

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION – 2010

THE DEPARTMENTAL COMMITTEE ON DEFENCE
AND FOREIGN RELATIONS

REPORT ON THE PROCUREMENT, DISPOSAL AND
CONSTRUCTION OF PROPERTIES OF KENYA'S
DIPLOMATIC MISSIONS:

1. EGYPT
2. JAPAN
3. NIGERIA
4. BELGIUM
5. PAKISTAN

OCTOBER, 2010

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,

OCTOBER, 2010

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1.0 PREFACE

Mr. Speaker,

1.1 The Departmental Committee on Defence and Foreign Relations is established pursuant to provisions of Standing Order 198 (1). Under the provisions of Standing Order 198 (3) the Committee is mandated to:-

- (a). investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (b). study the Programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
- (c). study and review all legislation referred to it;*
- (d). study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- (e). investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and*
- (f). make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

1.2 The Committee is also mandated to scrutinise the budget of line Ministries as provided for under Standing Order No. 152:-

- (1) Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental Committees according to their mandates.*

(2) Each departmental Committee shall consider, discuss and review the estimates committed to it under this standing order and submit its report thereon to the House within twenty one days after they were first laid before the House.

1.3 The Committee oversees the performance of the following Ministries and Government department:-

- (i) Defence;
- (ii) Foreign Affairs;
- (iii) East African Community; and
- (iv) National Security Intelligence Service.

1.4 Under the above Ministries, the Committee covers the following subjects;

- (i) Defence matters;
- (ii) Foreign policy;
- (iii) Treaties , Conventions and Agreements;
- (iv) International and Regional Organisations;
- (v) Bilateral and Multilateral Relations;
- (vi) Regional Cooperation policy;
- (vii) East African Community Affairs;
- (viii) National Security Intelligence.

1.5 Membership

1.5.1 The Committee comprise the following Members of Parliament:-

The Hon. Adan W. Keynan, MP – Chairperson

The Hon. Hassan A. Joho, MP – Vice Chairperson

The Hon. George Omari Nyamweya, MBS, MP
The Hon. Julius K. Kilonzo, MP
The Hon. Eugene L. Wamalwa, MP
The Hon. Jeremiah N. Kioni, MP
The Hon. Charles M. Kilonzo, MP
The Hon. Joshua S. Kutuny, MP
The Hon. Peter E. O. Anyanga, MP
The Hon. Benedict F. Gunda, MP
The Hon. Wilson M. Litole, MP

1.0 THE PROCUREMENT, DISPOSAL AND CONSTRUCTION OF PROPERTIES OF KENYA'S DIPLOMATIC MISSIONS ABROAD

1.1 The Committee embarked on interrogating the policy and its implementation on the matter of property purchase, construction or disposal of five Kenya Missions abroad:- Cairo, Egypt; Tokyo, Japan; Lagos/Abuja, Nigeria; Brussels, Belgium and Islamabad in Pakistan. To achieve this, the Committee resolved to hold meetings with Government Ministries, Departments and relevant individuals and undertook inspection visits of the Missions under review.

(a) Meetings

1.2 The Committee held meetings with officers of the relevant Government Ministries and other persons who made submissions on Government policy on properties of Kenya missions abroad and adduced evidence on the purchase, construction and disposal of properties of Kenya Missions abroad.

1.3 The Committee received submissions and evidence from the following:-

- (i) Attorney General;
- (ii) Minister for Public Works;
- (iii) Minister for Lands;
- (iv) Minister for Foreign Affairs;
- (v) Ambassador Dennis Awori, former Kenya Ambassador to Japan;
- (vi) Deputy Prime Minister and Minister for Finance;
- (vii) Interim Director, Public Procurement and Oversight Authority;
- (viii) Governor, Central Bank of Kenya; and
- (ix) Mr. Robert Osogo – former official cook to Kenya's Ambassador to Japan

1.4 The Committee also received written submissions.

(b) The Inspection Visits

1.5 The Committee undertook two inspection visits to the Kenya Missions abroad. The visits were undertaken in two phases: Cairo - Egypt and Tokyo - Japan between 14th and 22nd July, 2010 and Abuja and Lagos - Nigeria, Brussels - Belgium and Islamabad - Pakistan between 18th and 26th August, 2010. The purpose of the visits was twofold:-

- (i) To review the performance of Kenya Missions in the aforementioned five countries;
- (ii) Inspect properties disposed, acquired and or under construction by the Government through the Ministry of Foreign Affairs for the respective Missions.

1.6 The Committee set out to meet these objectives by visiting and inspecting Kenya's diplomatic Missions in the aforementioned Countries and held meetings with Mission staff and other relevant persons.

1.7 The following Members of the Committee undertook the visits:-

1.8.1 Inspection Visit to Cairo and Tokyo

- (i) The Hon. Adan W. Keynan, MP – Leader of Committee
- (ii) The Hon. George O. Nyamweya, MBS, MP
- (iii) The Hon. Charles M. Kilonzo, MP
- (iv) The Hon. Benedict F. Gunda, MP
- (v) The Hon. Peter O. Anyanga, MP
- (vi) The Hon. Eugene W. Wamalwa, MP
- (vii) Emejen Nicholas – Secretary to Committee

1.8.2 Inspection Visit to Abuja and Lagos, Brussels and Islamabad

- (i) The Hon. Adan W. Keynan, MP – Leader of Committee
- (ii) The Hon. George O. Nyamweya, MBS, MP
- (iii) The Hon. Wilson M. Litole, MP
- (iv) The Hon. Jeremiah N. Kioni, MP
- (v) Emejen Nicholas – Secretary to Committee

1.9 The Committee had successful inspection visits in which it met and held discussions with various persons as stated here below:-

1.9.1 Kenya Embassy in Cairo, Egypt

1. Meeting with the Kenyan Ambassador to Egypt, H.E. Ambassador Daniel Makdwallo and the Embassy home based staff. The meeting

discussed Kenya-Egypt relations, the operations at the Mission and the sale of the Government plot in Dokki, Giza area;

2. Meeting with Kenyans in Egypt - the meeting discussed the role of the Diaspora community in Kenya's development.

1.9.2 Kenya Embassy in Tokyo, Japan

3. Meeting with the Kenyan Ambassador to Japan, H.E. Ambassador Benson Ogutu and the home based Embassy staff – discussed the Kenya Japan relations, operations at the Mission as well as the purchase of the Mission property in Meguro ward.
4. Meeting with architect, Mr. Dick Olango – discussed his architectural report to the Mission.
5. Meeting with Mr. Nobuo Kuriyama, vendor – deliberated on the sale of the property to Kenya Mission in Japan.
6. Meeting with M/s Coral Corporation, real estate agents – deliberated on the valuation of the Mission property.
7. Courtesy call on Hon. Tetsuro Yano, Vice Chairman of the Japan Africa Parliamentary League;
8. Meeting with the Tokyo Fire Department – Committee briefed on the fire report.
9. Meeting with Mr. Akiyoshi Ohtake, the Shihoushoshi.
10. Meeting with representatives of Kenyans in Japan - the meeting discussed the need for dual citizenship, the role of the Diaspora community in Kenya's development, challenges faced by the

Diaspora, their view on the purchase of the property in Tokyo and fire that destroyed the Ambassador Residence.

11. Officials of the Ministry of Foreign Affairs of Japan – the Committee held the meeting at the Government of Japan offered plot in Minato area.

1.9.3 Kenya High Commission in Abuja, Nigeria

12. Meeting with the Kenya High Commissioner to Nigeria, H.E. Francis Sigei, EBS and the Mission's home based staff. The meeting discussed Kenya Nigeria relations, operations at the High Commission, the sale of the Mission property in Lagos and construction of the Chancery and Residence in Abuja.
13. Meeting with the Design and Build (D & B) Ltd, Lead consultants – discussed status of the project (construction).

1.9.4 Kenya Embassy in Brussels, Belgium

14. Meeting with the Kenya Ambassador to Belgium, H.E. Ambassador Kembi Gitura and the Embassy home based staff. The meeting discussed the Kenya Belgium relations, operations of the Mission and the purchase of the Chancery along Winston Churchill Avenue.

1.9.5 Kenya High Commission in Islamabad, Pakistan

15. Meeting with the Kenya High Commissioner, H.E. Mishi Masika Mwatsahu and Mission home based staff. The meeting discussed

Kenya Pakistan relations, operations at the Mission's and the construction of the Chancery and Residence.

16. Meeting with Impact Designs, Lead Consultants – discussed status of the project (construction works).

2.0 General recommendations

2.1 During the visits and the meetings held to discuss the matter of purchase, construction and or disposal of properties for Kenya Missions abroad the Committee on a broad perspective recommends that:-

- 2.1.1. The Ministry of Foreign Affairs should at all times adhere to its stated objectives of promoting, and protecting the image of Kenya. The Ministry should project Kenya's proper image and role in world commerce, diplomacy and peace building.
- 2.1.2. While the Committee acknowledges that the appointment of diplomats is undertaken by the office of the President, the Ministry of Foreign Affairs should consider the technical capacity of persons to be appointed and specific technical needs of various Missions so as to maximise gains for the people of Kenya.
- 2.1.3. The Ministry of Foreign Affairs should review its policy on appointments, promotions and terms of service of officers in the Foreign Service. The appointments and promotions should be based on merit and relevance to the respective Missions so as to curb cronyism, nepotism and corruption in the diplomatic service.
- 2.1.4. The Ministry of Foreign Affairs must take full advantage of the technical and educational support offered by friendly countries and

expeditiously disseminate the offered support to the relevant Ministries and Kenyans.

- 2.1.5. The Ministry of Foreign Affairs should review the rationalisation policy in relation to Attachés. While reviewing the role of Attaché's on a case by case basis to determine their relevance in each Mission the Ministry of Foreign Affairs should consult with the relevant line Ministry.
- 2.1.6. The Ministry of Foreign Affairs should develop a clear policy to be adopted by the Cabinet to guide the procurement, construction and or disposal of properties for Kenya Missions abroad.
- 2.1.7. The Ministry of Foreign Affairs should ensure that relevant Government Ministries and Departments particularly the Attorney General, Ministry of Public Works, Ministry of Lands, Ministry of Finance and the Public Procurement Oversight Authority are involved in the process of acquisition, construction and or disposal of properties. The involvement of the technical Government departments will ensure value for money for Kenya.
- 2.1.8. The Public Procurement Oversight Authority (PPOA) should ensure that the Public Procurement and Disposal Act, 2005 and attendant procurement regulations are adhered to by all public entities including Kenya's diplomatic Missions abroad when acquiring, disposing and or constructing properties abroad.
- 2.1.9. The Public Procurement Oversight Authority should undertake regular audit of procurement processes undertaken by the Ministry

of Foreign Affairs and in particular Kenya's diplomatic Missions abroad.

- 2.1.10. The Ministry of Foreign Affairs in conjunction with the Ministry of Public Works and the Ministry of Finance should establish a comprehensive inventory of all Government properties abroad complete with the authentic ownership documents.
- 2.1.11. The Government should take decisive disciplinary action on Public officers who may be found to have flouted relevant laws and procedures during the procurement of properties for Kenya missions abroad;
- 2.1.12. Public Officers found culpable in the transactions involving the purchase, construction and or sale of Government properties be surcharged and made to refund money lost by the Government.
- 2.1.13. Public Officers found culpable in the transactions involving the purchase, construction and or sale of Government properties be barred from holding public office.

3.0 ACKNOWLEDGEMENT

3.1 wish to express my appreciation to Members of the Committee who sacrificed time from their families and Constituents to undertake the study visit during a time of campaigns for the Referendum on the proposed Constitution. The Committee is grateful to the Speaker of the Kenya National Assembly for allowing the Committee to undertake the visit and to the Office of the Clerk, for facilitating and providing technical support during the visit.

3.2 The Committee is grateful to the Ministry of Foreign Affairs for their facilitation of the inspection visits. The Committee also wishes to register its appreciation to the Kenyan Diaspora in Egypt, Japan and Pakistan for finding time to meet and hold open discussions with the members of the Committee.

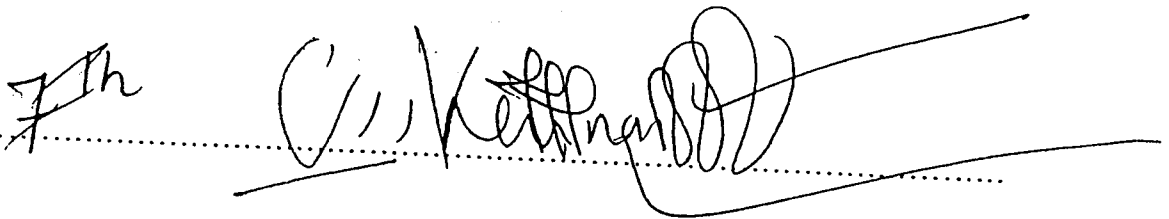
3.3 The Committee observations and findings in this Report are based on the submissions and evidence received by the Committee during meetings and site visits and were agreed to unanimously by all members present during report writing;

3.4 The decisions of the Committee on this Report were arrived at after extensive deliberations and were unanimous.

Mr. Speaker,

3.5 It is my pleasant duty and privilege, on behalf of the Departmental Committee on Defence and Foreign Relations to table this Report and commend it to the House for adoption pursuant to provisions of the National Assembly Standing Order 181.

Signed:



THE HON. ADAN W. KEYNAN, MP
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

Date:

7th OCT 2010

4.0 BACKGROUND

4.1 The National Assembly Standing Order No. 152 mandates the Committee on Defence and Foreign Relations to consider, discuss and review Estimates of assigned Ministries. The Committee while reviewing the Estimates of the Ministry of Foreign Affairs for the Financial Year 2009/2010 and 2010/2011 realised that a large portion of the Ministry's Development vote is dedicated to the acquisition and construction of properties for Missions abroad. While undertaking the budget scrutiny and Mid-Term expenditure review for FY 2009/2010.

4.2 The Committee identified the following Missions for review; Nigeria, Egypt, Belgium, Japan and Pakistan. From interactions with the Minister for Foreign Affairs during Budget Scrutiny, the Committee realised that proceeds from the sale of the Lagos properties was allegedly transferred to purchase property in Tokyo (DFR 1) instead of utilizing the proceeds of the sale for the stated and intended purpose of constructing a Chancery and Residence in Abuja where the Federal Government of Nigeria had offered a plot at no direct cost to the Kenya High Commission in Nigeria.

4.3 Because of the foregoing the Committee resolved to interrogate the Ministry's policy on property acquisition, construction and or disposal for Missions abroad and in particular:-

CAIRO, EGYPT

4.3.1 The Government through the Ministry of Foreign Affairs had in 2007 sold a plot it had purchased in Cairo. The proceeds of the sale (4,191,600 Egyptian pounds) were to be used in purchasing a

Residence for the Ambassador but instead the funds were allegedly returned to Treasury and not utilized for the intended purpose.

TOKYO, JAPAN

4.3.2 At the request of H. E. the President of the Republic of Kenya, the Government of Japan identified and offered a prime plot for sale, in Minato ward, to the Kenya Government for construction of a Chancery and Residence. However the Ministry of Foreign Affairs in 2009 purchased as Chancery and Ambassador's Residence in a residential area in Meguro ward, Tokyo, at a price of JPY 1,750,000,000. In February 13, 2010 a mysterious fire destroyed the Ambassador's Residence.

LAGOS AND ABUJA, NIGERIA

4.3.3 In 1972 the Government of Kenya purchased properties in a prime location along Queens Drive, Lagos. The Federal Government of Nigeria relocated its capital to Abuja in 1976 and all diplomatic Missions were offered plots at no direct cost to construct Chanceries and Residences in a diplomatic enclave in Abuja. The High Commission of Kenya relocated to Abuja in 2004 and a decision to sell the properties in Lagos was made with a recommendation to sell two of the three plots in Lagos, use the proceeds to construct a Chancery and Residence in Abuja and retain one of the plots. However all three properties were sold and the proceeds of the sale was allegedly used to purchase the Chancery and Residence in Tokyo.

4.3.4 The Ministry of Foreign Affairs commenced construction of a Chancery and staff quarters and Ambassador's Residence in Abuja in 2010.

