

**REPORT**

**OF**

**THE SELECT COMMITTEE ON NATIONAL SOCIAL SECURITY FUND**

**(NSSF)**

**FEBRUARY 2015**

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## Acronyms

AG	-	Attorney General
CGV	-	Chief Government Valuer
CMA	-	Capital Markets Authority
CS	-	Corporation Secretary
DMD	-	Deputy Managing Director
IGG	-	Inspector General of Government
IPO	-	Initial Public Offer
ISSA	-	International social security Association
LTA	-	Lead Transaction Advisor
MD	-	Managing Director
NSSF	-	National Social Security Board
PDU	-	Procurement and Disposal Unit
PPDA	-	Public Procurement and Disposal of Public Assets
UEDCL	-	Uganda Electricity Distribution Company
URBRA	-	Uganda Retirement Benefits Regulatory Authority
URSB	-	Uganda Registration Services Bureau
URA	-	Uganda Revenue Authority
USE	-	Uganda Securities Exchange
SG	-	Solicitor General

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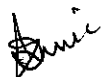
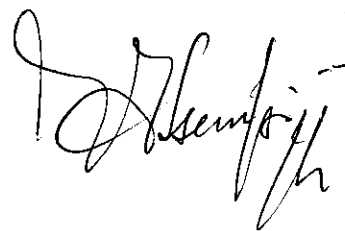

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## Acknowledgement

The Committee would like to acknowledge the following persons and institutions for enabling it to execute its mandate:

- Rt. Hon. Speaker who extended the life of the Committee twice when it became clear that the areas to cover were wide and deep.
- The Clerk who facilitated the Committee with staff and other logistics to enable it conduct hearings and benchmark in other jurisdictions
- A number of whistle blowers who provided vital information to the Committee.
- Uganda's High Commission in Dar es Salaam which enabled the Committee to benchmark from the Social Security Regulatory Authority of Tanzania on investment and governance of Tanzania's pension schemes and the
- Uganda's Permanent Representative to Geneva who enabled the Committee visit and interact with ISSA that hosts a centre of excellence in pension fund management.
- The leadership of CMA, URSB, ERA, UMEME, PPDA, URBRA, Mr. Kizito, and Members of the NSSF Board who gave evidence on the matters before the Committee
- The press for covering the proceedings of the Committee.

Without the support of the above mentioned persons and institutions, the Committee would not have succeeded with its work.



## Executive Summary

On 17<sup>th</sup> July 2014, the Parliament of Uganda established a 5 – Members Select Committee to inquire into specific matters pertaining to the mismanagement in the National Social Security Fund. The terms of reference of the select Committee were to inquire into:

- Allegations that NSSF irregularly acquired shares in UMEME;
- Allegations of irregularity, nepotism and unfairness in the recruitment processes of staff at the NSSF;
- Allegations of irregularity in the disposal of NSSF assets; and
- Any other matter related to the above.

The Committee made the following findings and recommendations:

### ***NSSF Investments***

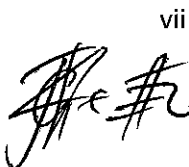
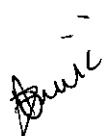
As at June 2014, NSSF was worth 4.34 Trillion. Monthly, NSSF receives between UGX 50 – 60 Bn in form of contributions from its members. However, the speed at which the money comes in is not the same speed at which it is invested.

Currently, the NSSF portfolio investment is as follows:

Areas	Actual (%)	Planned (%)
Fixed Income	81	73
Real Estates	10	6
Equities	9	21

### ***Investment in UMEME***

Since December 2002, NSSF has purchased 131,502,300 shares in UMEME worth UGX 36,163,077,500/=, broken down as below:



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	No of shares	Share Price	Total Cost
IPO Allotment	91,234,700	UGX 275	25,089,542,500
Secondary Market (5-14 Dec 2012)	40,267,600	UGX 275	11,073,535,000
Total	131,502,300		36,163,077,500

The investigations of the Committee revealed that although the IPO transaction was conducted in accordance with the laid down internal investment procedures as per the NSSF Investment Policy, the transaction did not have a blessing of the Attorney General/Solicitor General.

The Committee further found that during NSSF's acquisition of UMEME shares on the secondary market, Mr. Ivan Kyayonka, Chairman NSSF Board and Ms Geraldine Ssali the then Ag Managing Director, made the investment without the support of the Board and approval by the Minister of Finance as required by the NSSF Act.

The Committee further found that the NSSF broker for equities, Africa Alliance, was at the same time the sponsoring broker for UMEME IPO and also a director at the Uganda Securities Exchange, thereby conflicting itself. However, the capital markets regulator, the Capital Markets Authority, did not bring the broker to book.

The Committee recommends that disciplinary action be taken against the implicated officials.

#### ***UMEME Concession Obligations after the sale of Shares to NSSF and others***

The Committee found that with the sale of further shares in 2014, UMEME Ltd violated the concession obligations. Section 6.2 (d) (v) of the Government Support Agreement permits the sale of ordinary share capital by the UMEME's initial shareholders to local Ugandans, and other persons, provided that the initial shareholders retain 51% or more direct or indirect ownership interest in the outstanding ordinary share capital. In addition, Section 10 of the Amended License Conditions for Supply of Electricity and the Amended License for Distribution of Electricity restrict a transfer as part of a public offering to at most 40%. The initial shareholders



must retain at least 51% or more direct or indirect ownership interest in the outstanding ordinary share capital. The initial shareholders were Globeq and Eskom. In 2006, Eskom sold its shares to Globeq – which later became Umeme Holdings Ltd. The import of these provisions is to ensure that there will always be a controlling interest responsible for implementing the obligations under the concession agreement under the supervision of the regulator, Uganda Electricity Regulatory Authority.

However, UMEME Ltd has now greatly reduced its shareholding as can be seen below:

S/No	Shareholders	% shareholding
1.	Investec Asset Management	18.5%
2.	Umeme Holdings Ltd	14.3%
3.	National Social Security Fund	14.27%
4.	Farallon Capital	7.8%
5.	Coronation Funds	3.7%
5.	Allan Gray Africa Funds	3.3%

The Committee recommends that CMA be held responsible for facilitating UMEME Ltd to violate its concession obligations, a situation that puts the interests of Uganda at risk.

#### ***Procurement and disposal of Assets – Plot 434 Namirembe Road***

The Committee found that in 2008, NSSF management acquired various pieces of land in many areas of Uganda with a view to building branch offices. One of such pieces of land was Plot 434 Namirembe Road that was bought at UGX 650 Million. In addition, NSSF spent more UGX 65 Million, to convert the leasehold title of Plot 434 into freehold. The Committee found that the policy of building branch offices was reversed.

The Committee found that the process to dispose of the land was commenced by Mr. Richard Byarugaba, MD NSSF, without a reserve price. In addition, the piece of land was sold at less than the cost price 'because it was surrounded by another plot, plot 436.'

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The Committee found that the MD NSSF sold the land without exploring the possibility of obtaining access rights under the Access to Roads Act, Cap 350.

#### ***Delayed Recruitment of Top Managers of NSSF***

The Committee found that it took more than 10 months to appoint senior managers of NSSF, a Fund that is worth 4.5 Trillion. Moreover, about UGX 500 Million was spent on the recruitment process and the candidates who emerged the best as revealed by the consultant's (PricewaterhouseCoopers) report were not offered the employment. Instead, the former employees were re-engaged.


*The Committee found that the Minister of Finance caused financial loss to the NSSF.*

#### ***Governance of the Financial sector in Uganda***

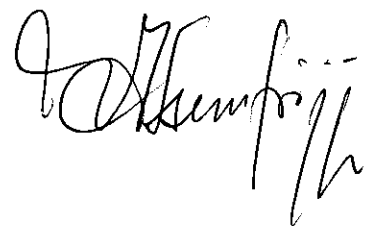
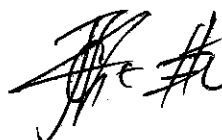
The Committee observed that the Minister of Finance was 'everywhere' in the financial sector regulation in general, and in the regulation of the pension sector in particular, and was bound to be entangled in a very serious conflict of interest.

With respect to the regulation of the pensions sector, the Minister does not only end at appointing the Board and Chief Executive of the regulator, under the URBRA, she also appoints the Board and top management officials of the NSSF, one of the bodies that is regulated by the URBRA. In addition, the Minister appoints her chief technical advisor, the Permanent Secretary/Secretary to the Treasury to the NSSF Board. The Committee found that the PS/ST was the head of the sub-committee of the Board of NSSF in charge of investments. In addition, the NSSF Board is barred from undertaking investment decisions without consulting the Minister.

*The Committee recommends that the responsibility of the Minister of Finance should stop at appointing the regulatory bodies and leave other layers to play their part as good corporate governance dictates.*



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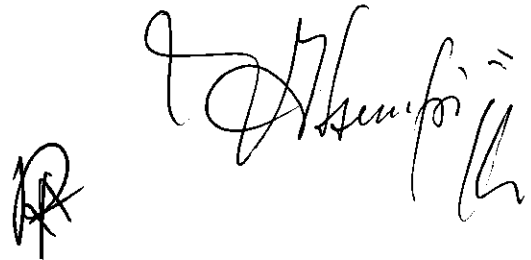

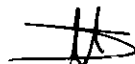
### ***Governance structure of USE***

The Committee learnt that the USE was a private entity owned by the brokers, namely; Africa Alliance (U) Ltd; Baroda Capital Markets (U) Ltd; Crane Financial Services Ltd; Crested Stocks and Securities Ltd; Dyer and Blair (U)Ltd; Equity Stocker Brokers Ltd; UAP Financial Services Ltd and Stanbic Bank Group Uganda.

The Committee was concerned that where brokers were the owners of the market, there is bound to be a conflict of interest.

*The Committee recommends that Government should explore the possibilities of having the stock market a public company in order to enhance transparency and separate the rights and responsibilities of traders and owners of the market which are currently fused.*

*The Committee further recommends that the requirement of consulting the Minister on or during investment decision-making should be abolished. The Board and Management of the pension fund or system should take full responsibility. Instead, the Minister should engage in policy build, regulation and audit.*

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## CHAPTER ONE

### 1.1 Introduction

On 17<sup>th</sup> July 2014, the Parliament of Uganda established a Select Committee to inquire into specific matters pertaining to the mismanagement in the National Social Security Fund. The terms of reference of the select Committee were to inquire into:

- Allegations that NSSF irregularly acquired shares in UMEME;
- Allegations of irregularity, nepotism and unfairness in the recruitment processes of staff at the NSSF;
- Allegations of irregularity in the disposal of NSSF assets; and
- Any other matter related to the above.

The members of the Select Committee were as follows:

- |                                      |   |             |
|--------------------------------------|---|-------------|
| 1. Hon Vincent Bamulangaki Ssempijja | - | Chairperson |
| 2. Hon Ruhunda Alex                  | - | Member      |
| 3. Hon Ssewungu Joseph Gonzaga       | - | Member      |
| 4. Hon Theopista Ssentongo Nabulya   | - | Member      |
| 5. Hon Nankabirwa Ann Maria          | - | Member      |

### 1.2 Appreciation of the Assignment

On 5<sup>th</sup> August 2014, the Committee embarked on its assignment. The first meeting was about appreciating the Terms of Reference that had been issued by the Rt. Hon Speaker to the Committee. The Committee's appreciation was that Parliament was concerned about the allegations that worker's savings were being mismanaged through irregular investments in questionable deals, such as the purchase of shares in UMEME, moreover, without following the due process.

In addition, the Committee appreciated the concern of the House that the assets of the National Social Security Fund (NSSF) were being disposed of without value for money, an

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example being a piece of land in Namirembe, which was purchased in 2008 at UGX 650 Million and UGX 65 Million was spent on its conversion from leasehold to freehold in favour of NSSF, but the same land was sold in 2012 at a mere UGX 650 Million!

The Committee also understood the concern of the House that the allegations of nepotism in the recruitment and summary dismissals of staff and the general mismanagement of the human resources was a recipe for disaster, and thus, the worker's savings were in jeopardy. The Committee understood the assignment to be to audit the processes by which NSSF management acquired shares in UMEME Ltd, acquired and disposed of land at Namirembe and managed human resources, including the process of the recruitment of the three top officials of the NSSF.

The Committee understood the assignment as a reflection of the consistent desire and push by the Parliament of Uganda to have the savings of the workers of Uganda properly managed and invested to realize a good return.

### 1.3 Methods of Work

The Committee used three methods to collect data/ evidence. There were:

- Public hearings – where the Committee received evidence from the key and relevant stakeholders (list of the witnesses is attached as Annex 1)
- Study of secondary documents such as Acts, Minutes, Reports, Agreements, Prospectuses, and other official documents (list of the documents is Annex 2)
- Study visit to Dar Es Salaam, Tanzania to benchmark the pension sector governance and regulation
- Study visit to the International Social Security Association (ISSA) in Geneva to learn about international best practices and guidelines in pension fund governance and investment.

It is from the above sources that the Committee generated its observations, findings and recommendations which are reported here-under.



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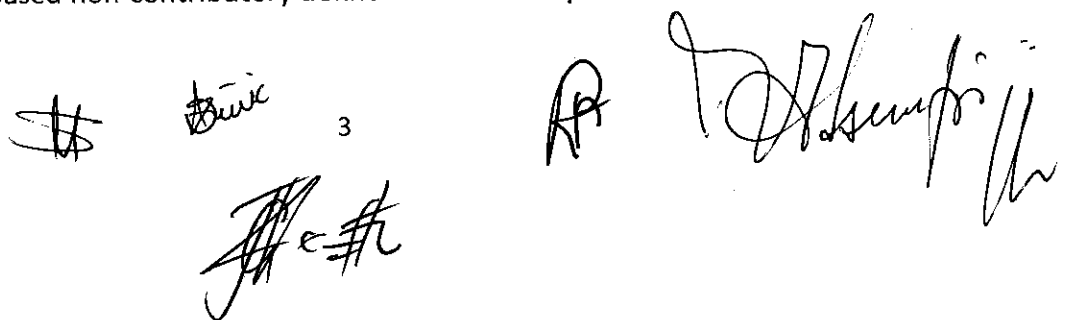
#### 1.4 What is the National Social Security Fund (NSSF)?

The National Social Security Fund (NSSF) was established under the National Social Security Act, Chapter 222, Laws of Uganda to provide social security benefits to private sector employees, including employees of Non-Governmental Organizations (NGOs). It covers all employers with five or more employees whose age bracket is 16 and 55 years. It is a provident fund that provides lump-sum payments or benefits to its members. The benefits depend on the contributions made to the Fund and the investment returns, minus Fund management expenses. The contributions are remitted by the employer for each employee to the Fund. The employer must deduct 5% from the employees' total gross monthly wage and contribute 10% of the total gross monthly wage, making a total contribution of 15% to the NSSF for each employee.

The Fund pays out six types of benefits –

- Age benefit – payment to a contributing member who has reached 55 years old or has attained the age of 50 years and has retired from regular employment;
- Invalidity benefit – payment to a member who has lost his or her earning capacity due to physical or mental incapacitation, including HIV/AIDS, as certified by a medical doctor;
- Survivors Benefit – payment made to the beneficiaries of a contributing member who dies;
- Exempted Employment – payment made to a contributing member who joins another employment, such as public service, that has a recognized social protection scheme;
- Withdrawal Benefit – payment made to a member who attains the age of 50 years if she or he was not employed for a period of one year immediately preceding his or her claim;
- Emigration grant – payment made to a contributing member who is leaving the country permanently.

It is also important to note that, in Uganda, there is another pension fund, the Public Service Pension Fund; a tax-based non-contributory defined benefit that provides terminal benefits and

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severance packages to public sector employees. Of recent, the public pension scheme was engulfed by corruption scandal, and criminal prosecutions are on-going.

### **Aim of NSSF**

The aim of the Fund is to provide social security to the contributing members when they reach the mandatory retirement age or become indisposed.

### **Investment Obligations**

In order to guarantee a return on the contributions, the NSSF leadership is obligated by the NSSF Act to invest the savings in profitable ventures. Section 30 provides:

All monies in the fund, including the reserve account, which are not for the time being required to be applied for the purpose of the fund shall be invested in such investments as may be determined by the board in consultation with the Minister.

It is important to note that under the NSSF Act, the Minister responsible for the NSSF affairs is the Minister responsible for Social Security. However, in mid-2000, the President assigned the Minister of Finance, Planning and Economic Development the political supervision of the NSSF.

### **NSSF Investment Portfolio**

Accordingly, successive NSSF managers have invested workers savings in different ventures, ranging from real estate, private equities, treasury bills and bonds, to public equities. Investments have been made in Uganda, Kenya, Tanzania, among other areas. However, some major NSSF investments have been tainted with scandals. Some of the prominent ones are: the *Nsimbe – Mugoya Project*; the *Temangalo Project*; the *Pension House Project*.

