 July 2010.
- 2 That KPMG discharged its responsibilities under the contract and submitted a final report that included four candidates for consideration by the NSC for the position of Managing Director. In addition, we also provided another three candidates and expressly stated that we did not consider these to be qualified for the position. These additional comparison candidates were being provided at the request of the NSC. Attached is a letter from KEBS dated 12 July 2010 which acknowledges receipt of the report, confirms tabling before a meeting of the NSC of 12 July, and adoption of the same. In our view, the recommended candidates represented the diversity of Kenya based on merit.
- 3 That subsequent to the performance and expiry of the contract, KEBS purported to terminate KPMG's contract. Attached are copies of some correspondence between KPMG and KEBS on the purported termination.

In addition the committee also requested evidence of the attempted interference in the recruitment process by the Minister. Attached are two statements signed under oath by our Mrs Josephine Oduor-Mwaniki, the manager responsible for our executive selection services and who was called to a meeting by Mr Isaiah Kiplagat. Mr Kiplagat expressly stated that he was representing the Minister in the recruitment of the Managing Director at KEBS. The other statement is from our Mr Richard B Ndung'u, the former CEO and now Tax Partner who was invited to a meeting by the Minister. At that meeting, the Minister stated that he had a candidate interested in the position and proceeded to mention the name of the candidate. This is the name of the individual appointed into the position by the Minister.



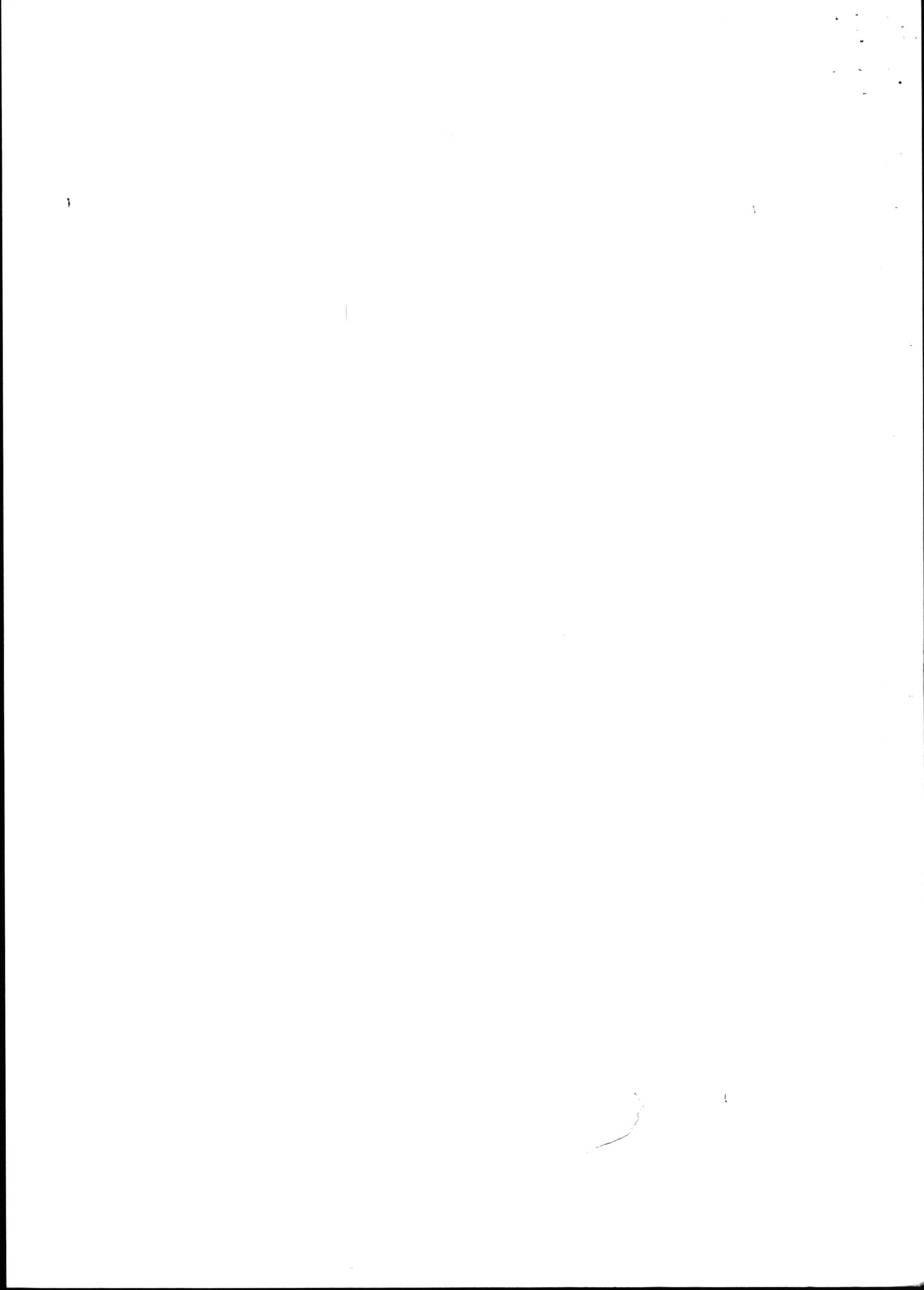
I do hope that these will assist the committee in its work. Please do not hesitate to contact me if you require any further clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Josphat Mwaura'. The signature is written in a cursive style with a large, stylized initial 'J'.

Josphat Mwaura
Chief Executive Officer and Senior Partner

Enclosures: *As above*





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PO Box 54974 00200
Nairobi

Our ref: Z/932/ig/jk

18 March 2010

Dear Dr Wasike

Letter confirming terms of engagement

We refer to Kenya Bureau of Standards's intention to engage KPMG Kenya to assist in the recruitment of a Chief Executive Officer.

This letter sets out the agreed terms of engagement and forms an integral part of the contract between Kenya Bureau of Standards (herein referred to as KEBS) and KPMG Kenya.

Below are the agreed terms of reference and deliverables, the timetable and other issues concerning this agreement.

Identity of the client

For the purposes of this engagement, the client is Kenya Bureau of Standards. Our understanding is that our principal contact in KEBS will be yourself. Nevertheless, we may rely on the instructions, notices or requests (whether in writing or not and however communicated to us) from any person authorised, or reasonably believed by us to be authorised, by yourself to give such instructions, notices or requests.

Where you or any authorised person by yourself wishes to communicate with us via electronic mail, you accept the inherent risks of such communications (including the security risks of interception of or unauthorised access to such communication, the risks of corruption of such communications and the risks of viruses or other harmful devices) and that you shall perform virus checks. We will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically.

2





Terms of reference

The terms of reference for this engagement are for KPMG to perform the following:

- Gain a good understanding of KEBS corporate strategy and the strategic initiatives for the Chief Executive Officer role and identify any possible implications for this recruitment;
- Review and update the existing job description for the position;
- Identify the critical job competencies and person specifications for the position as derived from the updated job description;
- Draft an advertisement for consideration and approval by KEBS and advertise in agreed upon media;
- Advertise in the dailies;
- Receive and code all responses to the advertised position;
- Develop an appropriate selection criteria for the position in line with the updated job description;
- Evaluate all applications using the agreed-upon selection criteria;
- Short-list candidates who meet the requirements set out in the selection criteria;
- Send an initial short-list of 8 to 10 candidates to KEBS and agree on the candidates to be interviewed;
- Conduct interviews for the short-listed candidates and identify those that exhibit the requisite knowledge, skills and abilities required for the position;
- Conduct strategy presentations for the candidates further short-listed for the position;
- Administer psychometric testing to the candidates short-listed;
- Prepare and submit to KEBS, a short-list report on the suitability of the recommended candidates for the position;
- Train KEBS Board members for the final interviews and facilitate final interviews by preparing the interview appointments and ensuring that candidates avail themselves for interviews; and
- At the request of KEBS following final selection, conduct reference checks and advise KEBS accordingly on the outcome.

KEBS will be responsible for conducting the final interviews and selection of the final candidate.

This engagement does not cover any other work relating to other areas other than those expressly covered in our terms of reference above.

Our recommended approach

We set below our approach to assisting KEBS in the recruitment of this position.

Review and update job descriptions

We will conduct a high-level job analysis to confirm the objectives, key responsibilities and person specifications for the position and further update the existing job description received from KEBS.



Competency identification and selection criteria

Competencies are discrete dimensions of behaviour which are relevant for job performance. Thus, competencies deal with behaviours people need to display in order to perform a job effectively. They are a cluster of observable behaviours and actions which can include personality, ability, interest and motivation.