BRUSSELS, BELGIUM

4.3.5 In 2008 the Ministry of Foreign Affairs purchased a Chancery located along Winston Churchill Avenue in Brussels, Belgium at a cost of 3,850,000 Euros. The purchase price was intended to include refurbishment, furniture and fittings. An Ambassador's Residence had been purchased earlier on.

ISLAMABAD, PAKISTAN

4.3.6 In 1991 the Government of Kenya bought land in a diplomatic enclave in Islamabad, Pakistan covering 6,773 Square Metres at KES 1.4 million for construction of a Chancery and Ambassador's Residence. Construction of the Chancery and Residence commenced in 2008 at a total cost of KES 366, 734, 700. Construction is ongoing.

4.4 The Committee also found it necessary to inquire into the application of monies allocated for this purpose in the Budget and also to inquire into the operations of the Missions as part of its oversight role as provided for under Standing Order No. 198 (3) .

4.5 In light of the fact that the Ministry had embarked on the purchase, construction and or disposal of properties abroad without a clear policy to guide the process, the Committee was concerned as to whether the procedure and policies used in the purchase, construction

and or disposal of the properties was in conformity with the public procurement procedures and if indeed the properties alleged to have been bought had been acquired and their general condition. While undertaking this exercise, the Committee took into consideration and was guided by the Constitution of Kenya; the Public Procurement and Disposal Act, 2005; The Government Contracts Act; The Fiscal Management Act and other relevant laws, rules and regulations.

4.6 The Committee resolved to hold hearings to receive submissions and evidence in respect of implementation of the foregoing and visit the aforementioned Missions. The Committee held meetings at Parliament Buildings with the following:-

- (i) Attorney General - March 30, 2010
- (ii) Minister for Public Works - May 12, 2010;
- (iii) Minister for Lands - May 13, 2010;
- (iv) Minister for Foreign Affairs – June 3, 2010 and August 12, 2010;
- (v) Ambassador Dennis Awori, immediate former Kenya Ambassador to Japan – June 22, 2010;
- (vi) Deputy Prime Minister and Minister for Finance – August 10, 2010 ,
- (vii) The Interim Director General, Public Procurement and Oversight Authority – August 12, 2010.
- (viii) The Governor, Central Bank of Kenya – September 7, 2010;
- (ix) Mr. Robert Osogo, former cook to Kenya's Ambassador to Japan – September 7, 2010.

4.7 During the visits the Committee also received oral and written submissions and evidence.

CHAPTER ONE: GOVERNMENT POLICY ON PURCHASE, CONSTRUCTION AND DISPOSAL OF PROPERTIES

SUBMISSIONS IN RESPECT OF GOVERNMENT POLICY ON PURCHASE, CONSTRUCTION AND DISPOSAL OF PROPERTIES

5.0 Submissions by the Minister for Foreign Affairs

5.1 The Minister for Foreign Affairs, Hon. Moses Wetangula, EGH. MP appeared before the Committee on June 3, 2010 and briefed the Committee that:-

5.1.1 The Ministry is formulating the broad policy of Government to own or build property in Missions abroad. The policy will take into consideration the political, economic and strategic importance of countries where Kenya Missions are located as well as rent paid by the Government for leasing properties.

5.1.2 The Government owns land, buildings and other movable assets in some diplomatic Missions abroad which include 47 residential and 15 non residential properties.

5.1.3 The acquisition of properties has been gradual but in the past it was prompted by the needs of specific Heads of Mission. With expansion of Kenya's diplomatic presence abroad demand for space and acquisition of properties will continue.

5.1.4 Treasury is the largest source of revenue for property acquisition.

5.1.5 Property acquisition is in line with the Ministry's strategic plan and the report of the Taskforce on rationalization, restructuring and

strengthening of the Ministry. In line with the aforementioned report the Ministry established an asset management unit so as to manage existing properties, create a comprehensive data base of all assets and recommend prioritization and acquisition of properties for Missions, consider joint acquisition of properties with Partner States of EAC as well as consider policies for funding the acquisition of properties.

5.1.6 In any tender there must be an inter Ministerial Committee which must adhere to the Public Procurement and Disposal Act and that Treasury's authorization must be sought before proceeding with the acquisition or disposal.

6.0 Submission by the Minister for Public Works

6.1 The Minister for Public Works, Hon. Chris Obure, EGH, MP appeared before the Committee on May 13, 2010 and informed the Committee that:-

6.1.1 The Ministry of Public Works undertakes technical assessment on the viability and suitability of buildings for intended purposes upon invitation by concerned Government Ministries by sending its professionals to the actual sites.

6.1.2 The Ministry also assesses on invitation the need for repairs of public buildings but the actual rehabilitation is normally undertaken by the parent Ministry.

6.1.3 When Government decides to lease or dispose property, the Ministry of Public Works is not involved in the process.

7.0 Submission by the Minister for Lands

7.1 The Minister for Lands, Hon. James Orengo, EGH, MP appeared before the Committee on may 13, 2010 and briefed the Committee as follows, that:-

7.1.1 The role of the Ministry of Lands in the acquisition of Government properties is advisory and Technical and is on request by the service consumer, in the case of acquisition of property by Kenya Missions abroad, the Ministry of Foreign Affairs requests for a Valuer to accompany the team.

7.1.2 The acquisition of property by the Government of Kenya is subject to Kenyan Laws and the Laws of the respective countries in which the property is located;

7.1.3 Before any purchase there should be thorough consultative meetings which should involve all relevant Government departments. There is insufficient legislation to compel ministries to consult technical Government departments.

8.0 Submissions by the Interim Director General, Public Procurement and Oversight Authority (PPOA)

8.1 The Interim Director General, Director General of the Public Procurement and Oversight Authority appeared before the Committee on August 9, 2010 and informed the Committee that:-

8.1.1 Procurement in the public sector is governed by the Public Procurement and Disposal Act, 2005 and Kenya Mission abroad are expected to follow the public procurement laws. The role of the

Public Procurement Oversight Authority (PPOA) is to give guidance and approve specially permitted procurement procedure. Public entities report to Public Procurement and Oversight Authority on how they have carried out their procurement, termination of contracts, contracts in excess of KES 5 million and also when an item is being sold to an employee.

- 8.1.2 There are several procurement procedures among them: open tendering, restricted tendering, direct procurement, request for disposal, procurement of low value items and specially permitted procurement. Before acquisition is done it is mandatory that the procurement entity has a plan which is reflected the public entities annual procurement plan.
- 8.1.3 When using direct procurement, negotiations are mandatory after the approval of the method by the Ministerial Tender Committee. A negotiation team is formed to negotiate with the bidder. There are no negotiations for open tendering.
- 8.1.4 In Direct procurement the tender committee must approve use of the method in writing with justifications. Direct procurement only applies where there is only a single bidder, no reasonable alternative and where there is an urgent need for the goods to be procured.
- 8.1.5 In the procurement of services and other items, it is important for public entities to engage the services of experts from other public institutions so as to realize value for money.
- 8.1.6 According to the Public Procurement and Disposal Act, 2005 the following disposal methods are allowed;- Transfer to another public

entity; sale by open tender; sale by public auction; destruction by dumping or burying; trading in; and disposal to employees. Before disposal, there must be a disposal plan. A disposal committee carries out a valuation of items for disposal and recommends the method of disposal. Disposal can't be effected until final payments have been paid.

- 8.1.7 Procurement Contracts on behalf of public institutions are entered into by the accounting officers or duly authorized representative. Contracts and procurement processes not signed by the accounting officer are flawed as they do not meet the requirements of law.
- 8.1.8 The Public Procurement Oversight Authority has not carried out any audit assessment in relation to diplomatic missions abroad.

9.0 Submissions by the Deputy Prime Minister and Minister for Finance

9.1 The Deputy Prime Minister and Minister for Finance appeared before the Committee on August 10, 2010 and briefed the Committee as follows:-

- 9.1.1 The policy of the Government is to acquire rather than lease property so as to save on the ever increasing exorbitant rents. The savings realized can be applied to other urgent needs.
- 9.1.2 The Ministry of Finance does not give policy directions or micromanage Ministries. It is the role of the accounting officer to ensure that resources allocated are utilized efficiently. Treasury allocates funds in accordance with the policy objectives of the Government and sectors have ceilings within which they work out their priorities. Treasury is no longer involved in the signing of

procurement contracts for Ministries especially after the coming into force of the Public Procurement and Disposal Act, 2005. Treasury only oversees Ministries in line with financial regulations and only intervenes when there is reason to believe that money was not used appropriately.

9.1.3 When acquiring, disposing or constructing the Ministry of Foreign Affairs works with relevant Ministries with the technical capacity to ensure they get value for money.

10.0 Submissions by Governor, Central Bank of Kenya

10.1 The Governor, Central Bank of Kenya, Prof. Njuguna Ndungu appeared before the Committee on September 7, 2010 and briefed the Committee that:-

10.1.1 The Central Bank of Kenya (CBK) is a fiscal agent and banker to the Government of Kenya and is responsible for effecting foreign currency payments and receives offshore inward remittances on behalf of Government Ministries and Departments.

10.1.2 When CBK receives funds for Government Ministries it is in the form of SWIFT FN 103/202/910 messages from correspondent banks. Each message contains information pertaining to the sender of the money, type of currency, beneficiary and purpose of the funds. Once the money has been received it is credited to the beneficiary Ministry's account in Kenya shillings equivalent and the relevant Ministry is notified of the credit by a letter signed by two

CHAPTER TWO: SALE OF GOVERNMENT PLOT IN CAIRO, EGYPT

SALE OF GOVERNMENT PLOT IN DOKKI, GIZA AREA, CAIRO, EGYPT

11.0 Evidence from the Minister for Public Works

11.1 The Minister for Public Works, Hon. Chris Obure, EGH, MP appeared before the Committee on May 12, 2010 and informed the Committee that:-

11.1.1 The Ministry of Public Works and Housing was in August 1988 requested by the Ministry of Foreign Affairs to identify consultants to design, document and supervise the construction of a new Chancery in Cairo. Architect C. D.K Muya - Ag. CSA and Engineer M.M. Munzyu – SSE (Structural) visited Cairo on August 21st to 24th 1988 to undertake the assignment. The proposed project was however later shelved.

11.1.2 In October 2005 a team comprising of officers from the Ministry of Foreign Affairs, Ministry of Roads and Public Works and Ministry of Lands visited Cairo and recommended the purchase of a Chancery and an Ambassador's Residence to save on cost from rent. The Ambassador was tasked to scout for suitable premises and advise the parent Ministry accordingly. (DFR 2)

12.0 Evidence from the Minister for Lands

12.1 The Minister for Lands, Hon. James Orengo, EGH, MP appeared before the Committee on May 13, 2010 and informed the Committee that most of the properties acquired were not located in diplomatic enclaves

in the respective countries; some like in Cairo were in *slumatised* (Slum) areas. (DFR 03)

13.0 Evidence from the Minister for Foreign Affairs

13.1 The Hon. Moses Wetangula, EGH, MP Minister for Foreign Affairs appeared before the Committee on June 3, 2010 and informed the Committee that:-

13.1.1 In 1989 the Government of Kenya purchased a plot located at No. 4 Kassem Street, Dokki Location, Giza, Gavenret in Cairo. The plot measured approximately 698 metres squared and was purchased at a price of US \$377, 244.

13.1.2 Proposals for funding to develop the plot were made to Treasury but no funds were allocated and efforts to get alternative funding were not approved by Treasury and therefore the plot remained undeveloped.

13.1.3 At the time of purchasing the plot it was located in a prime area but the neighbourhood deteriorated and became 'slumatised' and hence unsuitable for an Embassy. The Mission therefore recommended that it be sold and the proceeds be used to acquire a Chancery or Residence elsewhere.

13.1.4 In November 2005 an inter Ministerial inspection team comprising of Ministries of Foreign Affairs, Finance, Lands and Public Works visited the plot, valued it at US \$ 1.2 million and recommended that the plot be disposed off due to the deteriorated

neighbourhood and the proceeds be used to acquire an Ambassador's Residence.

13.1.5 Treasury upon request from the Ministry of Foreign Affairs approved the disposal of the plot but the proceeds from the sale were to be forwarded to Treasury. (DFR 04) In 2007 the Ministry undertook an independent valuation of the plot and returned a value of Egyptian pounds 6,000 to 7,000 per square metre.

13.1.6 The Embassy advertised for the sale of the plot and the highest bidder, M/s Modern Power Systems offered Egyptian pounds 6,000 per square metre and was awarded the sale. A sale agreement was signed on March 19th 2007 by the Kenyan Ambassador to Egypt and the buyer. 10% of the sale price was paid to the Embassy in Egypt upon execution of the agreement and the remaining 90% (US \$677, 246) was transferred to the Ministry's Account No. 01010 R004. The money was later transferred to Treasury.

14.0 Evidence from the Interim Director General, Public Procurement Oversight Authority (PPOA)

14.1 The Interim Director General, Director General, Public Procurement Oversight Authority Mr. M. Juma appeared before the Committee on August 9, 2010 and informed the Committee that PPOA was not consulted on the sale of the property in Cairo.

15.0 Evidence from the Deputy Prime Minister and Minister for Finance

15.1 The Deputy Prime Minister and Minister for Finance, Hon. Uhuru Kenyatta, EGH, MP appeared before the Committee on August 10, 2010 and informed the Committee that the plot in Cairo was sold at KES 47, 106, 221.30 and the funds realised were remitted to Treasury's account at the Central Bank of Kenya.

16.0 Evidence by the Governor, Central Bank of Kenya

16.1 The Governor, Central Bank of Kenya, Prof. Njuguna Ndungu appeared before the Committee on September 7, 2010 and informed the Committee that:-

16.1.1 On December 24, 2007 it received a SWIFT FIN 103 message from the Bank of New York advising receipt of US \$ 677, 246 from Kenya Embassy in Cairo. The funds were remittance of 90% balance on sale of Government plot in Dokki area, Cairo and the beneficiary was Ministry of Foreign Affairs.

16.1.2 CBK raised entries to transfer the funds on January 7, 2008, equivalent to KES 42, 395, 599. 60 and advised the Ministry of Foreign Affairs accordingly. CBK is not aware of additional funds sent from Cairo. (DFR 04).

17.0 Inspection visit of the Kenya Embassy in Egypt – 14th to 16th July, 2010

17.1 The Committee paid a courtesy call on the Kenya Ambassador to Egypt, H.E. Daniel Makdwallo on Thursday July 15th, 2010. The Ambassador

welcomed the Committee to Egypt and thanked the Committee for visiting the Embassy in Egypt.

17.2 The Ambassador Mr. Makdwallo accompanied by the Embassy staff briefed the Committee on the sale of the Government plot in Dokki area as follows:-

17.2.1 In 1989 the Embassy purchased an undeveloped plot measuring 698.6 m² at a cost of US \$ 373,244 with the intention of building a Chancery and residential flats for Embassy staff but due to lack of funds the project was shelved.

17.2.2 An Inter-Ministerial audit and inspection team visited the Embassy in Cairo in November 2005 and recommended that the plot be disposed off and funds realised be applied towards the purchase of a Residence for the Ambassador. The plot was to be sold on account of being in an overcrowded area, lacking adequate parking space on the access road, unsuitable location for an Embassy and was being targeted for illegal sale by conmen due to non development. Treasury granted authority for the disposal of the plot in line with the recommendations of the inspection team and the Ambassador's request in October, 2006 vide letter Ref: PPD.2/20/04 Vol. I/(72) (DFR 05).

17.2.3 The Embassy began the process of disposal by appointing M/S Coldwell banker to provide indicative value for the plot in August 2006 and a value of 5,500 to 7,000 Egyptian pounds was returned subject to conditions. Adverts were subsequently placed in two local dailies Al Wasset and Al Ahram and four responses

were received ranging between 5, 000 and 6,000 Egyptian Pounds per square metre. The offers were communicated to Ministry of Foreign Affairs and subsequently Treasury granted authority for disposal in November 2006 and the Embassy procurement Committee met to discuss the sale and evaluate the bids. M/s Modern Power Systems was offered to purchase the plot after emerging the highest bidder at 6, 000 Egyptian Pounds per square metre.