Currently, the portfolio investment of the worker's money is as follows:

Areas	Actual (%)	Planned (%)
Fixed Income	81	73
Real Estates	10	6
Equities	9	21

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The Fund currently has a membership of about 1,319,345. However, out the total membership, only 578,000 are active, and the rest are inactive. 85% of the active members are below the age of 45 and own 70% of the active members' fund.

As at June 2014, NSSF was worth 4.34 Trillion. Every month, NSSF receives UGX 50 – 60 Billions in form of contributions from the members. However, the speed at which the money comes in is not the same speed at which it is invested.

It is also important to note that at the time of conducting the inquiry, Government was in the process of liberalizing the pension sector to, among other objectives, bring more players on board, thereby breaking the monopoly of the NSSF. To that end, a regulator of the pensions sector, The Uganda Retirement Benefit Regulatory Authority, had been put in place. The Liberalization of Retirement Benefits Bill was under consideration by the Committee of Parliament. Once enacted, the operations of NSSF would most likely be affected.

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- Top center: *RA*
- Top right: *W. H. H. H.*
- Bottom left: *HA*
- Bottom center: *RA*



## CHAPTER TWO

### 2.0 NSSF ACQUISITION OF UMEME SHARES

#### 2.1 Introduction

In this section, the Committee investigated whether NSSF followed the laid down procedures during its acquisition of shares in UMEME Ltd in 2012 and 2014, and whether NSSF leadership could have been enticed to buy into the UMEME Ltd against the interests of the contributing members. It should be noted that UMEME Ltd issued an IPO at the time the Parliamentary Ad hoc Committee on the Electricity Sector and the Salim Saleh Committee had investigated the electricity sector and recommended corrective measures.

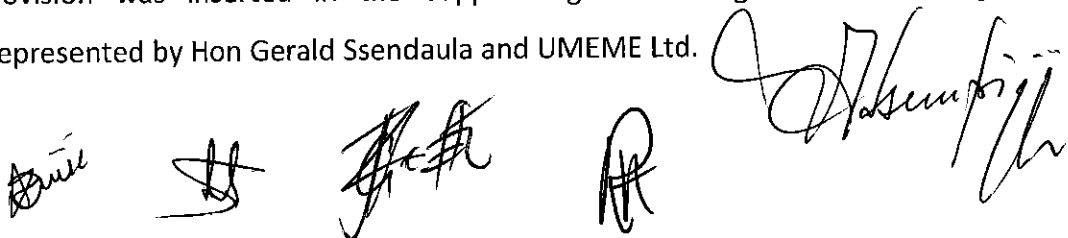
#### 2.2 Relationship between NSSF and UMEME before 2012 and the Role Played by Hon Gerald Ssendaula

Although NSSF acquired the first stake in UMEME in November 2012 when it purchased UMEME's Initial Public Offer (IPO) 131,502,300 shares at UGX 275 per share, the relationship between the two entities seemed to have started way back in 2004, even before the incorporation of UMEME Ltd.

For instance, Article 12 (d) (vi) of the Memorandum and Articles of Association of UMEME Ltd, filed with the Registrar of Companies on 6<sup>th</sup> May 2004, it is provided:

...Government ...shall not unreasonably withhold its approval for requests for approval of transfers of Ordinary Share Capital. Government of Uganda hereby approves sale by the Company and the Initial Shareholders of Ordinary Share Capital to the National Social Security Fund of Uganda, to employees of the Company who are Ugandan citizens and through public offerings on the Uganda Securities Exchange.

The same provision was inserted in the Support Agreement signed between Uganda Government represented by Hon Gerald Ssendaula and UMEME Ltd.



The Committee was informed that NSSF leadership was not aware about its relationship with UMEME and was never invited or involved in the negotiations between Government of Uganda and UMEME that created a relationship with NSSF in 2004.

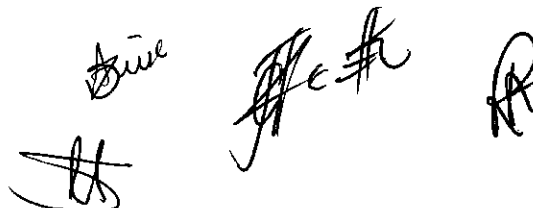
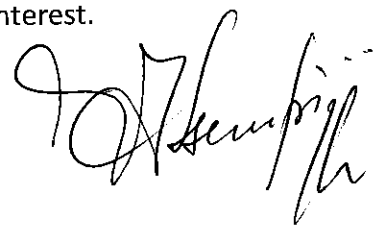
The Committee inquired from Hon Gerald Ssendaula why NSSF was 'married' to UMEME in 2004 without the knowledge of the former. Hon Gerald Ssendaula responded that it was government policy that privatized companies would offer shares to Ugandans, hence, a clause was inserted in the Support Agreement that UMEME would offer shares to NSSF that belongs to Ugandans.

The Committee noted that Hon Gerald Ssendaula was at the helm of the Ministry of Finance, Planning and Economic Development where Privatization Unit was domiciled when Government awarded a Concession to UMEME Ltd, a concession that is believed to have been very generous to UMEME at the expense of the Ugandans. The Committee observed that the same Hon Gerald Ssendaula was later appointed to the Board of UMEME Ltd in 2013. The Committee asked Hon Gerald Ssendaula whether his appointment to UMEME Board was as a result of the 'good' work he executed in 2004 when he provided generous terms to UMEME Ltd. He categorically denied that he was appointed to UMEME as a reward. He further indicated that there was no law that stopped former ministers from getting employment. He submitted that he was approached by UMEME Ltd to serve on the UMEME Board after one of their Board Members, James Mulwana, had died.

The Committee further noted that the same Hon Gerald Ssendaula, who was a Board Member of UMEME Ltd was also the Chairman of the Uganda Revenue Authority. Later, in this report, the Committee revisits the challenges URA has encountered in collecting taxes from UMEME, a situation that places Hon Gerald Ssendaula in a possible conflict of interest.

## **2.3. The Legal Framework for NSSF Investments**

### **2.3.1. The NSSF Act**

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- (2) Notwithstanding the provisions of any other written law, the investment policy of a scheme shall be implemented subject to any regulations the Minister (of Finance) may, in consultation with the Board ( of URBRA), make for that purpose.
- (3) There shall be submitted to the Chief Executive Officer, in respect of every scheme, a statement of all investments of the retirement benefits scheme, in such a manner and at such intervals as may be prescribed.

Under Section 68 of the URBRA Act, it is provided that the funds of a retirement benefit scheme shall not be used for speculative investments and invested outside East Africa or invested contrary to the guidelines prescribed for that purpose.


### **2.3.3 NSSF Investment Policy Framework – The Internal approval procedure**

In order to streamline and facilitate investment decision making by the NSSF, in 2006, the Board of NSSF enacted NSSF Investment Policy, which was later revised in 2010, and then in 2011 and in June 2013. According to the 2013 Revised Policy, an investment proposal is originated and prepared by the Investment Department of NSSF. The proposal is reviewed by the Management Investment Committee (MIC) headed by the Managing Director. Once the proposal is adopted by the MIC, a recommendation is made to the sub-committee of the Board, called the Investment and Project Monitoring Committee. Once the sub-committee of the Board is satisfied with the investment proposal, it makes a recommendation to the Board for its final approval.

Once the internal approval process of an investment proposal has been completed, external approvals (or consultation and legal advice) are sought from the Minister and the Solicitor General respectively.

The basis for obtaining approval or consultation from the Minister is the NSSF Act and the URBRA Act, seen above. The basis for seeking clearance or legal advice from the Solicitor General is Article 119 (5) of the Constitution, which provides that:

Subject to the provisions of the Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an



interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe.

It is in the light of the above legal and policy framework that the Committee inquired into how NSSF acquired UMEME IPO shares in 2012, and later, in 2014.

## **2.4 NSSF'S Acquisition of Shares in UMEME LTD**

### **2.4.1 Who is UMEME Ltd?**

UMEME Ltd was incorporated on 6 May 2004 as a private Limited company with a nominal share capital of USD 50, 000 divided into 50 ordinary shares at a par value of USD 1000. The objective of the company was to carry out a lease and assignment agreement and any ancillary agreements to be entered into with the Uganda Electricity Distribution Co Ltd for the purpose of operating, maintaining, upgrading, expanding and exploiting UEDCL's distribution system.

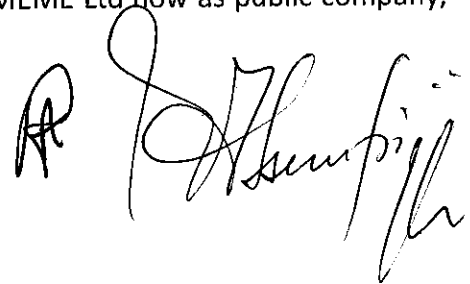
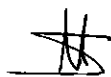
The original shareholders were: (1) Globeleq Holdings (Conco) Ltd, company domiciled in Bermuda that held 28 shares and (2) Eskom Enterprises (Pty) Ltd a company domiciled in South Africa that held 22 shares.

In 2006, Eskom disposed of its shareholding in UMEME Ltd to Globeleq, which subsequently changed its name to Umeme Holdings Ltd, a company domiciled in Mauritius. For purposes of meeting the requirements of the Companies Act, i.e. minimum of two shareholders for a private company, Umeme Holdings Ltd allocated one share to Mr. Luka Buljan. On 9<sup>th</sup> June 2008, Buljan's one share was transferred to David Grills.

On 10 September 2007, the nominal share capital was increased from USD 50,000 to USD 13,550,000 by issuing 13,500 ordinary shares.

On 28 June 2012, the company, UMEME Ltd, was converted into a public company.

On 4<sup>th</sup> July 2012, at an Extraordinary General Meeting, the UMEME Ltd now as public company, made the following Resolutions:



- The nominal share capital was re-denominated from USD to UGX and expressed as UGX 23,153,918,865 divided into 13,550 ordinary shares each with a par value of 1,708,776.30.
- 4,450 new ordinary shares were created. Consequently, the nominal share capital was increased from UGX 23,153,918,863 divided into 13,550 ordinary shares with a par value of 1,708,776.30 to UGX 30,757,973,400 divided into 18,000 ordinary shares with a par value of 1,708,776.30
- The 18,000 shares (13,550 plus 4,450) were thereafter split into 100,000 shares for each ordinary share hence creating 1,800,000,000 shares each with a par value of UGX 17.087763.

In November 2012, UMEME Ltd issued an IPO to offer or sell 622,378,000 shares whereby 350,000,000 belonged to Umeme Holdings Ltd, the major shareholder in UMEME Ltd and 272,378,000 as new shares offered by UMEME Ltd for subscription.

In November and December 2012, NSSF acquired 131,502,300 shares from UMEME worth UGX 36,163,077,500/= whose breakdown is indicated below:

	No of shares	Share Price	Total Cost
IPO Allotment	91,234,700	UGX 275	25,089,542,500
Secondary Market (5-14 Dec 2012)	40,267,600	UGX 275	11,073,535,000
Total	131,502,300		36,163,077,500

The question of concern was that: Was the legal due process and economic and financial due diligence undertaken in the process of acquisition of UMEME shares?

#### 2.4.2 Chronology of Events in the Acquisition of Shares

Between September 2011 and October 2012, the Ad Hoc Committee on Energy inquired into the Performance of the Electricity Sub-sector and in its report, recommended that the UMEME Ltd's power distribution concession be terminated.

*Signature*

*Signature*

*Signature*

*Signature*

Between 15<sup>th</sup> October and 7<sup>th</sup> November 2012, UMEME issued an Initial Public Offer (IPO) offering 622,387,000 of its 1,338,400,000 shares to the public at an IPO price of UGX 275/=.

Of the 622,387,000 shares offered, 350,000,000 shares were for the shareholder of UMEME Ltd, called Umeme Holdings Ltd and the rest (272,378,000 shares) were new shares being offered by UMEME Ltd for subscription.

Note that UMEME issued the IPO after it had transformed itself from a private company into a public company on 28 June 2014. At the time of conversion, UMEME Ltd was owned by Umeme Holdings Ltd by 99.99%, as shown in the Table below:

#### UMEME Shareholding before the IPO

No	Owner	Shares
1	Umeme Holdings Ltd	1,338,300,000
2	David Stuart Michael Gryllis (Nominee)	100,000
3	Brigitte Kusiima Byarugaba (Nominee)	1
4	Nicholas Mwasame (Nominee)	1
5	Janet Ayesigwa	1
6	Rebecca Nakiranda	1
7	Naome Byabazaire	1

The reason for floating shares was to secure the single shareholder of UMEME, namely; Umeme Holdings Ltd. The use of the proceeds was indicated in the IPO Prospectus, on pg 62:

Funds raised, net of related expenses, through the issue of the Subscription Shares will accrue to the Company and will be primarily utilized to repay existing shareholder loans.

Funds raised, net of related expenses, through the sale of the Sale Shares will accrue to Umeme Holdings, the immediate shareholder.

On 23<sup>rd</sup> October 2012, the Management Investment Committee of NSSF resolved to apply for 186,713,400 shares worth UGX 51,346,185,000/= of the UMEME IPO.

On the same day, 23 October 2012, Mr. Ivan Kyayonka wrote to the Minister of Finance making a case for investment in UMEME IPO shares and requested for a no-objection.

*Amie*

*H*

*12*

*RA*

*T. Humphreys*

On 7<sup>th</sup> November 2012, Hon Maria Kiwanuka, the Minister of Finance offered a 'No Objection' to the investment in the UMEME IPO.

However, the Minister of Finance, Hon Maria Kiwanuka, in her letter dated 20 August 2012 to the Minister of Energy and Mineral Development's request for no-objection to minority offer of shares in UMEME Ltd to the public and listing on the Uganda Securities Exchange, had observed that

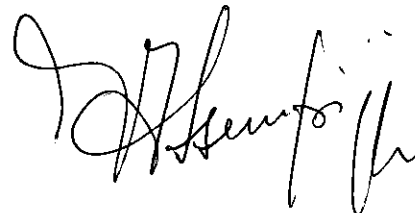
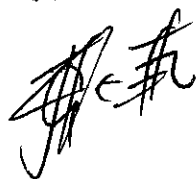

...Depending on how many shares UMEME plans to list and how much capital it intends to raise, the IPO can help boost activity on the bourse and such development can lead to Uganda's pension funds and individual investors to become owners of Umeme and thus benefit from the Company's long-term growth.

However, the Minister also indicated that the proposed IPO should not contravene the provisions of the Government Support Agreement and the Amended License Conditions for Supply of Electricity and the Amended License Conditions for Distribution of Electricity.

On 12 November 2012, the Corporation Secretary, NSSF, David Nambale wrote to the Ag Solicitor General seeking legal advice on the purchase of shares in UMEME Ltd IPO. He indicated that the allotment date was 16<sup>th</sup> November 2012.

The Committee observed that the letter to the Ag Solicitor General was received on the 15<sup>th</sup> day of November 2012. The Committee further observed that before the legal advice was sought from the Ag Solicitor General, NSSF management had, on 7<sup>th</sup> November 2012, issued to UMEME Ltd an irrevocable Bank Guarantee by the Standard Chartered Bank for UGX 51,346,185,000/= in consideration of the allocation of shares to NSSF. Therefore, in effect, NSSF management committed NSSF in the purchase of UMEME IPO shares before seeking legal advice from the AG/SG.

And on 16<sup>th</sup> November 2012, the Chairman of NSSF Board and the MD of NSSF took a decision to apply for 186,713,400 shares worth UGX 51,346,185,000/=, a decision which they had already made on 7<sup>th</sup> November 2012 when they provided a Bank Guarantee to UMEME Ltd.





Well after the deal had been concluded, on 6<sup>th</sup> December 2012, the Solicitor General responded to the letter of 12 November 2012 by attracting the attention of NSSF to the report of the Parliamentary Ad hoc Committee on Energy, which had recommended that the UMEME contract be terminated, and asked whether in spite of the above mentioned report, NSSF wished to go ahead with the purchase of UMEME shares. The Solicitor General also indicated that the allotment date of 16 November 2012 had elapsed.

On 19<sup>th</sup> December 2012, the Corporation Secretary NSSF wrote to the Solicitor General informing him that the Government of the Republic of Uganda through the Minister of Finance, Planning and Economic Development granted the Fund a 'no-objection' to purchase shares offered by UMEME Ltd, and that the Fund had gone ahead to purchase a total of 131,502,300 shares as of 14<sup>th</sup> December 2012.

On 10<sup>th</sup> January 2013, the Solicitor General wrote to the Corporation Secretary NSSF. He expressed dismay at how the matter had been handled. He ended his letter by informing the Corporation Secretary NSSF that "seeking legal advice from this office (office of solicitor general) is not a mere formality."

