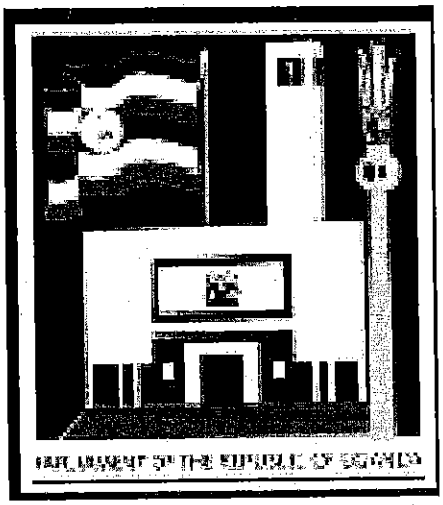

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON GOVERNMENT COMPENSATION TO HABA GROUP OF COMPANIES LIMITED AND RHINO INVESTMENTS LIMITED IN THE FY 2009/2010

FEBRUARY, 2012

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ACRONYMS

AG	Attorney General
SG	Solicitor General
SIL	Sheila Investments Ltd
VIL	Victoria International Trading Company Ltd
VITCL	Victoria International Trading Company Limited
YIL	Yudaya International Trading Company Limited
FMITC	First Merchant International Trading Company
KCC	Kampala City Council
VAT	Value Added Tax
JV	Joint Venture
VAT	Value Added Tax
NSMVA	Nkivubo Shauriyako Market Vendors Association
KIU	Kampala International University
PS/ST	Permanent Secretary/Secretary to Treasury
MOFPED	Ministry of Finance, Planning and Economic Development
KPMG	
USD	United States Dollars
ST	Secretary to Treasury
FY	Financial Year
UGX	Uganda Shillings
PPS	Principal Private Secretary
PAC	Public Accounts Committee
UPDF	Uganda People's Defence Forces
IGG	Inspectorate of Government
PPDA	Public Procurement and Disposal Public Assets

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) ON GOVERNMENT COMPENSATIONS

Introduction

1. Rule 148 (2) provides that the Public Accounts Committee shall be assigned the examination of the audited accounts showing the appropriation of sums granted by Parliament to meet public expenditure of the central government and the judiciary. The Auditor General audits the accounts of government and submits a report of his findings to Parliament. In the Report of the Auditor General to Parliament for the year ended 30th June 2010, it was reported that ***"Government is incurring a lot in compensation to companies and individuals for loss of business arising from cancellation of contracts they entered into with government. It was also noted that in a number of cases, trade taxes have not been assessed or collected."*** The report highlighted the compensation claims brought against government by HABA Group of companies Ltd. and Rhino Investments Ltd. and approved as follows:

1. Haba Group of companies was paid UGX 142.6 billion allegedly on account of its management contracts and sub-lease for markets in the city having been cancelled by Government. HABA's subsidiary companies are:

(a) Sheila Investment Ltd which was awarded UGX 70,589,528,007 for loss of management contract and sub-lease over Nakasero Market
(b) Victoria International Trade Co Ltd which was awarded UGX 2,801,585,133 for loss of its management contract over St. Balikudembe (Owino) Market;

(c) First Merchant Trading Co Ltd which was awarded UGX 5,652,231,004 for loss of sub-lease over Shauriyako Market; and

(d) Yudaya Investment Ltd which was awarded UGX 63,654,752,244 for loss of its sub-lease over the Constitutional Square.

(e) Rhino Investment Ltd was paid UGX 14,965,569,313 allegedly on account of its lease over Kisseka Market having been cancelled by Government;

2. The Committee's attention was drawn to the huge sums of money that Government was paying to companies as compensations for breach of contract, and decided to examine the matter in detail to determine the propriety of these claims. The Committee was deeply concerned when it received a report from the Auditor General indicating that whereas Government compensated HABA Group of Companies with UGX 142.6 billion, an independent assessment of the claim by KPMG had shown that the HABA Group instead owed Government a net of UGX 999,039,186/=.

3. The Committee is pleased to present its report to the House on its findings and recommendations on the compensation settlement between Government and the above entities.

Terms of Reference

4. The committee's inquiry was guided by the following terms of reference:

i. Establish whether each of the contracts in question was entered into or executed according to the law;

ii. Establish whether the cancellation of the contracts was done through proper procedures and in public interest;

iii. Establish whether the compensation claims lodged by affected companies were evaluated competently, transparently and rationally to arrive at appropriate and justified compensation payments;

iv. Establish whether all taxes associated with the transactions between Government and the companies in question were remitted to the Uganda Revenue Authority;

v. Establish whether any public officials at the level of contract award, management, cancellation and compensation acted contrary to established legal frame work and/ or public interest;

vi. Make recommendations to the House on the next course of action.

Methodology

5. In order to obtain the relevant information and evidence, the Committee adopted a multi-pronged approach, which entailed:

(a) Interviews:

i. Interviewed officials in the relevant Ministries and Government departments that were involved in these contract claims

ii. Interviewed the former and the present Ag. Solicitors General and the former Attorney General in light of their roles as provided for in Article 119 (5)of the Constitution

iii. Interviewed the Directors of the two companies mentioned

iv. Interviewed the members of the compensation committee which evaluated the claims that were lodged by HABA Group of Companies and RHINO Investments Ltd

v. Interviewed the Permanent Secretary/Secretary to the Treasury

vi. Interviewed the former Minister of Finance, Planning and Economic Development on the role she played in processing the compensation claims

vii. Interviewed the Governor Bank of Uganda

viii. Interacted with the President

ix. Interviewed the Presidential Aides.

(b) Perusal of Documents

(i) Contract documents

(ii) Court judgements on cases taken to court

The list of the names of the witnesses is attached as Appendix No.1.

Challenges

6. In conducting this inquiry, the Committee encountered a number of challenges:

- Some witnesses were uncooperative and hostile like the former Attorney General, Hon. Khiddu Makubuya who initially challenged the locus of the Committee to investigate the issue of compensation.
- Limited time in respect of the volume of work.
- Inadequate financial resources.

Acknowledgement

7. The Committee acknowledges all the offices that helped and supported the Committee in the course of its inquiry in particular, the support it received from the Public Accounts Committee Secretariat and the staff of the Auditor General's office.

Below, the Committee presents its findings, observations and recommendations.

I. HABA GROUP OF COMPANIES LIMITED

8. Haba group of companies represents the following companies namely: Sheila Investments Ltd, Victoria International Trading Company Ltd, Yudaya International Trading Company Ltd and First Merchant International Trading Company:

a. Sheila Investment Ltd (SIL) in respect of Nakasero Market
b. Victoria International Ltd (VIL) in respect of St Balikuddembe Market
c. Yudaya International Trading Company (YIL) for Constitutional Square
d. First Merchant International Trading Company (FMITC) for Shauriyako market.

Background to the contracting out of markets

9. As far back as May 1995, the KCC made a decision to contract out the management of markets to private entities so that Council staff could concentrate on the core function of service delivery. In 2002, the Council took a decision to contract out management of Nakasero market and St Balikuddembe market, and after a competitive bidding, Ms SIL and VIL

respectively emerged the winners. The other objectives of contracting out management of the markets were: to maximize revenue collection; minimize collection costs and minimize risks in revenue collections.

10. One of the issues brought to the attention of the Committee was that by KCC contracting out the management of markets to private entities, it had privatized people's markets to private individuals, which was against the Government Policy. This is captured by the concern of the President as follows: '....*why sell to an individual what belongs to many people? If you want to sell, why not sell to the people themselves.*' [1]

11. On 29th November 2002, KCC entered into a management contract with SIL and VIL to manage, control and maintain Nakasero and St Balikudembe markets respectively for three years. In return, SIL would remit an annual contract fee of UGX 256,410,251/= payable in advance plus VAT of UGX 43,589,748/= and VIL would remit UGX 1,066,666,668/= as annual contract sum payable in advance and VAT of UGX 181,333,332/=.

12. The Committee found that before the tendering process was concluded, the Ag. Solicitor General, on 28th November 2002, wrote to the then Mayor, Hon. Sebanna Kizito, requesting him to stay any dealings with VIL and SIL to allow for investigations into the companies existence in law. However, the following day, 29th November 2002, the day KCC entered into contract with the companies in question, the Mayor responded to the Solicitor General that the companies had already accepted the offer and paid the required monies to KCC, and 'hence a contract was made between KCC and the companies which can only be altered by mutual

[1] See the end of the first paragraph of the letter dated 30 July 2008 by the President to Hon Khiddu Makubuya, the then Minister of Justice and Constitutional Affairs/Attorney General.

consent or unilaterally by KCC at our peril.' Beyond the request by the Ag. Solicitor General to stay the tendering process to enable investigations into the legal status of the companies in question, which request was rejected, there was no evidence that the Attorney General's Chamber cleared the contracts between KCC and the two companies in question. Article 119 (5) requires that all contracts involving government departments should be cleared by the Attorney General before signature.

13. **Official Expiry of the Initial Contracts**

The management contracts for the two markets officially expired in November 2005. After the expiry, and before new tenderers could be procured, the President, in his letter of February 2006, directed that the renewal of the contracts for managing markets be halted. This directive was lifted by the President in his letter of 31st July 2006.

14. In the meantime, the then Town Clerk, Mr. Ssegane, on 9th December 2005 wrote to Ms SIL and VIL allowing them to continue to manage the Nakasero and St Balikudembe markets respectively, on the same former terms. When Mr Ssegane appeared before the Committee, he indicated that he took the administrative action to extend the contracts in order not to allow vacuum to prevail in the collection of revenue from the markets. He also indicated that his action was supposed to be a temporary measure to allow the constitution of the new council which would take a policy decision on the matter. Nonetheless, the management contracts for the two markets as extended by Mr. Ssegane on 9th December 2005 were terminated in a letter dated 2nd February 2007 signed by Mrs Kijjambu, the then acting Town Clerk.

The Committee observed that the action by Mr. Ssegane to extend the contract without council approval was a huge administrative error.

15. The Committee found that the termination of the management contracts was not the basis for the compensation claim. Rather, it was the frustration of the sub-lease agreement that KCC had entered into with SIL. The origin of the sub-lease agreement referenced in Daily Monitor 23rd December, 2005

a. Joint Venture and Sub-lease in respect for the Nakasero Market

16. During the subsistence of the first management contract between KCC and SIL over the management of Nakasero Market, the two parties entered into a JOINT VENTURE (JV) Agreement on 2nd September 2005 for the development of Nakasero Market. Clause 1(ii) of the JV Agreement stated that KCC was to contribute the land for the development while SIL was to provide the funds. However, the JV Agreement was never implemented, and the term of the Mayor Kizito and his council expired. When the new Mayor and Council took office in 2006, they discarded the idea of a Joint Venture and instead opted for sub-leasing the land to SIL. Consequently, on 4th June 2007, KCC and SIL signed two sub-lease agreements for plot 4B and 7B in respect of Nakasero market. In the said sub-lease agreement, SIL was supposed to pay premium of **UGX 2,080,000,000/=** and annual ground rent of **UGX 104,000,000/=.** The said premium and ground rent were revised to **UGX 2,913,200,000/=** and **UGX 103,960,000/=** respectively. The said amount of money was subsequently paid to KCC.