17.2.4 The Embassy engaged Mr. Mahmoud El Shorbagy, a lawyer to oversee the sale and transfer transaction in December, 2006 but the Permanent Secretary, Ministry of Foreign Affairs put the sale on hold pending scrutiny of documents sent to Treasury related to valuations. The Ministry in February; 2007 directed that valuations be undertaken of the plot and the Embassy appointed two valuation firms to undertake valuation for the plot. Treasury granted authority for the sale to proceed in February, 2007 vide Ref: ES.90/06/02 and the Embassy proceeded with the sale with the sale agreement being signed on March 19, 2007 upon receipt of 10% deposit amounting to US \$ 73,279.72 which was transferred by the Embassy in June 2007 to the Ministry's Account (01-1010-R004) with Central Bank.

17.2.5 The buyer completed the payment of the remaining 90% of the purchase price in December 2007 and the amount equivalent to US 766,278 was transferred by the Embassy to the Ministry's account (R4 01-010-R004).

17.2.6 The Committee was further informed that the emerging trend amongst developed countries is the purchase of floors on already developed office blocks for use as Embassies. This is cheaper than developing a stand alone property. The Embassy currently has no plans to purchase property in Cairo.

18.0 Site Visit to the sold Embassy plot in Dokki, Plot No 4, Kassem Street Giza area

18.1 The Committee accompanied by the Ambassador visited the plot sold by the Government of Kenya and the surrounding area. At the site of the plot the Committee observed that a six storey building and the price per square metre is currently at 7, 000 Egyptian pounds.

19.0 Meeting with Kenyan Diaspora in Egypt

19.1 The Committee held a meeting with Kenyans working, living and or pursuing studies in Egypt. The Diaspora was briefed on the role of Parliament and the Mandate of its Committees. The Committee further advised the Diaspora to register themselves with the Embassy so that the Mission can cater for their welfare when need arises.

20.0 Committee Observations on the sale of government plot in Egypt Cairo

20.1 Only 90 % of the funds realised from the sale of the plot were remitted to CBK. The money was later on the request of the Ministry of Foreign Affairs, returned to the Ministry's development account

contrary to the Minister's submission that the proceeds of the sale were returned to Treasury.

- 20.2 Committee noted that the figures given by the respective officers on proceeds from sale of the plot and remittances to CBK.
- 20.3 Concern that officers gave contradictory information.
- 20.4 Sale of the property was the right decision since the plot was in a location that is mainly residential and therefore not suitable for an Embassy.
- 20.5 Funds realised from the sale of the property were to be used in purchasing a Residence for the Ambassador but funds were allegedly returned to Treasury and not utilized as intended.
- 20.6 In Missions where it is not viable to purchase or build a stand alone structure and instead the Mission should explore the principle of purchasing floors in already built structures in up market and suitable areas designated for diplomatic use.

CHAPTER THREE: PURCHASE OF CHANCERY AND RESIDENCE
FOR KENYA EMBASSY IN TOKYO, JAPAN

PURCHASE OF CHANCERY AND RESIDENCE FOR KENYA
EMBASSY IN MEGURO-KU, TOKYO, JAPAN

21. Evidence by the Attorney General

21.1 The Attorney General Hon. Amos Wako, EGH, MP - appeared before the Committee on March 30, 2010 and informed the Committee that State Law Office was not involved in the purchase of the Chancery and Ambassador's Residence in Tokyo. (DFR 06)

22. Evidence by the Minister for Public Works

22.1 The Minister for Public Works, Hon Chris Obure, EGH, MP on May 12, 2010 informed the Committee that the Chancery and Ambassador's Residence was purchased by the Government in 2009 however the Ministry of Public Works was not involved in the purchase process. (DFR 02)

23. Evidence by the Minister for Lands

23.1 The Minister Hon. James Orengo, EGH, MP appeared before the Committee on May 13, 2010 and informed the Committee that:-

23.1.1 Vide letter MFA./212/15A/Vol. II/(18) dated 26th November 2008 the Ministry of Foreign Affairs requested the Ministry of Lands to nominate and officer to accompany a team visiting Tokyo in early

January. The letter gave a brief history of the plot to be valued where the Japanese Government had offered the Kenyan Government. (DFR 07)

- 23.1.2 The Assistant Commissioner of Lands, Mrs. Teresia Kimondiu was nominated by the Commissioner of Lands to be part of the team travelling to Japan for valuation of the plot. The team that left for Tokyo comprised of Mr. Antony Muchiri, Ministry of Foreign Affairs, Mr. Kimemia, Ministry of Finance and Mrs. Kimondiu from Ministry of Lands.
- 23.1.3 In Tokyo the team in the company of Ministry of Foreign Affairs representatives, Ministry of Finance/infrastructure of Japan and some real estate agents identified by the Mission visited 7 plots that had been identified by the Mission.
- 23.1.4 The team met with the Tokyo local finance officers on 15th January, 2009 who were charged with the sale of the plot offered by the Government of Kenya (plot 4-1-5 Minamu Azabu). On seeking to understand the basis of the price offered for the plot the team was informed that the valuation was confidential and final.
- 23.1.5 On 16th January, 2009 the team Leader Mr. Muchiri (MFA) and the Kenya Embassy management proposed that the team meets a Mr. Nobuo Kuriyama, the landlord of the premises housing the Embassy to know whether he was still interested in selling the property and a decision to value the this property (3-24-3 Yakumo Meguro-ku) was made.

- 23.1.6 The team also met with Mr. Dick Olango a Kenyan architect in Japan on 16th January, 2009. Mr. Olango briefed the team on the land values and regulations in Japan.
- 23.1.7 On 26th January 2009 the architectural analysis of the viewed plot for construction of the Chancery and Ambassador's Residence was forwarded to the Ministry of Foreign Affairs by the Architect.
- 23.1.8 In Tokyo, Japan, the Ministry of Lands valued the property (3-24-3 Yakumo Meguro-ku) at JPY 1, 600, 000 (KES 1.392 billion). The valuation was guided by the Tokyo area land rates released by the Government of Japan and the open market offers of the plots in Meguro-ku. The valuation report was sent to the Ministry of Foreign Affairs on 11th February, 2009.
- 23.1.9 At a ministerial tender committee meeting held on 25th May, 2009 held by the ministry of foreign affair it occurred that the acreage on offer was 1,431 metres squared and not 1,600 metres squared as earlier indicated in Japan. This necessitated a downwards revision of the final value of the property to JPY 1,431,300,000 (KES 1,245,231,000).
- 23.1.10 Though the depreciated value of the buildings had been included in the report it was clear that this should not be part of the purchase price. This was informed by the fact that permanent buildings in Japan are taken at a lifespan of 20 years – the subject is older.
- 23.1.11 While carrying out property valuation, the Valuer tries to acquire information on the property from both the Government and real

estate agents/local valuers. The valuation report shows that the Valuer did acquire limited information on various properties and the qualification of the real estate agents contacted, were questionable.

24.0 Evidence by the Minister for Foreign Affairs

24.1 The Minister for Foreign Affairs, Hon Moses Wetangula, EGH, MP appeared before the Committee on June 3, 2010 and briefed the Committee as follows:-

24.1.1 The Government of Kenya first established an Embassy in Tokyo in 1979.

24.1.2 In 1989, the late Amb. Ole Leken identified a plot and negotiated with the owner to construct a Chancery and Ambassador's residence to the specifications of the Kenya Government for leasing.

24.1.3 Mission moves into the premises the same year.

24.1.4 Amb. Ole Leken suggests purchase of the same premises in a letter dated 22nd June, 1990 at a cost of JPY 5.5 billion (Kshs830,500,000,000) and confirms that Egypt, Algeria, Zambia, and Zaire, countries with similar or less endowed economies that had purchased property in Tokyo.

24.1.5 By a letter dated 14th November, 2006 Amb. Awori wrote suggesting purchase of the property occupied by the Mission and highlighting its advantages. Further written confirmation regarding accessibility of the premises and the presence of 15 other

Embassies within the locality from the Japanese Embassy is attached.

- 24.1.6 Amb. Awori initiated discussions with the property owners who gave an offer of JPY 2,208,834,000.00.
- 24.1.7 He proposed that the money for the purchase be raised through credit from Tokyo Mitsubishi UFJ Bank, with the Government of Kenya guaranteeing the loan.
- 24.1.8 A meeting was held on 21st February, 2007 in Nairobi between Permanent Secretary, Ministry of Foreign Affairs, Treasury officials and the UFJ Bank Tokyo. However, Treasury advised against securing a commercial loan due to the likely negative effects on the external debt situation of the country.
- 24.1.9 The Ministry then advised the Mission to factor the entire cost of acquiring the property in its development budget, subject to a valuation to ensure that the offer price of JPY 2.2 billion was not above the prevailing market prices.

25.0 Justification for purchase of the property

- 25.1 Kenya's presence in Japan is based on Japan's strategic importance, implying long-term presence of the Kenya Embassy in Tokyo.
- 25.1.1 High rents of JPY 4.3 million (Kshs2.9 million) monthly payable 12 months in advance from 1989. By 2009, rent had risen to Kshs48 million per year.

25.1.2 The property had been built to the specifications of the Kenya Government with an understanding that should the owner ever decide to sell, the mission would be given first consideration. In addition, the Chancery and the residence were housed in one large compound, making the property even more attractive.

25.1.3 From 2006/2007, the Ministry initiated far-reaching reforms which included improving the management of public resources through cost cutting, reducing wasteful spending and poor financial control and entrenching prudent financial management measures.

25.1.4 A 2006 audit report showed that the Ministry's recurrent expenditure was extremely high due to high rents paid for property occupied by missions. It singled out Tokyo, which is one of the most expensive cities in the world, as the most expensive mission to maintain.

25.2 Identification of a suitable property

25.2.1 In light of the above factors, the Government prioritized the acquisition of the property in Tokyo.

25.2.2 Considering the difficulty in securing the funding to purchase the property occupied by the mission it was decided to explore other options.

25.2.3 The mission initiated the process of identifying alternative properties. During a meeting in July 2008 with a visiting

Japanese delegation led by Senator Tetsuro Yano, the Kenya Government therefore requested the Government of Kenya for construction of a Chancery and Residence.

- 25.2.4 Following Sen. Tetsuro's visit to Nairobi, Amb. Awori held a follow up meeting with him in upon his return to Tokyo. A summary is contained in a letter to the Permanent Secretary dated 3rd October, 2008.
- 25.2.5 The Government of Japan in October, 2008 identified a plot in Minami-Azabu, Minato-Ku measuring 700.39 square metres. In a letter dated 24th October, 2008, Amb. Awori recommended the plot for purchase and gave an indicative price of JPY 900,000,000.00 or (Kshs.603, 000,000.00). This estimate was based on the Government of Japan's annual published price guidelines for plots in this area. However, such price guidelines are normally followed by actual valuations as and when the Government of Japan decides to sell.
- 25.2.6 Indeed, Amb. Awori wrote two months later informing that after an evaluation commissioned by the Government of Japan, the plot was on offer at a market price of JPY1.307 billion or Kshs1.138, 527,700.00. This was disappointing since it had been anticipated that the plot would be offered at a price substantially lower than the market value.
- 25.2.7 An evaluation and inspection team was constituted and dispatched to Tokyo from 13th to 17th January, 2009. The team comprised Mr. A.M. Muchiri – Deputy Director of

Administration, Ministry of Foreign Affairs, Mr. Joseph Kimemia – Ministry of Finance and Mrs. Teresia Kimondiu, Ministry of Lands. Its mandate was to assess the suitability of the plot offered and compare it with other available options in the market.

25.2.8 Prior to its departure to Tokyo, the team requested the mission to identify other plots for purposes of comparison with the Japanese Government's plot.

25.2.9 On arrival, the team visited seven plots, identified through real estate agents and Japanese Ministry of Foreign Affairs. However, most of them were found unsuitable on account of exorbitant pricing (up to JPY 2.5 to 3 billion), unattractive, in inappropriate locations, irregularly shaped, and too small to accommodate a chancery and residence. Some of the plots had also already been sold or were subject to auction.

25.2.10 The plot on offer from the Government of Japan was assessed to be unsuitable based on the findings of the team photographs taken on account of the following:-

- It was undeveloped plot
- At 700.39 square metres, it was half the size of the property occupied by the mission which measures 1431 square metres.
- The neighbourhood was surrounded by high rise residential apartments and was therefore inappropriate and unsuitable to house an embassy.

- It was more expensive by 35% per square metre.
- It was irregularly shaped, rendering it unsuitable for the construction of both the Chancery and an ambassador's Residence, given that the regulations in that locality require that no more than 60% of the land should be built-up.
- The Government of Japan had registered a caveat on the property allowing it to excavate for archeological materials at anytime, including after its sale. In the event that such materials were found, the Government of Japan reserved the right to repossess the plot and refund any payments made.
- It would have cost Kshs1, 138,527,700.00 plus Kshs589, 000,000.00 as the cost of construction of buildings of similar size and quality as well as continued payment of rent for an estimated three years. The total cost would therefore have amounted to Kshs1,896,000,000.00

25.2.11 After ruling out all other options on this and other plots in a meeting chaired by Amb. Awori, the evaluation and inspection team on 17th January, 2009 decided that the property occupied by the mission was the most suitable for the purposes intended. This was based on the fact that the property is located in one of the most prime neighborhoods in Tokyo, is home to two international schools and more than 13 embassies, contrary to media reports. The buildings thereon

were 20 years. In Japan, as in many developed countries, stone buildings are assigned an economic value of 20 years merely for tax purposes. This does not affect their functional, intrinsic and market value.

25.2.12 By a letter dated 30th March, Amb. Awori conveyed the decision of the Government of Kenya to relinquish its interest in the Japanese Government -owned plot.

25.2.13 At the same time, the team, led by Amb. Awori met Senator Yano who was the principal link between the Embassy and the Government of Japan. The purpose of the meeting was to express the Ministry's dissatisfaction with the offer price. The team had learnt that the offer price was final. Senator Yano concurred and offered to take up the matter.

25.2.14 Following an analysis of all options, the evaluation and inspection team in a meeting chaired by Amb. Awori held discussions with the property owner with a view to expressing firm interest in purchasing the property. The owner consulted with his family and gave an offer of JPY 1.9 billion (Kshs1.654 billion) on 19th January, 2009.

25.3 The Procurement Process

25.3.1 Once the offer was made, and in line with Government procurement requirements for competitive tendering, the mission advertised in the local dailies for other plots within Meguro Ward where the property is situated.

- 25.3.2 Five plots were identified and evaluated by the mission. They found unsuitable on grounds of excessively high costs and unsuitable locations. Analysis of the responses indicated that the property currently housing the Chancery and ambassador's Residence was the best option that was likely to give the Government better value for money.
- 25.3.3 A valuation of the property occupied by the mission was carried out by an assistant commissioner (Lands Valuation) from the Kenyan Ministry of Lands. The valuation confirmed the area and ownership of the property, and returned a value of JPY1, 431,300,000.00 (Kshs1, 245,231,000.00) for the land only. Upon request by the Valuer from the Ministry of Lands, an Architectural Analysis Report was prepared by a Tokyo-based firm which returned a value of JPY 3,384,475,100.00 for the property occupied by the Mission. However, the evaluation took into account 1600 square metres of land, instead of 1431 square metres.
- 25.3.4 The embassy had earlier commissioned valuation from a Japanese firm, Coral Corporation. On 23rd, March, 2007, the firm returned a value of JPY 1.09 billion 1.195 square metres.
- 25.3.5 The structures on the property are in excellent condition, solid and habitable, as evidenced by the rent paid by the embassy of over Kshs4 million per month, orKshs48 million per year. Indeed, according to a letter from Amb. Awori, the buildings would not require any further renovations for 10 years after

major renovations by the owner in 2002. The total built up area of both buildings is approximately 1131.98 square metres, and they share twelve parking spaces. The structures remain beautiful and retain both intrinsic and functional values. In addition, the Government of Japan has confirmed that the economic lifespan for buildings is merely for tax purposes, and is set at 38 years for living purposes, and 41 years for office usage. This lifespan does not affect the functional value.