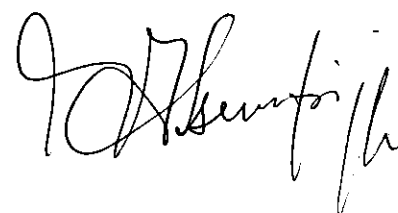
#### **2.4.3 Failure to seek and secure the approval of the Board and the Solicitor General**

From the facts above, the Committee established that in the process of purchasing UMEME IPO shares in 2012, the NSSF Board Chairman, Mr. Ivan Kyayonka and the MD NSSF Mr. Richard Byarugaba purchased the UMEME IPO without the approval of:

1. The Board of NSSF
2. The Solicitor General.

##### **2.4.3.1 Did the NSSF Board Chairman and MD Error to purchase IPO without the Approval of the Board?**

The Committee received evidence from the NSSF Board Members representing the workers that Mr. Ivan Kyayonka purchased UMEME IPO shares without the involvement of the Board.



They also tendered evidence where Mr. Ivan Kyayonka apologized for the anomaly, in form of Minutes of the Board Meeting. In the Minutes, it was alluded that Mr. Ivan Kyayonka was in a hurry to purchase UMEME shares because the proceeds would go to the independent thermal power producers (IPP), the suppliers to UMEME, who would then pass on the money to SHELL, where Mr. Ivan Kyayonka was a director. Mr. Ivan Kyayonka admitted that the IPPs were supplied heavy diesel fuels by SHELL to generate and supply power to UMEME Ltd. Hence, the Board Members alluded to possible conflict of interest for the NSSF Chairman.

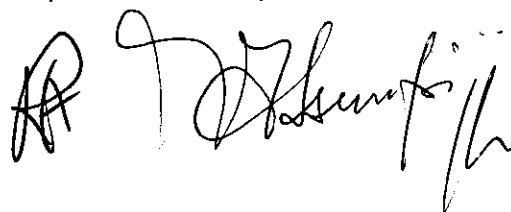
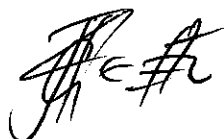

The Committee inquired from the Ag MD Ms Geraldine Ssali and the former MD, Mr Richard Byarugaba and the Mr Ivan Kyayonka why the entire Board of NSSF was not involved in the UMEME investment as is required under the NSSF Act.

The Committee was informed that the 2012 UMEME investment was handled under the NSSF Investment Policy of 2011. Under the said policy, the power of the Board in IPO investments had been delegated to the NSSF MD and the Chairman of the Board. The NSSF Investment Policy dated 8<sup>th</sup> December 2011 that was duly approved by the NSSF Board provides that:

- All the IPO investments are to be scrutinized by the Management Investment Committee chaired by the MD;
- The Managing Director shall seek Chairman's approval before such investments are undertaken
- The Chairman NSSF Board shall approve all investments
- The Minister shall provide a 'no objection' to the investments.
- The MD NSSF shall report all such transactions at the next NSSF Board meeting.

Accordingly, therefore, the Board delegated its powers over the IPO investments to the Board Chairman.

The Committee asked Mr. Ivan Kyayonka, the Chairman of the NSSF Board to explain why he apologized to the Board Members for not involving them in the UMEME IPO investment if he believed he had operated in accordance with the policy. He responded that he just apologized but had not committed any mistake.



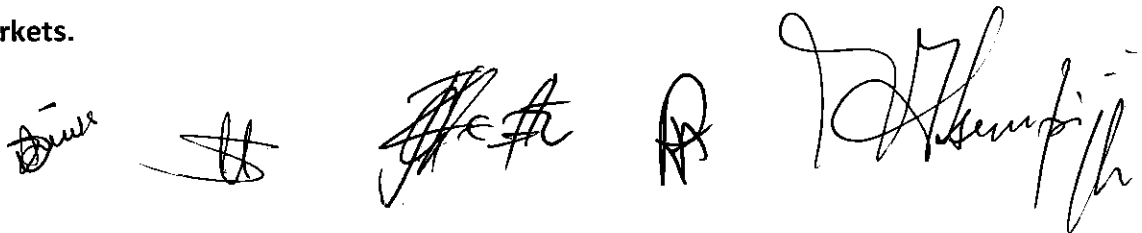
*The Committee observed that there was no requirement at the time to subject the IPO investments to the approval of the NSSF Board. Hence, there was no error committed when the Mr. Ivan Kyayonka and Mr. Richard Byarugaba when they purchased the UMEME IPO without the approval or involvement of the NSSF Board Members.*

**2.4.3.2 Did the NSSF Board Chairman and MD Error to purchase IPO without seeking the legal advice from the Solicitor General?**

As already discussed above, the NSSF MD and the NSSF Board Chairman committed NSSF to purchase UMEME IPO before seeking legal advice from the Attorney General/Solicitor General when they issued, through Standard Chartered Bank, an irrevocable Bank Guarantee of UGX 51,346,185,000/= to UMEME on 7<sup>th</sup> November 2012. Later, NSSF Management tried to clear the error by seeking legal advice from the Solicitor General on 12 November 2012. In the opinion of the Committee, the act of issuing an irrevocable bank guarantee to UMEME before seeking legal advice from the Attorney General violated Article 119 (5) of the Uganda Constitution.

When the NSSF management was asked to explain why they violated the law, they argued that the spirit of the framers of the provisions on the investment in the NSSF Act was not to subject quick investment decisions to the constitutional and bureaucratic approvals by the various agencies of the Government, such as the PPDA and the Solicitor General's Office. Further, they cited the practice in the neighbouring countries where pension funds trustees such as in Tanzania do not subject their investment decision making to the approvals of the PPDA or the AG. The Committee further received testimonies that management of NSSF had previously written to the AG to exempt NSSF investments in equities from the requirement of Article 119 (5) since quick decision making has to be made by the Fund.

**The Committee recommends that the Minister of Finance and the Attorney General should urgently institute reforms to enable quick and efficient investment of social security funds in equity markets.**



#### 2.4.4 Possible Conflict of Interest – Nexus between Shell – Independent Power Producer – UMEME - NSSF

The Committee tried to establish whether Mr. Ivan Kyayonka acted behind the back of his colleagues because of the vested interest where– Shell –a company where he was the Managing Director, would be the beneficiary of NSSF purchase of UMEME shares. Mr. Kyayonka indicated that there was no conflict of interest because Shell (U) Ltd ceased to supply fuel to independent power producers in 2011 and at the time of the UMEME IPO sale, Shell had no existing business relationship with any of the independent power producers (**Refer to Minute 77.8 of the 5<sup>th</sup> Extra Ordinary Meeting of the 9<sup>th</sup> Board, held on 18 Dec 2012**).

However, Mr Ivan Kyayonka testified before the Committee that his company – Shell- supplied heavy diesel fuel to the independent power producers such as *Aggrego and Electromaxx*. These producers were selling their generated power to UMEME Ltd. The Committee obtained information to the effect that these thermal power generators switched off their thermal generators in protest of unpaid arrears (See African Alliance Research Note on UMEME Ltd dated 3 September 2012, pg. 12.).

It, therefore, would appear that since the independent power producers had not been paid by UMEME Ltd, they also had not paid Shell for the heavy diesel supplied. Hence, any proceeds to UMEME Ltd would be used to offset its debts to its suppliers, including the IPPs, and these, in turn, would offset their obligations to their creditors, including Shell. So, any support to sell and or buy UMEME IPO would indirectly be beneficial to Shell.

The Committee established that one of the owners of the IPPs was Mr. Bitatule, who was at the same time the Director of UMEME Ltd that was selling IPO. Another owner of an IPP is Charles Mbiire, who is also a Director at the Uganda Securities Exchange where UMEME shares would eventually be traded. And, of course, Mr Ivan Kyayonka of Shell who needed his money back from the two gentlemen was the Chairman, NSSF Board who at the same time was anxious at buying the UMEME IPO.

*The Committee observed that Mr Ivan Kyayonka appeared to have acted under conflict of interest when he pushed NSSF to purchase the UMEME IPO, even without the approval of the Solicitor General.*

**The Committee recommends that Mr. Ivan Kyayonka forced to vacate the Board of NSSF due to his irregular action in pushing NSSF to purchase UMEME IPO shares without the approval of the Solicitor General.**

## **2.5 NSSF Acquisition of More Shares in UMEME Ltd in 2014**

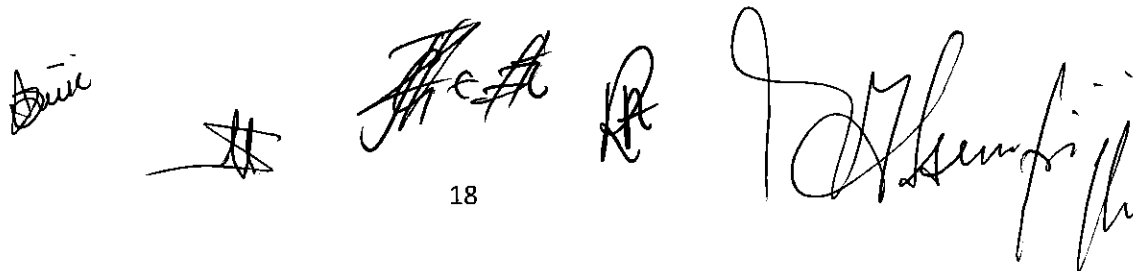
### **2.5.1 The Question of Concern**

In October 2013, NSSF received an unsolicited offer from Stanbic Bank Uganda, the transaction advisor appointed by Umeme Holding, to increase its (NSSF) shareholding in UMEME Ltd from 8.1% to 15% by buying 111,858,930 shares out of a block of 731,971,804 ordinary shares belonging to Umeme Holdings that were to be listed on Uganda Securities Exchange. Umeme Holdings Ltd was selling 45.08% of its stake in UMEME Ltd to reduce its overall holding to 15%.

On 9<sup>th</sup> May 2014, NSSF purchased further 111,858,930 shares at UGX 340 per share from Umeme Holdings on the secondary market. This pushed NSSF's shareholding in UMEME Ltd to 14.2%. The question of concern was: **Was the purchase made transparently and in accordance with the laid down procedures?** To get the answer to the foregoing question, the Committee critically looked at the chronology of events leading to the purchase of these shares, and examined whether the requisite approvals were obtained and due diligence was done.

### **2.5.2 Amendment of the Investment Policy**

Following disagreements by the Board Members on the role of the chairman in the IPO acquisition, the Investment Policy of NSSF was in June 2013 amended to provide that investments in equities shall be approved by the Board. Hence, the acquisition of the UMEME shares on the securities exchange in 2014 was or ought to have been approved by the Board.



### 2.5.3 Offer of More Shares to NSSF

As seen above, in October 2013, Stanbic Bank approached NSSF with an offer to sell NSSF a further 111,858,930 shares, being offered by Umeme Holdings, a major shareholder in UMEME Ltd. The offer was studied by the NSSF Business Development Manager in charge of equities. On 19<sup>th</sup> March 2014, he recommended, in a note to the Management Investment Committee to take up the offer at a price of UGX 350/= per share.

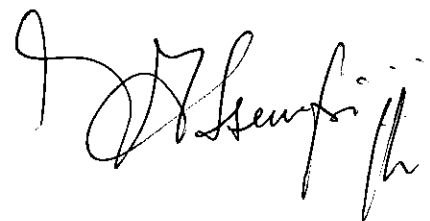
### 2.5.4 Processing of the Offer at the Management Level

On 21 March 2014, the Investment Risk Manager, in his Risk Assessment Report to the Management Investment Committee recommended that NSSF should not take up the additional offer from UMEME Ltd. Key concerns raised by the Risk Manager were as follows:

- There would be concentration of risk if additional shares were to be bought in UMEME Ltd
- The Fund had not created value from its investee companies where it holds a significant shareholding position, examples being: Uganda Clays Ltd, Housing Finance Bank Ltd; TPS Uganda Ltd and New Vision Ltd
- Acquiring a significant exposure in a company (such as UMEME) implied involvement in its strategic direction to determine capital structure, management team and technology, which requires a Board and management team with diverse experience, effective reporting and analytical capacity – competences which were largely lacking in the NSSF
- Uncertainty about UMEME Ltd's concession in light of the Parliamentary Ad Hoc Committee recommendations.

On 24 March 2014, the Business Development Manager –Equities made a response to the risk assessment report and reiterated his recommendation to NSSF Management Investment Committee to purchase the offer.

The Legal Department of NSSF also conducted a legal due diligence on the proposed offer and recommended that, should the proposed investment materialize, the Fund should seek a seat



on the Board of Directors of UMEME Ltd, and this should be done immediately after the transfer of shares. The Legal Department further recommended that the (un-named) Committee nominate a person to be confirmed by the Board that should be proposed as a Director representing NSSF on the Board of Directors of UMEME Ltd.

On 25<sup>th</sup> March 2014, Management Investment Committee met and reviewed the risks and opportunities, and resolved that NSSF should take up the offer at UGX 350 per share and maximum of UGX 380 per share.

Consequently, Management Investment Committee referred the matter to the Board Investment and Project Monitoring Committee.

#### **2.5.5. Processing of the Offer at the Board Level**

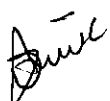
On 31 March 2014, the Investment and Project Monitoring Committee met and resolved to support the purchase of more UMEME shares.

On 6<sup>th</sup> May 2014, the Ag Corporation Secretary wrote to the Solicitor General seeking clearance for NSSF to purchase more shares on the secondary market. It is important to note that the Board approval had not been secured when the CS was writing to the SG

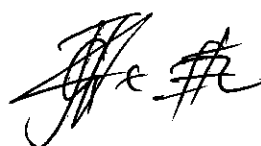
On 7<sup>th</sup> May 2014, another letter was written to the SG on the same matter reminding him of the exigencies of time and also informing him that other processes such as the Board approvals were on-going.

On the same 7<sup>th</sup> May 2014, a Board meeting was convened to consider the approval of the purchase of more shares from UMEME Ltd. The meeting failed to agree on the proposal. It was agreed that all members go and consult their constituencies and submit their position on the proposed offer via e-mail to the Chairman NSSF Board, Mr. Ivan Kyayonka the following day, 8<sup>th</sup> May 2014, latest by 4:00 p.m.

Out of the 10 Members of the Board of NSSF, five (5) Board Members (Mr. Mukasa Henry, Ms Agnes Kunihira, Mr Richard Bigirwa, Mr Okello Musa and Mr Kahirita Christopher) sent a joint e-mail to the chairman reaffirming their earlier position that the purchase of more shares from



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UMEME be put on hold. Another member (Pius Bigirimana) communicated that the investment was attractive but indicated that funds should not be committed before obtaining clearance from the Solicitor General. Another member, Mrs Sarah Walusimbi communicated her support for the investment 'provided all the required procedures are complied with and the necessary authorizations and clearances from the Minister of Finance and Attorney General are obtained.'


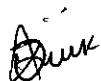
The Committee was informed that the other remaining three Board Members, namely; Mr. Patrick Ochailap – who was the chairman of the Board's Investment and Project Monitoring Committee; Ms Geraldine Ssali who was the Ag Managing Director NSSF and Mr. Ivan Kyayonka, Chairman of the Board were already in support of the transaction and did not have to send their position via e-mail.

**The Committee observed that the three Board Members that did not communicate their position violated the resolution of the Board that was made on 7<sup>th</sup> May 2014 which required all members to consult and submit their position to the Board Chairman by e-mail.**

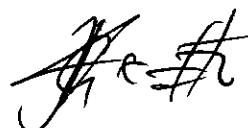
The Committee was informed that when the responses were tallied in the afternoon of 8<sup>th</sup> May 2014, it was found that the proposal to invest was supported by 5 members and rejected by 5 members. To break the deadlock, and in line with Section 5 (4) of the NSSF Act, the chairman of the Board exercised his casting vote in support of the transaction. Section 5 (4) states: Decisions of the Board shall be taken by a simple majority of the members present and voting, with the person presiding having a casting vote.

Some of the legal technicalities that the Committee grappled with were: Was the decision taken through voting? Did the sending of e-mails constitute voting? Did the three Members who did not send e-mails to the chairperson vote or abstain? Was what was done envisaged under the law? Can one be a presiding officer outside of a meeting? Can one exercise his or casting vote when there is no formal sitting?

The Committee noted that the manner in which the decision by Mr. Ivan Kyayonka, the NSSF Board Chairman was taken to purchase further shares from UMEME Ltd was grossly irregular. *The Committee recommends that Mr. Ivan Kyayonka should be reprimanded.*



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### 2.5.6 Solicitor General's Legal Advice on the second purchase of shares

The Committee noted that on 9<sup>th</sup> May 2014, the Solicitor General wrote to the NSSF clearing the transaction subject to the approval of the Board and authorization by the Minister of Finance.