17. However, before the sub-lease title could be transferred to SIL, market vendors protested the redevelopment compelling Government to

intervene by the letter dated 30th July 2007 from the President cancelling the sub-lease.

The Committee observed that the Joint Venture between KCC and SIL of September 2005 and the sub-lease to SIL when the JV could not proceed were not subjected to competitive bidding.

18. Subsequently, on 31st March 2009, HABA Group on behalf of SIL lodged a compensation claim to Government of **UGX 47,838,134,213**. The claim was later revised by Craven, the agent of HABA, to **UGX 61,905,018,734/=** and resubmitted to the office of the Attorney General on 15th June 2009, detailed as hereunder:

Claim	Amount
Equity Contribution, Premium and ground rent	3,328,063,588/=
Legal fees	1,100,000,000/=
Compensation to vendors	1,700,000,000/=
Construction of office block	1,935,029,482/=
Refuse collection costs	1,387,200,000/=
Intrinsic value of the sub-lease lost	28,600,000,000/=
Compensation for loss of business opportunity	12,078,000,000/=
Interest	7,276,725,664/=
Payment of general damages	4,500,000,000/=
Total	**61,905,018,734/=**

b. VIL in respect of St Balikuddembe Market

19. The circumstances under which Nakasero market and St Balikuddembe market (Owino) were placed in private management hands were similar. Victoria won the tender to manage the Owino market in 2002 for a three year contract. The initial management contract expired in November 2005, and was extended by the Town Clerk (Mr.

Segane) in the same circumstances that SIL's contract over Nakasero was extended on 16th April, 2006.

Meanwhile, between February 2006 and April 2007, there were riots and demonstrations by the market vendors, which culminated into KCC reassuming management of the same market from 16th April 2007.

Arising from the foregoing, VITCL under HABA petitioned H.E. The President to have the former compensated in respect of the frustrated management contract.

20. In March 2008, VIL lodged a claim of UGX 23,589,121,708 to Government. In July 2008, the President directed the Minister of Justice and Constitutional Affairs/Attorney General to examine the legality of the claims and advise him. The claim was subsequently revised by CRAVEN, the agent of HABA GROUP OF COMPANIES, from UGX 23,589,121,708 to UGX 21,281,197,817/=, detailed as hereunder:

Claim	Amount
Reimbursement of Management Contract fees	2,606,960,000/=
Outstanding Legal fees	760,000,000/=
Reimbursement of renovation costs	2,668,711,775/=
Reimbursement of construction costs	1,097,399,534/=
Reimbursement of refuse collection costs	1,976,080,000/=
Compensation for loss of business	2,158,000,000/=
Interest and adm fees on outstanding payments	7,014,046,508
General damages	3,000,000,000/=
TOTAL	**21,281,197,817/=**

21. Meanwhile, VIL had problems with KCC due to its poor remittances. This resulted into a court case and judgement was entered on the 26th

February 2008 in favour of KCC. Court ruled that **UGX. 2,164,029,816/=** (VAT inclusive) was payable to KCC plus interest of 15 percent per annum from 7th May 2007 the date of filing the counter-claim till the date of full payment. Following the failure by VIL to pay the decretal sum, KCC filed a winding-up petition against VIL. Before the said petition could be heard, the Ag. Solicitor General, Mr. B. Kainamura, now a judge of the High Court of Uganda, on 23th August 2010 advised KCC to discontinue its chase for the decretal sum as the sum would be deducted from the pending compensation by Government to VIL and remitted to KCC.

c. First Merchant International Trading Company in respect of Shauriyako Market

22. On 5th July 2006, Nakivubo Shauriyako Market Vendors Association (NSMVA) was given the sub-lease offer over Plot 35A by Kampala City Council to develop Shauriyako market. The procedure by which the vendors obtained the sub-lease was that they approached KCC with an application for a sub-lease and KCC accepted the proposal.

The terms of the sub-lease was that NSMVA was required to pay a premium of UGX 500,000,000/= per annum, ground rent of UGX 10,000,000/= per annum, and the sub-lease was for an initial period not exceeding 49 years.

23. On 10th July 2006, NSMVA wrote to KCC requesting for permission to enter into a partnership with FMITC to redevelop Shauriyako market.

24. On 14th July 2006, Mr. Ssegane on behalf of KCC wrote back to NSMVA giving it a no objection to engage FMITC as a development

partner. The same letter indicated that NSMVA could transfer its interests to FMITC provided that the latter complied with the all development obligations under the sub-lease offer.

25. Meanwhile, in a document titled Memorandum of Understanding made this 12th day of July 2006 between FMITCL and the NSMVA Executive Committee indicated that FMITC paid UGX 750,000,000/= to the Executive Committee of NSMVA for purposes of lobbying vendors to agree to assign their interests in the property to FMITC. It also indicated that FMITC was to pay another separate amount of UGX 810,000,000/= to be distributed to the members of NSMVA.

26. On 14th July 2006, NSMVA assigned its sub-lease interest to FMITC for a consideration of UGX 810,000,000/=.

27. On 14th July 2006, FMITC on behalf of NSMVA paid UGX 500,000,000/= and UGX 10,000,000/= to KCC as premium and ground rent respectively.

28. However, on the 15th August 2006, KCC signed a sub-lease agreement with another entity namely, Nakivubo Shauriyako Market Company Ltd.

29. The decision by KCC to sign a sub-lease agreement with another company called Nakivubo Shauliako Market Company Ltd prompted FMITC to file a civil suit against NSMVA, and on 18th August 2006, a decree was issued by court directing KCC to transfer all rights, interests and documents in Plot 35A to FMITC. The Town Clerk KCC was ordered to release the sub-lease documents to FMITC.

30. Before the FMITC could enjoy their interests and rights in Shauriyako Market, the President issued a directive to the effect that no sublease interest should be passed over to FMITC and that the sub-lease belongs to NSMVA.

31. On 31th March 2009, FMITC through HABA Group of Companies lodged a claim for compensation for an amount of UGX 19,739,187,500/= to government. On 15 June 2009, HABA Group of Companies through its agent, CRAVEN & ASSOCIATES revised the original claim from UGX 19,739,187,500/= to UGX 20,748,762,500/= and resubmitted to Government. Details of this claim as lodged by HABA Group of Companies via Craven Report in respect of Shauriyako Market is as detailed hereunder:

Claim	Amount (UGX)
Equity contribution, Premium and Ground rent	510,000,000
Legal fees	50,000,000
Compensation to vendors	750,000,000
Intrinsic value of the sub-lease	10,777,266,500
Compensation for loss of business opportunity	5,296,896,000
Interest	864,600,000
General damages	2,500,000,000
Total	**20,748,762,500**

The Committee observed that FMITC should not have claimed UGX 510,000,000/= in respect to equity contribution, premium and ground rent. This is because, by court decree dated 16th October 2007, KCC was ordered to refund the amount of UGX 510,000,000/= to FMITC. Subsequently, on 31st October 2007, KCC refunded UGX 400,000,000/= and on 16th November 2007, KCC refunded the balance of UGX

110,000,000/=. Hence the claim by FMITC for UGX 510,000,000/= was fraudulent.

d. Yudaya International Trading Company Ltd in respect of the sub-lease to re-develop the Constitutional Square

32. The bid for the development of the Constitutional Square was advertised in the New Vision Newspaper on 15th June, 2001. The advertisement indicated that the closing date for receiving the bids was on 17th July, 2001.

33. Only one company, namely MS YUDAYA INTERNATIONAL LTD responded to the advertisement.

The Committee noted with concern that KCC proceeded to award the sub-lease to YIL to redevelop the Constitutional Square after receiving one bid only. The Committee would have expected KCC to re-advertize, but it did not.

34. By letter referenced Square/YIL/2001 dated 6th August 2001, Kampala City Council (KCC) gave a sub-lease offer to YIL, with the following terms: Initial period of two years extendable to 49 years; payment of UGX 635,000,000/= as premium; payment of UGX 3,175,000/= as ground rent; avail within 30 days from the date offer an original letter from ABN AMRO of Amsterdam, in form of a tested message through any commercial bank in Uganda for the equity funds to KCC; submit evidence of equity from their local bankers, Standard Chartered Bank.

35. On 23rd August 2001, YIL duly accepted the sub-lease offer.

36. On 18th September 2001, YIL paid to KCC UGX 235,000,000/= as part payment towards clearance of Premium.

37. Before other conditions of offer could be fulfilled, in December 2001, before KCC could process the sub-lease agreement with the YIL, the then Minister of Local Government (Hon. Jaberi Bidandi Ssali) intervened, stopped the sub-lease arrangement and ordered that a Commission of Inquiry into the leasing of the Constitution Square be instituted.

38. By Legal Notice No. 14 of 2001, the Commission of Inquiry into the Leasing of the Constitutional (City) Square by KCC to a private company was instituted. The Commission produced its report dated March 2002.

39. The Commission recommended that the Constitutional Square should not be leased to a private developer.

40. On 31st March 2009, Mr. Basajjabalaba of Haba Group of Companies lodged to Government a claim on behalf of YIL for the amount of UGX 55,438,420,250/=.

41. The above claim was revised by Craven, the agent of HABA Group of Companies, to UGX 27,800,017,600/= with details as hereunder:

Claim	Amount
Reimbursement of Premium	235,000,000
Intrinsic value of the sub-lease lost	22,407,000,000
Compensation for loss of business opportunity	3,744,417,600
Interest	413,600,000
Payment of the general damages	1,000,000,000
Total	**27,800,017,600**

The Committee observed that KCC awarded all the contracts to manage and re-develop markets to companies all associated with Mr. Basajjabalaba's Haba Group of Companies.

Evaluation of the Compensation Claims

42. The Committee was informed that in 2007, at various occasions, Mr. Basajjabalaba approached the President claiming for compensation as a result of Government having frustrated his investments in the aforementioned markets in Kampala as well as the City Square. Upon receipt of the compensation claims from Mr Basajjabala, the President, on 30th July 2008, wrote to the Attorney General directing him to examine the legality of the claims and advise the President as soon as possible.

PAC observed that the then Attorney General never replied the President's letter of 30th July 2008 on the legality of the claims.

43. On 25th March 2009, the President, in response to the petition by Basajjabalaba requesting for the intervention of H.E. the President in his compensation claims, convened and chaired a meeting. The meeting was attended by the Attorney General; Minister of Local Government;

Minister of Finance, Planning and Economic Development; Permanent Secretaries of the foregoing ministries; and officials from HABA Group of Companies.