We will:

- Liaise with KEBS to identify the critical job competencies and key skills required to effectively perform in the position;
- Use the Saville & Holdsworth (SHL) competency model to determine the relevant job competencies; and
- Develop an appropriate selection criteria for the position.

The recruitment process

Our recruitment process will involve conducting an assessment centre comprising of the following assessment tools:

- *Competency based interviews* - We shall develop structured competency based interview questionnaires for the initial interviews which will gauge the candidates' technical skills and behavioural competencies with regard to the position. The interviews will be conducted by a panel of KPMG Consultants. This will form the first criteria for further short-listing the candidates who will proceed for further assessments as outlined below.
- *Strategy presentations* - The short-listed candidates will further be required to deliver a presentation to a panel audience on a case study analysis of KEBS to demonstrate their understanding of the challenges currently facing KEBS and their vision and strategy to address these challenges. The structure and content of this assessment will be developed by KPMG based on the strategic objectives of KEBS and will be conducted by KPMG Consultants.
- *Psychometric testing*
 - *Advanced Managerial Ability tests* - these are tests designed to measure current ability and future potential for different types of work skills. The tests we propose to administer will assess verbal and numerical analysis. Verbal and numeric tests measure the ability of the individual to evaluate the logic of various kinds of arguments and the individual's ability to make correct decisions or inferences from numeric data respectively.
 - *The Occupational Personality Questionnaire (OPQ)* - OPQ provides a profile of the candidate's perception of their behaviour at work. By understanding an individual's style, information on how they fit in within certain work environments and teams and how they will cope with different job requirements can be gained. The OPQ will summarise how the candidate's preferred style or typical way of behaving is likely to influence his/her potential on a range of management competencies. These management competencies include Leadership, Planning and organising, Quality orientation and Commercial awareness among others. The competencies provide insight on the candidate's fit to the role with regard to behavioural competencies.



The results of the Occupational Personality Questionnaire and the ability tests will be combined to provide a competency profile for the short-listed candidates. We will match the candidates' results with the competencies identified and this will form the basis of our recommendations.

We shall present to KEBS the results of the assessment and selection sessions in the form of a short-list report on the suitability of the candidates recommended.

Deliverables

The deliverables for this assignment will be as follows:

- A project plan indicating the timeframe within which the recruitment assignment will be conducted;
- An updated job description for the position;
- A draft advertisement for the position to be reviewed and approved by KEBS;
- An initial short-list summary of candidates identified for the position;
- A final short-list report giving a detailed assessment of recommended candidates for consideration by KEBS;
- Final interview timetable; and
- Reference checks for the candidate appointed to the position.

Limitation of scope

For the services described in this engagement, KPMG is unable to proactively source for candidates in a contractual employment relationship with any of our current clients. In addition, KEBS shall be solely responsible for the final selection of the candidate to fill the role.

Timetable

Our project plan will detail the timeframe within which the recruitment process will be conducted. It will take approximately eight weeks from the time we contract until the time you meet the final short-listed candidates. The process shall commence on submission of this signed engagement letter, unless agreed otherwise.

Debriefing

On completion of the engagement, as part of our commitment to the quality of our service, we would welcome the opportunity to receive your views on the work carried out by ourselves and the service delivered. We will contact you in due course in order to make specific arrangements.

Reliance on information provided by Kenya Bureau of Standards

As we have indicated in the terms of reference above, our performance on this engagement shall rely on information provided by KEBS particularly but not limited to an overview of KEBS's operations and strategy and the job profile of the position. You will endeavour to ensure that any information which we may require for the purpose of the engagement is made available to us, as and when we may reasonably require. You agree to keep us regularly informed of any new information or developments of which you are aware which may have a bearing on the provision of this recruitment service by us in connection with our engagement. We shall not be treated as having notice, for the purpose of the engagement, of any information provided by any person to, or known by, any KPMG person other than those individuals directly concerned with



the services to be provided by KPMG Kenya in connection with the engagement. We will not be responsible for loss or damage as a result of information material to our task being withheld or concealed from us or wrongly represented to us.

Fees

Our fee for this recruitment is KShs 1,488,396. This is inclusive of disbursements, psychometric testing and VAT at 16%. In the event that the recruitment is terminated, we would invoice you on the basis of time spent up to that point.

Payment terms

- Mobilisation fee 40%
- Final fee on submission of the final report 60%

The team

Josphat Mwaura	-	Engagement Partner
Josephine Oduor-Mwaniki	-	Lead Consultant
Lydia Gathuge	-	Senior Advisor
Jackline Onchuru	-	Advisor

We shall reasonably endeavour to ensure that individuals identified in this engagement contract as being involved in the services are so involved. However, we may substitute those identified for others of equal or similar skills and experience, should the need arise.

Confidentiality

Our standard internal procedures are designed to ensure that confidential information communicated to us during the course of this assignment will be maintained confidentially. We agree that we will treat as such all confidential information obtained from you and will not disclose such information to others, except to those KPMG Kenya persons engaged in providing services to you, or use such information except in connection with the performance of the services agreed to in this letter.

Deferment condition

Should our recommended candidate be hired by KEBS, (whether it be a firm, company or group), or any of its subsidiaries or associated companies, within 12 months of the original referral date, KPMG Kenya is entitled to the full fee from the client as we are the effective introducing agents and will invoice accordingly.

Use of client name

KEBS authorises KPMG Kenya, or any of the KPMG member firms, to disclose, as evidence of KPMG's client portfolio, the name of KEBS on outgoing KPMG materials.

Restrictive practice

KPMG Kenya will not be restricted or prevented from providing services to other existing or potential clients by virtue of our relationship with KEBS.



Standard terms and conditions

We have included our standard contract terms and conditions in the Appendix of this letter, which form an integral part of this contract.

Conclusion

We thank you for this opportunity to serve KEBS and we look forward to working closely with you and your team to realise the objectives of this assignment.

Please do not hesitate to contact me if you require any additional information or clarification.

Yours sincerely

Josphat Mwaura
Engagement Partner



Appendix: KPMG's standard terms and conditions

These standard terms and conditions apply to services rendered by KPMG to a client pursuant to a letter recording the engagement ("the engagement letter") enclosing these standard terms and conditions or incorporating them by reference.

Definitions

The meanings of the following words and phrases, which are widely used in these standard terms and conditions, shall be as set out below:

Colleagues or a colleague: collectively or individually, KPMG persons and employees who are not members of the engagement team.

Engagement team: collectively or individually, KPMG Persons and employees who are involved in delivering the services.

KPMG or we (or derivatives): The KPMG contracting party as identified by our letterhead.

KPMG persons: The KPMG contracting party, each and all of our partners, directors, employees and agents as the case may be, together with any other body or entity controlled by us or owned by us or associated with us and each and all of its partners, directors, employees and agents and "KPMG person" shall mean any one of them.

Other beneficiaries: Any and each person or organisation whose activities you may control, if any such person or organisation is identified in the engagement letter as a recipient or beneficiary of the services or any product thereof and any and each person or organisation which we and you agree may be so treated.

Services: The services to be delivered by us under the engagement letter.

Services contract: The standard terms and conditions included in this document and any additional terms specified in an engagement letter, together with any documents or other terms applicable to the services to which specific contractual reference is made in the engagement letter.

You (and derivatives): The addressee of the engagement letter.

Service delivery

1. We will seek to ensure that our service is satisfactory at all times and delivered with reasonable skill and care. If at any time you would like to discuss with us how the service can be improved you are invited to telephone the partner or director identified in the engagement letter.
2. The engagement will be governed by (Kenyan) law and jurisdiction.

Our services and responsibilities

3. We may acquire sensitive information concerning your business or affairs in the course of delivering the services ("confidential information"). In relation to confidential information we shall

comply with the confidentiality standards of our regulatory bodies. We shall also require disclosure to partners/directors and employees who need to know such information to perform KPMG quality performance review process. This clause shall not apply where confidential information enters the public domain or where we may be required to disclose it to our insurers, legal advisers or under legal compulsion.

4. Prior to completion of the services we may supply oral, draft or interim advice or reports or presentations but in such circumstances our written advice or our final written report shall take precedence.
5. We shall not be under any obligation in any circumstances to update any advice, report or any product of the services, oral or written, for events occurring after the advice, report or product concerned has been issued in final form, unless otherwise specifically agreed upon by mutual consent of you and us in the body of the engagement letter.
6. Any product of the services released to you in any form or medium shall be supplied by us on the basis that it is for your benefit and information only or that of the other beneficiaries and that it shall not be copied, referred to or disclosed, in whole (save for your own internal purposes) or in part, without our prior written consent. The services shall be delivered on the basis that you shall not quote our name or reproduce our logo in any form or medium without our prior written consent. You may disclose in whole any product of the services to your legal and other professional advisers for the purposes of your seeking advice in relation to the services, provided that when doing so you inform them that:
 - disclosure by them (save for their own internal purposes) is not permitted without our prior written consent, and
 - we accept no responsibility or liability to them in connection with the services.
7. Any advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.