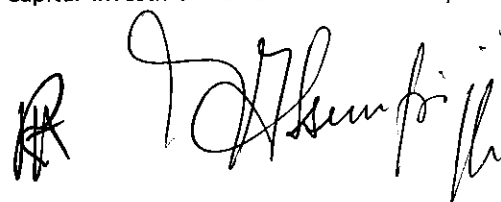
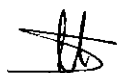
### 2.5.7 Approval by the Minister of Finance

As already seen above, some members of the Board, such as Mrs. Sarah Walusimbi and Mr. Pius Bigirimana had supported the investment subject to the approval of the Minister. Even the Solicitor General, as already seen above, had advised that the transaction should be authorized by the Minister of Finance. The Committee inquired whether the Minister of Finance had approved the purchase of more shares from UMEME Ltd by NSSF. The Committee's findings are highlighted below.

On 7<sup>th</sup> May 2014, the Chairman NSSF Board, Mr. Ivan Kyayonka wrote to the Minister seeking her no objection to the purchase of more shares from UMEME Ltd, and informed her that the transaction had to be closed by the 9<sup>th</sup> day of May 2014.

On 13 May 2014, the Minister wrote to the Chairman NSSF declining to grant immediate approval of the transaction due to the short notice given. She also gave a comprehensive list of concerns that NSSF ought to consider before it thinks of investing in UMEME. In her letter, she cautioned as follows:

- a. NSSF wants to take up 15%, thereby acquire a seat on UMEME Board. However, no mention is made about who will take up the remaining 38% divested shares this shareholder(s) if it has a significant holding would have a very influential voice in controlling UMEME decisions.
- b. The suggested shares cap price seem to be higher than the market price of 360/= as at 8<sup>th</sup> May, 2014. Although it is only "a snapshot view", surely the USE market dealings would provide a more objective platform for valuing a listed company like UMEME. It is also noted that UMEME had a very generous dividend payout policy in the period prior to the share offer and as such that policy may have also artificially inflated UMEME share value.
- c. UMEME is currently enjoying a monopoly position and is protected by a contract that is under public debate. While UMEME appears to be very profitable, it may be due to increased efficiency in revenue collection and not growth in asset base. Capital investment in asset base is very crucial in deciding future revenue flows.



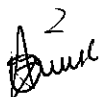
- d. UMEME debt position also needs further scrutiny. Total liabilities: equity ratio is about 70:30. Further, current liabilities are over 60% of the total liabilities. The trend is also visible in the financial projections.
- e. UMEME currently accounts for over a significant part of NSSF's investment portfolio, at the same time, NSSF should give due thought to other long term income generating infrastructure instruments for NSSF's consideration, such as the two upcoming hydro-power generation projects (Karuma and Isimba) which will effectively double the national generation capacity.
- f. In summary, while the UMEME investment appears to be very attractive, I recommend that the Board and management get an independent proven expert to review the whole investment proposal including the sustainability of financial projections and the risk concerns raised in the report and which would affect the viability of NSSF's long-term objectives.

On 16<sup>th</sup> May 2014, NSSF was allocated 100 million shares at UGX 340 per share translating into a total cost of UGX 34 Billion.

When the Committee put Mr. Ivan Kyayonka to task to explain why he authorized the purchase of shares without obtaining approval from the Minister, his response was that he telephoned the Minister on 8<sup>th</sup> May 2014 and the Minister informed him that she could grant immediate approval and left it to him to make a choice provided he was ready to take personal responsibility for any consequences that may arise. He indicated that he was ready to take personal responsibility.

The NSSF Management further made an argument that it was not essential, as a result of the enactment of the URBRA Act, that the Minister had to be consulted before the investment was made. They argued that the requirement for the consultation of the Minister in matters of investment was a creature of the NSSF Act of 1985. However, this changed with the enactment of the URBRA Act. Section 95 (1) and (3) provides for the supremacy of the URBRA Act over all other laws in matters of retirement schemes. Section 91 (1) and (2) (g) limits the involvement of the Minister to issuing statutory instruments for policy guidance.

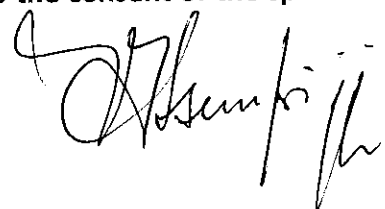
To this end, the Minister in April 2014, by statutory instrument No 44, issued the Uganda Retirement Benefits Regulatory Authority (Investments of Scheme Fund) Regulations 2014 that guide investment of funds by retirement benefit's scheme, such as the NSSF. Under Regulation No. 3 (3), it is provided as follows: **The investment policy statement of a scheme shall not require that a decision to make an investment shall be subject to the consent of the sponsor.**





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They argued that when they acquired shares in UMEME in 2014, they were operating under a new dispensation which does not mandatorily require securing consent of the sponsor or Minister before making an investment.

The Committee observed that the manner and timing in which the Minister and the Solicitor General were treated in the acquisition of shares was irregular and suspicious. The transaction started in October 2013 and was concluded on 16 May 2014, a period of 8 months. However, the Board Chairman and Ag MD decide to involve the SG and the Minister of Finance all between 7 – 16 May 2014, and make it look like there is crisis which need urgent decision.

**In light of the above, the Committee recommends that Mr. Ivan Kyayonka and Mrs G.Ssali should be reprimanded for their dubious and irregular actions in the acquisition of shares.**

## **2.6 African Alliance as both the Investment Advisor to NSSF and the lead sponsoring broker for UMEME Ltd: Conflict of Interest?**

In a legal due diligence report by the legal advisory services of NSSF on UMEME IPO, dated 7<sup>th</sup> November 2012, potential conflict of interest involving African Alliance was underlined. It was reported:

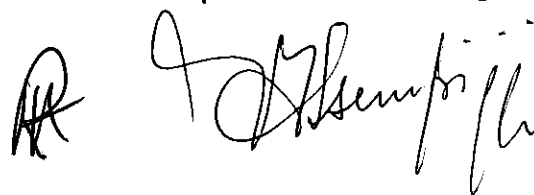
African Alliance has a contract with the Fund to act as its broker for transactions on the USE. It is also the lead sponsoring broker for the IPO as well as one of the authorized selling agents. Clarification needs to be sought as to the propriety of African Alliance acting as both the seller and buyers broker from which they collect fees. Management needs to clarify on the fees to be paid to African Alliance in respect of the IPO. Capital Markets Authority should be requested to pronounce itself on this potential conflict and their effect if any on the Fund's participation in the IPO. The Capital Markets Authority (Conflict of Interest) Regulations and the CMA (Corporate Governance) Regulations are instructive. Additionally, African Alliance should be availed an opportunity to respond to this possible conflict of interest.

The Committee found that the NSSF management did not heed the advice of their legal advisors as they did not consult CMA on the matter or even invite Africa Alliance to comment.

**The Committee recommends that the MD NSSF should be faulted and punished for avoiding the advice and the proper procedure.**



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### 2.6.1 How was African Alliance (U) Ltd procured by the NSSF and for what purposes?

African Alliance (U) Ltd is a subsidiary of the African Alliance Group, that was incorporated in Uganda on 20 February 1997 to carry on the business of merchant bankers, investment business managers, finance arrangers, finance advisors, fund managers, stock brokers etc. Its shareholders are: African Alliance Kenya Investment Bank Ltd and de Castro Antonio Manuel Baptista. The Chief Executive Officer of African Alliance Uganda is Mr Kenneth Kitariko.

The Company was first contracted by the NSSF on 20 October 2010 to provide brokerage services for Uganda Securities Exchange transactions for one year, from the 1<sup>st</sup> day of October 2010 at a brokerage commission and fees as stipulated in the Rules and Regulations of USE but in any case not more than 2% of the value of each transaction. After the expiry of the contract, NSSF advertised for a bidder to provide brokerage services on Regional Stock Exchange Market. On 24 February 2014, the Accounting Officer of NSSF displayed the best evaluated bidder as MS African Alliance Uganda Ltd at a contract price on the Uganda Stock Exchange of 2.1% (up to UGX 200 Million), 1.9% (up to UGX 800 Million) and 1.2% (up to UGX 1 Billion). Other prices for Nairobi Stock Exchange, Rwanda Stock Exchange and Tanzania Stock Exchange were also indicated. On 9<sup>th</sup> July 2012, Africa Alliance was appointed by NSSF to,

- provide trade origination and execution services to the Fund on the Regional Stock Exchanges;
- advise the Fund on IPOs, cross listings, and any secondary equity offerings in East Africa;
- provide timely market updates and research;
- advise the Fund on proposed increases or decreases from existing equity portfolio.

It was under this contract that African Alliance, as a broker, procured for NSSF UMEME IPO shares in 2012 and UMEME shares on the secondary market in 2014 totaling 231,722,771 shares at total cost of UGX 71,834,059,010/=.

### 2.6.2 When African Alliance acted both as a seller and buyer



The Committee found that the same broker for NSSF, African Alliance, was the Lead Sponsoring Broker for the UMEME IPO as well as one of its authorized selling agents. At the second listing of UMEME Ltd in 2014, again, African Alliance acted on behalf of the Stanbic Bank as the retail coordinating broker when it was still a broker for the NSSF.

The Committee invited Mr. Kenneth Kitariko, the CEO African Alliance, to comment on the possibility of conflict of interest arising from the multiple roles the company played and when it acted both as a seller and a buyer.

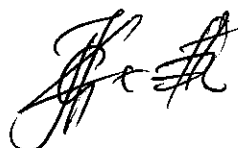
He categorically denied any possible conflict of interest. He argued that the drivers of conflict of interest in the IPO market were eliminated because the price of the share is set by the company and the transaction advisor, and is non-negotiable.

He further indicated that as the deliverables under the Contract with UMEME Ltd were different from the deliverables under the NSSF Contract. As a sponsoring broker, the work was to introduce the company to the regulators (CMA and USE). Its performance services were:

- In cooperation with the Transaction Advisor – Stanbic Bank- facilitate all communication between UMEME and CMA and USE
- Present the application for admission of the listing of the IPO on the USE
- Review and comment on guidance that the lead transaction advisor, and legal counsel to UMEME provide to the company – UMEME Ltd
- Assist the Lead Transaction Advisor and UMEME in setting key information for the IPO
- Undertake sponsoring stock brokerage tasks as may be required by the LTA, CMA and USE.

He further indicated that there were only 8 licensed brokers in Uganda and that due to the few brokers, there would always be a situation where a sponsoring broker for the issuer would also be a broker for the investing buyers.

He also indicated that conflict would not arise because all fees of the transaction advisor team are borne by the company and are published in the IPO prospectus.



**The Committee invested a lot of energy in the matter of conflict of interest by Africa Alliance and after a lengthy legal research, made some observations, indicated below.**

A broker is defined under Rule 2 of the Uganda Securities Exchange Listing Rules, 2003 to mean:

a body licensed by the Capital Markets Authority and approved by the Governing Council of the Uganda Securities Exchange limited to carry on the business of buying and selling of securities as an agent for investors, in return for a commission.

A conflict of interest is defined in Black's Law Dictionary, 8<sup>th</sup> Edition as 'a real or seeming incompatibility between one's private interests and one's public or fiduciary duties.'

It arises when a person has a duty to more than one person or organizations. In the case of **Uganda vs. Patricia Ojangole vs. Patricia Ojangole HCCC No. 1 of 2014**; Gidudu J stressed that a conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that decisions may be unduly influenced by secondary interests.

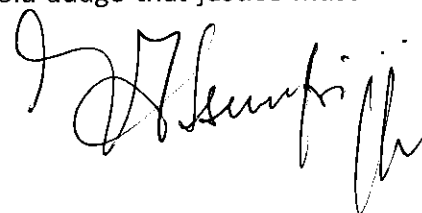
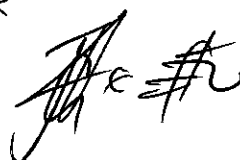
Conflict of interest in this case may be presumed particularly when a financial institution provides multiple services and the potentially competing interests of those services may lead to a concealment of information or dissemination of misleading information. A conflict of interest exists when a party to a transaction could potentially make a gain from taking actions that are detrimental to the other party in the transaction.

This rise in prices can entice more people to believe the hype and then buy shares as well. The stock brokers will then sell their shares and stop promoting, the price will drop, and other investors are left holding stock that is worth nothing compared to what they paid for it. The brokers are using their knowledge and position in a way to influence and control others and gain personally, which is morally wrong.

It is both the actual and the perception that count when tracing conflict of interest in a transaction. It is what a reasonable person would conclude while viewing the transaction from a distance that counts. It is related to the rule against bias. This old adage that justice must



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not only be done but must be seen to be done applies to principle of conflict of interest as well.

The best way to deal with conflict of interest is to avoid it completely whenever it arose regardless of whether any harm or prejudice accrued or not. This is what best professional practices dictate and this is what African Alliance, a reputable investment firm ought to have done.

As stated earlier, it is immaterial whether the conflict of interest was remote, or that the manner in which it arose, or the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.

Furthermore, a broker or dealer is enjoined to disclose to CMA under Section 17 of the CMA the fact that he is acting as an agent or a nominee for another person.

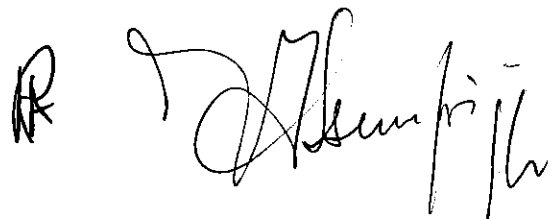
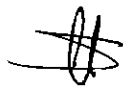
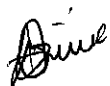
Among the considerations and qualities for the issuance of a broker's license under section 35 of the CMA Act are efficiency, honesty, fairness and good reputations.

Also section 57 of the Act is emphatic as far as disclosure of interest is concerned. It obliges a broker to include a concise note on the nature of any interest in acquisition of shares in any communication circular sent by a stock broker.

The Act further prohibits any fraudulent inducement of a person to deal in securities by dishonest concealment of material facts. Fraud can be attributed to African Alliance because of their omission to disclose to NSSF the nature of their relation with UMEME.

Regulation 4 of the Capital Markets (Conduct of Business) Regulations states that:

where a Licensee has material interest in a transaction to be entered into with or for a customer or a relationship which gives rise to a conflict of interest in relation to that transaction, the Licensee shall not knowingly either advise, or deal in the exercise of a discretion in relation to that transaction unless he or she has fairly disclosed that material interest or relationship, as the case may be to the customer or has taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interest of the customer.



Pursuant to the above provisions, African Alliance as Licensed stock brokers offended these provisions and in order to act as a deterrent and in order to promote professionalism for upcoming investment brokers both local and international, they should be prosecuted and punished according to the law. The Committee is of the view that, African Alliance Uganda Ltd has not only violated the stock exchange laws and regulations in Uganda but also fallen short of meeting international standards of corporate governance and best practices in the stock exchange market. Focus on corporate governance in the global financial markets aims to promote accountability, transparency and investor confidence.

*The Committee recommends that African Alliance Uganda Ltd should be visited with sanctions by the Capital Markets Authority for having conflicted its interest by working both as a seller for UMEME Ltd and buyer for NSSF.*

## **2.7 Role Played by the Capital Markets Authority in the NSSF purchase of Shares**

### **2.7.1 Protective Mandate of CMA**

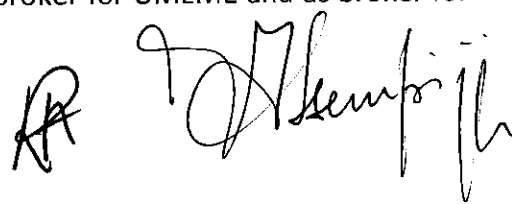
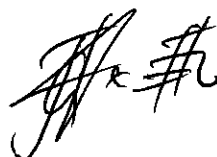
Section 5 (2) (c) of the Capital Markets Act indicates that the protection of investor interests is one of the core functions of CMA. Of interest to the Committee was to establish whether, in the process of investing worker's savings in UMEME Ltd, CMA as a regulator delivered a protective role to ensure that worker's savings were securely invested.