44. The meeting of 25th March 2009 unanimously adopted the following resolutions as passed to the Minister of Justice and Attorney General by the President on 16th June 2009:

- That the Inter-Ministerial Committee be constituted under the Chairmanship of the Attorney General and comprise of Ministry of Local Government; Kampala City Council; Minister in charge of the Presidency; Ministry of Finance and the Auditor General;
- That the Inter-Ministerial Committee authenticates and evaluates HABA Group of Companies' input in purchasing the market;
- That the Ministry of Local Government causes KCC to take responsibility for its indulgence in an illegal transaction of selling the market without a policy and compensate the buyers;
- That Government retains Nakasero Market and all its other assets of that category because they are public goods;
- That Basajjabalaba withdraws from the court the suit against Government (for the breach of the contract);

45. However, it was on 31st March 2009 that Basajjabalaba wrote to the Attorney General submitting the claims for compensation for losses suffered by the four companies related to HABA Group of Companies, totalling UGX 131,734,996,651/=.

46. On 16th June 2009, H.E. the President wrote to the Hon Attorney General reminding him about the resolutions made by the meeting H.E. the President chaired, and informed the Attorney General that he was

supposed to resolve this matter within 60 days from the receipt of 'this' communication.

47. Instead of constituting an Inter-Ministerial Committee whose composition had been unanimously defined in a meeting convened and chaired by H.E the President on 25th March 2009, the Solicitor General resurrected a committee of seven members that had been used previously to evaluate the compensation claim by Ms Rhino Investments Ltd in respect of a frustrated sub-lease agreement over Plot 9A Kyaggwe Road commonly known as Kisseka Market, to evaluate the claims by HABA Group of Companies.

48. The team consisted of:

i. Arch. H. Kazahuura, Commissioner Building, Ministry of Works and Transport, who acted as the chairperson of the team;

ii. Mr. Bwiragura A, Chief Government Valuer, Ministry of Lands Housing and Urban Development;

iii. Mr. Kenneth Mugambe, Commissioner Budget Policy and Evaluation, Ministry of Finance, Planning and Economic Development;

iv. Mr. Abbey Iga, Assistant Commissioner, Urban Administration, Ministry of Local Government;

v. Ms Mary Nankabirwa, Senior State Attorney, Legal Advisory Services, Ministry of Justice and Constitutional Affairs;

vi. Mr. Jeffrey Atwiine, State Attorney, Directorate of Civil Litigation, Ministry of Justice and Constitutional Affairs;

vii. Ms Patricia Anabo, State Attorney, Legal Advisory Services, Ministry of Justice and Constitutional Affairs;

The Committee therefore observed that the Attorney General did not conform to the directives by H.E. the President in constituting the Inter-ministerial committee. AG reconstituted an already existing technical committee contrary to the Presidents directive.

In addition, the Attorney General did not chair the committee, and did not involve the KCC, the Minister for the Presidency and the Auditor General as directed by the President.

Recommendations Made by the Evaluation Committee

49. The Evaluation Committee recommended compensation in respect of the four claims as shown in the table below:

Name of Company	**Amount Claimed UGX**	**Amount recommended UGX**
VIL	21,281,197,817/=	2,801,585,133/=
SIL	61,905,018,737/=	11,676,813,536/=
FMITC	20,748,762,500/=	5,652,231,004/=
YIL	27,800,017,600/=	2,639,720,000/=
Total	131,734,996,651	22,770,000,000/=

Observations of PAC on Questionable Awards by the Evaluation Committee:-

A. Reimbursement for Collection and Disposal of Garbage to VIL

50. The Committee noted that with respect to Victoria International Ltd, the amount recommended by the Committee included claims of reimbursement of refuse collection amounting to UGX 1,976,080,000/=.

The Committee observed that *much as this was an obligation imposed on Victoria International Ltd under the contract, by letter referenced CR/115/18 dated June 5th 2003, KCC permitted VIL to carry on with the refuse collection exercise in the market, and the cost thereof would be offset from the management contract sum and further, such cost would be in accordance with the Councils refuse collection rates.*

51. The Committee further observed that under clause 5.2 of the general conditions of contract, VIL was obligated to among others collect and dispose of garbage.

52. When the PAC inquired from the Evaluation Committee why they awarded VIL for collection and disposal of garbage, they responded that they had written to the then KCC Town Clerk, Mr. Gordon Mwesigye who was purported to have written the letter mentioned above requesting him to verify the authenticity of the said letter, but the Committee had not received any written response from him. And in the absence of a written response from Mr. Gordon Mwesigye disputing the contents of the said letter, the Evaluation Committee resolved the doubt in favor of VIL.

53. When the PAC interviewed Mr. Gordon Mwesigye, he indicated that he had responded to the inquiry about the letter and categorically indicated to the Evaluation Committee that the letter was a forgery. The then Acting Solicitor General, now the Judge of the High Court, Mr. Billy Kainamura, when he appeared before the PAC confirmed that indeed, Mr. Gordon Mwesigye responded to the inquiry and his response was forwarded to the Evaluation Committee for consideration. PAC observed that UGX 1,976,080,000/= was awarded to Victoria International Trading Company Ltd in error by the Evaluation Committee.

B. Compensation payment to Vendors in Nakasero and Shauriyako Markets

54. SIL (Nakasero market) and FMITC (Shauriyako market) claimed 1,700,000,000/= and 750,000,000/= respectively as re-imbursements paid by the two companies to the vendors to buy their interests. The PAC noted that it was not one of the obligations in the contracts that the companies had to compensate the vendors. It would not therefore be fair for the Government to re-imburse the companies' money they allegedly paid to vendors to buy their interest, when the same Government was fighting to return the markets to the vendors. On the contrary, if there was any money to be re-imbursed to the companies on the account of their contracts over markets having been cancelled in favor of the vendors, it should be the vendors who should compensate the companies. In that way, the interests in the markets would shift from the companies to the vendors.

C. Award given to SIL and VIL in respect of collection and disposal of garbage:-

55. SIL and VIL claimed UGX 1,387,200,000/= and UGX 1,976,080,000/= respectively as expenses incurred in the collection and disposal of garbage. The Evaluation Committee recommended that the said cost of UGX 1,387,200,000/= and UGX 1,976,080,000/= be reimbursed to SIL and VIL in the absence of the written response from Mr. Gordon Mwesigye the then Town Clerk disputing the contents of the letter from Haba Group of Companies to Ministry of Justice and AG. that purportedly made the collection and disposal of garbage an obligation of KCC contrary to the agreement between KCC and SIL and VIL. However, when Mr. Gordon Mwesigye appeared before the PAC, he denied the allegation that he failed to substantiate the contents of the letter. He actually confirmed to the PAC that he duly notified the Evaluation Committee that the letters attributed to him were forgeries. The evidence by Mr. Gordon Mwesigye was corroborated by Mr. Billy Kainamura, former Solicitor General in his submission to PAC.

The Committee observed that:

- *The letter presented by HABA Group of Companies backing its claim for collection and disposal of garbage was forged.*

- *There was no need to award any money to HABA Group of Companies in respect of collection and disposal of garbage since the contractual obligation to collect and dispose of garbage fell on the shoulders of the contracted company.*

- *That the awards to SIL of UGX 1,387,200,000/= and VIL of UGX 1,976,080,000/= in respect of garbage collection and disposal was not justified.*

Submission of New Claims and the Re-evaluation Exercise of HABA Group of Companies Claims:

Re-evaluation by the Evaluation Committee

56. Upon receipt of the evaluation report which recommended that Haba Group of Companies should be paid UGX 22,770,349,673/=, HABA Group of Companies on 18th November 2009 wrote to the Attorney General accepting awards to VIL in respect of the management contract of St. Balikuddembe market and to FMITC in respect of the sub-lease agreement over Shauriyako market.

57. With respect to awards to SIL (Nakasero Market), HABA Group of Companies accepted all the items reimbursed but contested the following items:

- Loss of business opportunity award of UGX 2,300,000,000/= instead claimed UGX 20,184,712,067.5/=;
- Invoice No 149 of UGX 983,500,000 in respect of the services rendered by Ornate Designers to SIL;
- Advance Payment of 10 percent of the total project cost of UGX 30,000,000,000 (which was UGX 3 Billion) in respect of the services rendered by Travellers Choice Ltd to SIL as per agreement dated 1st June 2007.

The Committee observed:

- *That the claim of UGX 983,500,000/= by HABA Group of Companies that it had contracted Ornate Designers in respect of project management for redevelopment of Nakasero market, was defective since Ornate was contracted 7 months before the lease to SIL was offered.*

- *A prior contractual obligation could not be in contemplation of KCC at the time of the award of the sub-lease. Therefore, at the time of the termination of the sub-lease, KCC could not be held liable.*

- *That the payment to Travellers' Choice was not applicable.*

58. HABA Group of Companies on behalf of SIL also made additional claims as follows:

- Reimbursement of Legal fees amounting to UGX 1,100,000,000/=; and
- Interest on UGX 4,448,062,500/= from the above three items.

59. With respect to the awards to YIL (Constitutional Square), HABA Group accepted all but contested the following claims:

- Loss of business opportunity of UGX 1,891,120,000/=;
- Invoice No. 020/01 by Id Forum of USD 532,733/=; and
- Receipt No. 12577 from Mugoya Construction Company of USD 2, 628,677

60. HABA Group of Companies also made an additional claim – interest on additional claims - of UGX 2,904,710,280/=.

61. On 20th November 2009, HABA Group petitioned the President bringing to his attention the contested areas, and also complained that the Evaluation Committee did not consider documents which were submitted in support of some items and further that the Evaluation Committee had not used the same formula it had previously used in evaluating compensation payable to Rhino Investment Ltd in relation to Kisseka Market.

62. On 24th November 2009, the President wrote to the Attorney General directing him to conclusively resolve all the issues raised by HABA Group in their petition. On 16th July 2010, Mrs Joy Kabatsi writing on behalf of the Principal Private Secretary to the President wrote to the Attorney General reminding him about the President's directive dated 24th November 2009.

63. On 14th December 2009, the Attorney General, through an Internal Memo, wrote to the Solicitor General, advising that Government should effect payments to Mr. Hassan Basajjabalaba for the awards that he accepted (i.e. FMITCL totalling UGX 5,652,231,004/=, and Victoria International Trading Co Ltd totalling UGX 2,801,585,133/=). He further advised that with regard to awards which were contested namely with respect to Sub-leases for Nakasero and Constitutional Square, the evaluation committee should examine the grounds on which claimant contested the two evaluations. Consequently, the evaluation committee was recalled to review the grounds for contesting its earlier report and the new claims that were submitted by HABA Group.

64. The Committee was informed that while all the members of the previous evaluation committee accepted to evaluate the new claims by HABA Group, one member, the Chief Government Valuer then (Mr. Bwiragura), declined to participate. When he appeared before the PAC he argued that he declined because he was satisfied with what the Evaluation Committee had recommended and therefore saw no need to review the new claims the Presidential directive notwithstanding.

65. Nevertheless, the rest of the members proceeded to examine the grounds advanced by HABA Group to reject evaluations in respect of Nakasero Market and Constitutional Square, and to evaluate the new claims.