25.3.6 Upon instructions from the Permanent Secretary to continue negotiating, the mission pursued the matter further. Subsequently, on 19th February, 2009, the owner agreed to reduce the price further to JPY 1.75 billion (Kshs1.524 billion).

25.3.7 In line with the Government procurement procedures, a negotiating team was appointed on 6th May, 2009, to negotiate further on the price and conclude the transaction. However, despite efforts to negotiate, the owner declined any further reduction, and the team therefore settled on the JPY1.75 billion down from JPY 1.9 billion earlier offered in January, 2009.

25.3.8 The team recommended purchase on the terms negotiated and agreed upon with the landlord. These included payment installments, transfer and registration upon receipt of the first installment after which there would be no further payment of rent. As a result, the mission realized savings of JPY 20 million

(Kshs13, 440,000) in rental payments that would have fallen due within the transaction period.

25.3.9 The final decision on the purchase was passed in the Ministerial Tender Committee meeting No.MFA/MTC/07/2008-2009 of 25th May, 2009.

25.3.10 By a letter dated 20th April, 2009, the Ministry directed the embassy to procure the services of a lawyer. The mission subsequently advertised in two newspapers of 27th April, 2009 – the Japan Times and Daily Yomiuri. The lowest bidder quoted a fee of 2.8% of the sale value, amounting to Kshs45.7 million. Upon realizing that the cost of hiring a lawyer was exorbitant, the Permanent Secretary directed the mission to consult the Japanese Ministry of Foreign Affairs on possible options.

25.3.11 A meeting was held between the embassy and the Ministry of Foreign Affairs of Japan officials on 1st June, 2009, during which the mission was advised on the use of a licensed solicitor recognized under the Japanese law (also known as 'Shihoshoshi' in Japanese) to undertake the transaction.

25.3.12 The Ministerial Tender Committee thereafter approved this recommendation at its meeting No.MFA/MTC/09/2008-2009 held on 12th June, 2009. The solicitor then carried out background checks, tax exemptions and participated in drawing up the sale contract and finalization of the transaction. This cost the embassy Kshs383, 000.00.

25.4 Funding the Project

25.4.1 The cost of the property was JPY1, 750,000,000 billion which was at that time equivalent to Kshs1, 524,425,000. The purchase was to be funded as follows:-

- At this stage, there were indications that Treasury may not have had immediate budgetary provision for this purchase, and the Ministry therefore requested Treasury to allocate funds amounting to Kshs984, 709,080.40 realized from the sale of a Government plot in Lagos.
- The balance of the purchase price was to be funded from reallocation from other areas during the financial year 2008/2009 which was formalized by having funds in the amount of Kshs215, 290,920 factored under Development Vote – 04.

25.4.1 The first payment was made in June, 2009, pursuant to the terms of the sale agreement. Under the contract, the final installment should have been made by 1st September, 2009. However, due to budgetary constraints, it was paid on 15th January, 2010.

25.4.2 A letter from Mr. Kuriyama confirming the size of the property he sold and the amount of money he received for it.

25.5 Fire Incident

25.5.1 On 13th February, 2010, a fire broke out and the Ambassador's residence, substantially destroying the building, despite efforts

by the Tokyo Fire Department to extinguish it. However, the fire did not affect the Chancery building. A subsequent investigation by the Tokyo Fire Department at the mission's request established that the fire was caused by a frying pan that was left with cooking oil on a fully lit gas cooker by the Ambassador's official cook, Mr. Robert Osogo.

25.5.2 By this time, the Residence was unoccupied as Amb. Awori had resigned on his own volition and left the station on 16th April, 2009 to take up employment as Chairman of Toyota East Africa. A copy of his letter dated 30th January, 2009 to His Excellency, the President requesting to be released, while a letter to the Ministry dated 17th April, 2009 informing of the end of his tour of duty.

25.5.3 Since the Ambassador had left the station ten months before and no replacement had been sent, there was no official occupation of the Residence except routine cleaning and nominal cooking by the cook.

25.5.4 No Government documents were kept at the Residence and none were therefore destroyed in the fire.

25.6 Conclusion

25.6.2 The embassy is open and operational and a new Ambassador has now been posted.

25.6.3 Land in Tokyo is not just scarce but extremely expensive. The cost of running the mission has been the highest in all the 48 embassies abroad. As far as back as 1990, the late Ambassador

ole Leken wrote to the Ministry giving a strong justification for acquiring the embassy premises. He gave examples of countries like Tanzania, Zambia, Zaire, Egypt and Algeria which were similarly or less economically endowed than Kenya but had moved ahead and purchased properties in Tokyo.

25.6.4 At that time, had we heeded his call, the property the mission was renting would have cost JPY5.5 million. As it is, we have now purchased the property after a meticulous process that adhered strictly to the Government procurement regulations. Attached is a matrix marked TP46 detailing all the meetings held both in the Ministry and the mission in Tokyo in pursuance of the property transaction.

25.6.5 The question must therefore be asked, "Did the public get value for money?". The answer is a resounding "YES" on account of:-

- The taxpayer was saved Kshs48 million per year in rent;
- The choice of the particular property with an unusually large area suitable for both a chancery and residence, with structures in excellent condition and custom-built for the embassy (as shown in the attached pictures);
- That no additional funds were required for the development of suitable buildings;
- That there would therefore be no further payments of rent during the construction period of at least three years;

- In contrast, the purchase of land and construction of suitable structures would have cost an estimated Kshs1.9 billion.

This decision was therefore wise and prudent, and was long overdue.

26.0 Evidence by Ambassador Dennis Awori, immediate former Kenya Ambassador to Japan

26.1 Ambassador Dennis Awori appeared before the Committee on June 22, 2010 and informed the Committee that:-

26.1.1 In August 2006 the Ministry of Foreign Affairs wrote to all Missions informing of the new policy of property acquisition proposed by the Ministry of Finance so as to mitigate the high rent paid by Missions. In response to this request the Mission wrote back in November 2006 forwarding a proposal to purchase the premises that were being rented by the Mission based on the price asked by the landlord which was subject to independent valuation. Together with the proposal, the Mission recommended that the Government borrows the purchase price from the Mission's bankers Tokyo Mitsubishi UFG with payments less than the monthly rents.

26.1.2 The Ministry informed the Mission in April 2007 that Treasury had turned down the proposal to borrow money from the commercial bank. The Ministry further advised that the purchase price was high and that an independent Valuer be procured to value the property and that the valuation price be factored in the 2007/2008 Budget. The Mission contracted M/s Coral

Corporation of Japan to value the property. The property was valued at JPY 1.09 billion against the landlord's asking price of JPY 1.9 billion. The landlord turned down the offer of the Mission which was pegged on the valuation by M/s Coral Corporation.

26.1.3 Following the refusal by the landlord to lower the price the Mission approached the Government of Japan to assist in identifying a plot or property since that would be a Government to Government transaction as opposed to dealing with a private individual. The Mission was seeking plot or property that had proximity to the Government offices, commercial hub, public transport, international schools, other Embassies, ease of development and building codes, good topology of the lands and quality neighborhood.

26.1.4 The process of identifying suitable plot took close to 14 months and involved meetings and negotiations with Government officials in the Ministries of Foreign Affairs and Finance of Japan. This culminated in the offer of several plots and in October 2008 the Mission zeroed in on two plots and eventually to one plot measuring 700 metres squared based on its proximity to Government offices and Central business district for political diplomacy and economic diplomacy (ten minutes drive as opposed to 45 minutes for the current location of the Mission). The plot was also close to a train station and located in an up market neighborhood with 8 Embassies as direct neighbors and

79 others in the neighborhood. The neighborhood allowed a building permission of 60% coverage of the plot with a 30 meters height restriction as compared to 10 meters for the current premises. Constructing a new building would have meant more space with a multi storey building. The Plot also had a road frontage meaning easy access, road parking and visibility as compared to the current premises that has no road frontage.

26.1.5 The Mission informed the Ministry of the decision to bid for the plot and subsequently applied to the Government of Japan for the plot. Following pressure from the Government which included a meeting between President Kibaki and Senator Yano, Vice Chairman of the Japan Africa Parliamentary League, the Mission was going to get the plot at a fair price. The Mission was advised by the Japanese Government that they would first commission independent valuations and offer the plot at the valuation price.

26.1.6 After valuation by the Japanese Government the plot was offered at JPY 1.3 billion. This price was communicated to the Ministry Headquarters together with a recommendation for an inter-ministerial team to assess and value the plot before purchase. The evaluation team arrived between January 13 to 17, 2009 and he (Awori) showed them the plots, and took them for meetings with Government officials and Senator Tetsuro Yano but did not participate in the evaluation committee meetings that assessed the plots because as the

Ambassador and the person recommending it wasn't right for him to do so.

26.1.7 Prior to the arrival of the evaluation team in Japan he had requested the President to release him from Ambassadorial duties by March 31st 2009. He left Japan to Kenya to lead Committee of Japanese tea importers who came to study Kenya's tea industry and returned to Tokyo on 5th February 2009.

26.1.8 On 20th January 2009 the landlord sent an offer of JPY 1.9 billion to the evaluation team and the team advertised intention to purchase the property. On 26th January 2009 the Mission advertised seeking plots to purchase and bids were to be submitted by 30th January, 2009 and due to the short time for submitting bids the response was poor.

26.1.9 The Embassy procurement Committee met with the landlord on 2nd February, 2009 and negotiated for price reduction and settled on JPY 1.75 billion and this was communicated to the Ministry on 3rd February, 2009.

26.1.10 On 5th February, 2009 he returned to Tokyo from Nairobi and on March 2nd, 2009 the Ministry sent a process matrix to guide the purchase of the premises occupied by the Mission. The matrix included:-

- 26th February , 2009 – Valuation
- 2nd to 6th March,2009 – Ministerial Tender Board
- 9th to 20th March, 2009 – Consultations with Treasury
- 23rd March, 2009 – Public Works inspection

- 6th April, 2009 – Negotiations and feedback
- 14th April, 2009 – Ministerial Tender Committee deliberation approval or rejection
- 20th April, 2009 – Letter of acceptance
- 2nd to 30th May, 2009 – appointment of lawyer, verification of status and preparation of sale agreement
- 15th June, 2009 – payment of 10 % deposit
- 30th July 2009 – registration and transfer of Title
- August 2009 – final payment

26.1.11 He (Awori) left Tokyo on March 17th, 2009 to attend an International Conference for Africa's Development in Botswana and while he was away on 20th March the Mission received confirmation of authorization to purchase the building. In a letter dated 30th March 2009 (DFR 08) he informed the Japanese Government that the Government of Kenya had turned down the offer to buy the plot at Minato Ku. On 31st March, 2009, he chaired a meeting informing the landlord that the Government of Kenya had agreed to purchase the property based on the approval from Treasury, but subject to each party appointing a lawyer, thorough inspection of the buildings, independent valuation and final price to be negotiated by a negotiating team from Nairobi. (DFR 09);

26.1.12 He never chaired a meeting of the team that decided to purchase the current premises contrary to what the Minister for Foreign Affairs was reported to have told the Committee.

26.1.13 He personally was not happy about that decision since the plot offered by the Government of Japan was better in the long term and short term than the current premises.

26.1.14 The Ambassador informed the Committee that he had already left the diplomatic Service when the fire consumed the Ambassador Residence in Japan. (DFR 10).

27.0 Evidence by the Interim Director General, Public Procurement

Oversight Authority (PPOA)

27.1 The Interim Director General, Public Procurement Oversight Authority Mr M. Juma appeared before the Committee on August 9, 2010 and informed the Committee that:-

27.1.1 On Tokyo the Ministry of Foreign Affairs wrote requesting to use specially permitted procurement procedure in the acquisition of the Chancery and Residence but the Public Procurement and Oversight Authority declined and advised that they use other available procurement procedures and that they comply with the provisions of public procurement. (DFR 11)

28.0 Evidence by the Deputy Prime Minister and Minister for Finance

28.1 The Deputy Prime Minister and Minister for Finance, Hon. Uhuru Kenyatta, EGH, MP appeared before the Committee on August 10, 2010 and informed the Committee that:-

28.1.1 The final payment for Tokyo property (3-24-3 Yakumo Meguro-ku) was made this Financial Year (2010) and the cost for the purchase was KES 1.524 Billion.

28.1.2 Treasury conducted an internal audit of the Tokyo Mission after reports appeared suggesting that there might have been problems. The outcome of the audit indicated that Kenyans got value for money based on the size of the plot and the location (security and environment). The Auditors from Ministry of Foreign Affairs and Ministry of Finance relied on documents availed to them and did not involve the services of professionals such as surveyors, valuers or structural engineers.

29.0 Evidence by Robert Osogo, former cook to Kenya Ambassador to Japan

29.1 Mr. Robert Osogo appeared before the Committee on September 7, 2010 and informed the Committee that:-

29.1.1 He was hired as a local staff in January 2007 for a contract period of two years to manage the Ambassador's Residence in the capacity of a Chef and assist in any other duties assigned to him from time to time.

29.1.2 After the substantive Ambassador left the „Charge D' Affaires assigned him duties at his residential house to cook for various guests.

29.1.3 In February 13, 2010 a fire broke out at the Ambassador's Residence. During the day there was a TV exchange programme

between Kenyan and Japanese children. The children prepared Kenyan food (Samosa's and tea) with the assistance of Ms. Dorothy Nthiwa and Ms. Eri Osakabe (Tourist Assistant). On direction of Mr. Allan Mburu he (Osogo) prepared food for Ambassador Ruth Solitei, Director of Protocol Office of the Prime Minister.

29.1.4 Later Mr. Mburu requested him to prepare more Samosa for guests who were at the Chancery and since there weren't enough materials he rushed to purchase them. He prepared the Samosa's and switched off the cooking stove and went to the Chancery to prepare tea for the guests. A fire broke out at the residence while he was at the Chancery kitchen.

29.1.5 On February 12, 2010 some (two men and a lady) strangers in the company of Mr. Allan Mburu left their car, a RAV 4, overnight at the Chancery. The three strangers left the Chancery on 13 February, 2010 while the fire was being put out.

29.1.6 The handling of the cooking equipment by those working for the TV filming session was not supervised as he busy doing other duties and chores.

29.1.7 Several guests were accommodated at the Ambassador's Residence after Ambassador Awori left the service including officers from the Ministry of Foreign Affairs, Armed Forces, Brand Kenya, and Office of the Prime Minister among others.

30.0 Inspection visit to the Kenya Embassy in Japan – 17th to 22nd July, 2010

30.1 On Monday July 19th, 2010 the Committee paid a courtesy call on the Kenya Ambassador to Japan, H.E. Ambassador Benson Ogutu. The

Ambassador welcomed the Committee to Tokyo and thanked the members of the Committee for visiting the Kenya Embassy in Japan.

30.2 The Committee held meetings with staff at the Embassy who adduced evidence as follows:-

30.3. Evidence of Mr. Allan Mburu – Charge d' Affaires/Deputy Head of Mission. He briefed the Committee as follows: -

30.3.1 The Purchase of the Mission properties in Tokyo goes back to 1990 during Ambassador Leken's tenure when he requested the owners to construct the properties according to the Mission's specifications. The matter was revived during Ambassador Odinga's tenure and later by Ambassador Dennis Awori. Ambassador Awori had proposed that the Mission purchases the property through loan financing from Mitsubishi Bank which was willing to offer a loan of up to 90% of the purchase price. Mr. Manabe visited Kenya & held talks with Treasury attended by Ambassador Awori to discuss the financing of the purchase. Treasury advised against financing the purchase through a commercial bank loan citing Kenya's external loan balance.

30.3.2 In 2007 the Mission contacted M/s. Coral Corporation, a real estate agent, to value the property. A value of JPY 1.09 billion was returned by the real estate agent for an area of 1195m² covering the Chancery and the Residence that was leased by Mission (DFR 12). An additional 232m² was not included in the valuation by Coral Corporation.