### **2.7.2 Role of CMA in the Issuance of IPO by UMEME Ltd**

The Committee interacted with CMA technical team on the subject of UMEME IPO and was informed as follows:

The transaction was done in a transparent manner

- All the required approvals for issuing the IPO were obtained by UMEME Ltd
- All the selling brokers for the IPO were duly licensed by the CMA
- African Alliance did not operate under a situation of conflict of interest as it could not gain undue advantage when it acted as sponsoring broker for UMEME and as broker for





NSSF as the latter did not pay commission or fees to Africa Alliance for the IPO share purchase

- CMA ensured that there was full disclosure by UMEME Ltd in the IPO Prospectus
- CMA approved the IPO prospectus

However, the Committee discovered that the Prospectus was issued by UMEME Ltd before final approval by the CMA, and CMA did not act. The Committee observed that the application for issuing the IPO was lodged to CMA on 6<sup>th</sup> June 2012. The approval by the CMA Board was given on 12 October 2012 subject to a number of conditions which had to be fulfilled first:

- The transaction Advisor to provide copy of the Minutes of Umeme Holdings Ltd notarized and submitted to CMA;
- Amendment of the legal opinion to reflect that the lawyers have reviewed the Resolution by Umeme Holdings Ltd to offer a total of 350 million shares
- Submit the revised prospectus to the CMA for review prior to the opening of the offer (when was the offer opened)

In spite of the above clear conditions precedent to the opening of the offer, UMEME Ltd issued the Prospectus on 11<sup>th</sup> October 2012, obviously before receiving approval from CMA, the regulator.

The Committee noted that CMA did not sanction UMEME Ltd or its sponsoring broker for the anomaly of issuing the prospectus before fulfilling all the conditions set by the CMA.

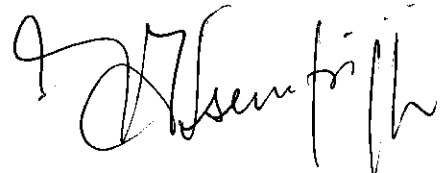
**The Committee recommends that the Management and Board of CMA should be reprimanded for their complacency.**

## **2.8 Was UMEME Investment good for NSSF?**

The Committee was informed by the NSSF management that their investments in UMEME were the best performing portfolio. However, the Minister of Finance, in her letter of 13 May 2014 to the Chairman NSSF Mr. Ivan Kyayonka, underlined the salient risks in UMEME investments. The contents of the letter are already indicated above. In addition, the Ad Hoc Committee of



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Parliament in its report on the electricity sector did show that the UMEME concession was unfavourable to Uganda, and should be terminated. The recommendation was adopted by the Parliament of Uganda.

## **2.9 Is UMEME Ltd a law abiding company in terms of tax compliance?**

The Committee invited the URA Commissioner General to indicate to the Committee whether UMEME Ltd had been tax compliant, including payment of capital gains tax.

### **2.9.1 Corporation Tax**

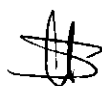
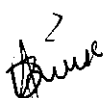
The Committee was informed that UMEME Ltd had always filed returns showing no profits and hence no taxes to pay or under declaring its profits. However, URA usually conducted audits to assess taxes payable. Two audits were carried out between 2005 and 2012. The first audit assessed tax payable by UMEME being UGX 66,115,136,000/= and the second audit assessed UGX 66,115,136,000/=.

Both assessments were based on miss-classification of assets in the books of accounts, among other issues. It was found that UMEME Ltd was treating the assets belonging to UEDCL as their own assets and claiming capital deductions on them.

The Committee was informed that UMEME Ltd agreed to pay some of the assessed taxes and objected to pay some. The matter was before court.

### **2.9.2 Capital Gains Tax**

The Committee was informed that UMEME Ltd and Umeme Holdings Ltd could not pay taxes on the proceeds from the sale of the shares because the transfer transactions were not subject to capital gains tax. URA quoted Section 79 of the Income Tax Act which states the income derived from sources in Uganda to the extent to which it is; .... (g) *'derived from the disposal of an interest in immovable property located in Uganda or from shares in a company the property of which consists directly or indirectly principally of an interest or interests of such immovable property, where the interests of such immovable property, where the interest or share is a business asset.'*



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URA submitted that capital gains tax, in relation to transfer of shares involving non-residents, is premised on the income sourcing rules in Uganda. The sourcing rules require that the shares being disposed of should be backed by existence of immovable property in Uganda.

URA observed that according to the Concession Agreement, the assets (immovable property) that UMEME Ltd uses belong to UEDCL and not UMEME. UMEME shares are hence not backed by immovable property located in Uganda. Rather, their shares are backed by an intangible asset in Uganda called the concession. Hence, UMEME could not be asked to pay capital gains tax.

***The Committee recommends that the Income Tax Act be reviewed to address the loophole that concession holders in Uganda will use to avoid capital gains tax payment.***

### **2.9.3 Hon Gerald Ssendaula and the Tax dispute between URA and UMEME**

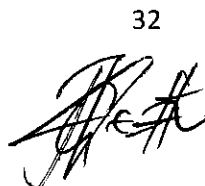
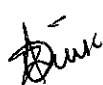
We have seen that on corporation tax payment, URA and UMEME Ltd are in court. The Committee found that Hon Gerald Ssendaula who is a Director at UMEME Ltd that is contesting corporation tax payment is at the same time the Chairman, Board of Directors at URA that is responsible for assessing and collecting government taxes.

***The Committee recommends that Hon Gerald Ssendaula should be forced to relinquish one of the positions in either URA or UMEME Ltd to avoid conflict of interest.***

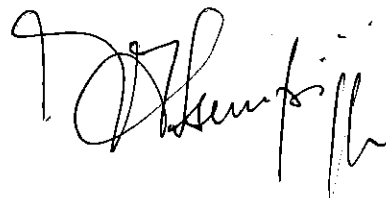
### **2.10 Regulatory Issues Associated with UMEME Sale of Shares and the Concession**

It should be recalled that UMEME Ltd has to operate under the provisions of the concession agreement it signed with the Government in 2004. However, it would appear that the conditions under the Concession Agreement were not fully complied with during the UMEME sale of shares. In other words, UMEME Ltd sold beyond what it was legally supposed to do as per the concession agreement.

Section 6.2 (d) (v) of the Government Support Agreement permits the sale of ordinary share capital by the UMEME's initial shareholders to local Ugandans, and other persons, provided that the initial shareholders retain 51% or more direct or indirect ownership interest in the



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outstanding ordinary share capital. In addition, Section 10 of the Amended License Conditions for Supply of Electricity and the Amended License for Distribution of Electricity restrict a transfer as part of a public offering to at most 40%. The initial shareholders must retain at least 51% or more direct or indirect ownership interest in the outstanding ordinary share capital. The initial shareholders were Globeleq and Eskom. In 2006, Eskom sold its shares to Globeleq – which later became Umeme Holdings Ltd. The import of these provisions is to ensure that there will always be a controlling interest responsible for implementing the obligations of the concession agreement under the supervision of the regulator, Uganda Electricity Regulatory Authority.

The Committee found that ERA, the regulator, always emphasized the above mentioned conditions to both UMEME Ltd and CMA during the process of sale of shares. In addition, Hon Maria Kiwanuka, the Minister of Finance emphasized the said conditions in her Letter dated 20 August 2014 to Hon Simon D’Ujanga, Minister of State for Energy also then holding the portfolio of Minister of Energy and Mineral Development, when the latter requested a no-objection towards the proposed UMEME IPO. She wrote:

This Ministry (of Finance) has no objection towards the proposed IPO provided it is in compliance with the contractual obligations of UMEME in the Government Support Agreement and the Amended License Conditions for Supply of Electricity and the Amended License Conditions for Distribution of Electricity.

The letter was copied to the Permanent Secretary/Secretary to the Treasury who was also a Board Member of NSSF.

The Committee noted that at the second sale of UMEME shares in 2014, ERA was bypassed. Consequently, original shareholders sold their stakes in the company below the acceptable limits. The shareholders of the company on whom a due diligence was conducted by Government in 2004 before awarding them the concession are no longer the majority shareholders. The Committee observed that by 2014, after the IPO and Second Public Offering, the initial shareholding of the UMEME Ltd had dwindled beyond the acceptable limits as per the agreements mentioned above as shown in the Table below.

S/No	Shareholders	% shareholding
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1.	Investec Asset Management	18.5%
2.	Umeme Holdings Ltd	14.3%
3.	National Social Security Fund	14.27%
4.	Farallon Capital	7.8%
5.	Coronation Funds	3.7%
5.	Allan Gray Africa Funds	3.3%
5.	etc	

The Committee observed that CMA as a public body enjoined to safeguard the interest of Ugandans should not have allowed UMEME Ltd to sell shares to the level that violates the terms of its concession agreements.

**The Committee recommends that the Concession Agreement with UMEME Ltd be reviewed given the major changes that have occurred in the ownership of the Company.**

**The Committee further recommends that the Minister of Energy should audit the effect of the violation of the concession agreement as a result of the reduction of the shares of the original shareholding below the acceptable limits as per the concession agreement.**

**The Committee further recommends that the Minister of Finance should reprimand the leadership of CMA (Management and the Board) for its failure to do a comprehensive due diligence that would have safeguarded the interests of Uganda in the UMEME Concession Agreement.**

## **2.11 ERA – The Regulator and its protection of the Public**

The Committee inquired from ERA on whether UMEME was the one responsible for the cost of the poles, transformers, wire solidos, meters as part of their capital investment obligations. The Committee had observed that people pay for the above items when they apply for connection to the grid. ERA indicated that what the customers pay was a highly subsidized cost, but could not demonstrate the size or magnitude of the subsidy.

The Committee further observed that there were many complaints and public outcry about the oppressive behavior of UMEME field staff and exorbitant electricity tariffs.

The Committee observed that due to the weakness of ERA's regulatory oversight, UMEME was getting compensation for poles, solidos etc for which it did not buy.

The Committee recommends that this possible fraud should be further investigated by the relevant Government agencies.

The Committee further recommends that the performance of ERA be critically evaluated.

*Amwe*

*T. Thompson*

*AR*

*HS*

*J. K. #*

## CHAPTER THREE

### 3.0 INVESTMENT IN REAL ESTATE

#### 3.1 Introduction

One of the concerns of the House was the allegation that vital assets of the Fund, such as land, were being disposed of irregularly with no value for money. Yet, real estate is one of the critical means of investing workers savings. In this chapter, the Committee presents its findings after an investigation of how one asset, namely Plot 434, Kibuga Block 4, Namirembe Road was acquired and disposed of.

#### 3.2 Plot 434, Kibuga Block 4, Namirembe Road (0.2 hectares equivalent of 0.494 acres)

##### 3.2.1 How the Land was Acquired

The Committee was informed that in 2007, the Board of NSSF passed a policy on developing signature branch offices. The buildings would be located in strategic sites around the country and would house the branch offices and provide some rentable space for economic gain for the Fund. Consequently, branch managers were asked to identify suitable plots for sale which were then purchased by the NSSF. One such Plot was Plot 434 Namirembe Road.

On 29<sup>th</sup> April 2008, a one Lady Charlotte Ssali wrote to the then MD NSSF, Mr David Chandi Jamwa, offering to sell their property located at Namirembe Bakuli Market Parish Plot 434 Butikiro Road below Sanyu Babies Home to the NSSF at UGX 900 Million.

Consequently, NSSF management engaged three reputable firms to undertake a valuation of the above property with a view to ascertaining its open market value. The firms were: Bagaine & Company; East African Consulting Surveyors & Valuers; and Associated Consulting Surveyors. The firms findings are shown in the Table below.

Name of the Company	Inspection Date	Title/ Tenure	Boundary Opening	Valuation (UGX)
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<i>Bagaine &amp; Company</i>		Leasehold under Leasehold Register Volume 791 Folio 5.	Done by Sam Okia Okiiso on behalf of Bagaine in May 2008	725,000,000/=
<i>East African Consulting Surveyors</i>	16 June 2008	Freehold (Freehold Register Vol No. 54 Folio 14 formerly under Leasehold Register Vol No 791	Not done	550,000,000/=
<i>Associated Consulting Surveyors</i>	16 June 2008	Leasehold tenure for a term of 99 years effective 1 Jan 1969. However, we have been made to understand by the administrators that the lease has since been converted to freehold tenure, pending official documentation as per Freehold Register Volume 54 Folio 14.	Not done	370,000,000/=

On 8<sup>th</sup> July 2008, the NSSF Investment Analyst, Mr Paul Gimeyi, initiated procurement – purchase of land LRV 791 Folio 5, Plot 434 for Branch Development Bakuli, which request was approved by Grace Isabirye on the same day, i.e. 8<sup>th</sup> July 2008.

*Quire*

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On 8<sup>th</sup> July 2008, the same day the procurement was initiated, the then MD NSSF Mr. David Chandi Jamwa wrote to Lady Charlotte Ssali providing an offer price for land LRV 701 Folio 5 Plot 434 Namirembe a maximum price of UGX 650 Million as the final offer valid for 45 days.

On the 15<sup>th</sup> August 2008, land sale agreement was signed Charlotte Ssali and others as vendors and the MD NSSF as the purchaser. It was agreed that the purchaser was to pay UGX 650 Million in two installments, with a first installment of UGX 550 Million immediately, and the second and final settlement of UGX 100 Million to be paid to the vendor upon their successful acquisition of a freehold interest in the land and registration as proprietors thereof. The purchaser also undertook to pay the vendors reimbursable costs limited to the acquisition of the Freehold interest in the land, and further undertook to assist the vendors expeditiously secure the freehold interest. The Committee was informed that UGX 65 Million was spent by the NSSF on the conversion of leasehold interest into freehold.



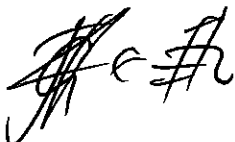

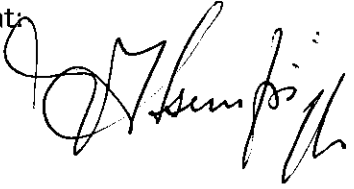
In Article 10 (f) of the said agreement, the vendors warranted to the purchase that there was no charge, encumbrance or third party dispute over the said land.

On 3<sup>rd</sup> August 2009, the title for Plot 434 Namirembe Freehold Register Volume 115 Folio 13 was transferred into the names of NSSF vide instrument 416202.

The Committee was not able to receive evidence from Mr Jamwa David on the purchase of Namirembe Land. When the Committee invited him, he indicated that he could not comment on the matter since it was subjudice; and this was subsequently confirmed by his lawyer, Mr. A.F. Mpanga, who was also the counsel to the Ag MD NSSF, Ms Geraldine Ssali. Therefore, the Committee missed the opportunity to question Mr. Jamwa David on the exorbitant cost of the freehold process and whether he followed all the procurement procedures.

### ***3.2.2 Chronology of the Disposal Process of Plot 434***

The NSSF Board at its meeting held on 2<sup>nd</sup> and 4<sup>th</sup> March 2011 took a decision to dispose of the pieces of land at Masaka, Mbarara, Hoima, Gulu, Bakuli/Namirembe and Kibuye. The concern of Parliament was that a plot which was bought by the NSSF in 2008 at UGX 715 Million was sold at 650 Million in 2012. Through inquiry, the Committee was informed that:

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- The original policy of constructing branch offices was reversed and a decision was taken to dispose of all the pieces of land in various parts of the country that had been procured for the purpose;
- Most of the pieces of land that had been bought were either in wetlands or not suitable for the intended developments;
- The Plot 434 in Namirembe was un-accessible as it was surrounded by Plot 435.

In respect to Plot 434, the Committee was intrigued that at the time the land was purchased, it was easily accessible and had no encumbrances, a fact that had been ascertained by the various valuers and surveyors that NSSF had consulted. Upon inquiry, the Committee noted the following:

On 6<sup>th</sup> May 2010, Mr. S. Meghani, Director at Malibu Holdings Ltd wrote to NSSF requesting that Plot 434 be sold them. 'We are your neighbours and want to expand because we have a big project to put up in that area but lack enough land to do so.'

On 17<sup>th</sup> May 2010, Mr Francis Kajura on behalf of the MD, NSSF, responded to Mr Meghani of Malibu Holdings Ltd informing the latter that a decision to sell the property had not yet been made, and in case of sale, it would be advertized in papers for the attention of potential bidders.

On 26 October 2010, Mr Meghani wrote to the MD NSSF and referred 'to our earlier telephone conversation indicating our interest to purchase the land Plot 434 Namirembe,' and enclosed 'a site plan which shows that your plot number 434 is surrounded by our land,' and 'having done a search of the property prices in the neighborhood, we are offering UGX 600 Million for the plot.'

On 14 January 2011, Richard Byarugaba, MD NSSF wrote to Mr Meghani advising him that the Fund had reconsidered its position to sell Plot 434 to the highest bidder, but as a public entity, the due process of disposal as provided for under the PPDA would be followed. He further advised that once the relevant approvals had been obtained, any other interested bidders would be invited to apply, and the invitation would be sent out at the end of February 2011.

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On 13 January 2011, a disposal requisition for various parcels of land was initiated by Mr. Ichumar Humphrey, Project Team Leader. The parcels of land to be disposed of included Plot 434, Kibuga Block 14, Namirembe Road at estimated disposal value of UGX 650 Million. Here lies the problem: what method did Mr. Ichumar Humphrey use at this stage to estimate the disposal value? **Mr. Ichumar should be blamed for the apparent connivance.**

On the same day the disposal requisition was made, i.e. 13 January 2011, the Accounting Officer/MD NSSF, Mr. Richard Byarugaba approved it. A reserve price was estimated at UGX 650 Million.