66. The Evaluation Committee finalized its report dated 2nd February 2010 wherein the figure was raised from UGX 22bn to UGX 54bn

Re-evaluation by the Attorney General Leading to the Escalation of Awards

67. On 3rd March 2010, the then Attorney General, Hon Kiddu Makubuya, through an internal memo, wrote to Ag Solicitor General, then Mr. Billy Kainamura, and among other things, acknowledged receipt of the Addendum to the Evaluation Report; thanked the Evaluation Committee for a Job well done; agreed with the Committee's recommendations and communicated that HABA Group vide its letter of reference HB/CHG/8/26/02/2010 of 26th February 2010 had accepted the recommendations of the Evaluation Committee in their entirety. The Attorney General decided that YIL's total approved payment was UGX 22,075,937,056/= and SIL's total approved payment was 24,160,763,956/=. This was in addition to the already agreed claims of UGX 2,801,585,133 in

favour of VIL and UGX 5,652,231,004 in favour of FMITC giving the grand total of UGX 54,690,517,149/=. The action by the then Attorney General was unilateral and unjustified.

68. Strangely, on 29th July 2010, Hon Khiddu Makubuya, through another Internal Memo, wrote to the Ag Solicitor General on the subject of Compensation to Haba Group. In the Internal Memo, the Attorney General set aside the work that the Evaluation Committee had just done. For example, in para. 2 of the Internal Memo, dated 29th July 2010, the Attorney General submitted that "*the matter of compensation to HABA Group was substantially handled by the Technical Inter-Ministerial Committee ... with some of its recommendations being accepted by HABA Group itself...*" In para. 4, the Attorney General indicated that *HABA Group has challenged the methodology used in valuing the investment by SHEILA a/c Nakasero Market and YUDAYA a/c Constitutional Square*...In para. 8, of the Internal Memo, the Attorney General made a decision on what Government should pay as follows: "**My decision on the actual award is that Government should pay to the claimants 75% only of the original claims.**"

69. The revision by the Attorney General radically and completely ignored the awards as recommended by the Evaluation Committee, which ironically the claimant had agreed to in totality.

The committee noted with concern:

- *Why did the Attorney General institute an evaluation committee to review the contested claims and later, completely ignore the report of the committee he had put in place?*

- *Why was public funds used for an exercise whose result was completely ignored?*
- *Why did the Attorney General agree with the recommendations in the addendum report only to ignore them later?*
- *If it was true as the Attorney General communicated to the Ag. Solicitor General that HABA Group had agreed with the recommendations of the Evaluation Committee in its addendum report in their entirety, why did the Attorney General revise the figures upwards?*
- *In whose interest did the Attorney General apply 75 percent of the original claim to award HABA Group?*

70. On 8th November 2010, HABA Group petitioned H.E. the President in respect of the Compensation for the sub-leased lands, management contracts and Government contribution towards the construction of the KIU – Teaching Hospital, Ishaka. In the petition, Basajjabalaba complained that the methodology used by the government's evaluation committee in evaluating Rhino Investments Ltd's compensation for the latter's interest in Kisseka Market was not the same that was used to evaluate Basajjabalabas' claims.

71. In response to the petition, on 13th November 2010, the President wrote to the Attorney General on the subject "compensation for sub-leased lands and Management contracts of Haba Group and the Government's Contribution towards the construction of KIU Teaching Hospital Ishaka." In the said letter, the President indicated that he had earlier made directives to the Attorney General to put in place a mechanism that conclusively resolves the matters pertaining to the compensation of HABA Group for their losses regarding investments in

various entities. In spite of this directive, the President indicated that he kept receiving more petitions to the effect that their claims had not been conclusively resolved to-date. Consequently, the President directed the Attorney General to resolve all the issues raised in the petition by HABA Group already mentioned above within the shortest possible time. By copy of the same letter, the President directed the Minister of Finance, Planning and Economic Development to liaise with the Governor Bank of Uganda with a view of settling all the outstanding claims in respect of the above matter.

72. *PAC observed with concern that in all the letters written to the Attorney General by H.E. the President, the Attorney General did not respond to the President giving him an up-date on evaluation of the claims. The claimant exploited lack of feedback to the President from the Attorney General by continuously filling petitions to the President, thereby creating the impression to the President that HABA Group claims had not been assessed by the Office of the Attorney General.*

Payment of Compensation to HABA Group of Companies: the Requisitioning Process

73. On 13th December 2009, the then Ag Solicitor General, Mr. Billy Kainamura, wrote to the Permanent Secretary/Secretary to the Treasury, Ministry of Finance, Planning and Economic Development requesting for the approval and release of UGX 8,453,816,137/= being compensation to First Merchants International Trading Company and Victoria International Ltd.

74. On 5th March 2010, the same Officer wrote to the Permanent Secretary/Secretary to the Treasury, Ministry of Finance, Planning and Economic Development requesting for the approval and release of UGX 46,236,701,012/= as compensation to HABA Group of Companies in respect of SIL and YIL.

75. On 30th July 2010, the same Officer wrote to the PS/ST, Ministry of Finance, Planning and Economic Development to approve and release UGX 88,007,579,239/= as compensation to HABA Group of Companies.

76. As a result of these numerous requests on the same subject from the Ag. Solicitor General, on 27th September 2010, Mr Keith Muhakanizi on behalf of the PS/Secretary to the Treasury, Ministry of Finance, Planning and Economic Development wrote to the Ag Solicitor General requesting for clarity on whether the revised figure of UGX 88,007,579,239/= was inclusive of the earlier request of UGX 54,690,517,149/= or was in addition to the said amount.
PAC noted with concern the frequency of the requests by the Ag Solicitor General to the PS/ST. Ref, to the letters

77. On the following day, 28th September 2010, the new Acting Solicitor General, Ms Harriet Lwabi, responded to the letter by the PS/ST, Ministry of Finance, Planning and Economic Development explaining that the grand total payable to the HABA Group of Companies was UGX 96,461,395,376/= only.

78. On 18th October 2010, Mr. Hassan Basajjabalaba of HABA Group of Companies wrote to Hon Khiddu Makubuya contesting the clarification that the Ag. Solicitor General had provided to the PS/ST, MOFPED, where

she had stated that the grand total payable to HABA was UGX 96,461,395,376/= only. In the letter, HABA Group referred to the clarification by Ms. Harriet Lwabi Ag Solicitor General as 'erroneous and bizzare'. HABA Group requested Hon Khiddu Makubuya to clarify the matter and show that the total of UGX 88,007,579,239/= was additional to the earlier award of UGX 46,236,701,012/=.

79. Indeed, Hon. Khiddu Makubuya did as was requested by HABA Group of Companies, and set aside what his Ag. Solicitor General had clarified. On 22th November 2010, Hon Khiddu Makubuya wrote an Internal Memo to the Ag. Solicitor General, Harriet Lwabi. In Para. 3, Hon Khiddu Makubuya submitted:

> **"Having worked on these issues for some time, my view was and still is that the new values were additional to the original values rather than simple enlargements of the original values."**

80. Consequently, Hon. Khiddu Makubuya put the position on the total awards as follows:

HABA's claims: March, 2009 November, 2011

Company	Original claim by the Haba group	Ammended claim after 25 March,09	Award by the 1st evaluation committee	Award by the second evaluation committee	Award by Rhino Formula (62.5%)	Award by the AG 75%	,2nd AG award
			,30/10/09	,02/02/10	,29/07/10		,22/11/10
Sheila Investments	61,905,018,734	61,905,018,734	11,669,669,550	24,160,763,956	38,690,636,709	46,428,764,151	70,589,528,007
Victoria	21,281,197,817	21,281,197,817	2,801,585,133	2,801,585,133	2,801,585,133	2,801,585,133	2,801,585,133
First Merchant	20,748,762,500	20,748,762,500	5,652,231,004	5,652,231,004	5,652,231,004	5,652,231,004	5,652,231,004
Yudaya	27,800,017,600	55,438,420,250	2,639,720,000	22,075,937,056	34,649,012,656	41,578,815,188	63,654,752,244
Total	**131,734,996,651**	**159,373,399,301**	**22,763,205,687**	**54,690,517,149**	**81,793,465,502**	**96,461,395,476**	**142,698,096,388**

Hon. Khiddu Makubuya went on to indicate that the grand total for all companies would be UGX 142,697,150,388/= and advised the Ag Solicitor General to advise the appropriate authorities accordingly.

81. PAC observed that the computation by Hon. Khiddu Makubuya was astonishing:

- *First, the basis of the so-called original values was mysterious. It would appear they included what the Evaluation Committee had recommended upon contestation of its first report.*
- *Secondly, the additional values, which Hon. Khiddu Makubuya arrived at by adding the original claim by HABA Group by 75% was in sharp contrast with the figure that the Evaluation Committee had recommended.*
- *Thirdly, by advising that the new values were additional to the original values would tantamount to double counting. The net effect would be inflated payments to the HABA Group of Companies by 161%, all attributable to the single-handed act by Hon. Khiddu Makubuya!*

In response, Hon. Khiddu Makubuya indicated that he had instructions to act on HABA Group's petitions, and in any case, he just gave advice to the Ag. Solicitor General.

82. As directed by the Attorney General, the Ag. Solicitor General, Ms Harriet Lwabi went ahead to communicate to the PS/ST the new award, contrary to her earlier clarification. On 29th November 2010, Ms Harriet Lwabi wrote to the Permanent Secretary/Secretary to the Treasury, Ministry of Finance, Planning and Economic Development on the subject of compensation claims to Haba Group of Companies. In her letter, she

clarified that the revised amount payable (Grand Total) to Haba Group of Companies now was UGX 142,698,096,388/=, just one million shillings more than what the Attorney General had awarded. She stressed that the revised total figure was UGX 142,698,096,388/= and not UGX 96,461,393,376/= as earlier communicated by her in her letter of 29th September 2010 already referred to above.

83. When Ms Lwabi Harriet appeared before PAC, she explained that the additional one million shillings came about due to correction of the wrong summation by the Attorney General, Hon. Khiddu Makubuya.

84. PAC observed that Ms Lwabi Harriet, the Accounting Officer who was supposed to be custodian of public finances in the Ministry of Justice and Constitutional Affairs simply complied with the directives of the politician, the Attorney General, on matters pertaining to financial management.

Role of the Ministry of Finance, Planning and Economic Development in the HABA Compensation Payment: the Technical Officials and the Minister

85. PAC established that the initial response by the Ministry of Finance, Planning and Economic Development was professional. The Ministry demanded for substantiation and independent assessment. As already seen above, when the PS/ST received constant stream of requests for approval and release of funds for compensation to HABA, he sought clarification on the quantum of payment. However, as also already seen, the clarification sought did not clarify the matter as contradictory requests were instead submitted, shortly afterwards.

86. In light of the continuous escalation of the compensation figures to HABA Group of Companies coming from the Office of the Solicitor General, upon receipt of request from the Solicitor General for the release of UGX 142,698,096,388/= to compensate HABA Group of Companies on 2nd December 2010, Keith Muhakanizi, on behalf of the Permanent Secretary/Secretary to the Treasury, wrote to the Auditor General requesting him to establish the value for money in respect of the claims by the HABA Group of Companies before the said payments could be effected.