30.3.3 In 2007 the Mission advised by Treasury through Ministry of Foreign Affairs headquarters to factor the cost of acquiring property in Tokyo into the budget and as a result KES 1.62 billion was factored in the 2008/2009 Budget. Negotiations with the owner of the property rented by the Mission did not bear fruits since the landlord offered the property at a higher price than what the Mission could afford. This led the Mission to explore other options. The Mission entered into discussions with the Government of Japan seeking a plot to construct a Chancery and Residence for the Mission. Hon Tetsuro Yano was instrumental in the negotiations with the Government of Japan that led to the Government of Japan offering a plot for sale to the Government of Kenya. Ambassador Awori delegated negotiations to a team led by himself (Mr. Allan Mburu). Following the negotiations, the Government of Japan offered the Mission a plot covering an area of 700 m² in Minato area. Due to the high price on the Government of Japan offered plot, Senator Yano undertook to seek price reductions for the plot.

30.3.4 In January 2009 a validation team was sent from Nairobi to value the plot offered by the Government of Japan and consider other options. The team from the Mission comprised all members of the procurement committee. The team visited other plots as well as the one offered by the Government of Japan. The team rejected the Government of Japan offered plot on account of its irregular shape and the high price. Other plots visited were dismissed on account

of size and price. The Mission advertised for other plots within Meguro ward. Adverts were placed on 26th Jan, 2009 to be returned on 30th Jan, 2009. The adverts were in English newspapers. (DFR 13)

- 30.3.5 Following the above decisions by the validation team, Ambassador Awori directed that the team meets with Mr. Kuriyama. The meeting was held at the Embassy and after consultations Mr. Kuriyama agreed to sell the property at JPY 1.9 billion for an area of 1,431 m².
- 30.3.6 After the validation team left Tokyo and presented its report, the Ministry Headquarters directed that further negotiations be held with Mr. Kuriyama with a view to reducing the price.
- 30.3.7 Before Ambassador Awori left the diplomatic service he informed Mr. Kuriyama of the Government of Kenya's intention to purchase the property. He further informed the Government of Japan of the decision by Kenya to withdraw interest in the plot in Minato Ku. (DFR 9)
- 30.3.8 In May 2009 a negotiation team was sent from Nairobi comprising Njambi Kinyanya, Deputy Director (Political Affairs) and Korir Erick, procurement. The team was joined by Mr. Allan Mburu, Charge d' Affaires (CDA), Njeru, Finance Officer and Mose, co-opted member and co – secretary to the team. Negotiations were entered into and the negotiating team agreed on JPY1.75bn with waiver of rent after payment of the first instalment. Upon return to Nairobi by the negotiating team, the Ministerial tender

committee communicated to the Mission that Government of Kenya was to purchase property at JPY 1.75 billion (DFR 14). As agreed with the vendor during the negotiations JPY 1.5 Billion was to be paid as the first instalment in June, 2009 and the remaining JPY 200 million was to be paid in September, 2009.

30.3.9 The Ministry of Foreign Affairs never requested the Mission to get a valuer and as such no valuation was done on the property by a local valuer in 2009.

30.3.10 He wrote to the Ministry seeking to use the services of a lawyer and the Ministry (Procurement Committee) advised the Mission to get a lawyer. Bids were placed and the lowest bidder placed a price of 3% of the purchase price. This was an exorbitant price and as a result the Permanent Secretary advised that the Mission employs the services of a 'Shihoshoshi' or legal scrivener. (DFR 15)

30.3.11 He granted himself the power of attorney in order to execute the agreement of sale. On 30th June 2009 he signed the sale agreement after the draft had been sent to Nairobi and returned to the Mission. A second agreement signed by the Permanent Secretary was brought to Tokyo by the Ministry's Principal Legal Counsel, Mr. Kihwaga on realisation that the first agreement signed by Mr. Allan Mburu was not sufficient. The agreement by the Permanent Secretary was to be lodged with the Government of Japan as the correct and legal agreement for sale.

30.3.12 On February 13, 2010 a fire broke out at around 5.30 pm at the official Ambassador's Residence. During the day there was a

function of film shooting by the Benesse Team of Japan whose crew members arrived at 12.30 pm at the Residence.

30.3.13 The Tokyo fire department after investigations established that the cause of the fire was a frying pan that was left with cooking oil on a fully lit gas cooker by the Ambassador's Cook (DFR 16). The cook was suspended from duty vide a letter Re: KET/L/PER/69(45) dated 23rd March, 2010

30.3.14 Mr. Allan Mburu Laid before Committee a file containing correspondence and documents related to the purchase of the property in Tokyo.

31.0 Evidence by Njeru John Kenneth Nyagah – Financial Attaché

31.1 He informed the Committee that:-

31.1.1 In 2006 several meetings were held between Mr. Kuriyama and the Mission on the possibility of selling the property to Mission. Mr. Kuriyama gave his price which was considered by the Ministry of Foreign Affairs to be overvalued. The Ministry advised for valuation of the property and not to rely on price by the owner.

31.1.2 The Mission contacted various valuers and real estate agents. The lowest bidder M/s Coral Corporation did a valuation in March 2007 and the Mission wrote to Ministry of Foreign Affairs on the valuation price.

31.1.3 Following the valuation the Ministry advised that the Mission approaches the owner of property on the basis of the valuation

price. Mr. Kuriyama rejected the valuation price after which the Embassy embarked on a search for other plots available for sale.

- 31.1.4 Seven plots were identified and categorised. The Government of Japan offered plot was ranked Number 1 on the basis of its size 700 m² , proximity to the Government offices, beautiful park, proximity to other Embassies, proximity to international schools, means of communication and rail transport etc. The immediate former Ambassador (Dennis Awori) was engaging with the Japanese Ministry of Foreign Affairs & Ministry of Finance on the land/plot.
- 31.1.5 The Mission wrote to the Ministry requesting that a team from Nairobi be sent to value the Government of Japan plot – (DFR 17). On 16/01/2009 the valuation team met Mr. Kuriyama at the Embassy. The valuation and validation team reintroduced the idea of purchasing the current premises. On the same day Mr. Kuriyama gave a quotation of JPY 1.9 billion for an area of 1664.28 m². Mr. Mburu convened another meeting to engage Mr. Kuriyama on the purchase price upon which Mr. Kuriyama gave a second offer of JPY 1.75 billion for an area of 1431.28m².
- 31.1.6 The adverts were placed on 26th January, 2009 and the deadline for submitting bids was 30/01/2009.
- 31.1.7 On 3rd Feb, 2009 a letter by the MF recommended that the offer be accepted within stated price.
- 31.1.8 The Ministry of Foreign Affairs wrote that Treasury had accepted the purchase on March 01, 2009.

- 31.1.9 Ambassador Awori convened meeting to inform Mr. Kuriyama that Government of Kenya had accepted to purchase the property & further informed that a lawyer was to be appointed to represent the Government of Kenya. Mr. Nobuo Kuriyama declined to have a lawyer in the transaction. The Mission was advised by Mr. Dick Olango, Architect not to use agents introduced by the vendor due to conflict of interest. (DFR 18)
- 31.1.10 When the decision to purchase current property was made Ambassador Awori was not in Japan.
- 31.1.11 He was on leave during the time that the team from Nairobi visited in January 2009 and therefore was not part of the team that validated the property.
- 31.1.12 The sale agreement was signed at the vendor's bank in the presence of all the mission procurement committee members.

32.0 Evidence by Catherine Muraguri - Confidential Secretary

32.1 She informed the Committee that:-

- 32.1.1 Ambassador Dennis Awori, initiated negotiations with Tokyo Mitsubishi UFG Bank for the financing of the purchase of the Tokyo property but the Ministry of Finance did not approve of the proposal to finance the purchasing of the property through a bank loan.
- 32.1.2 Mission requested the Government of Japan to sell land to the Government of Kenya for construction of an Embassy. The Ambassador held meetings with Senator Tetsuro Yano who assured

Amb. Awori that he would help in identifying a suitable Government land. Following meetings and negotiations the Government of Japan offered a plot measuring 700.39 meters squared for sale to the Government of Kenya in Minato-Azabu are at a price of JPY 1, 307, 000, 000. The Embassy procurement committee viewed the plot.

32.1.3 An inter ministerial team was sent from Nairobi comprising of officers from the Ministry of Foreign Affairs, Ministry of Lands and Ministry of Finance to assess the Government plot and other plots for comparison purposes. The team visited the plot, met officials of the Tokyo local finance office and Ministry of Foreign Affairs of Japan. The purpose of the meeting was to negotiate the price of the plot. The Government of Japan officials did not reduce the price citing that the price was decided through competitive tendering and in line with current market trends.

32.1.4 The team failing to make headways on price reductions decided to visit other comparative plots in the neighbourhood including the property rented by the Mission. The owner, Mr. Nobuo Kuriyama, of the rented property was approached to sell the property to the Mission. Mr. Kuriyama sought to consult family members after which he offered a price of JPY 1.9 billion but after negotiations the price came down to JPY 1.75 billion. The team advised that adverts be placed to get bids. A negotiating team was sent from Nairobi to negotiate for price reduction but Mr. Kuriyama declined further price reductions.

- 32.1.5 The procurement committee decided to hire a lawyer for the transaction and adverts were placed and Mr. Kijima was selected. A recommendation was sent to the Ministry headquarters. The Mission was informed that the permanent secretary had instructed that instead of hiring a lawyer the Mission should seek a letter of comfort from the owner indicating that once the money had been paid he would facilitate the transfer to the Government of Kenya. The Embassy procurement committee was also informed by Mr. Allan Mburu, that the Permanent Secretary had after consultation with the Japanese Ambassador to Kenya advised that the Mission uses a judicial scrivener (Shihoshoshi). The Mission was authorised to hire the 'Shihoshoshi' at a charge of JPY 457, 900. (DFR 19)
- 32.1.6 The purchase of the property was authorised vide Ministerial Tender Committee meeting No. MFA/MTC/07/2008-2009 of May 23, 2009. The sale agreement was drafted and sent for perusal by the Ministry's legal unit after which the Mission was advised to go ahead with the purchase. The Landlord was paid in instalments and the sale agreement was signed on behalf of the Government of Kenya by Mr. Allan Mburu in the presence of all members of the Embassy Procurement Committee and a bank representative at the Bank of the vendor. (DFR 20)
- 32.1.7 On February 13, 2010 a fire broke out at around 5.30 pm at the official Ambassador's Residence. During the day there was a function of film shooting by the Benesse Team of Japan whose crew members arrived at 12.30 pm at the Residence. Ms. Dorothy

Nthiwa was tasked to arrange for this function which involved preparation of a Kenyan dish.

33.0 Evidence of Mr. Peter Mose, Immigration Attaché –

33.1 The Committee was informed that:-

33.1.1 November 2006 Amb. Dennis Awori wrote to the ministry of the intention to purchase current property at US\$20 million (JPY 2 billion) with a recommendation to finance the purchase through bank loan.

33.1.2 April, 2007 the Mission was advised by Treasury to avoid the loan option and instead factor the cost in the budget

33.1.3 The Mission commissioned Coral Corporation to value the property and in March 2007 a valuation of JPY 1.09 billion was returned. This was communicated to the Ministry who advised that the offer be made to Mr. Kuriyama based on the valuation.

33.1.4 Mr. Kuriyama declined the offer and the mission explored other options and through the advice of experts the acquisition of Government of Japan land was recommended.

33.1.5 Amb. Awori initiated talks with the Ministry of Foreign Affairs, Ministry of Finance and Japanese political leaders on the purchase of a plot in Minami Azabu, Minato Ku where most embassies are located.

33.1.6 By August, 2008 Sen. Yano undertook to assist Kenya in getting a Government plot as he had promised His Excellency the President during a visit to Kenya. Subsequently, in October, 2008 the

Government of Japan offered to Kenya a plot at address 4-1-5 Minami Azabu, Minato Ku measuring 700.39 square metres.

- 33.1.7 From 13th to 16th January, 2009 an inter ministerial team was sent from Nairobi comprising of officers from the Ministry of Foreign Affairs, Ministry of Lands and Ministry of Finance to assess the Government plot and other plots for comparison purposes. The team visited the plot, met officials of the Tokyo local finance office and Ministry of Foreign Affairs of Japan. The purpose of the meeting was to negotiate the price of the plot. The team was accompanied by the mission's procurement committee.
- 33.1.8 The team failing to make headways on price reductions decided to visit other comparative plots in the neighbourhood including the property rented by the Mission. The owner, Mr. Nobuo Kuriyama, of the rented property was approached to sell the property to the Mission. Mr. Kuriyama sought to consult family members after which he offered a price of JPY 1.9 billion but after negotiations the price came down to JPY 1.75 billion. The team advised that adverts be placed to get bids. A negotiating team was sent from Nairobi to negotiate for price reduction but Mr. Kuriyama declined further price reductions.
- 33.1.9 The procurement committee decided to hire a lawyer for the transaction and adverts were placed and Mr. Kijima was selected. A recommendation was sent to the Ministry headquarters but during a meeting of the mission procurement committee Mr. Mburu informed members that the Permanent Secretary had

instructed that instead of hiring a lawyer the Mission should hire a Shihoshoshi who would facilitate the transfer to the Government of Kenya. The Embassy procurement committee was also informed by Mr. Allan Mburu, that the Permanent Secretary had after consultation with the Japanese Ambassador to Kenya advised that the Mission uses a judicial scrivener (Shihoshoshi). The Mission was authorised to hire the Shihoshoshi at a charge of JPY 465, 400. (DFR 21)

33.1.10 The purchase of the property was authorised vide Ministerial Tender Committee meeting No. MFA/MTC/07/2008-2009 of May 23, 2009.

33.1.11 The Landlord was paid in instalments and the sale agreement was signed on behalf of the Government of Kenya by Mr. Allan Mburu in the presence of all members of the Embassy Procurement Committee at the vendor's bank.

33.1.12 On February 13, 2010 a fire broke out at around 5.30 pm at the official Ambassador's Residence. During the day there was a function of film shooting by a Team of Japanese whose crew members arrived at 12.30 pm at the Residence.

34.0 Evidence of Ms. Dorothy Nthiwa, Political Officer-

34.1 She informed the Committee that:-

34.1.1 In January, 2009 an inter ministerial team was sent from Nairobi comprising of officers from the Ministry of Foreign Affairs, Ministry of Lands and Ministry of Finance to assess the Government plot

and other plots for comparison purposes. The team visited the plot, met officials of the Tokyo local finance office and Ministry of Foreign Affairs of Japan. The purpose of the meeting was to negotiate the price of the plot. The team was accompanied by the mission's procurement committee.

- 34.1.2 The team decided to visit other comparative plots in the neighbourhood including the property rented by the Mission. The owner, Mr. Nobuo Kuriyama, of the rented property was approached to sell the property to the Mission. Mr. Kuriyama sought to consult family members after which he offered a price of JPY 1.9 billion but after negotiations the price came down to JPY 1.75 billion. The team advised that adverts be placed to get bids. A negotiating team was sent from Nairobi to negotiate for price reduction but Mr. Kuriyama declined further price reductions.
- 34.1.3 The sale agreement was signed in June, 2009 when she was on leave in Kenya.
- 34.1.4 The deal was above board. On February 13, 2010 a fire broke out at around 5.30 pm at the official Ambassador's Residence. During the day there was a function of film shooting by the Benesse Team of Japan whose crew members arrived at 12.30 pm at the Residence. She assisted the cook to arrange for this function which involved preparation of Samosa's and tea. The TV team left at around 4 pm. When the fire broke out she was at the Chancery making arrangements for the Prime Minister's visit.

35.0 Evidence by the Mr. Dick Olango of Atelier Olango Architecture & Design

35.1 The Committee held a meeting with Mr. Dick Olango Architect on Monday, July 19th 2010 at the Kenya Embassy, Tokyo. Mr. Dick Olango informed the Committee that:-

35.1.1 The Committee was informed that he came to Japan 12 years ago to study architecture and after completing his studies he worked in Japan before starting his own firm AOAD – Atelier Olango Architecture & Design. He started his own firm Licence No. 78264 – Architect Licence No. Tokyo Government Architectural Practice Licence No. 13864.

35.1.2 In January 2009 he was hired to work with the evaluation and inspection team from Nairobi. During the team's validation exercise he translated technical terms & briefed it on how the Japanese real estate system works. He was also requested to evaluate the feasibility of constructing new Embassy property vis a vi purchasing the rented property. He was paid JPY 500,000 – by cheque by the Mission for the services rendered.