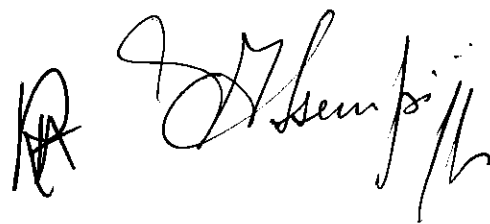
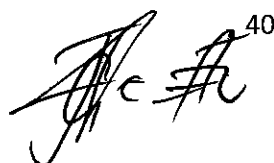
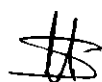
On 25<sup>th</sup> March 2011, the MD NSSF wrote to the Chief Government Valuer, requesting the CGV to provide the Fund with indicative market prices of six properties to help the Fund set the reserve prices. The properties included FRV 54 Folio 14 Plot 434 Namirembe. This means that the disposal process of Plot 434 was commenced on 13 January 2011 as seen above before valuation was done, contrary to PPDA Regulation 315(1).

The same request made to the CGV was made by NSSF MD to a private firm, East African Consulting Surveyors & Valuers, one of the private firms that had advised NSSF when it was in the process of buying the land.

On 3<sup>rd</sup> September 2011, the East African Consulting Surveyors & Valuers, gave a valuation for Plot 434 Namirembe of UGX 610 Million.

On 21 March 2012, the Moses Magala, the Chief Government Valuer responded to the letter of MD NSSF and gave a valuation of Plot 434 Kibuga Block 4 Leasehold Register Vol. 791 Folio 5 as UGX 600 Million. He also indicated that a title search commissioned by his office failed to verify and substantiate the status of the property, and hence relied on copy of the title – Leasehold – that NSSF submitted to him.

Meanwhile, on 31<sup>st</sup> March 2011, the MD NSSF sought advice from PPDA on how to disposal of the parcels of land.



On 2<sup>nd</sup> May 2011, PPDA wrote to NSSF and advised the Fund to use the most appropriate method of disposal that would ensure that the entity obtains the best returns from the disposal.

On 15<sup>th</sup> September 2011, MD NSSF, wrote to the Deputy Director, Physical Planning, KCCA, Mr Agaba George to verify whether Plot No 434 at Namirembe had no provision to an access road.

On 9<sup>th</sup> November 2011, Mr. George Agaba, Director Physical Planning KCCA wrote to MD NSSF confirming that Plot 434 has no direct access onto a public or private road as it was surrounded by Plot 436, and that it was almost impossible to develop without legal access out of another plot.

On 2<sup>nd</sup> December 2011, MD NSSF wrote to PPDA requesting for a waiver to enable NSSF use direct negotiations method to dispose of Plot 434 Namirembe Road, because: ' We have established that this plot is surrounded by another plot and has no direct access to a public road...and the owner of the plot surrounding the Fund's plot has expressed interest in acquiring it.' However, under Regulation 301(2) of the PPDA Regulations, the body to approve the use of direct negotiations disposal method is the Entity's Contract Committee. In the instant case, the Accounting Officer sidestepped the Contracts Committee in seeking a waiver from the PPDA.

On 17<sup>th</sup> January 2012, Benson Turamyie on behalf of the PPDA granted the waiver on the condition that the final price is not below the estimated value given by the Chief Government Valuer.

On 19<sup>th</sup> April 2012, direct negotiations were held with Malibu Holdings. NSSF was represented by Mr Ellis Biryahwaho (Head, PDU); Mr. Moses Lutalo (Real Estate Analyst); Ms Harriet Mucunguzi (Property Manager). Malibu Holdings was represented by Mr. Godfrey Mwesigwa and Mr Emmanuel Kyoyeta. The bidder (Malibu Holdings) agreed to increase his offer from UGX 610 Million to UGX 650 Million, which was above the valuation/reserve price of UGX 620 Million.

On 24 April 2012, the Contracts Committee of NSSF approved the negotiation committee report and recommended the award to Malibu at UGX 650 Million.



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On 26 April 2012, the MD NSSF communicated to Mr. Meghani the award of the offer to purchase plot 434 Namirembe at UGX 650 Million, subject to obtaining legal advice from the Solicitor General; and asked Mr. Meghani to indicate his acceptance of the offer within seven working days after receipt of the letter of offer.

On 28 April 2012, Mr. Meghani accepted the offer to purchase the said plot and indicated his preparedness to pay as soon as he got the NSSF bank details.

On 18<sup>th</sup> May 2012, Mr. Joseph Kalinaki on behalf of the Corporation Secretary NSSF wrote to the Ag Solicitor General to peruse the draft sale agreement between NSSF and Malibu and give advice before the deal is concluded by the parties.

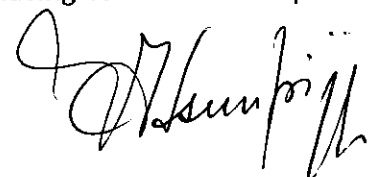
On 25<sup>th</sup> May 2012, Mr. Ben Turyasingura on behalf of the Solicitor General, wrote to the Corporation Secretary NSSF highlighting areas that need to be corrected and or addressed before the clearance of the draft agreement can be made.

On 30<sup>th</sup> May 2012, having realized that the title of Plot 434 Namirembe Road that was sent to the Chief Government Valuer was a leasehold and not the current one – Freehold, the MD NSSF wrote to the Chief Government Valuer seeking clarification as to whether the discrepancy in the Title could have a possible variation in the value that was returned.

On 31<sup>st</sup> May 2012, the MD NSSF, Mr. Richard Byarugaba, wrote to the Ag Commissioner Surveys and Mapping requesting his office to survey Plot 434 Namirembe Road, open its boundaries, ascertain the size of the plot, and also indicated that 'we have been advised by Kampala Capital City Authority that this plot has no direct access to a public or private road.'

On 10<sup>th</sup> June 2012, a survey report was submitted to the MD, NSSF. It was reported: The major problem with Plot 434 is that it lacks a direct access road. There exists Plot 436 between the boundary of plot 434 and Butikiro Road.

On 20<sup>th</sup> July 2012, the Chief Government Valuer, Mr. Moses Magala, on behalf of the Permanent Secretary, Ministry of Lands, Housing and Urban Development wrote to the MD NSSF responding to his letter of 30<sup>th</sup> May 2012. He clarified that 'having varied the unexpired



term of 56 years appraised under LRV 791 Folio 5 against the Marriage (Synergy) Value under the Freehold, we find the discrepancy minimal and not prohibitive and therefore maintain the value of UGX 600 Million as earlier returned.'

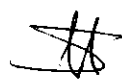
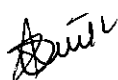
**The Real Estate Analyst recommends a review of the sale**

On 27<sup>th</sup> July 2012, Mr Moses Dennis Lutalo, the Real Estate Analyst wrote to the Head of Procurement and Disposal Unit calling for a review of the sale of Plot 434 Namirembe Road. He gave copies to MD, Deputy MD, Corporation Secretary, Head of Internal Audit, Head of Administration, and the Chief Finance Officer. In his internal Memo, he indicated that the Plot was acquired in 2008 at UGX 706,170,001. A disposal process for the plot was commenced, negotiations were held with the bidder, (which negotiations he attended) and settled for UGX 650 Million, which 'is below the cost of the Plot by UGX 56,170,001 in nominal terms and UGX 814 Million in real terms (if we were to consider the time value of money at the required rate of return for real estate projects of 20%). He further advised that if the good value cannot be got, there was the second and most feasible option: to consider acquiring access to the plot.

On instructions of the Accounting Officer/MD NSSF, The Ag Head, PDU, Mr Patrick Omony Okema requested the Contracts Committee for renegotiation on the price offered for Plot 434 by Malibu from UGX 650 Million to a minimum price of UGX 814 Million. However, the Contracts Committee rejected the request for two reasons: The Contracts Committee recommendation of an award at a sale price had already been communicated to the bidder; and the proposed sale price of UGX 814 Million was abstract and not supported by any valuations.

On 20<sup>th</sup> September 2012, Mr. Meghani of Malibu Holdings wrote to the MD NSSF complaining about the delay to advise them on where to deposit the agreed upon price of UGX 650 Million in respect of plot 434 Namirembe Road.

As pressure piles on the NSSF MD, on 21<sup>st</sup> September 2012, the NSSF Board met and DIRECTED management to explore the possibility of getting access to Plot 434 at Namirembe and



RESOLVED that the sale of Plot 434 to Malibu Holdings pend the resolution of access to the property.

On 20<sup>th</sup> December 2012, an agreement for sale of land between NSSF and Malibu Holdings Ltd was signed. Mr. Richard Byarugaba MD NSSF signed on behalf of the vendor in the presence of David Nambale, the Corporation Secretary. Meghani Sikander signed on behalf of the purchaser in the presence of Amin Meghani, Director at Malibu Holdings Ltd.

On 21 December 2012, Malibu Holdings Ltd transferred UGX 650 Million to NSSF's account at CITIBANK in respect of the purchase of plot 434 Namirembe Road.

On 26 December 2012, the transfer papers were signed and sealed by Mr Ivan Kyayonka, Chairperson Board of Directors NSSF in the presence of Mr. Richard Byarugaba, MD NSSF.

#### **NSSF Management did not care to obtain access to Plot 434**

The Committee noted that the MD NSSF did not explore the option of negotiating with the owner of the plot that surrounded the Fund's Plot. Moreover, the NSSF Board had directed so.

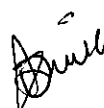
In addition, in a letter to the Select Committee dated 16 October 2014, the Meghani informed the Committee **that there was no request by NSSF at any given time asking for access to their plot.**

#### **Over inflated purchase price**

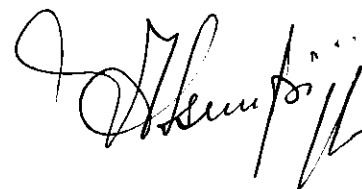
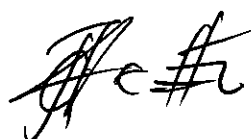
It is likely that the purchase price of plot 434 was over inflated for the benefit of the some people in NSSF. At the time NSSF bought the property, MALIBU HOLDINGS LTD bought the neighbouring plots at far much cheaper price. In a letter by Malibu Holdings to the Committee, 'We bought the neighbouring land on Kibuga Block 4 which had been demarcated into several plots in total measuring about 5 acres in 2008 from Mengo Hospital....at a rate of UGX 468 Million per acre.'

#### **3.3. Observations and Recommendations**

**The Committee made the following observations:**

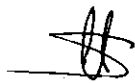


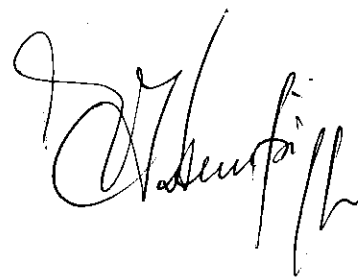

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- During the process of disposing of the Namirembe land, many private valuers such as Knight and Frank and Cathan Property Consult, and the chief government valuer were engaged to advise NSSF on the current market value of Plot 434. However, the valuers were given the Leasehold Title instead of the Freehold Title that had been obtained in 2009, which process had cost NSSF UGX 65 Million.
- NSSF Management did not explore the option of acquiring an access road to its plot.
- The resolution of the Board to halt the sale of the Namirembe Land and explore the possibility of acquiring an access road was ignored by Mr. Richard Byarugaba MD NSSF and Ivan Kyayonka, Chairperson, Board of Directors
- The land was sold at a price below its purchase price.
- There was no justifiable cause for the sale of the land, and NSSF was not in short supply of money.

**The Committee recommends that the Managing Director, Mr. Richard Byarugaba and the Chairperson NSSF Board Mr. Ivan Kyayonka be compelled to make good the loss the Fund incurred of UGX 56,170,001/= that resulted from the sale of Namirembe land below the cost price.**



## CHAPTER FOUR

### 4.0 HUMAN RESOURCE MANAGEMENT

#### 4.1 Recruitment of the senior Management Positions in the NSSF

One of the concerns raised on the floor of the House leading to the creation of the select Committee on NSSF was the allegations that the candidates that emerged best in the interviews for the position of MD, Deputy MD and Corporation Secretary had not been appointed by the Minister of Finance, an act that was causing anxiety among the staff of NSSF, but was also discriminatory and anti-meritocracy.

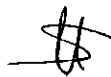
#### Findings

##### 4.1.1 Authority to Appoint MD, DMD and Corporation Secretary

Section 39 of the NSSF Act establishes the office of the Managing Director of the Fund who shall be the Chief Executive of the fund, and whose appointment shall be made by the Minister, for such period and on such terms and conditions as the Minister may deem fit. Similarly, Section 40 establishes the office of the Deputy Managing Director of the Fund to be appointed by the Minister; while section 41 establishes the office of the Secretary to the Fund, equally to be appointed by the Minister.

The committee was informed that the above offices had been vacant since December, 2013 when the contracts of the former office bearers expired. Until 29 October 2014, the office of Managing Director was occupied by the Deputy Managing Director whose contract as substantive Deputy Managing Director was extended for six months. The office of Secretary to the Fund was also being occupied by an officer in an acting capacity.

The Authority to appoint both the Board and the Statutory Officers of NSSF is all vested in the Minister of Finance Planning and Economic Development by virtue of sections 3(2), 39, 40 and 41 of the NSSF Act. This means that the Minister appoints both the NSSF Board and the NSSF top managers.



#### 4.1.2 Process of Filling Vacant Positions of Senior Managers in 2014

##### 4.1.2.1 Guidance by the Minister of Finance

In 2013, the Chairman Board NSSF wrote to the Minister of Finance bringing to her attention the expiry of the term of contract of the senior managers of the NSSF.

On 4<sup>th</sup> July, 2013, the Minister of Finance wrote to the Chairman of NSSF board on the subject of contracts for senior management position. She indicated that she was aware the contracts were due to expire. She also advised that: in light of the on-going investigation by the IGG, there was need for maximum transparency in the recruitment process. She further advised that after consultation within the Ministry, she was strongly recommending that:

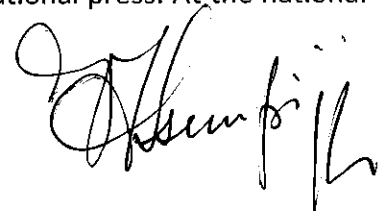
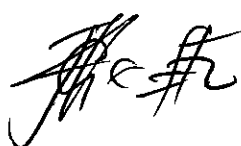
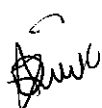
- a. *All senior management positions in the Fund should be advertised internationally; Existing and former personnel with appropriate skills and competences should be able to apply;*
- b. *Subject to the Laws of Uganda, extend the contracts of the senior management that are due to expire for an extra six months, to enable the Fund to operate smoothly and also to complete the recruitment process.*

##### 4.1.2.2. Procurement of a Recruitment Firm – PwC and the TORs

Upon receipt of the guidance by the Minister, the NSSF Board set the recruitment process in motion. On 21 January 2014, NSSF Board contracted a consultancy firm, PricewaterhouseCoopers Ltd (PwC) to “advertise, receive applications and carry out screening interviews.” The Consultant developed the person specifications, job descriptions and required qualifications for each of the three positions. The specifications were approved by the Board of NSSF.

##### *Advertisement locally, regionally and internationally*

The Consultant prepared and agreed with the Board on suitable advertisements for the positions which were run in different national, regional and international press. At the national



level, the advert was run in the *New Vision* three times on 13<sup>th</sup>, 20<sup>th</sup> January and 10<sup>th</sup> February, 2014. The advert was also run three times by the *Daily Monitor* on 10<sup>th</sup>, 17<sup>th</sup> January and 14<sup>th</sup> February, 2014. At regional level, the *East African* run the advert from 11 - 24 January and 17<sup>th</sup> - 20<sup>th</sup> February, 2014. Lastly, at the international level, the advert was run by the *Economist* from 1<sup>st</sup> - 7<sup>th</sup> February and 15<sup>th</sup> - 21<sup>st</sup> February 2014. On the closing date of 7<sup>th</sup> March 2014, the adverts attracted 39 applications for the post of the Managing Director, 94 for the Deputy Managing Director and 66 for the Corporation Secretary.