87. Accordingly, the Auditor General appointed KPMG to conduct an independent assessment of the claim by HABA Group of Companies at a cost of UGX 750,000,000/= only. The firm presented its findings to the Auditor General on 25th July 2011, and the same report was presented to the Speaker of Parliament on 26th July 2011.

Role of Hon Syda Bumba, former Minister of Finance, Planning and Economic Development

88. By the time the Auditor General presented the said report, the Governor Bank of Uganda, upon request by the then Minister of Finance, Planning and Economic Development, Hon. Syda Bumba, vide her letter of 7th June 2010, had issued guarantees (letters of comfort) to various commercial banks which enabled Mr. Basajjabalaba to access credit facilities totalling to USD 46 Million as testified by the Governor, Bank of Uganda, when he appeared before PAC on 1st December 2011.

89. Section 4 (1) of the Public Finance and Accountability Act vests in the Minister of Finance, Planning and Economic Development the

responsibility of *ensuring that systems are established throughout Government for planning, allocating, and budgeting for the use of resources in order to improve the economy, efficiency and effectiveness of Government.*

PAC observed that while technical officials (the PS/ST and the Deputy ST) in the Ministry of Finance were instituting due diligence to verify HABA claims, the Minister seemed to be undermining the said measures, contrary to the spirit of the law.

90. Long before the President directed her to liaise with the Governor, Bank of Uganda, with a view of settling all the outstanding claims in respect of HABA Group and KIU Teaching Hospital (see Presidents letter dated 13 November 2010), the Minister had already briefed the Governor, Bank of Uganda on the pending compensations to HABA Group of Companies, and requested the latter to provide any assistance he deems fit. On 7th June 2010, Hon. Syda Bbumba wrote to the Governor Bank of Uganda on the subject of compensation to HABA Group of Companies. She indicated that she had been requested to assist Mr. Basajjabalaba regarding his indebtedness to various banks, who were threatening legal action. She further informed the Governor that the Solicitor General had requested for a supplementary of UGX 46,236,701,612/= to compensate HABA Group of Companies. She also informed the Governor that part of this money had been included in the budget for the FY 2010/2011 to cover HABA's indebtedness to Government of Uganda and Uganda Development Bank. She then requested the Governor to provide any assistance he deemed fit.

91. The following day on 8th June 2010, Mr Basajjabalaba wrote to Hon. Bbumba, the Minister of Finance requesting her to clarify to the Governor,

among other things, that when debts owed to Government and Uganda Development Bank are netted off, the balance in favour of HABA becomes UGX 28,610,267,162/=, and to indicate how much she had provided in the budget and when she would be ready to settle the balance. On the same date, the Minister sought advice from the PS/ST and the latter advised that all that was available in FY 2010/2011 was enough to cover obligations to Government of Uganda and Uganda Development Bank, and that the balance would be paid possibly in three financial years.

92. On 14th June 2010, Hon. Syda Bbumba, wrote to HABA Chief Executive responding to his letter of 8th June 2010, and gave a copy to the Governor, Bank of Uganda. She clarified that in the 2010/2011 Budget, under Vote 130 Treasury Operations, funds to cover HABAs indebtedness to Uganda Development Bank and Uganda Government had been provided as follows:

1) Uganda Development Bank: UGX 3,500,000,000/=
2) Government of Uganda: US$ 11,575,000

93. She further informed HABA Group that there was another provision in the FY 2010/2011 Budget to the Ministry of Justice to settle claims. However, she did not disclose the amount. She advised HABA Group that the balance would be paid in the *subsequent two financial years*, a position which contradicted the advice given by the PS/ST already seen above in Para. 93.

94. On 30th July 2010, Mr. Billy Kainamura, then Ag. Solicitor General, wrote to the PS/ST communicating that following an appeal to H.E. the President by the Chairman of HABA Group to reconsider evaluation of his

compensation claims, the Attorney General, having been directed to handle the issues for HABA Group conclusively, had revised and approved the compensation claims totalling to UGX 88,007,579,239/=.

95. Upon receipt, on 5th August 2010, the PS/ST requested the guidance of the Minister and pointed out that the methodology used to reach the figure was not clear; the quantum was not warranted by the nature of investments; and whether the Ministry was permitted to demand a professional and independent valuation; and suggested to the Minister to take up the matter with H.E. the President. The Minister responded that she concurred with the advice on further consultation with H.E. the President.

96. *The PAC observed that there was no evidence that Hon. Syda Bbumba consulted with H.E the President as advised by the PS/ST.*

97. It would appear that for a while, the Minister ignored the revised and enhanced compensation figure of UGX 88 Billion. On 24th September 2010, Hon. Syda Bbumba wrote to the Governor and made reference to her previous letter dated 7th June 2010 confirming that Shs. 54,690,517,149/= was still owing to HABA Group as compensation, less UGX 24,500,000,000/= owed to Government, which would be channelled directly through Bank of Uganda in accordance with the payment schedule earlier agreed upon and communicated to him.

98. Meanwhile on 27th September 2010, Keith Muhakanizi on behalf of the PS/ST wrote to the Ag. Solicitor General seeking clarification on the new figure of UGX 88,007,579,239/= whether it was inclusive of the earlier UGX 54,690,517,142/= or was in addition to the said amount. He copied the letter to the Hon. Syda Bbumba, the Minister of Finance then.

99. On 28th September 2010, the Ag Solicitor General, Harriet Lwabi responded to Mr. Keith Muhakanizi's letter clarifying that the grand total payable to the HABA Group of Companies was UGX 96,461,395,376/=.

100. On 30th September 2010, Hon. Syda Bbumba wrote to the Governor communicating the new figure of UGX 96 Billion as clarified by the Solicitor General as Government's total indebtedness to HABA Group, and reminded the Governor that other terms remain as earlier communicated.

101. On 13th November 2010, the President wrote to the Attorney General with a copy to the Minister of Finance, and among other things directed her to liaise with the Governor, Bank of Uganda with a view of settling all the outstanding claims by HABA Group. However, the letter was silent on the amount payable to HABA Group. The directive came at a time when the Minister and the Governor were long in liaison on how to settle the claims by HABA Group. It therefore energized the Minister in the work she had already embarked on.

102. On 22th November 2010, the Attorney General advised the Ag Solicitor General that the grand total for all companies was not UGX 96,461,395,376/= but actually UGX 142,697,150,388/=.

103. Consequently, on 29th November 2010, the Ag. Solicitor General wrote to the PS/ST clarifying that the revised amount payable to HABA Group now was UGX 142,698,096,338/=, and copied the letter to the Minister of Finance and the Governor, Bank of Uganda.

104. On receipt of this new figure of UGX 142.6 Billion, on 1st December 2010, the Minister sought guidance from the PS/ST on how to handle the

issue. The PS/ST advised the Minister to request the Auditor General to verify the claim to establish its value for money before payments could be effected.

105. On 2nd December 2010, Mr. Keith Muhakanizi wrote to the Auditor General requesting his office to audit the claim and advise the Ministry before payment could be effected. The letter to the Auditor General was even copied to Hon. Bbumba, Minister of Finance.

106. The following day, on 3rd December 2010, Hon. Syda Bbumba wrote to the Governor reminding him about the directive by the President in his letter of 13th November 2010. She also communicated to the Governor the new figure of UGX 142.6 Billion as advised by the Ag. Solicitor General in her letter of 29th November 2010, and reiterated that the Ministry had no objection to any arrangement to assisting HABA Group through any financial institution to sort out their immediate financial obligations.

107. The Committee observed with concern that despite a request by the PS/ST, Mr. Keith Muhakanizi to the Auditor General for a forensic Audit in the claims (2nd December 2010); the following day (3rd December 2010) the Minister Hon. Syda Bumba wrote to the Governor Bank of Uganda stating that she had no objection to any arrangement to effect payment to HABA Group to the tune of UGX 142.6bn!

108. On 8th January 2011, the President wrote to Governor, Bank of Uganda, and gave a copy to the Minister of Finance, Planning and Economic Development. The President informed the Governor that he had been made to understand that the amounts owing to HABA Group in form of compensation had now been evaluated and quantified by the

relevant Government Ministries. However, he continued, this compensation was to be met over the next two financial years. He, then, advised the Governor to assist the company to access funding without suffering interest.

109. *PAC observed that the reason for the request made to the Governor, Bank of Uganda, had now changed. In the previous requests by the Minister of Finance, the reason was to help HABA Group settle its creditors. In the new request by the President, the reason was to assist HABA Group access financing without suffering exorbitant interest rates which would have negative financial implications on its operations.*

110. Following the advice by the President to the Governor to assist HABA Group access funding without suffering interest and even before this advice was given, the Governor wrote letters of comfort to a number of banks which enabled HABA Group to obtain funding. By February 2011, some of the payment dates had fallen due.

111. Consequently, on 16th February 2011, Mr. Basajjabalaba wrote to Hon. Syda Bbumba informing her that the Governor had assisted him with a small portion of financing from various financial institutions, and the liability was due for settlement. He therefore requested the Minister to authorize the Governor Bank of Uganda to sort out the portion of whatever assistance was rendered to him with the financial institutions.

112. On 24th February 2011, Hon. Syda Bbumba wrote to the Governor, Bank of Uganda requesting him to sort out repayment of the funds that financial institutions had extended to HABA Group of Companies. The

Governor requested that the letter be signed by the PS/ST, but the latter refused.

113. On 22nd March 2011, Hon. Syda Bbumba further asked the Governor to clear loans which banks had extended to Mr. Basajjabalaba. She wrote: This is to confirm that you can repay the proceeds of the earlier programmes with the Banks. As soon as the budgetary arrangements allow, I will authorize repayments to the HABA Group through Bank of Uganda from which payments you can deduct the extra money to pay to the Banks the extra loans you will have arranged for the HABA Group.

114. The Committee observed that:

- *The conduct of the Minister of Finance, Planning and Economic Development in facilitating the clearance of the compensation claim by HABA Group exposed the taxpayer to high risk.*
- *The Minister acted in a reckless manner. She did not advice the President when the approved claims by the Attorney General kept escalating.*
- *The Minister did not heed to the advice of the PS/ST.*
- *The Minister misled the Governor by indicating that the payment to HABA Group would be effected within two financial years, yet the PS/ST had advised her that it would possibly be cleared within three financial years (by then, the planning figure was UGX 46.2 Billion)*
- *The Minister misled the Governor to believe that there was budgetary provision in the FY 2009/2010 to cover compensations when she had been advised that there was none apart from clearing outstanding Basajjabalaba's indebtedness to Government.*

- *Even when the figure was astronomically raised, the Minister kept the Governor informed that the previous commitment of providing the resources within two years would remain.*
- *Even when the Minister knew very well that her Ministry had engaged the Auditor General to audit the compensation awards before effecting payments, she kept pressing the Governor to assist Mr. Basajjabalaba on the basis of the receivables from Government, when she knew very well that these were questionable.*
- *By Hon Syda Bumba continuing to press Governor, Bank of Uganda to facilitate Mr. Basajjabalaba to access funding when she had instituted a value for money audit of the compensation award, which exercise cost UGX 750,000,000/=,which was a wastage of public funds.*

115. In response, Hon. Syda Bbumba indicated that she acted on the strength of the letters from the Ag. Solicitor General and the legal advice by the Attorney General showing that HABA Group of Companies' compensation claims had been ascertained and quantified by the competent offices. She argued that she was bound by the legal position given by the Attorney General on compensations, and that she had no mandate to question the Attorney General's decision. She also acted on the basis of the letter from the President directing her to liaise with the Governor to sort out the outstanding claims. She also submitted that she did not want to disobey the advice of the Attorney General and the Government with its attendant consequences.