Ownership

8. We shall retain ownership of the copyright and all other intellectual property rights in the product of the services, whether oral or tangible, and ownership of our working papers. For the purposes of delivering services to you or other clients, we shall be entitled to use or develop knowledge, experience and skills of general application gained through performing the services. You agree to keep confidential any methodologies and technology used by us to carry out our services.
9. We have the right to use your name as a reference in proposals or other similar submissions to other prospective clients, unless you specifically forbid such disclosure. If we wish to use details of the work done for you for references purposes, we will obtain your permission in advance.



Fees

10. We shall render invoices in respect of the services comprising fees, outlays and VAT thereon (where appropriate) ("fees"). Details of our fees and any special payment terms shall be set out in the engagement letter.
11. Our fees are based on the time spent on your affairs by KPMG persons and on the levels of skill and responsibility involved. The fees may differ from estimates that may have been supplied. Stringent reporting requirements or deadlines imposed by you might require work to be carried out at a higher level than usual or outside normal working hours. This may result in increased costs; additional fees may also be as a result of material changes in the services or difficulties in obtaining information which could not reasonably be foreseen.
12. Outlays in respect of travelling expenses, photocopies, stationery, revenue stamps, postage and telephone calls will be recoverable at our predetermined rates.
13. Our fees will be exclusive of VAT, which may qualify for deduction as input tax by registered vendors.
14. In return for the delivery of the services by us, you shall pay our fees (without any right of set-off), on presentation of our invoice. If you are not in agreement with any fee note, please notify us in writing of your objection within 21 working days of our despatch of the fee note. Failure to do so will constitute acceptance of the fee. Approval of financial statements or minutes reflecting our fees will constitute acceptance of the fees, including any over / under provision that does not warrant redrawing the financial statements.
15. We will be entitled to charge interest (at the maximum rate allowed by law) on all amounts outstanding, for whatsoever reason, for more than 30 days from the date of presentation of our fee note. Such interest will be calculated on a monthly basis. All payments will be allocated first as to interest, then as to outlays, then as to the longest outstanding fee.
16. In the event of your appointing another auditor or advisor in our stead, or otherwise terminating our mandate, we will be entitled to raise a fee note upon receipt of such notification for all work done to date and not yet billed, at our standard charge-out rates, including disbursements incurred. In such event, you undertake to settle our account in full prior to our handing over books and records to you or to our successor.

Your responsibilities

17. You shall retain responsibility and accountability for:
 - the management, conduct and operation of your business and affairs
 - any representations made by the company to third parties including published information
 - the maintenance of the accounting records, the preparation of the annual financial statements and the safeguarding of the assets

- the adopted policies and prescribed procedures are adhered to for the prevention of errors and irregularities, including fraud and illegal acts
- the use of, extent of reliance on or implementation of advice or recommendations supplied by us or other product of the services
- making any decision in respect of the services delivered or any use of the product of the services
- the delivery, achievement or realisation of any benefits directly or indirectly related to the services that require implementation by you.

Information

18. To enable us to perform the services, you shall use your best endeavours to procure and supply promptly all information and assistance and all access to documentation in your possession, custody or under your control and to personnel under your control where required by us. You shall inform us of any information or developments which may come to your notice and which might have a bearing on the services.
19. We may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes ("an authorised person"). We may communicate with you by electronic mail where an authorised person wishes us to do so, on the basis that in consenting to this method of communication, you accept the inherent risks (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices) and that you shall perform virus checks.
20. We may receive information from you or from other sources in the course of delivering the services and
 - we shall consider the consistency and quality of information received by us
 - we shall not seek to establish the reliability of information received by us
 - we shall not be liable to you for any loss or damage suffered by you arising from fraud, misrepresentation, withholding of information material to the services or other default relating to such material information, whether on your part or that of the other information sources.
21. We will not be responsible for loss or damage arising as a result of information material to the engagement being withheld or concealed from us or wrongly represented to us, provided that this clause shall not exclude liability, subject to the maximum limits set out in clause 33, if enquiries which we ought reasonably to have made in the course of our work under this engagement would have made us aware of the deficiencies in such information.

Knowledge and conflicts

22. The engagement team shall not be required, expected or deemed to have knowledge of any information known to colleagues which is not known to them personally or be required to obtain such information from colleagues. The engagement team shall not be required to make use of or to disclose to you any information, whether known to them personally or known to colleagues, which is confidential to another client.
23. We or other KPMG persons may be approached to advise another party or parties who are in dispute with you, or to advise or represent the interests of a party or parties whose interests are opposed to yours through their material concern in matters to which the services are specifically and directly related ("adversarial conflicts"). We seek and shall continue to seek to identify adversarial conflicts. If you know or become aware of any which may arise, you shall inform us promptly.
24. We shall not accept an engagement which may give rise to an adversarial conflict for the engagement team. Colleagues may accept such an engagement where appropriate and where effective barriers exist to prevent the flow of confidential information from the engagement team to colleagues and from colleagues to the engagement team. We may accept such an engagement only when the adversarial conflict is disclosed to all the parties involved and their consent is obtained.
25. We or other KPMG persons may be approached to advise another party or parties where there is no adversarial conflict but whose interests compete with yours specifically and directly in relation to the subject-matter of the services ("competing party" or "competing parties"). We seek and shall continue to seek to identify competing parties. If you know or become aware that a KPMG person is advising or proposing to advise a competing party, you shall inform us promptly. In such situations we take appropriate measures to ensure that strict confidentiality is maintained in all respects.
26. Where a party being advised by us, has been identified by us or notified by you as a competing party, we shall activate appropriate barriers and when operating we shall be entitled to advise the competing party concerned at any time and in any capacity (save in relation to an adversarial conflict). We will write to you with the detail of the potential adversarial conflict and how this will be approached either before we commence work in accordance with these standard terms and conditions or during the engagement.
27. Where a party has engaged us to advise it, we may consider that, even with barriers operating, your or the other party's interests are likely to be prejudiced and we may not be satisfied that the situation can be managed. In that event, we may have to terminate the services contract and we shall be entitled to do so on notice, taking effect immediately. We shall consult you before we take that step. We shall not be responsible for any costs that you may incur in securing other professional services.

The services contract

28. The services contract sets out the entire agreement and understanding between us in connection with the services. Any modifications or variations to the services contract must be in writing and signed by an authorised representative of each of us. No variation of the terms and conditions of the engagement will be of any force or effect, unless reduced to writing and signed by all of the signatories thereto. In the event of any inconsistency between the engagement letter and any other elements of the services contract, the engagement letter shall prevail. In the event of any inconsistency between these standard terms and conditions and additional terms that may apply, the additional terms shall prevail.

Third party rights

29. The services contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights.

Circumstances beyond your or our control

30. Neither of us shall be in breach of our contractual obligations nor shall either of us incur any liability to the other if we or you are unable to comply with the services contract as a result of any cause beyond our or your reasonable control. In the event of any such occurrence affecting one of us, that one shall be obliged as soon as reasonably practicable to notify the other, who shall have the option of suspending or terminating the operation of the services contract on notice taking effect immediately on delivery.

Waiver, assignment and sub-contractors

31. Failure by any one of us to exercise or enforce any rights available to us shall not amount to a waiver of any rights available to either of us.
32. Neither of us shall have the right to assign the benefit or burden of the services contract without the written consent of the other of us.
33. We shall have the right to appoint sub-contractors to assist us in delivering the services as members of the engagement team but we shall consult you before doing so.

Exclusions and limitations on our liability

34. The maximum liability of KPMG or any individual partner, director, or employee, as the case may be, of the KPMG contracting party or of any body or entity controlled by us or owned by us or associated with us in respect of direct economic loss or damage suffered by you or by other beneficiaries arising out of or in connection with the services, shall be limited to the fees charged and paid for these services. The maximum liability shall be an aggregate liability for all claims arising, whether by contract, delict, negligence or otherwise.
35. In the particular circumstances of the services set out in the engagement letter, the liability to you and to other beneficiaries of each and all KPMG persons in contract or tort or under statute or otherwise, for any indirect or consequential economic



loss or damage (including loss of profits) suffered by you (or by any such other party) arising from or in connection with the services, however the indirect or consequential economic loss or damage is caused, excluding our wilful misconduct, shall be excluded to the extent that such limitation is permitted by law.