35.1.3 The current location of the Embassy is a first low rise residential area with a 10 metre high restriction and a site coverage ratio of 60% (one can build up to 60% of the site area) and a total floor space ratio of 150%. The area is also a quasi fire zone with shadow regulations (no building allowed 10 metres distance from the boundary line) (DFR 22). The Japanese real estate construction is based on a 'scrap and build' system which must adhere to

changing regulations, new technology and natural disasters. The buildings must therefore adapt to present requirements such as the yearly earthquake regulations.

- 35.1.4 The area in the Government of Japan offered plot at Minami Azabu, Minato-ku allows for more floor space, a tall structure is possible which could also cater for other diplomats apartments hence cut of monthly rent.
- 35.1.5 The current premises occupied by the Embassy were built more than twenty years ago and therefore according to Japanese standards it is only the land that is valued since the buildings have to be brought down, assuming that their suitability has been affected by the many earthquakes that have hit Japan, and new structures put in place in line with new technology and changing regulations.
- 35.1.6 Tokyo is an historical city and is generally considered to be rich in archaeological materials. As a result, during construction the site is tested for archaeological materials.
- 35.1.7 He advised the Mission that *with all factors taken into consideration, it is clear that staying in the present embassy proves to be costing the embassy more than the option of moving. The landlord quoted very high rates for the purchase of the land. Another factor is that the building will require renovations.*(DFR 23)

36.0 Evidence by Mr. Nobuo Kuriyama, Vendor

36.1 The Committee held a meeting with Mr. Nobuo Kuriyama, the vendor, at the Kenya Embassy in Japan. He informed the Committee that:-

36.1.1 The Kenya Embassy in Tokyo through the then Ambassador requested him to construct the property for use by the Embassy and as per specifications of the Ambassador. Upon completion a contract was signed with a clause indicating that if the property was to be sold then the Embassy could be given priority to purchase it.

36.1.2 Two years ago, the Mission requested him to sell the property. He was reluctant to sell the property since the land was an inheritance for the family but due to the longstanding relationship with the Mission he agreed to the request.

36.1.3 The purchase price was higher than the valuation but this was determined by the negotiations between himself and the Mission.

36.1.4 In Japan the price of buildings is not included in the purchase price because the buildings are old and can only be demolished to pave way for new construction but the Embassy wanted to use the buildings and never intended to demolish them.

36.1.5 He further informed the Committee that if he were to sell the property to Japanese, it can only fetch JPY 600 million.

37.0 Evidence by Mr. Hidehiko Takayashi, M/s Coral Corporation

37.1 The Committee held a meeting with Mr. Takayashi M/s Coral Corporation at the Kenya Embassy, Japan. The Committee was informed that:-

37.1.1 In 2007 the Kenya Embassy in Tokyo requested M/S Coral Corporation to prepare an evaluation of the land. An evaluation report was prepared and submitted to the Embassy and thereafter nothing was requested of the company. He only learnt of the purchase when requested to talk to the Committee.

37.1.2 Mr. Takayashi informed the Committee that he is not a land appraiser (valuer) but only collected information on land and real estate and submitted it to the Mission. In 2007 after the request by the Embassy he returned a value of 1.09 billion for the property. Current market price for the property would be around the same value or slightly cheaper. In Japan properties that are more than 10 years for wood and 20 years for natural stones are considered valueless, upon purchase such property is destroyed and new structures put up using modern technology and according to regulations and existing laws. (DFR 12)

37.1.3 The real estate property is located at 3-24-3 Yakumo, Meguro-ku, Tokyo was built in 1988 and is first low level residential area with a site coverage of 60% and a floor space ratio of 150% with a height limitation of 10 metres. The property is in a semi fire prevention area.

37.1.4 The land rates in Japan appreciate or depreciate depending on location or area. Prices in Meguro area are going down. Generally properties are going down from JPY 3million per Tsubo in 2007 to 2 million per Tsubo in 2010. (DFR 24)

38.0 Evidence by the Tokyo Fire Department

38.1 The Committee held a meeting with the Meguro Ward fire department at the Kenya Embassy, Tokyo. The Committee was informed that:-

38.1.1 The Fire started in the kitchen set cooker located in the ground floor of the Ambassador's Residence as indicated by the burnt board behind the store/gas cooker. The oil in the frying pan overheated and caused fire

38.1.2 The Fire later spread from the kitchen to the dining and other areas in the building and collapsing part of the second floor directly above the kitchen.

38.1.3 Received a call about the fire at 17.50 hours at the Tokyo Metropolitan area. Yagumko fire department arrived at 17.53 hours on 13/2/2010. The House was extremely burnt due to the materials (wood) used in building. The fire was extinguished one hour after the arrival of the fire fighters.

38.1.4 The area is categorised as residential area and therefore designated for small fire equipment. The Mission is located in the second row from the main Meguro road.(DFR 25)

39.0 Meeting with Kenyan Diaspora in Japan

39.1 The Committee met with representatives of Kenyans in Japan. The meeting discussed the role of the Kenyan Diaspora in Japan.

39.1.1 The Committee called upon the Ambassador to work closely with the Diaspora in promoting Kenya's image in Japan. The Diaspora was requested to invest in Kenya and project a positive image of the country.

39.1.2 The Kenyan's in Japan expressed concern that the purchase of the property was suspect and that the value of the property was exorbitantly high. The Diaspora further informed the Committee that real estate prices in Japan have been in the decline for the past five years.

39.1.3 The Committee was also informed that in Japan buildings that are more than ten years for wood and twenty years for concrete have no value attached to them and it is only the land that is purchased. Old structures once purchased are demolished and new buildings are constructed with new technology and construction guidelines.

39.1.4 It was preferable for the Mission to purchase the Government of Japan plot in Minamu Azabu rather than the current premises in Meguro - ku due to its location at the CBD. (DFR 26)

40.0 Site Visit of the areas surrounding the Kenya Embassy in Meguro-ku

40.1 The Committee observed that:-

- 40.1.1 The area is predominantly residential with narrow streets and with the exception of the Embassy of Rwanda there are no other Embassies in the immediate neighbourhood.
- 40.1.2 The plot has no road frontage and part of it is used as access road to the Embassy, hence reducing the area available for construction.
- 40.1.3 Buildings in the area are Maisonettes with no high rise buildings except on the other side of Meguro road which is in another building zone which is not covered by the same height restrictions. (DFR 27)

41.0 Site Visit to the Government of Japan offered plot, Minato-ku

41.1 The Committee visited the Government of Japan offered plot and observed that:-

- 41.1.1 The plot was located in close proximity to other Embassies such as Pakistan, Algeria, USA, Germany and Australia. Close to 70 other Embassies are located in the Minato ward.
- 41.1.2 The shape of the plot is not irregular as alleged by some witnesses.
- 41.1.3 The plot is located in Minato area and only a few minutes away from the Ministry of Foreign Affairs and the Central Business District and close to public transport system (trains, metro etc).

41.1.4 International schools and a beautiful park are located near the plot.

41.1.5 The European Union had commenced construction on a plot they had purchased next to the plot offered to Kenya. Morocco had also purchased a plot next to the EU. (DFR 28)

42.0 Site Visit to the Government of Japan offered plot, Minato-ku

42.1 The Committee visited the Government of Japan offered plot in the company of officials of the Ministry of Foreign Affairs of Japan who showed the Committee the beacons of the plot. (DFR 29)

43.0 Meeting with Senator Tetsuro Yano

43.1 The Committee held a meeting with Senator Tetsuro Yano at Parliament buildings and discussed bilateral relations between Kenya and Japan. The discussions centred on the technical assistance offered to Kenya by Japan, the role of Kenya in regional and international peace building efforts.

43.2 The meeting stated the long standing and strong relations between the two countries which has been strengthened by the high level visits by leaders from the two countries. The meeting reiterated the need for greater cooperation and sharing of information by the two countries.

43.3 The Committee appealed for greater cooperation in the areas of energy, environmental conservation, investment and peace building.

44.0 Written submission from Meguro tax and planning office –

44.1 The submission from Meguro tax office dealt on the issue of planning regulations, permissible height, land values in Meguro area.

44.1.1 **Planning regulations** - The Meguro planning office must be consulted on regulations governing development.

44.1.2 **Permissible height for Yakumo 3-24-3 Chome**

- (i) The height of structures to be developed is calculated at a radius of 20 metres from the main road and is applicable on either side of the road.
- (ii) Areas within 20 metres from the main road have a slight flexibility in height than those outside the 20 metre area.
- (iii) The location of current embassy is outside the 20 metres area and is located in a restricted residential area and therefore the maximum height is 10 metres.
- (iv) The building structures must be not more than 5 metres to the northern side.
- (v) This restriction is supposed to protect the neighbour's amount of sunlight per day.
- (vi) Current location of the embassy is a restricted residential area and the Embassy requires a special permit from Meguro planning office to construct an embassy chancery or convert into office use. The presence of the residence is the only guarantee at the moment that enables the buildings to be used for office use.

44.1.3 Value per Tsubo or square metre 2009/2010 in Yakumo

- (i) Since 2006 to 2009 property prices in Japan have fallen drastically and in 2009 to 2010 the prices per square metre fell by 16%.
- (ii) The price per square metre for 2009 at the current location where the embassy is located was 488, 000 Japanese Yen per square metre and in 2010 this price fell by 16%. (DFR 30) (DFR 31)

45. Committee Observations on the purchase of properties in Tokyo, Japan

- 45.1 The valuer from the Ministry of Lands relied on limited information to arrive at the value of the properties in Tokyo, Japan. The Kenyan valuer was not better placed to value the property and should instead have dealt with a local valuer who would have given appropriate cost for the plot.
- 45.2 The Government of Kenya had exerted political and diplomatic pressure on the Government of Japan to sell to the Kenya a suitable plot to develop a Chancery and Residence for the Embassy and there was assurance from the Government of Japan on the same and further that a suitable plot had been identified and offered for sale by the Government of Japan.
- 45.3 Other than the valuation carried by the Ministry of Lands no independent valuation was conducted in 2009 by a local firm.
- 45.4 M/s. Coral Corporation conducted two valuations on the property prior (2007) to and after the purchase. The valuation after the purchase of the property was worth less money than what the Government of Kenya purchased it.

- 45.5 Despite numerous indicative rates suggesting a much lower value for the property the Ministry decided to purchase the property at an exorbitant price way above the valuation prices given by the Ministry of Lands and M/s Coral Corporation.
- 45.6 Despite recommendations of the Ministerial Tender Committee and Mission's own procurement committee, the Ministry decided to conclude the purchase transaction without the services of a lawyer.
- 45.7 The sale agreement was drawn by the vendor, translated by the vendor's friend and signed by Mr. Allan Mburu and lodged at the justice Ministry of Japan by the Shihoshoshi. The Permanent Secretary Mr. Thuita Mwangi, signed another Agreement to regularize the agreement signed by Mr. Alan Mburu who was not authorized to sign the agreement. The officers ignored the provisions of the Public Procurement and Disposal Act, 2005
- 45.8 The Ministry of Public Works was not involved in determining and assessing the structural suitability of the premises in spite of the process matrix from the Ministry of Foreign Affairs indicating when the Ministry of Public Works was to undertake inspection of the Chancery and Residence.
- 45.9 The Mission advertised for bids within a limited locality and the time for submitting bids was limited contrary to Regulation 40 of the Public Procurement and Disposal Act. This limited time for submitting bids resulted in the few number of bids received. The adverts were also placed in English newspapers with limited

coverage instead of being placed in Japanese newspapers with wide coverage.

- 45.10 Negotiations started way before the normal procurement procedures were followed and the Ministry purported to use open tendering while using direct procurement contrary to the advice of the Public Procurement Oversight Authority and the provisions of the Public Procurement and Disposal Act, 2005.
- 45.11 Ambassador Awori did not Chair the evaluation and inspection team meeting that decided to purchase the Chancery and Ambassador's Residence as opposed to the plot offered by the Government of Japan contrary to allegations by the Minister for Foreign Affairs. At the time Ambassador Dennis Awori had left Japan for a meeting in Gaborone, in Botswana.
- 45.12 The internal audit carried by auditors from Ministries of Finance and Ministry Foreign Affairs did not involve technical experts like architects, town planners, valuers, surveyors or structural engineers. Thus the report purporting to exonerate wrongdoing relied on limited information as it did not involve professionals in the field.
- 45.13 Kenyans in Diaspora are not happy with the current location of the Chancery and would prefer that the Chancery be moved to Minato-ku. Further they consider the price paid in acquiring the Chancery as exorbitant and suspect.

46. Committee Findings on purchase of properties in Japan

46.1 Long negotiations with the Government of Japan with Presidential intervention during a meeting with Senator Tetsuro Yano in Nairobi. Intensive political and diplomatic pressure led the Government of Japan to prioritise the offer of the plot in Minato Ku to Kenya. The decision to reject the Government of Japan offered plot was a diplomatic embarrassment considering the long diplomatic negotiations (over 18 months) by the Mission through the Ministry of Foreign Affairs of Japan and the political intervention of H.E. President Mwai Kibaki during a meeting with Senator Tetsuro Yano. The rejection of the plot was an embarrassment to the Presidency. (DFR 32)

46.2 Taking into account Japan's importance as a strategic partner to Kenya, the current location is not convenient and does not reflect Kenya's strategic importance and stature in regional and international diplomacy. A move to a more convenient and suitable location preferably in Minato ward would reflect Kenya's regional and international standing among nations. There is therefore need to move to a suitable location preferably the Government of Japan offered plot where the Mission can build a modern multi storey building for a Chancery, Ambassador's Residence, staff Residences and leased space to other East African Partner States.

46.3 There was deliberate disregard of professional advice given to the Ministry both by professionals within and outside Government :-

46.3.1 Lawyers advise –

46.3.1.1 Mr. Yoshito Kijima of Kijima international legal office in Japan vide letter KET/ADM/1/11A/VOL.II/(73) dated 16th June, 2009 to act on behalf of the Government in overseeing the execution of the transfer of the property to the Government of Kenya. (DFR 33) – advised that the transaction is irregular and further that negotiations were necessary. The lawyer in a letter dated June 12, 2009 advised the Embassy that:-

- (a) *In Japan, we do not pay 80% of the price upfront. We usually pay 10%-20% of the price and pay the balance of changing the registration. This is historically common methods of transaction. This is to avoid all risks arising from the real estate transaction.*
- (b) *The price that was offered and agreed here is extremely higher than the true values of the properties. The Government should buy these properties in a not fair price because the lack of research and lack of 'tools' to win the negotiation. One of our brief research indicated that the reasonable price of the properties are 1 billion Japanese Yen. To deal with such a person, the Government should negotiate with him (Kuriyama) with the certificate of the values which is currently issued.*
- (c) *Please be kindly informed again that the scheme that the Government agreed above is very unusual and we barely*

could see such a transaction in Japan. This is not recommended scheme at all. The lack of the basic research is fatal. So the Government should purchase the properties not in the reasonable price. I believe that this could be avoided by involving the experts in the negotiations with the owners. It is very difficult for us to understand why the Government should not purchase the properties not in the reasonable price. I believe that this could be avoided by involving the experts into the negotiations with the owners. It is very difficult for us to understand why the Government wants to take this kind of risk and why they stepped into the negotiation without basic research required in Japanese deal. I believe that the process is totally different in the usual real estate transaction in Japan. Frankly speaking, these risks are now a hinder for processing the drafting the contracts and complete the transaction safely.

(d) This transaction is very irregular and no experts will agree to step these processes.

46.3.2.2 Lawyer Shoji Yanagawa in his letter dated 7th April, 2009 advised the Embassy that:-

- (i) Land prices in Japan generally began following a downward path from 2008.

(ii) I recommend that your embassy perceive the price range of JPY 1,018,284,985 to JPY 1,089,204,080 as a fair yard stick for the price range for the four plots.

(iii) There is the possibility that MS. Kuriyama and the two others will demand a considerably high price for the properties from the government of Kenya in order to repay the money they owe the bank. (DFR 34)

46.3.2 Public procurement oversight authority advice on the procurement method- the ministry sought to use special procurement procedure but were advised to use other methods. The Ministry purported to use open tender but only advertised for three days and negotiated even before the tenders were advertised and bids received.