The Role of the Governor, Bank of Uganda

116. Below, we examine how the Governor, Bank of Uganda, came to be involved in the compensation of HABA Group. We have already seen the letters that Hon. Syda Bbumba wrote to the Governor, asking him to assist HABA Group. Here, we examine how the Governor responded to the requests made on behalf of HABA Group.

117. In response to the Minister's letter dated 7th June 2010 advising that a sum of UGX 46,236,701,612/= had been cleared by the Solicitor General for payment to HABA Group of Companies, and advising that the Governor could render assistance to the claimant on the basis of that assurance, the Governor issued a letter of comfort dated 11th June 2010 to Orient Bank, and another dated 12th June 2010 to United Bank of Africa. The letters read in part:

> "I am writing to confirm that the Government Budget read yesterday included provision for payment of the government debt owed to Mr. Basajjabalaba and HABA Group. Although the budget may be approved by Parliament soon, it may take a maximum of three months before the budget is approved and the money paid to Mr. Basajjabalaba. I am, therefore, writing this letter to support Mr. Basajjabalaba's request for further funding from you and I have received assurance from the Ministry of Finance, Planning and Economic Development that they will pay him as soon as the budget is approved. I will inform you when this is done".

118. When the Governor appeared before PAC, he referred to the above letters of comfort as being weak since they did not make any commitment to pay.

119. However PAC observed that the contents of the letter by the Governor were not accurate, yet he knew the truth that the money provided for in the budget was to settle old indebtedness by HABA Group to Bank of Uganda(USD 11.5million)and to UDB (UGX 3.5bn).

120. On 28th October 2010, the Governor issued another letter of comfort to Orient Bank Ltd supporting a facility of USD 10,000,000 against compensation claim from Government totalling UGX 96 Billion.

121. On 25th November 2010, the Governor issued another letter of comfort to Tropical Bank supporting a facility of USD 10,000,000 against compensation claim from Government totalling UGX 96 Billion.

122. In response to the letter from the Minister of Finance dated 3rd December 2010 communicating that the revised payments to HABA Group was UGX 142.6 Billion, and advising the Governor that, "As earlier communicated we have no objection to any arrangement to assisting HABA Group through any financial institution to sort out their financial obligations," the Governor issued several letters of comfort to various commercial banks to extend credit facilities to HABA Group. Some of the banks that were given letters of comfort as a result of the new information by the Minister of Finance were: United Bank of Africa (USD 10,000,000); Tropical Bank Ltd (USD 10,000,000); Orient Bank Ltd (UGX 10.4 Billion in favour of Uganda Broadcasting Corporation); Bank of Baroda (USD 1,000,000).

123. These letters of comfort were in fact irrevocable guarantees. They read, in part:

> "The Bank of Uganda, therefore, unequivocally confirms that the payment has been approved by the authorized officers and that there is no contingent conditions to the payment now or hereafter that can deter the release of the funds. In the above premises, we hereby with or without demand undertake to remit the monies owing to you from HABA Group of Companies".

The Committee observed that the statement that there were no contingent conditions on the compensations approved for HABA Group was misleading. In fact, the conditions were that:

- *HABA Group should withdraw all court cases instituted against Government*
- *Hand over the titles of properties to Bank of Uganda*
- *Pay taxes applicable.*

At the time of writing the letters of comfort, the conditions were still subsisting.

124. As would eventually happen, and as no money had been put in the budget for FY 2010/2011 to pay Mr. Basajjabalaba except the money he owed Government and UDB, no money was sent to Bank of Uganda for onward transmission to the HABA Group creditors. The Bank of Uganda as a guarantor was called upon to pay the due obligations. Bank of Uganda, in turn, called upon the Minister of Finance to regularize the payment.

125. However, on 24th February 2011, Hon. Syda Bbumba wrote to the Governor requesting the Bank of Uganda to sort out the repayment of HABA Group's loans with financial institutions. On 22th March 2011, Hon. Syda Bbumba wrote again advising the Bank of Uganda to repay the commercial banks and that as soon as the budgetary arrangements allowed, she would authorize repayments to the HABA Group through the Bank of Uganda.

126. Even after failing to secure payments from the Ministry of Finance, Planning and Economic Development through the budget process as

earlier promised, the Governor on 6 April 2011 issued another letter of comfort to United Bank of Africa for a sum of USD 10,000,000.

127. As no funds were forthcoming from the Government to clear HABA Group's claims, Bank of Uganda paid against the letters of comfort as they matured. The payments were charged to other Debtors Account. The Auditor General then queried the payments, and the Governor ceased to issue further letters of comfort.

128. Instead, on 16th June 2011, the Governor wrote to the new Minister of Finance, Hon. Maria Kiwanuka requesting for a payment of UGX 82,717,548,000/= being re-imbursements already made to banks in respect of the HABA Group's short-term loans, and a confirmation that UGX 63.2 Billion as included in the budget for FY 2011/12 would be re-imbursed to Bank of Uganda for payments it must make by November 2011. The Governor also indicated in the letter that there was confirmation that Government had agreed to pay HABA Group of Companies a total of UGX 142 Billion in the current financial year (2010/11).

129. PAC established that there was no such a confirmation and that there was no provision in the budget that Government would pay HABA Group UGX 142.6 billion in the FY 2010/11.

130. On 20 June 2011, the new Minister, Hon. Maria Kiwanuka responded to the Governor, and informed him, *inter alia*,

- That the Auditor General had been requested to conduct a value for money audit before any payments could be made;
- No provision had been made in the budget for 2010/2011 for any payment to HABA Group;

- Any payment must await the findings of the Auditor General;
- An audit warrant must be requested and obtained from the Auditor General in order to make any payments that might arise thereof.

131. *The Committee observed that Section 29 of the Bank of Uganda Act permits the Bank to guarantee loans to financial institutions. However, the speed and frequency at which the Governor was rushing to guarantee loans to HABA Group was disturbing and its motive questionable. There seemed to be a one-way traffic in the communication between the Minister of Finance and the Governor.*

The Committee further observed that the Governor did not seek clarifications from the Minister and the PS/ST on the different letters that were communicating escalating amounts.

The Governor seemed to be at peace implementing requests from the Minister, without question. Yet, the Constitution under Article 162 (2) provides that, "in performing its functions, the Bank of Uganda shall not be subjected to the direction or control of any person or authority."

132. In view of the above, the Governor seemed to be all out to assist HABA Group. Some of the letters of comfort that the Governor wrote contained information which was inaccurate. It is strange that the Governor decided not to consult the PS/ST on how to handle the requests from the Minister. It is even strange to note that the Governor did not revert or advise the President upon the receipt of H.E. the President's 8th January 2011 letter advising the Governor to assist Basajjabalaba access funding without suffering exorbitant interest rates.

The Committee was further stunned to learn from the Governor that he never involved the Board, Bank of Uganda, when he was committing the Bank on behalf of HABA Group of Companies.

133. In response, the Governor informed the Committee that he acted on the strength of the commitment by the Minister of Finance Hon. Syda Bbumba to re-imburse the Bank of Uganda, and the Solicitor General's letter that HABA Group had receivables from the Government to the tune of UGX 142 Billion.

The Role of H.E. the President in the Compensation Claims of HABA Group of Companies

134. Here below, we examine the role played by the President. In 2008, HABA petitioned the President demanding compensation as a result of his contracts and sub-leases having been frustrated by Government.

135. In a letter dated 30th July 2008, H.E. The President wrote to Hon. Khiddu Makubuya, Minister of Justice and Attorney General, then, introducing Hassan Basajabalaba as an active business man who wanted compensation for loss of his interest in the people's markets of Owino, Nakasero, Shauriyako and City Square, and asked the Attorney General to examine the legality of the compensation claim and advise the President as soon as possible. As already discussed, the President never received the legal opinion on the matter from the Attorney General.

136. On 12th April 2009, H.E. The President wrote to the Attorney General on the subject NAKASERO MARKET ISSUES reminding him of his earlier

directives, among other things, on 'settling the individuals/companies who had been sold these markets...'

137. On 16th June 2009, H.E. The President wrote to the Attorney General on the subject HABA COMPANY VS NAKASERO MARKET bringing to his attention that he had chaired a meeting on 25th March 2009, which came up with a resolution that an Inter-ministerial Committee be constituted under the Chairmanship of the Attorney General and membership as follows:

- Ministry of Local Government,
- Kampala City Council,
- Minister in Charge of the Presidency,
- Ministry of Finance, Planning and Economic Development Officials
- Auditor General.

The Presidential Directive on constituting the Committee was never implemented. Instead, the Ag. Solicitor General, then Billy Kainamura, decided to use a Committee that the Ministry had recently used to evaluate the claims by the Rhino Investments Ltd in respect of the Kisseka Market lease offer that was later cancelled.

138. When the Technical Evaluation Committee constituted by the then Ag. Solicitor General examined the claim submitted by the HABA Group of Companies, it recommended a figure of UGX 22.77 billion, which figure was contested by Hassan Basajjabalaba. He further submitted new claims which were evaluated by the same technical evaluation committee and consequently, the award was enhanced to UGX 54.69 billion.

139. HABA Group appealed to the President that its claim had not been fairly evaluated. On 24th November 2009, the President wrote to the then Attorney General on the subject COMPENSATION FOR HABA GROUP, and directed him to '...conclusively resolve all the issues raised in the petition, and to ensure fairness, use the same methodology or formula used in evaluating other claims, and to handle the matter expeditiously....'

140. On 16th July 2010, the President's directive was reiterated in a letter written to the Attorney General by Joy KABATSI, writing on behalf of the PPS to H.E. The President.

141. On 13th November 2010, the President wrote to the Attorney General complaining that his directive to conclusively resolve the matter was not heeded. And that new petitions were coming. He directed the Attorney General to resolve all the issues in the petition within the shortest possible time. In the same letter, the President directed the Minister of Finance to liaise with the Governor, Bank of Uganda to settle all the outstanding claims.

142. On 8th January 2011, the President wrote to the Governor, Bank of Uganda on the subject of Compensation for HABA Group. In the letter, the President indicated that he was made to understand that the amounts owing to HABA Group in the form of compensation had now been evaluated and quantified by the relevant government ministries. The President also indicated that the compensation was to be met over the next two financial years, which HABA Group claimed would have negative financial implications on its operations. The President advised the Governor to assist the company HABA Group to access this funding

without suffering interest. He however indicated that this should only be done after offsetting whatever was due and owing to Government.