36. You and other beneficiaries shall not bring any claim personally against any individual partner, director, employee or agent, as the case may be, of the KPMG contracting party or of any body or entity controlled by us or owned by us or associated with us in respect of loss or damage suffered by you or by other beneficiaries arising out of or in connection with the services. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party as a company for the acts or omissions of its partners, directors, employees and agents. Any claim from you or other beneficiaries must be made within two years of the date on which you or they became aware, or ought reasonably to have become aware, of circumstances giving rise to a claim or potential claim against us.

Third parties

37. You shall indemnify any KPMG persons and hold us harmless against any loss, damage, expense or liability incurred by them or us as result of, arising from or in connection with a combination of the following two circumstances:
- any breach by you of your obligations under the services contract and
 - any claim made or threatened by a third party or any other beneficiaries which results from or arises from or is connected with any such breach.

Termination

38. Each of us may terminate the services contract or suspend its operation by giving due notice in writing to the other at any time. Termination or suspension under this clause shall be without prejudice to any rights that may have accrued for either of us before termination or suspension and all sums due to us shall become payable in full when termination or suspension takes effect. We will be entitled to raise a fee note upon receipt of such notification for an amount adequate to cover all work done to date and not yet billed including disbursements incurred.
39. The following clauses of these standard terms and conditions shall survive expiry or termination of the services contract: clauses 2, 3, 4, 5, 7, 16, 19, 22, 24, 25, 26, 27, 28, 30, 31, 33, 34, 35, 39, 40 and 41.

Severability

40. Each clause or term of the services contract constitutes a separate and independent provision. If any of the provisions of the services contract are held by any court or authority of competent jurisdiction to be void or unenforceable, the remaining provisions shall continue in full force and effect.

Capacity

41. You agree to and accept the provisions of the services contract on your own behalf and as agent for other beneficiaries. You shall procure in such circumstances that any other beneficiaries shall act on the basis that they are a party to the services contract as if they had each signed a copy of the engagement letter and agreed to be bound by it. However, you alone shall be responsible for payment of our fees.
42. Your signature constitutes agreement to settlement of any dispute, controversy or claim by arbitration. The arbitration shall be held before a single arbitrator who is knowledgeable in legal procedures, the rules of evidence and similar engagements. The arbitrator shall be a person nominated by you and us or failing agreement between you and us within 7 days after the arbitration has been demanded, shall be a person appointed by the Chairman of the Institute of Arbitrators, including any applicable statutes or limitation and rules of evidence. The arbitrator shall deliver a written opinion setting forth findings of fact, conclusions of law and the rationale for the decision. Any opinion entered as a final judgement will be final and binding on both parties.

Staff

43. Our staff undergo periodic training and this, together with the taking of annual leave, may lead to staff turnover and lack of continuity. We will use our best endeavours to avoid any disruption to an engagement's progress.
44. You agree not to make any offer of employment or to employ any member of KPMG staff working on an assignment with yourselves. You also agree not to employ such a person or use such a person's services as a consultant either independently or via a third party for a period of 6 months following the end of any involvement by the individual concerned with any assignment for yourself without our consent.



Kenya Bureau of Standards
Quality products for quality life

KEBS Head Office
P. O. Box 64574, Nairobi 00200
Tel: +254 (0) 20 6068490, 8008603.
Mobile: 0722 202 137/8,
0704 600 471/2
Fax: +254 (0) 20 6009 650
Direct Dial: +254 (0) 20 694 8000
E-mail: info@kebs.org
Web: http://www.kebs.org

REF: KEBS/CONF./MD/00/2/18

Date: 2010-07-27

Rec'd 28/7

Josephat Mwaura
Senior Partner and CEO
KPMG
P.O. Box 40612 - 00100
NAIROBI

Dear *Josephat*,

RE: TERMINATION OF THE CONTRACT BETWEEN KEBS AND KPMG

KEBS Coast Region
P. O. Box 96076, Mombasa 80100
Tel: +254 (0) 41 231 7050, 2230939/38/40
Fax: +254 (0) 41 229 448
E-mail: kebs-msa@kebs.org

KPMG was engaged by the National Standards Council (NSC) to carry out the recruitment of the Managing Director for Kenya Bureau of Standards (KEBS). A formal contract was executed between KEBS and KPMG dated 16th March, 2010.

KEBS Lake Region
P. O. Box 2646, Kisumu 40100
Tel: +254 (0) 57 202 8398, 202 9549
Fax: +254 (0) 57 202 7814
E-mail: kebs-kisumu@kebs.org

Prior to the signing of the contract, a meeting was held between KPMG and the NSC on 14th March, 2010 whereat clear deliverables and project plan were agreed.

KEBS Rift Valley Region
P. O. Box 2136, Nakuru 20100
Tel: +254 (0) 51 221 0553/5, 221 1208
Fax: +254 (0) 51 221 0076
E-mail: kebs-nakuru@kebs.org

You were to proceed and carry out the recruitment process based on the agreed timelines and deliverables.

KEBS Mt. Kenya Region
P. O. Box 1790, Nyeri 10100
Tel: +254 (0) 51 203 1410/1
Fax: +254 (0) 51 203 2036
E-mail: kebs-nyeri@kebs.org

The NSC considered your report at its meeting held on 19th July, 2010 and noted that the same was not in accordance with the agreed deliverables in several instances. The instances were communicated to you in our letter dated 19th July, 2010 and you were given a chance to respond.

KEBS North Eastern Region
P. O. Box 976, Garsia 70100
Tel: +254 (0) 46 2819
Fax: +254 (0) 46 3455
E-mail: kebs-garsia@kebs.org

You responded on 21st July, 2010. The NSC met on 23rd July, 2010 and considered your response.

Having considered your response the NSC concluded that you had failed to deliver on your contractual obligations as agreed and resolved to terminate the contract between KEBS and KPMG.

This letter serves to communicate the termination of the contract in accordance with Clause 13.

Without prejudice to our right to claim all material received in regard to the exercise and in view of your claim of ownership of the same, you are advised to keep them in safe custody without any alteration whatsoever pending resolution of the matter and for the future accountability of KEBS to the Government of Kenya, the people of Kenya and for the ends of justice.

You will be informed of further developments in regard to the decision taken.

Yours sincerely,

Dr. Karanja Iniong'o
CHAIRMAN
NATIONAL STANDARDS COUNCIL



Kenya Bureau of
Standards

Quality products for quality life

KEBS Head Office
P. O. Box 54974, Nairobi 00200
Tel: +254 (0) 20 605490, 606506,
Mobile: 0722 202 137/8,
0734 600 471/2
Fax: +254 (0) 20 609 660
Direct Dial: +254 (0) 20 694 8000
E-Mail: info@kebs.org
Web: http://www.kebs.org

REF: KEBS/CONF./MD/00/2

Date: 2010-07-12

Josephat Mwaura
Senior Partner and CEO
KPMG
P.O. Box 40612 - 00100
NAIROBI

Dear *Josephat*

RE: RECRUITMENT AND SELECTION OF MANAGING
DIRECTOR

KEBS Coast Region
P. O. Box 99376, Mombasa 80100
Tel: +254 (0) 41 221 7050, 2230939/38/40
Fax: +254 (0) 41 229 448
E-mail: kebs-msa@kebs.org

I refer to your letter Ref. K024.0K95310001/jlm/jo dated 12th July, 2010 regarding the above subject.

KEBS Lake Region
P. O. Box 2949, Kisumu 40100
Tel: +254 (0) 57 202 8386, 202 9549
Fax: +254 (0) 57 202 7814
E-mail: kebs-kisumu@kebs.org

This is to confirm receipt of the final report containing the list of shortlisted candidates and their profiles.

KEBS Rift Valley Region
P. O. Box 2136, Nakuru 20100
Tel: +254 (0) 51 221 0663/5, 221 1208
Fax: +254 (0) 51 221 0076
E-Mail: kebs-nakuru@kebs.org

The report was tabled at the National Standards Council (NSC) meeting held on the same day and the same was adopted. The NSC is planning to carry out the interviews as scheduled. In the meantime however, the NSC has directed that you submit the list of all the applicants together with the applications to my office on or before 14th July, 2010.