#### 4.1.2.3 Short listing and Interviews Results by the Consultant

The Consultant screened all the applications and eventually shortlisted six (6) candidates for the position of Managing Director, 10 candidates for the position of Deputy Managing Director and 10 candidates for the position of the Corporation Secretary. The consultant conducted initial interviews for the best 6 ranked shortlisted candidates from 14<sup>th</sup> - 16<sup>th</sup> April, 2014. The Committee was informed by Mr. Ivan Kyayonka who said he personally supervised the recruitment that the Consultant did a due diligence on the applicants. The candidates emerged as follows:

#### Interview Results from the PwC Panel for the Position of Managing Director

Candidate Name	Background and relevant experience (Total marks) 20	Technical competencies (Total marks) 60	Personal competencies (Total marks) 20	Total out of 100	Rank
Edgar Agaba	16	49	17	82	1
Joseph Kitamirike	14	47	15	76	2
Richard Byarugaba	15	45	16	76	2
David	13	44	15	72	4

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Sandeep Das Gupta	12	37	10	62	5
Kolade Ogunsulire	11	34	13	58	6

**Interview Results from the PwC Panel for the Position of Deputy Managing Director**

Candidate Name	Background and relevant experience – total 20 marks	Technical competencies – total 70 marks	Personal competencies – total 10 marks	Total out of 100	Rank
Monica Rubombora	18	58	8	84	1
Patrick Ayota	16	55	9	80	2
Geraldine B. Ssali	16	52	8	76	3
James Mugabi	15	53	7	75	4
Christian Mwirigi Kaaria	13	46	7	66	5
Grace Charlotte Karugaba Kabunga	12	44	6	62	6

**Interview Results from the PwC Panel for the Position of Corporation Secretary**

Candidate Name	Background relevant experience –	Technical competencies – total marks	Personal competencies – total marks	Totals out of 100	Rank
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	<b>total marks</b> <b>20</b>	<b>60</b>	<b>20</b>		
Dorcas Apita Angom	16	50	16	82	1
Agnes Tibayeita Isharaza	17	49	16	82	1
Richard Wejuli Wabwire	16	49	16	81	3
Mark Martin Obia	16	49	15	80	4
Christine Echookit Akello	15	44	15	74	5
Yese Mugenyi	10	33	7	50	6

#### 4.1.2.4 Interview Results by the NSSF Board

The Consultant submitted a draft report containing the results of the first screening interviews, to the Board Chairman of NSSF on 2 May, 2014. On the basis of the report of the Consultant, the Board of NSSF conducted final interviews for the positions of Managing Director, Deputy Managing Director and the Corporation Secretary from 26<sup>th</sup> to 28<sup>th</sup> May, 2014 respectively. The interview panel consisted of all the Board members of NSSF, while PwC attended as observers to provide administrative support during the final interviews. After the interview, the performance of the candidates was established as follows:

#### Board interview results for the position of the Managing Director

<b>Candidate Name</b>	<b>Total average mark out of 100, based on scores for all the Board members</b>	<b>Ranking based on the score</b>
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Edgar Gerald Agaba	83	1
Joseph Serwanga Kitamirike	74	2
Richard Byarugaba	68	2
Kolade Ogunsulire	64	4
David Ogong	62	5

**Board interview results for the position of the Deputy Managing Director**

Candidate Name	Total average mark out of 100, based on scores for all the Board members	Ranking based on the score
Patrick M. Ayota	85	1
Monica Rubombora	82	2
Geraldine Ssali Busuulwa	77	3
James Mugabi	69	4
Christian Mwirigi Kaaria	66	5
Grace Charlotte Karugaba	65	6

**Board interview results for the Corporation Secretary**

Candidate Name	Total average mark out of 100, based on scores for all the Board Members	Ranking based on the score
Richard Wejuli Wabwire	86	1
Christine Echokit Akello	76	2
Dorcas Apita Angom	73	3
Agnes Tibayeita Isharaza	73	4

Mark Martin Obia	69	5
Yese Mugenyi	30	6

#### *4.1.2.5 Submission of the best candidates to the Minister*

The Committee was informed that upon completing the interviews, the Chairman of the NSSF Board submitted to the Minister names of the best three ranked candidates for each position for the Ministers appointment.

While appearing before the Committee on 2 September 2014, the Minister acknowledged receipt of the names from the NSSF Board chairman. She submitted that appointment of top managers of NSSF required wide consultation and due diligence with different stakeholders given that NSSF was an important financial power house, it needed competent, qualified and experienced individuals to manage it. The Minister further submitted that she had also submitted the names to Bank of Uganda for further due diligence and "fit and proper" test.

She also indicated that she had asked the Auditor General to conduct a forensic audit on NSSF so that the in-coming management team would have a good starting point. She assured the Committee that very soon, the top managers of NSSF would be appointed.

#### *4.1.2.6 Appointment of the Top Managers of NSSF*

On 29<sup>th</sup> October 2014, as the Committee was drafting this report, it was reported that the Minister of Finance had appointed Richard Byarugaba as the MD, Geraldine Ssali as the Deputy MD and Richard Wejuli Wabwire as the Corporation Secretary. In effect, she returned the former team except one David Nambale, the former corporation secretary.

#### **4.1.2.7 Committees Observations and Recommendation**

- UGX 500,000,000/= that spent on the recruitment of the officers was a waste of the contributor's funds.
- The candidates who emerged the winners from the recruitment process were not appointed to the jobs.

*Amir*

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*[Signature]*

- It is irregular, discriminatory and demoralizing for a public body to subject Ugandans to competitive interviews and after the exercise, the successful candidates are not offered the competed for jobs.
- Although the Minister of Finance is vested with the authority to appoint the top managers of the NSSF, upon requesting the NSSF Board to recruit the said top managers, and the Board hiring a reputable firm (PwC) to do the preliminary recruitment, an exercise that cost UGX 500,000,000/= of the workers savings, the Minister should have paid due regard to the recommendations from the reports of both the consultant and the NSSF Board.

**The Committee recommends that the Minister of Finance, Planning and Economic Development be held responsible for the loss of UGX 500,000,000/= that was spent on the recruitment process whose results were largely ignored.**

#### **4.2 Management of Human Resources under the Leadership or Tenure of Ms Geraldine Busuulwa Ssali as the Acting Managing Director**

The Human resource docket can be said to be the one which has faced the most serious allegations in the short term of office of M/s Geraldine Ssali as Acting Managing Director. There have been several claims of nepotism as well as complaints of irregular dismissals of staff.

##### **4.2.1 Claims of irregular recruitment of staff**

The Committee was informed of the recruitment of several persons into the employment of NSSF on temporary basis, without following the Institutional procedures. This is perceived to be irregular, especially given that a number of the recruited persons are alleged to have close connections with persons capable of influencing the NSSF decisions. The two of the affected persons are one Liz Kakooza, a daughter to the Inspector General of Government and another Nivia Nangobi a daughter to the former Head of Marketing in NSSF. These positions were not advertised by NSSF, neither were the appointed officers subjected to any formal interviews before the award to each of a 3 months renewable employment contract from 10<sup>th</sup> June, 2014.

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The Committee was informed that the appointed officers' details were in the NSSF database, having served earlier as interns in the marketing department of the NSSF.

The committee learnt that NSSF has a Staff Handbook; to wit Paragraph 2 of the Handbook is on Recruitment and Selection of employees of NSSF.

*Paragraph 2.1 is on Overall Principles and provides that:*

*Sound recruitment practice ensures that the right numbers of employees, of the right quality are available at the right time. NSSF is committed to principles of equity, fairness and non-discrimination. All recruitments will be based on merit because we are committed to finding the best possible candidate for each vacant position. The procedures that apply are based on best practice principles.... In keeping with this policy, all applicants and employees will be treated equally, without regard to race, color, religion, sex, age, national origin, or handicap.*

*The following principles apply:*

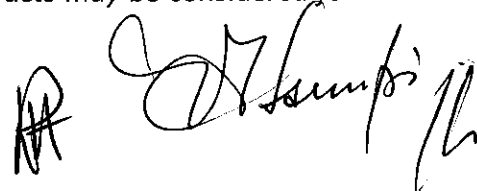
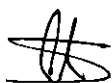
*2.2 Upholding transparency, objectivity, equal opportunity and integrity in the recruitment and selection process.*

*2.3 The vacant position will be advertised internally and or in the press, depending on the position in question. The decision about whether the recruitment process will be handled internally or externally will be based on the recommendations of the Head of Human Resource subject to the approval of the Managing Director.*

Management informed the Committee that they relied on Paragraph 2.22 which permits NSSF to hire temporary staff in the following terms:

***Paragraph 2.22: Contracts for temporary staff.***

*Temporary staff may be appointed on short term contracts, where there are urgent needs. All temporary appointments must be authorized in accordance with appropriate procedures. The length of the contract will depend on what needs to be done, but will normally be for not more than 6 months. Such contracts may be considered for renewal*



*subject to organizational requirements, and subject to satisfactory performance.  
Contracts will terminate automatically on the expiry date.*

The Committee observes that whereas the NSSF Staff Handbook encourages commitment to principles of equity, fairness and non-discrimination; and requires all recruitments to be based on merit and to uphold transparency, objectivity, equal opportunity and integrity in the recruitment and selection process; management disregarded the above provisions in the hiring of the two officers. The managers simply relied on the database which, according to management, had only three names from which the two officers were handpicked and not subjected to any process that would guarantee merit and uphold transparency, objectivity, equal opportunity and integrity in the recruitment process.

Consequently, the Committee apportions blame to the Ag Head of Marketing, Mr. Birungi, the Head of Human Resources, Ms Catherine Byakika and Ms Geraldine Ssali for flouting the NSSF recruitment principles and guidelines.

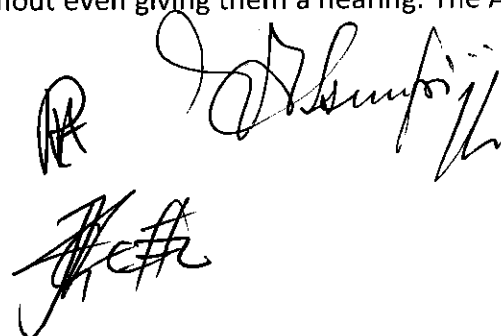
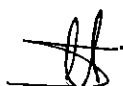
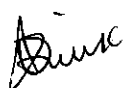
The Committee did not establish any role played by the Inspector General of Government, Justice Irene Mulyagonja, in securing a job for her daughter at the NSSF.

**The Committee recommends that the NSSF Board should reprimand Mr. Birungi, Ms Catherine Byakika and Ms Geraldine Ssali for flouting the recruitment guidelines.**

#### **4.2.2 Claims of irregular dismissal of staff**

The Committee was informed that the NSSF management dismissed several of their staff on grounds of alleged involvement in fraud and causing financial loss of up to UGX. 1,900.000.000/=. The Police officers who conducted the investigations observed that the evidence gathered in the investigation was inadequate, and as such recommended that further inquiries be conducted to gather credible evidence to warrant a prosecution of the NSSF staff allegedly to be involved in financial impropriety.

Notwithstanding the police recommendation, NSSF Management went ahead and summarily dismissed the officers who were being investigated without even giving them a hearing. The Ag



MD Ms Geraldine Ssali indicated to the Committee that management decided to dismiss the implicated staff without due process because of the risk posed to the Fund. The Committee was informed by Ag MD Geraldine Ssali and the Head HR, Catherine Byakika that NSSF as a financial institution is duty bound to handle cases of financial impropriety promptly and decisively.

**Section 29.1.7** of the NSSF Staff Handbook is on Dismissal and provides that:

*This is where the employer decides to end the employment of an employee, and proceeds with a formal dismissal. It relates to cases where there have been allegations of misconduct. Employees are normally interdicted (on half pay) during the period of a disciplinary investigation. Where the employer decides that they are guilty of wrongdoing and where there is strong evidence and they decide to proceed with a dismissal case. These are serious disciplinary cases.*

The above provision of the Staff Handbook is re-echoed in the appointment letters of the affected staff in the following terms:

**Paragraph 10.0** of the employment contract prescribes the circumstances of termination of employment. It provides for either termination by notice or by summary dismissal.

**Section 10.2 Summary dismissal**

*The employer may terminate this agreement (employment agreement) without notice if the employee is found guilty of conduct which justifies the summary dismissal of the employee as per the handbook.*

**Section 10.3:** *In the event of summary dismissal, the employee shall be entitled to:*

**Section 10.3.1:** *The monthly salary payable as will be deemed to have accrued on a day to day basis up to the date of such termination in addition to accumulated leave.*

**Section 10.3.2:** *Such termination is without prejudice to the rights of either party which have accrued up to the date of such termination.*

Employment contracts are governed by the Constitution of Uganda, the Employment Act, 2006, the Public Service Act and the Public Service Standing Orders among others. According to

section 69 of the Employment Act; summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision.

No employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision. This was the principle laid in **Jabi Vs Mbale Municipal Council (1975) HCB 190**; where court observed that a dismissal is wrongful where it is effected without any justifiable cause and or reasonable notice.

Although an employer can summarily dismiss an employee, an employee has an inherent right to a fair hearing as stipulated in the provisions of Article 28 of the Constitution. This was voiced by Ssekandi, Ag. Justice (as he then was) in the case of **A.M. Jabi. vs. Mbale Municipal Council**; when he held that

*it was a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving breach of disciplinary regulation or of misconduct. An employee on permanent terms was entitled to know the charges against him, and to be given an opportunity to give any grounds on which he relied on to exculpate himself. Where that was not done, it could properly be said that the dismissal was wrongful.*

The Committee noted that in the case of the NSSF employees who were dismissed allegedly for fraudulent conduct, the police reported that their findings had fallen short of establishing a prima facie case; and accordingly recommended that further inquiries needed to be conducted to gather credible evidence to warrant a prosecution.

In the case of **J. W. Kazoora vs. Rukuba SCCA No. 13 of 1992**; Oder JSC, found that the standard of proof of fraud in civil cases is heavier than the ordinary standard of proof in ordinary cases, but is not higher than beyond reasonable doubt. The police in this case failed to prove the charges of fraud even to the balance of probabilities, to warrant a summary dismissal of the employees.

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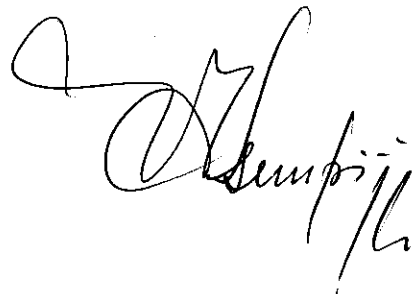
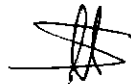
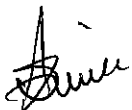
#### 4.2.3. Committee Observations and Recommendations

The Committee strongly observed that the NSSF staff were wrongly summarily dismissed as they were entitled to notice or to a right to be heard.

The Committee further observed that the Ag. Managing Director, Ms Geraldine Ssali and the Head Human Resources Ms Catherine Byakika acted with highhandedness in handling staff. They dismissed the staff without due regard to the law.

**The Committee recommends that Ms Geraldine Ssali, the former Ag Managing Director and now the Deputy Managing Director NSSF and Ms Catherine Byakika the Head Human Resources should be seriously reprimanded by the appointing authority for mismanaging the human resources and dismissing staff without following the law.**

The Committee further recommends that the dismissed staff should be reinstated on their jobs or an out of court settlement at the cost of Ms Geraldine Ssali and Ms Catherine Byakika is quickly done to protect the workers savings from being spent on huge compensation costs likely to be paid to the irregularly dismissed staff.



## CHAPTER FIVE

### 5.0 WAY FORWARD

#### 5.1 Social Security Coverage in Uganda

As we examine NSSF governance challenges, Government and indeed, Parliament should take note of the inadequate or largely non-existent social security protection in Uganda. Only about one million people out of 13.4 million total labour force in Uganda are formally saving for their old age. The two formal social security funds, namely; the NSSF and public service pension fund cannot meet the needs and demands of the older population. NSSF has active membership of less than 600,000 people. With the scandals that have rocked the public servants pension scheme at the Ministry of Public Service, pension cover for the 350,000 employees in the civil service is not even guaranteed. There are some occupation-based pension schemes, Communal self-help initiatives such as *Tweezike* and *Nigiina*, but these are largely unknown, undocumented and unregulated. This means that the social protection of the older population in Uganda requires urgent attention.

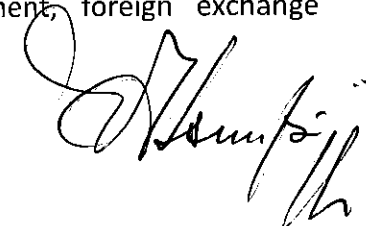
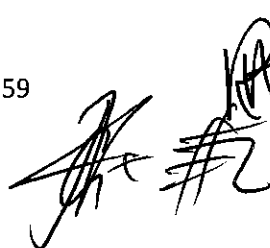
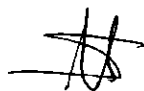
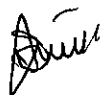
On the other hand, pension funds are potential pillars for Uganda's economic growth. They present enormous opportunity for capital markets development, savings mobilization, reducing dependency on donor funding and availing affordable local financing for infrastructure development.