143. When the Committee met with H.E. the President, PAC was informed that the letter was drafted by a one Muhoozi, a Private Secretary for Economic Affairs, who had not done enough consultation with the Government departments. The President, indicated that he was not made aware of the figures that had been awarded to Basajjabalaba. He further indicated that he was convinced that on a point of principle, Basajjabalaba was entitled to some compensation, but not to the tune of UGX 169 Billion, inclusive of UGX 26,816,607,642/= in respect of Nakawa Market Compensation, which has not been reported on by the Auditor General to Parliament. The President further indicated that he believed that Mr. Basajjabalaba was entitled to some compensation as a result of some money he had invested in the markets which had been irregularly sold to him by KCC.

144. On 8th May 2011, the President wrote to the Minister of Finance on the subject "Corruption through loan agreements and claims". With regard to the HABA Group's compensation of UGX 142.6 billion, the President referred to it as 'scandalous.'

145. When PAC interacted with the President on 21st December 2011, it was satisfied with the manner in which the President addressed the concerns raised by PAC on the compensation saga. The Committee was appraised on how the letters written by the President on the subject of HABA Group's compensation were drafted for his signature. The PAC was also appraised on the guidelines that have to be followed by the presidential assistants when drafting letters for the president's signature.

146. The President demonstrated to the Committee that given his heavy schedules, he could not redraft all the letters presented to him for his signature. However, he only re-drafted those which had glaring factual errors, or those that touched on sensitive matters. He indicated that the letters in question were drafted by his assistants without following the guidelines in place. One of the guidelines is to carry out consultations with the relevant government departments. The President named the officers in his office who drafted the letters without following the guidelines, as being Mrs Joy Kabatsi who drafted some letters to the Attorney General, and Mr. Muhoozi, who drafted the letter to the Governor, Bank of Uganda. The President assured the PAC that he had never been briefed on the quantum of money that Mr. Basajjabalaba had been awarded, until intelligence told him much later. The President directed the named officials to appear before PAC and explain their actions.

147. The Committee noted with concern that in this case, the President signed letters directing settlement of claims without knowing the quantum of the claim contained in the letters he referred to as having been drafted for him, which caused the taxpayer such great losses.

148. The President also wondered about the motive behind the hurried manner in which Hon Khiddu Makubuya and Hon Syda Bbumba acted on his so-called directives, when the same people had actually failed to implement his directive to compensate Mzee Aramtori of Katikekile, Amudat District whose 298 cattle had been confiscated by the UPDF wrongly. The President further indicated that even if he had given directives towards claim settlements, if he was wrong, the Ministers should have refused to implement the directives, and gave examples of Jenniffer

Musisi, Executive Director KCC and Hon Bart Katurebe, former Attorney General who at one point refused to implement his directives.

149. While appearing before PAC, the officers named above accepted that they did not make consultations with government departments when drafting the letters. Mrs. Kabatsi accepted that she wrote the letters on the basis of the petitions HABA Group had submitted to the President. However, she argued that she wrote to the Attorney General who was the principal legal advisor to Government, and that if her letters had legal errors, the Attorney General would highlight them and correct them. Similarly, Mr. Muhoozi accepted that when writing the letter in question (dated 8th January 2011 to the Governor), he did not consult with other departments for example to ascertain the quantum of money that had been awarded to HABA Group. However, he indicated that if the letter was not clear to the Governor or contained objectionable requests, he was certain the Governor would be able to seek clarification from government departments or even reject them.

150. The Committee noted with concern that the performance of some officials in State House is wanting. In handling the issue of HABA Group compensation, the Committee observed that the officials exhibited incompetence and failed to exercise due diligence and wide consultation in drafting letters for the President's signature.

151. *In view of the above findings, the Committee observed that the president played an evident role in the compensation process.*

Legality of the Contract, and thus Legality of Compensation

152. One of the issues that PAC got interested in was the legality of the contracts that HABA Group of Companies signed with KCC over the management of Owino, shauriyako, Nakasero and redevelopment of the City Square. During the committee's inquiry, two arguments surfaced on the legality of the compensations. The first was that there existed valid contracts after KCC had invited bids, companies responded, their bids evaluated, awarded contracts, offer accepted and considerations met, whether partially or fully. The second was that the so-called contracts were not cleared by the Attorney General as is required under Article 119 (5) of the Uganda Constitution, and that therefore, an un-constitutional contract cannot bind Government. The latter advanced the precedent in the *Nsimbe* case, (Nsimbe Holdings V. Attorney General and IGG, Constitutional Court Petition No....2006), where the Constitutional Court ruled that any contract involving a government agency that was not cleared by the Attorney General was un-constitutional, and therefore, void.

153. PAC considered the two arguments. It concurred with the argument that a contract involving a government agency that is not cleared by the Attorney General is indeed un-constitutional, and void.

154. The Committee observed that the failure to have the contracts cleared by the Attorney General prior to their signing had the effect of rendering the contracts of the afore-mentioned markets and City Square, void. However, in consideration of the principle of natural justice and equity, the Committee believed that the claims could be considered on other merits such as their financial basis.

Tax Claims on the HABA Compensation Payment

155. On 29th November 2010, when Hon. Khiddu Makubuya advised that Government should pay HABA Group of Companies a total of UGX 142.6 Billion, he did also advise that his advice was subject to the tax law of Uganda. However, on 6th October 2010, a consent judgment was purportedly concluded between HABA Group of Companies and Attorney General providing that the defendant (Attorney General) shall pay the Plaintiff (HABA Group) UGX 142.6 Billion. In para.6 of the purported consent judgment, the parties agreed that the above sums shall not be subjected to any taxes, levies, or reduced by the Defendant or its agents in any way. When the Ag. Solicitor General appeared before PAC, she testified that the said consent judgment is a forgery and that the matter has been referred to CID and URA for investigation.

The Committee established that HABA did not pay taxes on the payment amounting to 46 million dollars it was advanced by commercial banks through guarantee of Bank of Uganda.

RECOMMENDATIONS

1. ***In the course of these compensations the acts of Hon. Khiddu Makubuya former AG's tantamount to mismanagement and abuse of office, which acts are unjustifiable, suspicious and un acceptable therefore:***

    - ***Hon. Khiddu Makubuya should take political and personal responsibility for failing to take due diligence in his work.***

- *The appointing authority relieves Hon. Khiddu Makubuya of his duties for causing financial loss.*
- *IGG and CID should further investigate Hon. Khiddu Makubuya's actions and take appropriate action.*

2. *The Committee recommends that in considering Hon. Syda Bbumba's role in the compensation saga which involved abuse of office, mismanagement and causing financial loss:*
   - *Hon. Syda Bbumba should take political and personal responsibility for failing to take due diligence in her work.*
   - *The appointing authority relieves Hon. Syda Bbumba of her duties for causing financial loss.*
   - *IGG and CID should further investigate Hon. Syda Bbumba's role and take appropriate action.*
   -

3. *The committee recommends that:*
   - *The President takes note of the violations of the laid down guidelines and procedures by his subordinates and moves to rectify them.*
   - *The President institutes performance management contract systems for ministers and public officials.*

4. *The Committee recommends that:*

   - *The Governor BOU should be held personally responsible for the loss the Government incurred.*
   - *Governor BOU should be relieved of his duties.*
   - *Governor BOU should be further investigated by the IGG and CID for abuse of office and appropriate action be taken.*

5. *The Committee recommends that:*
    - *Government recovers from HABA Group all monies paid including applicable taxes, in excess of what was determined by the Auditor General.*
    - *The HABA Group should be investigated for uttering forged documents.*

6. *The committee recommends that the then Town Clerk Mr. Ssegane, who entered into and extended the various contracts without following the laid down procedures should be held liable for abuse of office and causing financial loss.*

7. *The committee recommends that the Former Ag. Solicitor General (Mr. Kainamura) and the current Ag. Solicitor General (Ms. Lwabi Harriet) be investigated by the IGG and CID for the role they played in handling the compensation claim.*

8. *The appointing authority should expeditiously appoint a substantive Solicitor General.*

9. *The committee recommends that the Attorney General's Chambers be restructured and streamlined.*
10. *The committee recommends that a Government Compensations Act, a law that shall stipulate priority schedule of Government compensations and emergency cases, inter alia be enacted.*

II. RHINO INVESTMENTS LTD IN RESPECT OF KISEKKA MARKET (UGX 14.9 Billion)

Introduction:

1. In 2009, Government of Uganda compensated MS Rhino Investments Ltd an amount of UGX 14.9 billion on the account that the sub-lease which had been given to Rhino to develop Kisekka Market by the Kampala City Council was cancelled by the Government. But, what exactly happened?

Background:

2. On 12th April 2007, the then Minister of Local Government, Hon. Maj. Gen. Kahinda Otafire wrote to the Town Clerk informing her that he had received a request from the Executive Committee of New Nakivubo Road (Kisekka) Market Vendors Association to develop Kisseka Market in partnership with a developer of their choice, Rhino Investments Ltd. He indicated to the Town Clerk that he had no objection to their request and supported that they should have priority in developing their place of work. He requested that they be allowed to develop their market provided they fulfil the following four conditions:

I. only vendors with lock-ups and stalls should participate in the project;
II. they should present an accepted investment plan; and should operate as one group to avoid a repetition of various competing groups.
III. they should present a formal agreement with an investor of their choice

3. On 27th June 2007, the Executive Director PPDA gave a go ahead to the Town Clerk with regard to the method by which the procurement transaction was handled, stating that "under Regulations 127 (1) (b) of the Local Government (Public Procurement and Disposal of Public Assets) Regulations, an entity is permitted to use a method of direct negotiations with the sitting tenant as it is reasonable to give that tenant the first option to buy. The vendors in this case may be considered so long as they fulfil the Council conditions and their offer is value for money."

4. On 22nd August 2007, Kampala City Council (KCC) gave a sub-lease offer of land comprised on Plot 9A Kyaggwe Road commonly known as Kisekka Market to Rhino Investments Ltd in a joint venture with the New Nakivubo Road Market Vendors Association for a period of 49 years to undertake the redevelopment of Kisseka Market. The sub-lease was offered at a premium of UGX 1,520,000,000/= and ground rent of UGX 76,000,000/=. Rhino Investments Ltd fully paid to KCC the premium and ground rent.

5. Before the sub-lease agreement was prepared for execution, a section of market vendors rioted, protesting the re-development, resulting into vandalism. This compelled the Government to intervene by deploying the security to contain the situation and also instituted a Commission of inquiry. Following the recommendation of the Commission of Inquiry, on 10th November, 2008, H.E. the President wrote to the Attorney General directing him to evaluate and compensate Rhino Investments Ltd. which had been given the sub-lease offer to redevelop Kisekka Market.