Yours sincerely,

KEBS Mt. Kenya Region
P. O. Box 1790, Nyeri 10100
Tel: +254 (0) 61 203 1410/1
+254 (0) 61 203 2038
E-mail: kebs-nyeri@kebs.org

Dr. Karanja Thiong'o
CHAIRMAN
NATIONAL STANDARDS COUNCIL

KEBS North Eastern Region
P. O. Box 676, Garsia 70100
Tel: +254 (0) 46 2519
Fax: +254 (0) 46 0466
E-mail: kebs-garsia@kebs.org



Kenya Bureau of Standards
Quality products for quality life

Josephat

CONFIDENTIAL

KEBS Head Office
P. O. Box 54974, Nairobi 00200
Tel: +254 (0) 20 6005490, 6005506,
Mobile: 0722 202 137/8,
0754 600 471/2
Fax: +254 (0) 20 6009 660
Direct Dial: +254 (0) 20 694 8000
E-mail: info@kebs.org
Web: http://www.kebs.org

REF: KEBS/CONF/JMD/00/2

Date: 2010-07-05,

Josephat Mwaura
Senior Partner and CEO
KPMG
P.O. Box 40612 - 00100
NAIROBI

Dear *Josephat*

RE: PROVISION OF HUMAN RESOURCE CONSULTANCY SERVICES TO
KENYA BUREAU OF STANDARDS

KEBS Coast Region
P. O. Box 99376, Mombasa 80100
Tel: +254 (0) 41 2317050, 2230939/39/40
Fax: +254 (0) 41 229 448
E-mail: kebs-coast@kebs.org

Further to your letter dated 5th July, 2010 and our subsequent discussions over the invoice and the extension time line, the NSC is obligated to pay the 40% invoice and will do so as early as possible. The NSC members agreed to change the timelines as follows:

KEBS Lake Region
P. O. Box 2543, Kisumu 40100
Tel: +254 (0) 57 202 8396, 202 9549
Fax: +254 (0) 57 202 781/4
E-mail: kebs-kisumu@kebs.org

Key Activity	Date	Detailed Activity	Responsibility
Submit report	12 th July 2010 at 2.30 p.m.	Submit report with results and files to the NSC	KPMG
Final Interviews	19 th /20 th July 2010	NSC interview panel training and final interview and selection of candidates	KPMG/NSC
Engagement Closure	22 nd July 2010	Submit engagement closure letter to KEBS	KPMG
		Schedule client satisfaction meeting	KEBS and KPMG

KEBS Rift Valley Region
P. O. Box 2138, Nakuru 20100
Tel: +254 (0) 61 221 0553/5, 221 1206
Fax: +254 (0) 61 221 0076
E-mail: kebs-nakuru@kebs.org

Kindly note the agreed changes and work towards successful completion of the project.

KEBS Mt. Kenya Region
P. O. Box 1790, Nyeri 10100
Tel: +254 (0) 61 203 1410/1
Fax: +254 (0) 61 203 2036
E-mail: kebs-nyeri@kebs.org

Yours *sincerely*

[Signature]

KEBS North Eastern Region
P. O. Box 976, Garissa 70100
Tel: +254 (0) 46 2518
Fax: +254 (0) 46 3456
E-mail: kebs-garissa@kebs.org

Dr. Karanja Thiong'o
CHAIRMAN
NATIONAL STANDARDS COUNCIL



Kenya Bureau of Standards
Quality products for quality life

Josephat
Ms Director

KEBS Head Office
P. O. Box 54674, Nairobi 00200
Tel: +254 (0) 20 6005450, 6005506,
Mobile: 0722 202 137/8,
0734 600 471/2
Fax: +254 (0) 20 6009 660
Direct Dial: +254 (0) 20 694 8000
E-Mail: info@kebs.org
Web: http://www.kebs.org

Ref: KEBS/ CONF/NSC/1A/3

Date: 2010-06-29

Mr. Josephat Mwaura
Senior Partner and CEO
KPMG
P.O. Box 40612 - 00100
NAIROBI

KEBS Coast Region
P. O. Box 88376, Mombasa 80100
Tel: +254 (0) 41 2017050, 2230639/38/40
Fax: +254 (0) 41 229 648
E-mail: kebs-msa@kebs.org

Dear *Josephat*

PROVISION OF HUMAN RESOURCES CONSULTANCY SERVICES TO KEBS

KEBS Lake Region
P. O. Box 2545, Kisumu 40100
Tel: +254 (0) 57 202 8398, 202 9549
Fax: +254 (0) 57 202 7814
E-mail: kebs-kisumu@kebs.org

Please refer to our telephone conversation on Monday 28th June 2010 based on your letter, dated 22nd June 2010.

KEBS Rift Valley Region
P. O. Box 2138, Nakuru 20100
Tel: +254 (0) 61 221 0553/5, 221 1208
Fax: +254 (0) 61 221 0076
E-Mail: kebs-nakuru@kebs.org

As noted, your work plan did not concur with that in the offer letter and therefore was not agreed to by ourselves, as the reply suggests. As explained, the board needs time to audit the process undertaken by you in order to arrive at the six candidates.

KEBS Mt. Kenya Region
P. O. Box 1790, Nyan 10100
Tel: +254 (0) 61 203 1410/11
+254 (0) 61 203 2038
E-Mail: kebs-nyan@kebs.org

Given your sentiments on this issue, let us have your final report and all the application files by 6th July 2010, so that your training program can take place on your suggested date of 13th July 2010.

Please note that this is the last extension of the work plan.

Yours Sincerely,

Dr. Karanja Thiong'o (MKNAS)
CHAIRMAN, NSC

KEBS North Eastern Region
P. O. Box 978, Garissa 70100
Tel: +254 (0) 49 2519
Fax: +254 (0) 49 3455
E-Mail: kebs-garissa@kebs.org

Dr Karanja Thiong'o
The Chairman
National Standards Council
Kenya Bureau of Standards (KEBS)
KEBS Centre, Popo Road
Nairobi

Our ref: K024/DK95310001/jim/jo

29 July 2010

Dear

Consultancy services for the recruitment of KEBS Chief Executive

We are in receipt of your letter dated 27 July 2010 which was delivered to our office on 28 July inst. Your letter purports to terminate the contract ostensibly because we "failed to deliver on our contractual obligations" but does not point out the specific clauses of the contract that we are in breach of. We would like to bring to your attention that the contract had already expired at the time of termination and we had already performed our services in accordance with the contractual obligations, and submitted our final fee note. For the avoidance of doubt, we set out below the chronology of events relating to this contract:

- KPMG submitted a proposal for the services in January 2010 and vide your letter dated 22 January 2010, KEBS informed us that our Technical proposal had met the minimum requirements and vide your letter dated 16 February 2010, KEBS invited us to commence negotiations;
- Following the successful conclusion of negotiations, we submitted an engagement letter to KEBS setting out the specific terms of engagement and executed a contract on 16 March 2010;
- Specifically, the engagement letter which formed an integral part of the contract, set out the scope of our work within the terms of reference and the deliverables under this engagement together with the standard terms that govern our work. These were accepted by the NSC as part of the contract under clause 14;
- The assignment commenced on 19 March 2010 with an initial completion date of 21 May 2010. However, due to the delays occasioned by consultations within the NSC, KEBS communicated extension of the delivery dates to 12th July for submission of our report and 22 July 2010 as the closure date (copy letter attached);
- As communicated in various correspondence, the NSC has been involved throughout this engagement, either directly or through its appointed representative, and in particular has:
 - Approved the job description including the qualifications and competencies that were to form the basis of the selection process (copy of approved JD attached)
 - Approved the position specification to be included in the advertisement (copy attached)

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- Approved the application review criteria which formed the basis of the review of the applications received (copy attached)
- Approved the short-list report dated 5 May which set out the basis for short-listing. This report included the candidates who had qualified within the limits of the contract, together with additional candidates who had met the minimum criteria and whom we had asked the NSC to consider together with the attendant cost implications.
- The NSC had initially provided verbal approval of the additional candidates but this decision was subsequently reversed at the eleventh hour necessitating a cancellation of the interviews. Vide our letter dated 27 May 2010, we expressed our concern at the delay by the NSC to provide guidance to enable the process to move forward. The final approval of the short-list was only received on 16 June 2010 (copy attached).
- KPMG conducted the interviews, strategy presentations and psychometric testing and submitted the final report to the NSC on 12 July 2010 in accordance with the contract. Vide its letter dated 12 July 2010, the NSC confirmed receipt of the final report and that the report had been tabled before the NSC on the same day and the same adopted (copy letter attached).
- Subsequent to the adoption of the report by the NSC, we agreed with you that the training for the NSC as well as commencement of interviews will be on 19 and 20 July 2010 and we proceeded to arrange interviews with the candidates on this basis. However, on 15 July 2010 (copy of letter attached), you communicated that the training and interviews could not proceed as you needed to make further consultations with the NSC. In our conversation that afternoon, I expressed our disappointment with this last-minute cancellation once again and reiterated that this would have a negative impact on the selection process and the role of the NSC. As this was a matter out of our control, we left the rescheduling of the training to the NSC at their convenience and confirmed that we had discharged our responsibilities under the contract.
- Following the confirmation of receipt, review and adoption of our final report by the NSC, we submitted our final fee note which remains unpaid.