46.3.3 Valuers advise

(a) Valuers' opinion on the buildings - M/s Coral Corporation, real estate agents had indicated that the buildings were more than 20 years old and therefore it is only the value of land that is considered and not the value of the buildings. Ministry of Lands, Kenya - *lifespan is more than 20 and 10 years value of the buildings has no value. The Value of buildings should be disregarded when negotiating for the selling price. (DFR 12)*

(b) Valuers opinion on the plot - The Ministry of Lands valuer Mrs. Teresia Kimondiu advised in her report dated 25th May 2009 that *property located off Meguro Dorri*

Road Yakumo area 3-24-3 Meguro-ku is zoned residential with a site coverage of 60% and a floor ratio of 150% with maximum height is 10 metres. The plot does not front the road and portion of it used as an access road hence reducing area available for construction. No embassies are located in the neighbourhood. The valuer further advised on need to establish if there are encumbrances/liabilities on the title.

(c) Architect advised that *with all factors taken into consideration, it is clear that staying in the present embassy proves to be costing the embassy more than the option of moving. The landlord quoted very high rates for the purchase of the land. Another factor is that the building will require renovations,* the architect further advised that the Government of Japan plot has more potential as compared to current premises.

(d) The Ministry of Foreign Affairs vide letter Ref: MFA.HSE 9/56A dated April 20th, 2009 advised that, *'..... imperatively necessary that the Mission engages a lawyer cum a licensed real estate agent to safeguard the interest of the Mission in the entire transaction'*. The letter further advises the Mission to urgently source for this service to enable the consultant join the negotiating team scheduled to visit the Mission shortly. (DFR 35)

(e) Technical team from Nairobi in its meeting of 12th may, 2009 in Tokyo *observed that in order to safeguard Government interests in a transaction of this magnitude, it was imperative to hire services of a legal counsel/estate agent as previously recommended because of the nature of the transaction i.e. different ownership of land and buildings, existing charge on the properties to the sum of 1.94 billion yen, property sits in on different parcel of land and therefore the need to consolidate them and more important, the adequate understanding of conveyance practises in Japan amongst mission staff bolstered by the language barrier.*

46.4 Valuation - The Committee noted that before the purchase of the property no valuation was done by local valuation (Japanese) firm as is the practise for those seeking to purchase property in foreign land. Disregard of Ministerial Procurement Committee advice to hire a professional Valuer to value the property. The use of a professional Japanese valuation firm could have given the Ministry the right price for the property and therefore value for money considering that land prices in Japan were on the downward trend following the world financial crisis beginning in 2008. (DFR 36)

46.5 Payment - All payments were effected before the property was purportedly transferred to the Government of Kenya. This exposed and compromised Kenya's national interest. From evidence adduced by Mission staff up to 85% of the payment was effected

before transfer of the properties (DFR 37). The Committee on Defence and Foreign Relations was concerned that all members of the Mission's procurement Committee went to the vendor's Bank when the vendor was being paid and therein signed the sales agreement. Officers accelerated the transfer of money in total disregard of the advice given by the lawyer and the provisions of section 9 of the public officers and ethics Act. (DFR 20)

46.6 Power of Attorney – The Committee was concerned that Mr. Allan Mburu, CDA, irregularly granted himself the power of Attorney and signed the sale agreement without authority contrary to provisions of section 2 and 4 of the Government Contracts Act and The Sources of Authority and Control of Government Finances. (DFR 38)

46.7 Hiring of a lawyer – The mission in a meeting held on 31/3/2009 established real estate practice in Japan requires that a lawyers who double as a real estate agent must be involved in process towards acquisition of property however the Ministry opted to hire a 'Shihoshoshi' instead of a lawyer to transact the purchase. From the visit it emerged that the 'Shihoshoshi' is not a lawyer and therefore could not represent the Mission in case of legal issues that might arise on the purchase. The 'Shihoshoshi' did not prepare the agreement and instead the Sale agreement was prepared by the vendor, with all risks involved.

46.8 Building not to be included in price negotiations – due to the age of the buildings and as per practice in Japan (land regulations)

buildings that are more than twenty years are not valued since new structures have to be built in line with new building requirements and technology. The Ministry however went ahead and included the price of buildings in their purchase price against the advice of the Ministry of Lands Valuer, Real Estate Agent (M/s. Coral Corporation) and Architect (Mr. Olango) as well as the validation team. (DFR 39)

46.9 Town planning regulations – the property is located in an area with limitations/restrictions on plot use and height restrictions (DFR 30) Minister misled the Committee. From a planning and a land use point of view, According to the Architect, bigger space can be put for Government of Japan offered plot as opposed to the current plot. Government of Japan plot has greater development potential. Part of the property purchased by the Government is used as a road as there is no road frontage (DFR 03).

46.10 Archaeological site – Government of Japan offered plots to diplomatic Missions for construction of Embassies. The Embassies of Pakistan and Algeria had already been constructed and in use while the EU was constructing on a plot they had purchased from the original plot without interference from the Government of Japan. Tokyo city is considered generally an archaeological area but the Government allows developers to excavate and only tests the ground for archaeological materials with limited interference. This is contrary to the Minister of Foreign Affairs submission that the

government of Japan offered plot is under caveat. Material misrepresentation of facts by the Minister. (DFR 40)

46.11 Existence of two sale agreements – The Committee was amazed of the existence of two sale agreements on the same property signed by two different officers purportedly on the same on 30th June, 2009 in Tokyo. One agreement signed by Mr. Allan Mburu, CDA and another by Thuita Mwangi the Permanent Secretary. The two agreements were purportedly signed on the same date. The Committee was concerned over the two agreements in respect of the same property and same day. Mr. Thuita Mwangi was never in Tokyo on the material day. (DFR 41), (DFR 42).

46.12 The Committee was amazed that the agreement used for purposes of registration and transfer of the property was the one signed by Mr. Allan Mburu. Mr. Alan Mburu signed the contracts in contravention of the section 2 and 3 of the Government Contracts Act Cap 25 Laws of Kenya. The Committee was concerned over the validity and authenticity of the sale agreements signed by Mr. Allan Mburu and the Permanent Secretary, Mr. Thuita Mwangi.

46.13 The Committee is concerned as to whether there is any legitimate or valid registration of Kenya's interest in the property and the fate of the payments of the JPY 1.75 billion made to Mr. Nobuo Kuriyama.

46.14 Ministry of Public Works was never involved in the purchase of the property – the Ministry of Public Works was not involved in the validation team that was sent to Tokyo and even after the

Ministry of Foreign Affairs prepared a process matrix in which the Ministry of Public Works was to assess the structural suitability of the buildings before the purchase, the Ministry of Public Works was never invited to assess the suitability of the premises in spite the matrix indicating their involvement. The involvement of the Ministry of Public Works before the purchase could have guided the Ministry of foreign affairs in determining the suitability of the structures and consequently the price. (DFR 43)

46.15 Contrary to the Minister and Mission officials, the Government of Japan plot according to the architect hired by the Mission had a better shape – the Ministry had briefed the Committee that the Government of Japan offered plot was irregular and therefore not suitable for the Embassy. On site visit and on interviewing the Architect, Mr. Dick Olango, it was evident that the shape of the plot could not affect the construction of an Embassy. The Architect had indeed submitted proposed architectural drawings to the Ministry for construction of the Chancery (DFR 23). The Ministry of Lands valuer had advised the Ministry of Foreign Affairs that the current property did not have a road frontage and portion of the plot used as an access road to the Chancery and Residence hence reducing area valuable for construction.

46.16 The Embassy never undertook due diligence to establish the insurance cover for the property upon the handing over of the ownership of the property after the first instalment.

**CHAPTER FOUR: SALE OF GOVERNMENT PROPERTY IN LAGOS
AND CONSTRUCTION OF CHANCERY AND
RESIDENCE IN ABUJA, NIGERIA**

47 Evidence by the Minister for Public Works

47.1 The Minister, Hon. Chris Obure, EGH, MP appeared before the Committee on May 12, 2010 and adduced evidence follows:-

47.2 Construction of Chancery staff quarters and Ambassador's Residence

47.2.1 Following the relocation of the political capital of Nigeria to Abuja the Federal Government of Nigeria allocated to all foreign diplomatic Missions plots at no direct cost for construction of Chanceries and Ambassadorial Residences in Abuja.

47.2.2 Initially the construction of the proposed Chancery was pegged on the sale of the property in Lagos but after the sale of the Lagos property the funds were diverted to purchase a property in Japan. Construction of the Chancery commenced in February 2010 and works are currently ongoing after the contract was awarded to M/s Diamatrix Ltd of Nigeria and contract agreement signed on February 12th, 2010.

47.2.3 The project was scaled down From 1, 183, 695, 249.15 Nigerian Naira to 1, 019, 753, 456.93 Nigerian Naira due to budgetary constraints.

47.3 Evidence by the Minister for Foreign Affairs –

47.3.1 The Hon. Moses Wetangula, EGH, MP, Minister for Foreign Affairs appeared before the Committee on August 12, 2010 and adduced evidence as follows:-

47.4 Sale of Government properties in Lagos

47.4.1 In 2003 the properties were advertised and bids received but the sale was suspended by the Ministry of Foreign Affairs Headquarters. In 2006 further attempts were made at selling the properties. Kenya Airways offered to purchase the properties at \$1,750, 000 but Treasury advised that the property be sold at the market value provided by the Ministry of Lands valuer. In March 2008 an Inter-ministerial inspection team visited Lagos to commence the sale process. The properties were valued by a Ministry of Lands valuer who accompanied the inter-ministerial team at N 710, 735,000 (KES 421,430,000). A second valuation was done by an independent Estate surveyor and valuer who returned a value of N 770, 000, 000 (KES 428, 996, 252). In April 11 to 15, 2008 tender adverts were placed in local dailies and the tender bids closed in April 25, 2008. A team from Nairobi was sent to oversee the bid selection and evaluation. The property was sold to 21st Century Global Capital Ltd, the highest bidder with GBP 8,815,000 (KES 984,709,080.40). The Ministry headquarters processed the transfer of documentation and consent to transfer of title ownership to the 21st Century Global Capital Ltd.

47.4.2 The proceeds of the sale of the properties were remitted to Treasury.

A total of KES 994, 205, 064 was remitted to Treasury and the balance of KES 7, 915, 293.40 was used to pay the Missions rent and a further GBP 14, 015 (KES 1, 580, 690.15) used to remit the money to Treasury.

47.5 Construction of Chancery staff quarters and Ambassador's Residence

47.5.1 In 1991 the Federal Government of Nigeria relocated its capital city to Abuja and all Diplomatic Missions were offered plots at no direct cost to construct a Chancery and Residence. The Kenya High Commission relocated to Abuja in 2004 and leased properties for the Chancery and Residences.

47.5.2 The Government of Kenya was allocated two plots: plot No. 357 measuring 1.92 acres in the CBD for construction of Chancery and staff quarters and the other plot No. 945 measuring 0.6 acres in Maitama area for construction of the official Residence.

47.5.3 Open tender prequalification for construction of the Chancery and Residence was carried out and advertisements placed in local dailies. Sixteen firms were prequalified during the tender committee in December 8th 2008. Twelve tenders were sold and tenders closed on January 27, 2009 and tenders received were five. Tender evaluation was done by M/s D & B limited, the project consultant, together with officers from Ministry of Foreign Affairs and Ministry of Public Works. The Ministerial Tender Committee awarded the contract to M/s Diamatrix limited of Nigeria and contract signed in February 12,

2010 and the works started in April 2010 with a contract period of 18 months.

47.5.4 The original contract sum was N 1, 183, 695, 249.45 (KES 769, 401, 902.14). The project was later scaled down by 14% to remove non priority items leading to reduction in the contract sum to N1, 019, 753, 456.93 (KES 662, 839, 747). The budgetary allocations for the projects were as follows: 2009/2010 KES 300 million; 2010/2011 KES 280 million. An initial certificate of 35% (KES 185, 595, 129.15) was issued and certified by the Ministry of Public Works. Inspection of the project was done in June 2010 by a team from Foreign Affairs and Public Works. The anticipated completion date is October, 2011.

48.0 Evidence by the Deputy Prime Minister and Minister for Finance

48.1 The Deputy Prime Minister and Minister of Finance, Hon. Uhuru Kenyatta, EGH, MP appeared before the committee on August 8, 2010 and gave the following evidence, that:-

48.1.1 Sale of Government properties in Lagos

48.1.1 The property was advertised and the highest bidder was offered to purchase the property at a price of KES 984, 709, 080 and the funds credited to the exchequer in January 15, 2009. Kenya airways had sought to purchase the property but later withdrew their offer of KES 129 million while the property had been valued at KES 161, 700, 000 in 2006.

49.0 Construction of Chancery and Staff Quarters and High Commissioner's Residence

49.1 The Government of Nigeria had allocated plots at no direct cost to all diplomatic Mission's for construction when the Federal Capital was relocated to Abuja. Tenders for construction of the Chancery, staff quarters and official Residence were floated and on February 12, 2010 the contract for the construction was signed at a cost of KES 753, 000, 000.93.

50.0 Evidence by the Governor, Central Bank of Kenya

50.1 The Governor Central Bank of Kenya, Prof. Njuguna Ndungu appeared before the Committee on September 7, 2010 and informed the Committee that:-

Sale of Government properties in Lagos

50.1.1 In December 16, 2008 the CBK was advised by the Ministry of Foreign Affairs through a letter from the Permanent Secretary that the Kenya High Commission in Abuja was transferring proceeds of GBP 8,815, 000 (Less 14, 000 for Bank charges) being sale of Government of Kenya property in Lagos, Nigeria to an account specified by the Ministry of Foreign Affairs.

50.1.2 The CBK, on December 29, 2008, received a Swift FIN 910 from the Bank of England advising a credit of GBP 8, 730, 805 from the Kenya High Commission, Abuja Nigeria.

50.1.3 On December 30, 2008 CBK received a letter from the Ministry of Foreign Affairs advising that GBP 8, 730, 805 be credited in their

Development Account No. 01-010-D004. An amount of KES 984, 709, 080.40 was transferred to the Ministry's account as advised and a notification issued. (DFR 44).

51.0 Inspection visit to the Kenya High Commission in Abuja – 18th to 19th August, 2010

51.1 The Committee paid a courtesy call on the Kenya High Commissioner to Nigeria, H.E. Francis K. Sigei, EBS on Thursday August 19th, 2010. The High Commissioner welcomed the Committee to Nigeria.

51.2 The Committee thereafter held a meeting with the Mission staff and was briefed on the operations of the High Commission and Kenya – Nigeria relations, sale of the Government property in Lagos and the construction works for the Chancery and staff apartments and official Residence in Abuja.

52.0 Evidence on Sale of properties in Lagos, Nigeria

52.1 The High Commissioner, H.E. Francis Sigei, EBS accompanied by Embassy staff briefed the Committee on the sale of Government properties in Lagos as follows:-

52.1.1 In 1991 the Federal Government of Nigeria relocated its capital city to Abuja and all Diplomatic Missions were offered plots to construct a Chancery and Residence at no direct cost. The Kenya High Commission was therefore to relocate to Abuja in 2004 and leased properties for the Chancery and Residences. Attempts to sell the property in 1998 and 2002 failed due to low offers received

from prospective buyers. In 2003 the properties were advertised and bids received but the sale was suspended by the Ministry of Foreign Affairs (DFR 45) Headquarters.

52.1.2 The Mission in November 1998 had engaged the services of a law firm, Chuma Anosike and Co. at a fee of 5% of the sale price. The lawyers have never been paid and are claiming payment. The lawyers have written to the Mission through the Ministry of Foreign Affairs of the Federal Republic of Nigeria. (DFR 46) & (DFR 47). The law firm was hired to ensure that the title was authentic and no outstanding payments to the state Government, carry out due diligence to ensure that bidders source of funds are transparent, facilitate transfer of title to successful bidder once the sale amount is in GOK account in Abuja and ensure that the buyer takes vacant possession of the property immediately after sale procedures and documents are completed.