Compensation claim

6. On 31st January 2009, Rhino lodged a claim to the Minister for Local Government for compensation to the tune of UGX 23,497,512,109/=, whose components are detailed hereunder:

Claim	Amount (UGX)
Premium	1,520,000,000/=
Ground rent	76,000,000/=
Stamp duty on premium	15,200,000/=
Project managers fees	1,161,868,750/=
Interest on premium for 1.25 years at 25% p.a	866,583,984/=
Invoice No. 023/08 MS Engineering Systems	995,887,500/=
Interest on invoice above for 1 year at 25% p.a	248,971,875/=
Loss of Business Opportunity	12,613,000,000/=
General damages	6,000,000,000/=
TOTAL	**23,497,512,109/=**

7. Evaluation Committee

PAC was informed that upon receipt of the Presidential directive to evaluate the claim of Rhino Investments with a view of determining the compensation amount, the Attorney General directed the Ag. Solicitor General to constitute an Evaluation Committee to study the claim as lodged by RHINO. The Solicitor General wrote to the Permanent Secretaries of the following ministries to nominate persons to constitute a technical team to evaluate the claim; Ministry of Lands, Housing and Urban Development; Ministry of Works and Transport; Ministry of Finance, Planning and Economic Development; and Ministry of Local Government.

The following persons were recommended by their respective institutions:

Name	Title	Ministry
1. Bwiragura A.J	Chief Gov't Valuer	Ministry of Lands
2. Arch. H.E.R.Kazahura	Commissioner	Ministry of Works
3. Mugambe Kenneth	Commissioner	Ministry of Finance
4. Abbey Iga	Ass. Commissioner	Local Government
5. Nankabirwa Mary	Senior State Attorney	Ministry of Justice
6. Mutesi Patricia	Senior State Attorney	Ministry of Justice
7. Anabo Patricia	State Attorney	Ministry of Justice

8. The Evaluation Committee was to critically analyze, assess and establish ~~the establish~~ the legal basis of the compensation claim and make recommendations to the Attorney General.

9. The Evaluation Committee established that the claim had a legal basis and deduced that there had been a binding contract between Rhino Investments Ltd in joint venture with Ms. Nakivubo Road Market Vendors Association and KCC, which contract was breached by cancellation of the sub-lease offer.

10. Consequently, it made the following recommendations on amounts to be compensated to Rhino Investments Ltd as in the table below:

Item	Amount Claimed (UGX)	Amount Recommended (UGX)
Premium	1,520,000,000/=	1,520,000,000/=
Ground Rent	76,000,000/=	76,000,000/=
Stamp duty	15,200,000/=	NIL as no receipts were availed
Project Managers fees	1,161,868,750/=	1,161,868,750/=
Interest on expenses above	866,583,984/=	758,413,063/=
Outstanding liabilities incurred	995,887,500/=	995,887,500/=
Interest on outstanding liabilities	248,971,875/=	NIL
Loss of Business opportunities for 2 years	12,613,000,000/=	2,123,400,000/=
General damages	6,000,000,000/=	230,000,000/=
TOTAL	**23,497,512,109/=**	**6,865,569,313/=**

11. The Ministry of Justice and Constitutional Affairs processed and paid UGX 6,865,569,313/= to RHINO in two instalments as follows:

27/07/2009 *UGX 5,278,308,000/=*

07/08/2009 *UGX 1,587,261,313/=*

12. On 27th October 2009, the Managing Director, RHINO, Mrs Hope Banga Mugyenyi, petitioned the President with regard to the way her claim for compensation for Kisseka Market was evaluated. She claimed that her claim was given to the Government valuer to assess, and subsequently recommended UGX 6.8 Billion. She further claimed that the company mobilised financial and human resources to construct a modern market and to establish support and ancillary services as well as

management systems for the market. She argued that one could not assign values to these technologies exactly as you assign values to land.

13. In spite of the above, she further asserted, 'the Government valuer remained firmly in the box and does not seem to have appreciated the basic difference between the dynamics of resource mobilization and management systems versus fixed or physical assets.' She however said they were grateful that UGX 6.8 Billion was given to them, and accepted it because, as the Baganda say, **nyama ntono okayana eri mu nkwawa.** She requested the President to intervene and authorize that an additional UGX 8.1 Billion be given to the company to bring the total compensation to UGX 14.9 Billion.

14. On 26th May 2010, the President reminded the Attorney General that he had received a petition dated October 27th 2009 that he had received ~~a petition dated 27th October 2009~~ from Rhino Investments Ltd claiming that they were unfairly compensated and directed the Attorney General to consider the complaint and handle accordingly.

15. PAC observed that the impression created by the Managing Director, Rhino Investments Ltd, that its compensation claim was handled by the Government Valuer single-handedly was wrong as the claim was evaluated by a team of technical officials under the chairmanship of the Chief Government Valuer.

16. On 28th July 2010, Hon Khiddu Makubuya, then Attorney General, in an Internal Memo, advised the Ag. Solicitor General that since Rhino had initially claimed UGX 23 Billion and was now requesting for UGX 14.9 Billion, *"having abandoned UGX 8.6 Billion,"* UGX 8.1 Billion should be provided to

Rhino Investments Ltd. as requested in addition to UGX 6.8 Billion already awarded by the Evaluation Committee. He advised that the claim of an additional UGX 8.1 Billion was reasonable, and then stated:
"Therefore, I have considered the complaint of Rhino Investments Ltd and hereby approve payment of UGX 8.1 Billion to Rhino Investments Ltd...I so decide".

17. On 30th July 2010, the then Ag. Solicitor General, Billy Kainamura, wrote to the PS/ST Ministry of Finance, Planning and Economic Development requesting for additional UGX 8.1 Billion in favour of Rhino Investments Ltd. On 3rd September 2010, the PS/ST approved the funds.

18. The Committee observed the following:

- *That Hon. Khiddu Makubuya did not re-engage the Evaluation Committee to consider the compensation complaint.*

- *The complaint did not raise specific areas where the company felt that it was unfairly evaluated.*

- *The Attorney General, in his consideration of the complaint, did not rebut the wrong assertion that the claim was subjected to valuation by the Government Chief Valuer.*

- *Instead of negotiating for a better deal for the Government and the taxpayer, the Attorney General simply accepted and approved in totality the proposal by the private company at the cost of his employer, the taxpayer.*

Therefore, the Committee is left with no rational explanation to this abnormal conduct of a person of Hon. Khiddu Makubuya apart from concluding that he behaved as such to benefit himself personally.

RECOMMENDATIONS:

1. **The Committee recommends that the former Attorney General, Hon. Khiddu Makubuya be liable for causing financial loss by unilaterally approving additional compensation (UGX 8.1billion).**

END

PAC MEMBERS WHO ENDORSED THE COMMITTEE'S REPORT ON THE GOVERNMENT COMPENSATION TO HABA GROUP OF COMPANIES AND RHINO INVESTMENTS LIMITED IN THE FY 2009/2010

S/N	NAME	SIGNATURE
1.	Kassiano E Wadri C/P	
2.	Akora Maxwell V/CP	
3.	Achia Terence Naco	
4.	Alaso Alice Asianut	
5.	Arinaitwe Joy Kariisa	
6.	Asupasa Isiko Wilson Mpongo	
7.	Bako Christine Abia	
8.	Bakunda Alex Byarugaba	
9.	Besisira Ignatius	
10.	Bihande Bwambale Yokasi	
11.	Boona Emma	
12.	Cadet Benjamin	
13.	Drito Martin Andi	
14.	Kaabule Everlyn Naome	
15.	Karuhanga Kafureeka Gerald	
16.	Kiboijana Margret .N	
17.	Kwizera Eddie Wa Gahungu	
18.	Kyooma Xavier Akampurira	
19.	Mpabwa Sarah Patience	
20.	Mugabi Muzaale Martin	
21.	Mujuni Vicent	
22.	Musasizi Henry Ariganyira	
23.	Musinguzi Yoona	
24.	Opolot Jacob Richards	
25.	Ssekikubo Theodre	
26.	Nansubuga Rosemary Sseninde	
27.	Ssewungu Joseph Gonzaga	
28.	Wamanga Wamai Jack	
29.	Yaguma Wilberforce	

WITNESSES WHO APPEARED BEFORE PUBLIC ACCOUNTS COMMITTEE ON COMPENSATIONS TO HABA GROUP OF COMPANIES LTD AND RHINO INVESTMETS LIMITED FOR THE FY 2009/2010.

1. Ag. Solicitor General – Ms. Harriet Lwabi - MOJCA
2. Ms. R.G. Rwakoojo – Ag. DCL - MOJCA
3. Mr. C. Gashirabake – Ag. DLAS/MOJCA
4. Mr. Bafaki K. Ernest – U/S F & A/MOJCA
5. Albert Mugyenyi Rugambwa - SAS - MOJCA
6. Mr. Owen Busingye - MOJCA
7. Mr. Magezi Alfred – SRO – MOJCA
8. Ms. Lutaaya Mary - Senior Accountant – MOJCA
9. Ms. Hope Byaruhanga – PPO – MOJCA
10. Mr. Francis Atoke – Administrator General – MOJCA
11. Mr. J. B. Tibamanya – P/A - MOJCA
12. Former Government Valuer – Mr. AJ. Bwiragura
13. Former Attorney General - Hon. Prof. Khiddu Makubuya
14. Executive Director, KCCA – Ms. J. Semakula Musisi
15. Mr. Waibi Moses Charles – Ag. CDF – KCCA
16. Mr. Karugonjo J.B. SPSA – KCCA
17. Mr. Peter Kaujju – KCCA
18. Mr. Charles Ouma – KCCA
19. Dr. Bakka Musujja - KCCA
20. Mr. Kabongo Julius Raymond - KCCA
21. Mr. Mugisha Caleb - KCCA
22. Ms. Ruth Kijjambu - KCCA
23. Mr. Mwesigye G.T - KCCA
24. Mr. Muwonge-Kezaala - KCCA

25. Mr. James Sseggane - KCCA
26. Ms. Kayongo Robinah - KCCA
27. Technical Evaluation Committee – Kenneth Mugambe, Jeffrey A. Atwine, Patricia Anabo, Mary Nankabirwa, Arch. H.E. Kazahura and Abbey M. Iga.
28. Managing Director, Haba Group of Companies – Mr. Hassan Basajjabalaba
29. Mr. Obed Mwebesa (Advocate to Haba)
30. Mr. Paul Tusubira (Advocate to Haba)
31. Mr. Geoffrey Nangumya (Advocate to Haba)
32. Mr. Moses Kayondo – (MD's Assistant - Haba)
33. Managing Director, Rhino Investments Ltd – Col. (Rtd) John Mugyenyi
34. Permanent Secretary/ Secretary, Ministry of Finance, Planning and Economic Development
35. Hon. Syda Bbumba, Former Minister of Finance
36. His Lordship Judge B. Kainamura
37. The Governor, Bank of Uganda – Mr. E. Tumusiime-Mutebile
38. H.E. The President of Uganda
39. The Aides to the President, Ms. Joy Kabtsi and Muhoozi Edward