From the foregoing, it is clear that KPMG has discharged its responsibilities under the contract and KEBS cannot purport to terminate a contract that has already been performed and expired on 22 July 2010. We encourage you to seek legal advice from the Government's chief legal advisor to avoid falling foul of the law and causing the Government and the people of Kenya to incur any unnecessary costs. In particular, we would like to draw to your attention to Section 70 of the Public Procurement and Disposal Act as some of the requests made by NSC may be in contravention of this section.

The payments under the contract are now due and payable. The first payment was due at commencement and this was only paid after considerable delay contrary to clause 3(iii) of the contract thereby occasioning KEBS and the Government to incur an unnecessary interest expense as stipulated in clause 3(iii). The interest amounts due under that clause remain unpaid to date. Our final fee should also be paid on or before 20 August 2010 to avoid incurring any unnecessary interest expense under the terms of the contract.

In conclusion, we reiterate that we have fully discharged our responsibilities as previously confirmed by the NSC in writing and intend to vigorously pursue our rights under the contract. We are open to dialogue with the NSC to demonstrate our performance under the contract and look forward to receiving final payment by the due date.

Yours sincerely

Josphat Mwaura
Chief Executive Officer and Senior Partner



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INTERNAL MEMO **CONFIDENTIAL**



MINISTRY OF INDUSTRIALIZATION

From: Hon. Minister
To: PS
Date: 23rd September, 2010

RE: RECRUITMENT OF MANAGING DIRECTOR - KEBS

I am in receipt of the Adhoc Committee report on the recruitment of the Managing Director of Kenya Bureau of Standards (KEBS).

From the report and what I have been able to gather on my own it would appear that there has been no final vetting of the final five (5) candidates.

However, the following is what can be concluded from the results of the five:-

- 1) Abdi Kadir Omar Aden - KEBSs 039, Marks 65%. The fact that he wants to take a salary cut is suspicious.
- 2) Eva Adegia Oduor - KEBS 016, Marks 66%. Currently working with KEBS. Associated with the former Managing Director.
- 3) John Mtuta Mruttu - KEBS 019, Marks 64% wants too high a salary of 1.32 m.
- 4) Joseph K. Kosgey - KEBS 011, Marks 62%. Appears to have strong financial management base.
- 5) Eng. Michael Ochieng Owino - KEBS 025, Marks 53%. The score of 53% is too low.

From the foregoing, it would appear by elimination, the most suitable candidate is Joseph K. Kosgey.

I therefore appoint him the Managing Director of Kenya Bureau of Standards (KEBS) with immediate effect.

HON. H.K. KOSGEY
MINISTER

CONFIDENTIAL

ADHOC COMMITTEE'S REPORT ON THE RECRUITMENT OF MANAGING DIRECTOR KENYA BUREAUS OF STANDARDS

Background

The National Standards Council of Kenya Bureau of Standards advertised for the post in all the daily newspapers. The closing date for the applications was indicated as 2nd September, 2010.

A total of 74 applicants were received. The National Standards Council appointed an Adhoc Committee to shortlist the applicants as per the indent and the agreed criteria. From the applicants, a shortlist of 15 applicants was presented to the National Standards Council by the Adhoc Committee. The 15 shortlisted applicants were invited to the interview. However, 4 of the shortlisted applicants did not present themselves for interviewing.

The Adhoc Committee who did the shortlisting in consultation with the NSC decided to include the three (3) serving KEBS directors who had also applied for the post, purely for purposes of transparency and comparisons of candidates.

The National Standards Council interviewed the 11 candidates over 3 days (13th, 14th and 15th of September, 2010) which resulted in a final list of 5 qualified candidates and they were to be vetted to get the best three (3). However, the Chairman made a ruling that the first three be picked according to marks scored, not according to the vetting criteria as earlier agreed, on the 15th September, 2010.

The list of the 5 candidates is as follows:

1. KEBS 039	-	Marks	<u>70%</u>	- Abdi Kadir Omar Aden
2. KEBS 016	-	Marks	<u>66%</u>	- Eva Adega Oduor
3. KEBS 019	-	Marks	<u>64%</u>	- John Mtuta Mruttu
4. KEBS 011	-	Marks	<u>62%</u>	- Joseph K. Kosgey
5. KEBS 025	-	Marks	<u>55%</u>	- Eng. Michael Ochieng Owino

A. D. M. C.

On the 16th of September, 2010, the National Standard Council met and picked 3 candidates based on the marks scored as above and listed below:-

1. KEBS 039	- Abdi Kadir Omar Aden	- Salary requested Ksh.900,000
2. KEBS 016	- Eva Adega Oduor	- Salary requested Ksh.700,000
3. KEBS 019	- John Mtuta Mruttu	- Salary requested Ksh.1.32M, a 10% increase.

Copies of their academic, professional and testimonials are hereby attached

From: Adhoc- Committee

AGREEMENT

BETWEEN

KENYA BUREAU OF STANDARDS

AND

KPMG KENYA

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This Agreement, (hereinafter called "the Contract") is entered into this 16th March, 2010 by and between Kenya Bureau Of Standards of P.O Box 54794-00200 Nairobi Kenya (hereinafter called "the Client") of the one part and KPMG Kenya of P.O Box 40612-00100 Nairobi Kenya (hereinafter called "the Consultant") of the other part.

WHEREAS the client wishes to engage the Consultant to perform the services set out herein (hereinafter referred to as "the Services"), and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Services
 - (i) The Consultant shall perform the Services specified under Section V: Terms of Reference contained in The Request For Quotation For Consultancy Services For Recruitment Of Chief Executive Officer For Kenya Bureau Of Standards: RFP NO: KEBS/HQS/0132/2009/2010, ("the bid document") which document is made an integral part of this contract.
 - (ii) The Consultant shall provide the personnel listed as the "Consultant's Personnel", to perform the Services.
 - (iii) The Consultant shall submit to Client the reports as specified in the consultant's technical proposal under the title "Activity (work) schedule"
 - (iv) The Contractor shall provide a schedule of activities which is hereby adopted as an annex to this contract and which shall set out the activities to be undertaken and the time lines thereof
2. Term

The Consultant shall perform the Services during the period commencing on 15th March 2010 and continuing through to 21st May 2010 or any other period(s) as may be subsequently agreed by the parties in writing.
3. Payment
 - i) For Services rendered pursuant, the client shall pay the Consultant an amount not to exceeding Kshs.1, 488,396 (Kenya Shillings One Million Four Hundred Eighty Eight Thousand, Three Hundred Ninety six) plus 16% VAT. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.
 - ii) The schedule of payments is specified below:
 - 40% on signing of the agreement, and
 - 60% upon the client's receipt of the final report, acceptable to the client.
 - iii) Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty (30) days following submission by the Consultant of invoices in duplicate to the client. If KEBS has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for

each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

4. Project Administration
- A. Coordinator
- KEBS designates J. B. Kalo as Client's Coordinator. The Coordinator will be responsible for the coordination of activities under this Contract and for receiving and approving invoices for payment.
- For purposes of acceptance and approval of reports under this contract, the client hereby designates Dr. Jacinta Wasike who shall be responsible for the acceptance and approval of the reports and of other deliverables.
- B. Reports
- The reports listed in "Consultant's Reporting Obligations," shall be submitted in the course of the assignment and will constitute the basis for the payments.
5. Performance Standards
- The Consultant undertakes to perform the Services with the highest standard of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the client considers unsatisfactory.
6. Confidentiality
- The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the client's business or operations without the prior written consent of the client. Provided that this clause does not include any information which:
- is or hereafter becomes generally known to the public except by reason of breach by the Consultant;
 - was available to the Consultant on a non-confidential basis prior to the time of its disclosure by the Client;
 - is disclosed by an independent third party with a right to make such disclosure;
 - the Consultant is required to disclose it to its insurers, legal advisers or under legal compulsion;
 - The Consultant is required to disclose to its partners/directors and employees who need to know such information to perform its normal review processes.
7. Ownership of Material
- Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the client under the Contract shall belong to and remain the property of the client. The consultant shall retain ownership of the copyright and all other intellectual property rights in the products of the services, whether oral or tangible. Methodologies and technology used by the consultant to carry out the services shall remain the intellectual property of the consultant.
- prepared by the Consultant for the client under the Contract shall belong to and remain the property of the client. The Consultant may retain a copy of such documents and software.