*The Committee recommends that Government enacts a robust social security policy and legislation to facilitate expansion of social security coverage in Uganda.*

#### 5.2 Governance of the Financial sector in Uganda

The financial market in Uganda is governed by the following regulatory bodies:

- Central Bank that focuses on monetary policy management, foreign exchange management;



- Capital Markets Authority that focuses in equity, debt and unit trusts,
- Insurance Regulatory Authority that focuses on insurance, assurance and reinsurance
- Retirement Benefits Authority that focuses on pension and provident funds.

In all these regulatory bodies, the Minister of Finance plays a fundamental governance role. Except in the Bank of Uganda, the Minister of Finance appoints the Board Members and Chief Executive Officers of CMA, Insurance Regulatory Authority and Retirements Benefits Authority.

With respect to the regulation of the pensions sector, the Minister does not only end at appointing the Board and Chief Executive of the regulator, the URBRA, she also appoints the Board and top management officials of the NSSF, one of the bodies that is regulated by the URBRA which is also appointed by the same Minister. In addition, the Minister appoints her chief technical advisor, the Permanent Secretary/Secretary to the Treasury to the NSSF Board. The Committee found that the PS/ST was the head of the sub-committee of the Board of NSSF in charge of investments. In addition, the NSSF Board is barred from undertaking investment decisions without consulting the Minister.

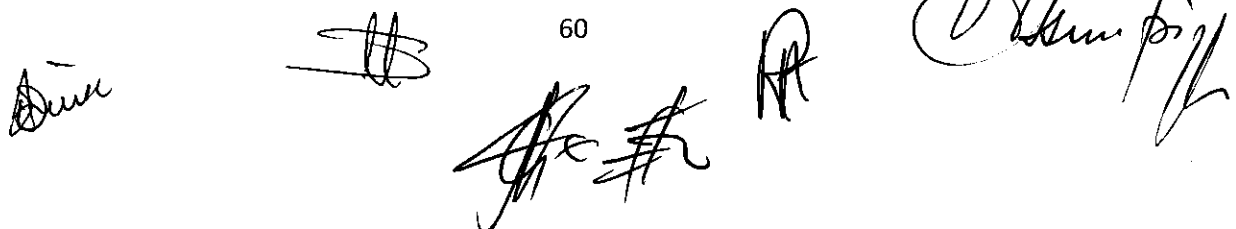
The Committee observed that the Minister was 'everywhere' in the financial sector regulation in general, and in the regulation of the pension sector in particular, and was bound to be entangled in a very serious conflict of interest.

In addition, there were many expensive layers of governance in the pension sector. For instance, the NSSF had a 10 Member Board and URBRA had a 6 Member Board, both bodies almost drawing members from the same organizations i.e. the Ministry of Finance, Ministry of Gender, Labour and Social Development and Federation of Uganda Employers.

*The Committee recommends that the responsibility of the Minister of Finance should stop at appointing the regulatory bodies and leave other layers to play their part as good corporate governance dictates.*

*The Committee further recommends that, as is the practice in other countries, the responsibility of investing pension funds should be vested into the Board of Trustees. The BOT should be the final authority on matters of pension fund investment.*

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### 5.3 Regulation of the Capital Market

#### 5.3.1 *Multiplication of shares for sale on the securities exchange*

The Committee was concerned about the over-multiplication, or splitting of shares by companies to be sold to the public. The Committee was informed that the Company law permits the practice. That once the shareholders decide to convene a meeting to multiply and or split the shares, and register the resolution to that effect with the Uganda Registration Services Bureau, then, the new shares are valid and can be traded on the stock exchange. The Committee was concerned at the rate by which UMEME Ltd 'produced' million of shares that were sold under IPO and at the secondary market.

*The Committee observed that without plugging this loophole in the law, Ugandans could be sold 'hot air' or artificially created shares with no accompanying value. Consequently, the Committee recommends that the Companies Act should be reviewed.*

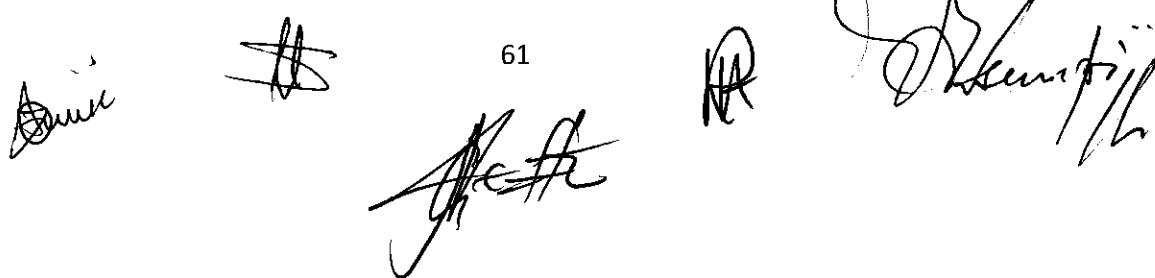
#### 5.3.2 *The Governance of the Securities Exchange*

The securities exchange is the market where securities are traded. In Uganda, the securities are traded on the Uganda Securities Exchange (USE). The securities are traded according to the rules set by the securities exchange and approved by the Capital Markets Authority. Whatever securities are sold on the exchange, the owners of the exchange receive fees.

The Committee learnt that the USE was a private entity owned by the brokers, namely; Africa Alliance (U) Ltd; Baroda Capital Markets (U) Ltd; Crane Financial Services Ltd; Crested Stocks and Securities Ltd; Dyer and Blair (U)Ltd; Equity Stocker Brokers Ltd; UAP Financial Services Ltd and Stanbic Bank Group Uganda.

The Committee was concerned that where brokers were the owners of the market, there is bound to be a conflict of interest. When the concern of the Committee was brought to the attention of the regulator, the CMA, it got the following response:

The CMA acknowledges that changes can be made to the governance structure of the USE to enable the USE compete favorably in the region and globally. The Uganda Securities Exchange (USE) is a mutual





company. A mutual company is a private company whose ownership base is made of its clients. This has been a feature of all securities exchanges all over the world but this trend started to change globally in 1993, in order to improve governance of securities exchanges. Currently the USE has a structure of a mutual exchange, the three rights i.e. the right to trade, the right of ownership and the right to manage the exchange are all with the trading members. For effective governance, these rights should be separated. The Governing Council is currently composed of 10 members; 7 members represent stock brokers/dealers, 1 member represents listed companies, 1 member represents the general public and lastly the Chief Executive Officer.

In a move to improve the governance structure of the USE, a consultant was engaged by the East African Community under the Financial Sector Deepening Project to advise on how the USE can become a demutualized exchange where the trading rights are separate from the ownership of the exchange. Demutualization refers to the change in the legal status of a stock exchange from a mutual association with one-vote per member (and usually consensus based decision-making) to a company limited by shares with one vote per share with majority decision making. It involves the separation of trading rights and ownership. The proposals made by the Consultant were discussed by the relevant stakeholders and are being implemented. The demutualized exchange is expected to have a better governance structure.

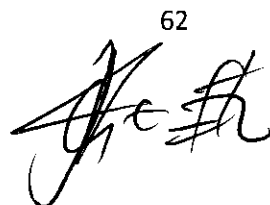
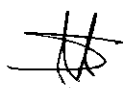
*The Committee recommends that Government should explore the possibilities of having the stock market a public company in order to enhance transparency and separate the rights and responsibilities of traders and owners of the market which are currently fused.*

#### **5.4 Investment of Pension Funds Governance Process – Lessons from TZ and Geneva**

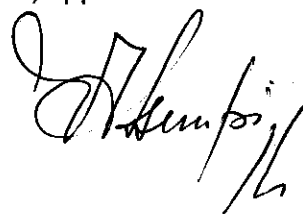
In Tanzania, investment of pension funds solely lies with the Board of Trustees of the pension schemes.

In Tanzania, making decisions to invest in securities is a function of management, as decision making in such cases has to be rapid. However, investment in real estate has to be approved by the Board.

In addition, where a pension scheme is to invest more than 10% of its funds, approval has to be obtained by the pension scheme from the Central Bank of Tanzania.



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The Members of the Board of Trustees of a pension scheme suffer personal liability in case of mismanaging the scheme.

Similarly, the ISSA Guidelines provide that the responsibility for investment decision making should lie with fiduciaries such as the Board and Management of a pension scheme.

*The Committee recommends that the lessons from Tanzania be considered for possible adoption.*

*The Minister of Finance should spearhead reforms to facilitate social security sector play a more vibrant role in economic growth and transformation of the country instead of relying on foreign investors/lenders.*

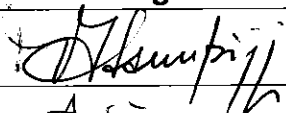
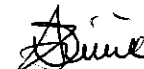
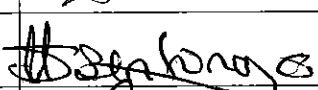
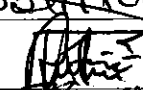
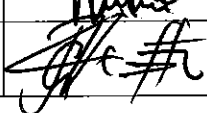
*The Committee further recommends that the PPP Bill be urgently enacted to create a conducive environment for profitable and long term investment of pension funds.*

*The Committee further recommends that strategies be devised urgently to expand social security coverage to include Ugandans currently engaged in informal sector.*

I beg that this report be adopted by this August House.

**I BEG TO REPORT.**

**This Report is endorsed by the following Members of the Select Committee on the NSSF.**

S/N	Name	Signature
1.	Hon. Vincent Bamulangaki Ssempijja	
2.	Hon. Nankabirwa Ann Maria	
3.	Hon. Nabulya Theopista	
4.	Hon. Alex Ruhunda	
5.	Hon. Ssewungu Joseph Gonzanga	

## APPENDIX

### WITNESSES WHO APPEARED BEFORE THE PARLIAMENT SELECT COMMITTEE ON THE NATIONAL SOCIAL SECURITY FUND

#### 13<sup>TH</sup> AUGUST, 2014

- |    |                           |   |       |
|----|---------------------------|---|-------|
| 1. | Mr. Bekabye Moses         | - | URBRA |
| 2. | Mrs. Cornelius Sabiiti    | - | PPDA  |
| 3. | Mr. Kakooza Uthman Segawa | - | PPDA  |

#### 14<sup>TH</sup> AUGUST, 2014

- |    |                     |   |        |
|----|---------------------|---|--------|
| 1. | Dr. Benon Mutambi   | - | ED ERA |
| 2. | Mr. Keith Kalyegira | - | CMA    |

#### 15<sup>TH</sup> AUGUST, 2014

- |    |                               |   |             |
|----|-------------------------------|---|-------------|
| 1. | Mrs. Geraldine Ssali Busuulwa | - | AG. MD NSSF |
|----|-------------------------------|---|-------------|

#### 19<sup>TH</sup> AUGUST, 2014

- |    |                  |   |                 |
|----|------------------|---|-----------------|
| 1. | xxxxxxxxxxxxxxxx | - | WHISTLE BLOWERS |
| 2. | xxxxxxxxxxxxxxxx |   |                 |
| 3. | xxxxxxxxxxxxxxxx |   |                 |
| 4. | xxxxxxxxxxxxxxxx |   |                 |

#### 20<sup>TH</sup> AUGUST, 2014

- |    |             |   |                   |
|----|-------------|---|-------------------|
| 1. | Mr. Ocailap | - | NSSF BOARD MEMBER |
|----|-------------|---|-------------------|

#### 21<sup>ST</sup> AUGUST, 2014

- |    |                     |   |                          |
|----|---------------------|---|--------------------------|
| 1. | Mr. Owere           | - | WORKERS' REPRESENTATIVES |
| 2. | Mr. Vicent Ssekkono | - | AND FORMER MD NSSF       |
|    |                     | - | Chairperson NOTU         |
|    |                     | - | FORMER NSSF, Board       |
|    |                     |   | Chairman                 |

#### 26<sup>TH</sup> AUGUST, 2014

- |    |                  |   |                 |
|----|------------------|---|-----------------|
| 1. | xxxxxxxxxxxxxxxx | - | WHISTLE BLOWERS |
| 2. | xxxxxxxxxxxxxxxx | - |                 |
| 2. | xxxxxxxxxxxxxxxx | - |                 |
| 3. | xxxxxxxxxxxxxxxx | - |                 |

4. xxxxxxxxxxxxxxxxxxxxxxxx -
5. xxxxxxxxxxxxxxxxxxxxxxxx -
6. xxxxxxxxxxxxxxxxxxxxxxxx -

#### **2<sup>ND</sup> SEPTEMBER, 2014**

1. Hon. Dr. Sam Lyomoki
2. M/S Tukamwesiga Penninah
3. Mr. Lwabayi Mudiba Hassan
4. M/S Kusasira Dinah
5. M/S Nyarua Loyo Grace
6. Mr. Majanja Zaalyembikke
7. Mr. Engura Geoffrey
8. Mr. Robert Keno
9. M/S Anita Sseruwagi
10. Mr. Mutaka Byansi
11. Mr. Richard Bigirwa
12. Mr. Mwamula Juma
13. Mr. Okuni Charles
14. Mr. Mboza William
15. Mr. Lwasa Umar
16. Mr. Sanya Aggrey
17. Mrs. Maria Kiwanuka

- **COFTU, NOTU AND MoFPED**  
- MP Workers

18. Mr. Moses Kaggwa

- Minister of Finance Planning  
and Economic  
Development.  
- MoFPED

#### **3<sup>RD</sup> SEPTEMBER, 2014**

1. M/S Kainobwisho Mercy K.
2. Mr. Mugabe Robert
3. Mr. Lubwama Moses

- **UGANDA REGISTRATION  
SERVICES BUREAU**

#### **4<sup>TH</sup> SEPTEMBER, 2014**

1. M/S Kunihira Agnes

- **COFTU AND NOTU BOARD  
MEMBERS AND MR. PIUS  
BIGIRIMANA**

2. Mr. Kahirita Christopher
3. Mr. Okello Musa
4. Mr. Bigirwa Richard
5. Mr. Mukasa Henry
6. Mr. Pius Bigirimana

- PS/MoGLSD

**9<sup>TH</sup> SEPTEMBER, 2014**

1. Mr. Kyayonka Ivan
2. Mr. Obia Mark Martin
3. Mr. Kasaato P. Gerald

- **CHAIRMAN NSSF BOARD**  
- Chairperson NSSF Board

**10<sup>TH</sup> SEPTEMBER, 2014**

1. Mr. Byarugaba Richard Patrick

- **FORMER MANAGING  
DIRECTOR, NSSF**

**11<sup>TH</sup> SEPTPEMBER, 2014**

1. Mr. Nambale David

- **FORMER CORPORATION  
SECRETARY**

**12<sup>TH</sup> SEPTEMBER, 2014**

1. Mr. Zimbe Sam
2. Mr. Rugamba Henry
3. Mr. Kihika Innocent
4. Mr. Mweheire Patrick
5. Mr. Mwenga Edwin Noah
6. Ms. Nafula Susan Bukenya

- **UMEME**

**17<sup>TH</sup> SEPTEMBER, 2014**

1. Mr. Kitariko Kenneth
2. Mr. Nyakatura William John
3. Mr. Nsiko Arthur
4. Mr. Edoma Dan
5. Ms Irungu Joan

- **AFRICAN ALLIANCE**

**18<sup>TH</sup> SEPTEMBER, 2014**

- **CAPITAL MARKETS  
AUTHORITY**

1. Mr. Kalyegira Keith
2. Ms Kanyima K. Angela
3. Ms Musaali Miriam
4. Mr. Danakine P. Innocent

**30<sup>TH</sup> SEPTEMBER, 2014**

1. Hon. Ssendaula Gerald

**2<sup>ND</sup> OCTOBER, 2014**

- **ELECTRICITY REGULATORY  
AUTHORITY**

1. Dr. Benon Mutambi
2. Ms Ziria Tibalwa Waako
3. Mr. Mutyaba Vianney
4. Mr. Obiga H.R.
5. Mr. Okobai Geofrey

**21<sup>ST</sup> OCTOBER, 2014**

- **NSSF MANAGEMENT**

1. Mrs. Geraldine Ssali Busuulwa
2. Mr. Obia Mark Martin
3. Ms. Byakika Eseza Catherine
4. Mr. Kasaato P. Gerald
5. Mr. Birungi Edgar
6. Mr. Mwanje Steven
7. Mr. Mpanga David

**21<sup>ST</sup> OCTOBER, 2014**

- **ELECTRICITY REGULATORY  
AUTHORITY**

1. Ms. Ziriya Tibalwa Waako
2. Mr. Obiga H.R.
3. Ms. Monica Katungi Engola
4. Mr. Wandera Julius
5. Mr. Mutyaba Vianney