8. Consultant Not to be engaged in certain activities
- The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the services and continuation thereof) for any project resulting from or closely related to the services. Provided that the Consultant shall not be prohibited from providing such other services to the Client if procured competitively and in accordance with the applicable law.
9. Insurance
- The Consultant will be responsible for taking out any appropriate insurance coverage.
10. Assignment
- The Consultant shall not assign this Contract or sub-contract any portion of it without the client's prior written consent.
11. Law Governing Contract Language
- The Contract shall be governed by the laws of Kenya and the language of the Contract shall be the English language.
12. Dispute Resolution
- Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.
13. Termination:
- Notwithstanding anything to the contrary contained in this contract, this contract shall at the option of the client terminate:
- i) If the Contractor breaches any of the terms, covenants, provisions and conditions contained in this contract or the applicable
 - ii) If the Contractor ceases or threatens to cease to carry out the services or takes or threatens to take any action to liquidate its assets, or stops making payments in the usual course of business;
 - iii) If the Contractor becomes insolvent or bankrupt or makes any arrangements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
 - iv) If the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to clause 1 hereof;
 - v) If the Contractor submits to the client a statement which has a material effect on the rights, obligations or interests of the client and which the contractor knows to be false;
 - vi) If the Contractor, in the judgment of the client, has engaged in corrupt, fraudulent or deceptive practices in executing the contract. For the purpose of this clause "Corrupt Practices" means the offering, giving, receiving or soliciting of any value to influence the action of a public official in the selection process or in contract execution, and "Fraudulent or deceptive Practices" means a misrepresentation of facts in order to influence a selection process or the execution of a contract;

vii) If, as a result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (30) days.

Termination by the Contractor

Notwithstanding anything to the contrary contained in this contract this contract shall at the option of the contractor terminate:

i) If the client is in material breach of its obligations pursuant to this contract and has not remedied the same within sixty (60) days after notice thereof has been given to the client by the contractor;

ii) If the client fails to comply with any final decision reached as a result of arbitration pursuant to clause 1 hereof.

14. Documents

The following documents shall be deemed to form and be read and construed as part of this agreement:

- i) The Bid document
- ii) The Consultant's Technical Proposal
- iii) The Consultant's engagement letter
- iv) The Consultant's standard terms and conditions

IN WITNESS WHEREOF the Parties hereto have caused this Contract to be executed the day and year first before written.

SEALED with the common seal of)

KENYA BUREAU OF STANDARDS)

In the presence of)

Director)

Corporation Secretary)

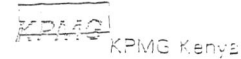
SEALED with the common seal of)

KPMG KENYA)

In the presence of)

Engagement Partner)

Manager)



IN THE MATTER OF THE OATHS AND STATUTORY DECLARATION
ACT (CHAPTER 15 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF THE RECRUITMENT OF THE MANAGING
DIRECTOR OF THE KENYA BUREAU OF STANDARDS (KEBS)

AFFIDAVIT


I, Richard Boro Ndung'u, of P.O. Box 45147-00100 Nairobi make oath and state as follows:

1. I am a citizen of Kenya and holder of National Identity Card Number 7868994 and competent to make this affidavit.
2. I am a certified public accountant of Kenya and a Partner in the firm of KPMG of Lonrho House 16th Floor, Nairobi.
3. That sometime between April and June this year I received a telephone call from a Ms Salina Jeptoo, who described herself as a Personal Assistant to the Honourable Henry Kosgey, Minister for Industrialization.
4. She stated that the Minister wanted to meet with someone senior in KPMG Kenya to gain an understanding of how we conduct our executive recruitment process, and she said that I was the only Partner that her contact knew, and therefore gave her my mobile number.
5. I cannot at this time recall who she said her contact was.
6. I agreed to meet with the Minister, which she then arranged.
7. When I met with the Minister at his office at Teleposta Towers, we initially made some small talk, and then the Minister enquired about KPMG's recruitment process.
8. I explained that KPMG Kenya has a very robust process, and depending on the Terms of Reference contracted with the client, the process could include:
 - a. assessment centres
 - b. psychometric testing and
 - c. formal, often Power-point assisted, presentations to the interview panel.

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9. The Minister then mentioned that there was a candidate who was interested in the position of Managing Director at the Kenya Bureau of Standards (KEBS), that KPMG was assisting with, and which is under his Ministry.
10. The Minister indicated that the candidate's name is 'similar' to his and he proceeded to mention the name of the candidate which, to my recollection, is the same as that of the candidate subsequently announced by the Minister as the new appointee to the position of Managing Director at KEBS.
11. By way of reply, I explained that the candidate would be subjected to the same robust process as any of the other candidates, and that the ultimate decision on the appointee rested firstly with the KEBS Board in the three names the KEBS Board would submit to the Minister, and then with the Minister himself, in the one person he would appoint from amongst the three choices.
12. I also explained to the Minister that Josphat Mwaura was not only the Chief Executive Officer (CEO) & Senior Partner of KPMG Kenya & East Africa, but that he was also the Partner in-charge of the People & Change Department of KPMG East Africa, and that this includes the Executive Selection Division, which was handling the recruitment of the Managing Director at KEBS.
13. I then proceeded to give the Minister Mr Mwaura's mobile telephone contacts to enable the Minister to contact Mr Mwaura directly, if he so wished.
14. After a few pleasantries, the meeting then ended, and I considered the matter dealt with.
15. It was critical and a matter of professional integrity that the whole process remain absolutely impartial and unimpeachable, and I therefore did not discuss my meeting with the Minister with anyone involved in the KEBS Managing Director recruitment exercise.
16. When the announcement of the new Managing Director at KEBS was made, my attention was drawn to public controversy surrounding the way the Minister made and announced his appointment, and also to the comments attributed to an anonymous KEBS Board Member, seeking to explain why the KEBS Board had discarded KPMG's report, and why they felt they had to repeat the recruitment exercise themselves.
17. It is then that I mentioned my earlier meeting with the Minister to the CEO and my fellow Partners.

9. The Minister then mentioned that there was a candidate who was interested in the position of Managing Director at the Kenya Bureau of Standards (KEBS) that KPMG was assisting with, and which is under his Ministry.
10. The Minister indicated that the candidate's name is 'similar' to his and he proceeded to mention the name of the candidate which, to my recollection, is the same as that of the candidate subsequently announced by the Minister as the new appointee to the position of Managing Director at KEBS.
11. By way of reply, I explained that the candidate would be subjected to the same robust process as any of the other candidates, and that the ultimate decision on the appointee rested firstly with the KEBS Board in the three names the KEBS Board would submit to the Minister, and then with the Minister himself, in the one person he would appoint from amongst the three choices.
12. I also explained to the Minister that Josphat Mwaura was not only the Chief Executive Officer (CEO) & Senior Partner of KPMG Kenya & East Africa, but that he was also the Partner in-charge of the People & Change Department of KPMG East Africa, and that this includes the Executive Selection Division, which was handling the recruitment of the Managing Director at KEBS.
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17. It is then that I mentioned my earlier meeting with the Minister to the CEO and my fellow Partners.

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IN THE MATTER OF THE OATHS AND STATUTORY DECLARATION ACT
(CHAPTER 15 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF THE RECRUITMENT OF THE MANAGING DIRECTOR OF
THE KENYA BUREAU OF STANDARDS (KEBS)

AFFIDAVIT

I, Josephine Oduor-Mwaniki of P.O. Box 40612-00100 make oath and state as follows:

1. I am a citizen of Kenyan and holder of National Identity Card Number 10474847 and competent to make this affidavit.
2. I am employed as the Senior Manager, People & Change (which includes Executive Selection) by KPMG of Lonrho House 16th Floor, Nairobi.
3. Mr. Isaiah Kiplagat the Chairman of *Athletics Kenya* called me on or about 24 February 2010 (week of 22-26 February) on the KPMG office line and requested for a meeting after establishing that I was the manager in charge of Executive Selection. He asked me whether I was a member of the Nairobi Club and when I answered in the affirmative, he requested for a breakfast meeting the next morning.
4. Mr. Kiplagat did not disclose the purpose of the meeting but I went ahead to meet with him as I know of him as the chairman of the *Athletics Kenya* and expected that this may be a business opportunity.
5. I met with Mr. Kiplagat the following morning at 8.30am at Nairobi Club in the main dining room.
6. The initial discussions held were mainly around exploring my family background, social and religious activities, including where I attend church services, and discussion about the club of which we are both members.
7. I was not clear why Mr Kiplagat was making these enquiries but I proceeded to answer the questions in polite conversation. When I explained where I go to church and that my husband was a pastor there, he mentioned that his daughters also go to church there.
8. Eventually Mr Kiplagat mentioned that he was representing the Minister for Industrialization, Mr Henry Kosgey, with regard to the recruitment of the Managing Director, Kenya Bureau of Standards, which KPMG was undertaking.
9. He indicated that there were many parties interested in this position and that the Minister was interested in getting a good candidate through a thorough process. I informed him that KPMG was still in the contracting process with the Council.
10. The meeting ended at about 9.15 am and we exchanged contacts and I never heard from Mr. Kiplagat again.

11. I found it odd to be contacted by a prominent person who, to my knowledge, was not directly involved in the management of the National Standards Council. I provided a briefing of the meeting to the KPMG Chief Executive Officer and engagement partner, Josphat Mwaura, on what had transpired and agreed to continue to safeguard our process from any external interference.
12. I make this affidavit from facts within my own knowledge and it is true.

Sworn by the said Josephine Oduor-Mwaniki)

At Nairobi this 4TH day of November, 2010)

Before me)

Peter M. Wanyaki)
Advocate, Commissioner for)
Oaths and Notary Public)
Commissioner for oaths)
Nairobi, Kenya)

Drawn by:

Mboya & Wangong'u

Advocates

Lonrho House, 7th Floor

Standard Street

P.O. Box 74041-00200

Nairobi

Dr Karanja Thiong'o
The Chairman
National Standards Council
Kenya Bureau of Standards (KEBS)
KEBS Centre, Popo Road
PO Box 54974 00200
Nairobi

Our ref: K024/DK95310001/jlm/jo

5 July 2010

Dear

Provision of human resources consultancy services to the Kenya Bureau of Standards

I refer to your letter dated 16 June 2010, our response dated 22 June 2010, our conversation on Monday 28 June 2010, and your subsequent letter dated 29 June 2010.

As I had indicated in our conversation on Monday 28 June 2010, our proposed delivery date of 12 July 2010 for the final report was based on the availability of the candidates whom we contacted after confirmation by yourselves that you only wanted to proceed with the 14 candidates already interviewed. As I indicated then, based on the availability of the candidates, we will only finish the strategy presentations and psychometric testing on Friday 9 July 2010 and intend to put in extra effort to enable us to deliver the report by Monday 12 July 2010. This was the basis of the revised project plan that we forwarded to you vide our letter dated 22 June 2010.

We have also subsequently sent a letter to the Company Secretary (copy attached) pointing out that KEBS has not honoured the contract with regard to the mobilisation fees payable on signing of the contract. This has remained outstanding for more than three months now and we have continued to provide the services in good faith in the expectation that the payment will be processed expeditiously. However, our follow-up has not yielded any fruits and we have now formally communicated that the project plan will be negatively affected by this delay on KEBS part to honour the contractual obligations.

I would be grateful if you could follow-up the outstanding payment and confirm to us when this is likely to be delivered to enable us to commit to the delivery date of 12 July 2010. We are very keen to complete this process and to safeguard it from the delays that have been experienced thus far. We believe the process has progressed significantly to enable KEBS to identify a candidate for CEO who has been subjected to an independent, credible and merit based selection process led by the NSC.

[Handwritten signature]

Please do not hesitate to contact me or Josephine Oduor-Mwaniki if you require any additional information or clarification.

Yours sincerely

Josphat Mwaura
Chief Executive Officer and Senior Partner



Kenya Bureau of
Standards
Quality products for quality life

KEBS Head Office
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0734 600 471/2
Fax: +254 (0) 20 6009 660
Direct Dial: +254 (0) 20 694 8000
E-Mail: info@kebs.org
Web: http://www.kebs.org

REF: KEBS/CONF./MD/00/2/15

Date: 2010-07-19

Josephat Mwaura
Senior Partner and CEO
KPMG
P.O. Box 40612 - 00100
NAIROBI

Dear

Josephat

KEBS Coast Region
P.O. Box 99378, Mombasa 80100
Tel: +254 (0) 41 2317050, 223093938/40
Fax: +254 (0) 41 229 448
E-mail: kebs-msa@kebs.org

RE: RECRUITMENT AND SELECTION OF MANAGING DIRECTOR

Refer to my letter Ref. KEBS/CONF/MD/00/2/14 of 15th July, 2010 and your letter Ref. KO24/DK 95310001/jim/jo of 13th July, 2010.

KEBS Lake Region
P.O. Box 2849, Kisumu 40100
Tel: +254 (0) 57 202 8396, 202 9549
Fax: +254 (0) 57 202 7814
E-mail: kebs-kisumu@kebs.org

As intimated to you, I referred the matter to the NSC during its meeting held today. During discussions the following fundamental technical issues were raised which will require your explanation before the NSC proceeds with the exercise:-

KEBS Rift Valley Region
P.O. Box 2138, Nakuru 20100
Tel: +254 (0) 51 221 0553/5, 221 1208
Fax: +254 (0) 51 221 0076
E-Mail: kebs-nakuru@kebs.org

- i) **Misinterpretation of the indent as agreed and advertised**
The specialised Bachelor of Science specified in the advertisement were Mechanical, Electrical, Civil, Electronic or Chemical Engineering. However, your firm went ahead and recruited candidates with Bachelor of Science in Agriculture and its related fields, contrary to the indent.

The NSC targeted a general Bachelor of Science degree commonly referred as BSc General which include studies in Mathematics, Physics, Chemistry, Biology etc.

KEBS Mt. Kenya Region
P.O. Box 1790, Nyeri 10100
Tel: +254 (0) 61 203 1410/1
Fax: +254 (0) 61 203 2038
E-Mail: kebs-nyeri@kebs.org

- ii) **Shortlisting of Former CEOs**
The NSC noted that other than the two internal candidates shortlisted, all the rest were former CEOs. NSC feels that integrity and past performance records may not have been vetted. The advertisement targeted candidates at senior management level whose career aspiration was to become CEOs.

KEBS North Eastern Region
P.O. Box 976, Garissa 70100
Tel: +254 (0) 46 2519
Fax: +254 (0) 46 3466
E-Mail: kebs-garissa@kebs.org

- iii) **Shortlisting of Candidates**
- The shortlist report on the suitability of the recommended candidates has not indicated how the fourteen (14) shortlisted candidates were reduced to nine (9).
 - The list of the candidates shortlisted and presented to the NSC in May 2010 indicated that the female candidate (KEBS-110) was from the Rift Valley. The NSC could not tell whether the female candidate shortlisted for final interview was the same KEBS-110.

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iv) **Misadventure by Your Firm**

- In May 2010, you presented a shortlist of 21 candidates instead of the 14 candidates requested by the NSC. The attendant additional cost would have resulted in the NSC flouting the public procurement procedures.
- Instead of presenting six (6) candidates for final interview by the NSC, you presented only four (4) credible candidates.

v) **Transparency Accountability and Good Corporate Governance**

Lack of facts on the candidates has made it impossible for the NSC to be accountable to the process used to arrive at the four candidates presented for final interviews. Interviewing the four candidates will restrict the NSC direct decision into eliminating only one candidate.

vi) **Presentation of the Final Report**

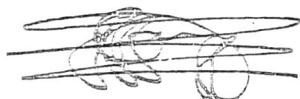
The NSC expected KPMG to present it with the final report but instead a report addressed to the Chairman was sent by courier.

vii) **Failure to Provide the Shortlist Details as Required by NSC**

This has put NSC in the dark about the applicants' relevant information for concurrence.

Please respond to the above issues on or before Thursday 22nd July, 2010.

Yours *Sincerely*,



Dr. Karanja Thiong'o
CHAIRMAN
NATIONAL STANDARDS COUNCIL



**Kenya Bureau of
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Quality products for quality life

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REF: KEBS/CONF./MD/00/2/68

Date: 2010-11-02

Mr. Patrick G. Gichohi, CBS
Clerk of the National Assembly
National Assembly
Parliament Building
P.O Box 241842 - 00100
NAIROBI

Attn: Rose Mudibo

KEBS Coast Region

P. O. Box 99376, Mombasa 80100
Tel: +254 (0) 41 2317050, 2230939/38/40
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E-mail: kebs-msa@kebs.org

Dear Sir,

RE: EXPENDITURE ON MD KEBS RECRUITMENT

This is in response to the demand by the committee on Equal Opportunity in our meeting of 28th October, 2010. You will note that the expenditure is from December, 2009 up to 26th October, 2010.

I hope this satisfies the committee

Yours faithfully,

KEBS Lake Region

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Fax: +254 (0) 57 202 7814
E-mail: kebs-kisumu@kebs.org

Dr. Karanja Thiong'o (MKNAS)
CHAIRMAN
NATIONAL STANDARDS COUNCIL

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E-Mail: kebs-nakuru@kebs.org

c.c: **Dr. (Eng.) Kibicho Karanja**
Permanent Secretary
Ministry of Industrialization
Teleposta Towers
NAIROBI

KEBS Mt. Kenya Region

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