52.1.3 In 2006 further attempts were made at selling the property. Kenya Airways offered to purchase the property at \$1,750, 000 but Treasury advised that the property be sold at the market value provided by the Ministry of Lands valuer.

52.1.4 In March 2008 an Inter-ministerial inspection team visited Lagos to commence the sale process. The properties were valued by a Ministry of Lands valuer who accompanied the inter-ministerial team at N 710, 735,000 (KES 421,430,000). (DFR 48) A second valuation was done by an independent Estate surveyor and valuer who returned a value of N 770, 000, 000 (KES 428, 996, 252)

appendix value reports) the independent valuation firm Ben Chika and Co. have never been paid and are now demanding to be paid their dues totalling N 31, 010,000 (DFR 49). The Ministry vide letter MFA.212/320A/VOLIII approved payment of the services of a valuer (DFR 50)

52.1.5 In April 11 to 15, 2008 tender adverts were placed in local dailies and the tender bids closed in April 25, 2008. A team from Nairobi was sent to oversee the bid selection and evaluation. The property was sold to 21st Century Global Capital Ltd, the highest bidder with GBP 8,815,000 (KES 984,709,080.40). The Ministry headquarters processed the transfer of documentation and consent to transfer of title ownership to the 21st Century Global Capital Ltd.

52.1.6 Proceeds of the sale were remitted to a Central Bank of Kenya Account in London as per instructions from the Ministry Headquarters (DFR 51). The proceeds of the sale of the property was remitted to bank of England, London account number GB1 1 BKEN 10000041810007. A total of GBP 8,744,820 was remitted to the aforementioned account and the balance of GBP 70, 180 (DFR 52) was used to pay the Missions rent in Abuja and a further GBP 14, 026 used to remit the money to London. (DFR 53)

52.1.7 Due to the importance of Lagos commercially, there is need to maintain the Missions presence in Lagos. Most Missions still retain presence in Lagos being the commercial capital for Nigeria and the whole of West Africa. The Immigration Attaché is currently

operating from Kenya Airways premises. This has denied him diplomatic privileges since it is contrary to the Vienna Convention.

52.1.8 A lawyer and valuer hired to assist in the disposal of the property in Lagos have written on several occasions to the Kenya High Commission demanding payment for the services offered. The lawyer has indeed written to the Ministry of Foreign Affairs of Nigeria seeking payment.

53.0 Evidence on construction of Chancery, Staff Quarters and High Commissioner's Residence

53.1 The Committee was further briefed on the Construction of the Chancery, Staff Quarters and High Commissioner's Residence as follows, that:-

53.1.1 The Federal Government of Nigeria allocated Kenya two plots in the diplomatic enclave, Plot 357 and 945 for the Chancery at Abuja CBD and the other at Maitama for the Residence respectively. The High Commission sought the assistance of the Minister of Federal Capital Territory in providing information on reputable construction companies. Most of the companies provided by the Minister either declined or did not respond to the invitation to do the job. The Mission thereafter identified two companies D & B Ltd and Julius Berger through internet research to undertake consultancy and architectural services. Julius Berger declined to offer the services while D & B Ltd accepted to provide architectural services. Authority to procure the services of D&B Ltd

was granted by the Permanent Secretary who hired the consultant vide letter MFA.212/320A/49.

- 53.1.2 The consultant was hired to provide a detailed design and documentation of the project, appoint sub consultants and supervise them and supervise the entire construction works. The company initiated the original architectural design that was reviewed and approved by the Ministry of Public Works and Foreign Affairs.
- 53.1.3 As per the terms and conditions of hire, the Consultant was paid N17, 828,807.06 (25%) after completion of preliminary drawings, N35, 657,614.12 (50%) after completion of working and detailed drawings and a further N 875, 000 for geotechnical and topographical survey.
- 53.1.4 In November 2008 under instructions from the Government of Kenya the consultant prequalified construction companies with the aim of identifying construction firms with capacity to handle the project. Adverts were placed in two local dailies and on November 17, 2008 bids were opened by the High Commissions procurement committee and out of the 29 companies that had submitted their bids 16 companies were prequalified by the Ministerial Tender Committee and they were requested to bid. On January 29, 2009 bids were opened in the presence of an observation team comprising of officers from Ministry of Foreign Affairs and Ministry of Public Works. Only 5 out of the 12 companies that had purchased the tender document had

responded and Diamatrix Ltd was identified as the most qualified and was recommended to the Ministerial Tender Committee. The original quoted and approved cost of construction was N 1, 183,695,249.45 but was later scaled down to N 1, 019,753,456.93. The scaling down was on account of reduction in staff houses from six to five, removal of swimming pool, gymnasium and associated works, and removal of extra staff parking but later the NSIS appealed that a sixth flat be constructed raising the construction cost to N 1, 061,726, 124.90. (Appendix variation)

53.1.5 The Contract for construction was signed on March 12, 2010 and works started in April 2010 and is due for completion in November 2011 (18 months). An advance payment of N356, 913,709.93 has been paid for construction work after certificate was issued. Certificate No. 2 of N 398, 293, 395.08 is pending approval for payment in Nairobi.

54.0 Site Inspection of the construction works for the Chancery, staff quarters and official Residence in Abuja

54.1 The Committee inspected the construction work for the Chancery and Residence and noted that work was in progress and according to the lead consultant and the Mission staff it was on course and expected to be completed on due date.

55.0 Site visit of the sold property in Lagos, Nigeria.

55.1 The Committee toured the sold plots along Queen's Way Drive and observed that the plots were located in a prime location with the back fronting a creek in the Atlantic Ocean.

56.0 Committee Observations and findings

The Committee observed that:-

56.1 The Mission procured the services of a lawyer without following the laid down public procurement laws and regulations. Further the Mission failed to terminate the services of the lawyer despite the lawyer not participating in the critical stages of the transaction. (DFR 54)

56.2 The Committee expressed concern over non payment of legal and valuation services rendered. The Ministry of Foreign Affairs even after the finalisation of the sale never paid the lawyer and valuer it had contracted during the sale process. The lawyer and the valuer have written to the Mission through the Ministry of Foreign Affairs of the Federal Republic of Nigeria. This has the potential of creating diplomatic embarrassment to Kenya. (DFR 47)

56.3 The Mission used part of the proceeds from the sale of the Government property in Lagos to pay rent for the Immigration Attaché without authorisation from Treasury. (DFR 52)

56.4 The Mission transferred the proceeds of the sale of the Lagos properties to a CBK account with the Bank of England for onward transmission to the MFA account with CBK contrary to the Minister's submission that the money was transferred to Treasury.

- 56.5 The entire proceeds of the sale were not remitted to the CBK yet the mission was directed to send the entire proceeds. A total of GBP 70,000 was not remitted and instead used to pay rent for consular services in Lagos. The Government incurred costs of transferring the money. (DFR 44)
- 56.6 Despite recommendations that the proceeds of the sale of the property in Lagos be utilised in construction of the Chancery and Residence in Abuja (DFR 55), the Ministry of Foreign Affairs transferred the proceeds to its Development Account through the CBK. There was urgency in disposing the property so as to construct Chancery and Residence due to the threat of plot repossession by the Federal Government of Nigeria yet the Ministry instead allegedly used the proceeds to purchase property in Tokyo.
- 56.7 A lot of funds (GBP 14, 026) were lost during the transfer of the proceeds of the sale of Government properties in Lagos to the final point of utilisation. Additional money was lost during the transfer and foreign exchange of funds to Tokyo.
- 56.8 The Ministry of Foreign Affairs sold all its properties in Lagos in spite the technical evaluation team recommending that a third of the plot be retained. The Mission is now renting office space for consular services and Residence for the Immigration attaché in Lagos. (DFR 56)
- 56.9 Construction works progressing well and is expected to be completed on time. There is delay in payment of the contractor

CHAPTER FIVE: PURCHASE OF CHANCERY FOR KENYA EMBASSY IN BRUSSELS, BELGIUM

57.0 Evidence by the Minister for Public Works

57.1 The Hon. Chris Obure, EGH, MP, Minister for Public Works appeared before the Committee on May 13, 2010 and adduced the following evidence in relation to the purchase of a Chancery in Brussels, that:-

57.1.1 The Ministry of Public Works was involved in assessing the condition of the property and after the assessment they recommended its acquisition. A technical team comprising of officers from the Ministry of Foreign Affairs, Ministry of Finance and Ministry of Public Works and Housing visited Brussels in October 3rd to 6th, 1998 to assess the property. The technical team recommended the acquisition of the building with an estimated value of 70, 000,000 Belgium Francs.

57.1.2 In May 2007 another team comprising officers from the Ministry of Foreign Affairs and Ministry of Lands visited Brussels to assess the property again. During the visit they held meetings with the landlord who offered to sell the property at a cost of Euro 4.5 million, equivalent to KES 410 Million. This included renovations to be undertaken by the landlord and a guarantee of 15 years.

57.1.3 In July 2007 another technical team comprising officers from the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Lands and Ministry of Public Works visited Brussels and agreed to prepare a TOR, draft sale agreement, and collate relevant information related to the acquisition. The team also met with the

landlord Mr. Chalouhi and recommended significant renovations to be undertaken before the purchase.

57.1.4 The Contract Agreement was signed by the Ministry of Foreign Affairs after the report of an inter Ministerial Committee.

58.0 Evidence by the Minister for Lands

58.1 The Hon. James Orengo, EGH, MP Minister for Lands appeared before the Committee on May 12, 2010 and informed the Committee that the building in Brussels, Belgium had been residential prior to the purchase. It was valued at 4.5 million Euros including furniture, though this shouldn't have been the case as second hand furniture has no value in Europe unless the items are antiques.

59.0 Evidence from the Minister for Foreign Affairs

59.1 The Hon. Moses Wetangula, EGH, MP Minister for Foreign Affairs appeared before the Committee on August 12, 2010 and adduced the following evidence, that:-

59.1.1 Plans to acquire property in Brussels started in 1999 when Former President Moi granted authority for the purchase of a Chancery. A tasks force from the Ministry visited Brussels in May 2005 and considered several options including office apartments and detached building as well as the premises being rented by the Mission for the Chancery. The team recommended purchase of a detached building as opposed to an apartment. The team held a meeting with Mr. Chalouhi of Sucotrade on the possibility of

purchasing the premises (town house) rented by the Mission. Sucotrade offered to sell the property at 4.5 million Euros which was inclusive of building, furniture and fittings.

59.1.2 The matter was revived in 2006 when the Ministry of Foreign Affairs shifted its policy from renting towards ownership of properties in Missions abroad. The Mission was tasked to search for comparable properties and talks were also initiated with the owner (Sucotrade) of the property that the Mission was renting.

59.1.3 In 2007 an Inter-Ministerial inspection team visited Brussels with the mandate of carrying out a technical evaluation of the premises rented by the Mission. The team comprised of officers from Ministry of Foreign Affairs, Ministry of Finance, Ministry of Lands, Roads and Ministry of Public Works. The team identified various repairs works (cracks, leaks, roof gutters etc) to be done on the Chancery. The owner undertook to renovate the building and to provide a guarantee upon sale.

59.1.4 Other properties were identified but found to be unsuitable on account of size, current use and location characteristics. The Ministry revisited the issue with Sucotrade again with the view of further price negotiations. After several meetings Sucotrade agreed to sell the property at Euros 3, 850, 000 and the transaction was to be concluded in February 2008. In May 2007 the Mission had contracted S. A. Atisreal Belgium Valuers to value the property and they returned a value of Euros 3. 316 million. The Ministry of

Lands, Kenya, valued the property at Euros 3 million excluding the aforementioned repair works.

59.1.5 An inspection team from Ministry of Foreign Affairs, Ministry of Roads and Ministry of Public Works visited Brussels in February 2008 to inspect the renovations recommended by the team that visited in 2007 and make recommendations regarding finalisation of the purchase of the property. The team was satisfied with the repair works and recommended that the Ministry of Foreign Affairs proceeds to purchase the property.

59.1.6 In March 2008 the Ministerial Tender Committee approved the purchase of the property for the Chancery in Brussels. A sale agreement was drawn and checked by the Ministry's Legal Department and signed by the Permanent Secretary (Mr. Thuita Mwangi). The property was transferred to the Government of Kenya at a price of Euros 3, 850, 000 (KES 381, 150, 000) which included the cost of furniture and fittings.

59.1.7 The building purchased was constructed in 1920 as a residential structure but turned into offices.

60.0 Evidence by the Interim Director General, Public Procurement Oversight Authority

60.1 The Interim Director General, Mr. M. Juma appeared before the Committee on June 22, 2010 and informed the Committee that the Authority was not consulted on the purchase of the Chancery in Brussels.

61.0 Evidence by the Deputy Prime Minister and Minister for Finance

61.1 The Hon. Uhuru Kenyatta, EGH, MP, Deputy Prime Minister and Minister for Finance appeared before the Committee on August 10, 2010 and informed the Committee that the Chancery in Brussels was purchased in the FY 2007/2008 at a cost of KES 378, 250, 950.

62.0 Inspection visit of the Kenya Embassy in Brussels, Belgium - August 20th to 22nd, 2010

62.1 The H. E. Ambassador Kembi Gitura accompanied by Embassy staff informed the Committee that:-

62.1.1 Plans to purchase a Chancery for the Mission started in 1999 however the matter was never concluded. A tasks force from the Ministry visited Brussels in May 2005 and considered several options including the premises being rented by the Mission for the Chancery. The team held a meeting with Mr. Chalouhi of Sucotrade on the possibility of purchasing the premises (town house) rented by the Mission. Sucotrade offered to sell the property at 4.5 million Euros which was inclusive of the building, furniture and fittings.

62.1.2 The matter was revived in 2006 when the Ministry of Foreign Affairs shifted its policy from renting towards ownership of properties in Missions abroad. A task force was formed by the Mission to search for suitable properties for purchase by the

Mission. Talks were also initiated with the owner (Sucotrade) of the property that the Mission was renting.

62.1.3 In 2007 an Inter-Ministerial Inspection Team visited Brussels with the mandate of carrying out a technical evaluation of the premises rented by the Mission. The team comprised of officers from Ministry of Foreign Affairs, Ministry of Finance, Ministry of Lands, Ministry of Roads and Ministry of Public Works. The team identified various repairs works (cracks, leaks, roof gutters etc) to be done on the Chancery. The owner undertook to renovate the building and to provide a guarantee upon sale. (DFR 57)

62.1.4 Due to the long time it was taking to come into an agreement with Sucotrade other properties were identified but found to be unsuitable on account of size, current use and location characteristics. The Ministry revisited the issue with Sucotrade again with the view of further price negotiations. After several meetings Sucotrade agreed to sell the property at Euros 3, 850, 000 and the transaction was to be concluded in February 2008. In May 2007 the Mission had contracted S. A. Atisreal Belgium Valuers to value the property and they returned a value of Euros 3. 316 million. The Ministry of Lands, Kenya valued the property at Euros 3 million excluding the aforementioned repair works.

62.1.5 An inspection team from Ministry of Foreign Affairs, Ministry of Roads and Ministry of Public Works visited Brussels in February 2008 to inspect the renovations recommended by the team that visited in 2007 and make recommendations regarding finalisation

of the purchase of the property. The team was satisfied with the repair works and recommended that the Ministry of Foreign Affairs proceeds to purchase the property.

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63.0 Site Inspection of the Chancery

63.1 The Committee inspected the Chancery and observed that:-

63.1.1 There is a lot of unoccupied space in the Chancery particularly at the extension housing the Visa Section.

63.1.2 The building requires renovations.

63.1.3 There were cracks in the wall of the Chancery.

63.2 The Committee also visited the Residence and observed that it is spacious but requires renovations in certain areas. The Committee could not establish when the Residence was purchased as all officers were not privy to the purchase.

64.0 Committee Observations and findings

64.1 The Committee observed that:-

64.1.1 The building is old. It was built in 1920's.

64.1.2 The renovations that were to be carried out by the vendor, and which raised the price, were not completed since there are visible cracks on the wall and need for renovations and therefore the building requires urgent renovations.

64.1.3 The purchase price, Euros 3.85 million, was way above the market valuation by the independent valuer, S.A Atisreal (Euros 3.316 million) and Ministry of Lands, Kenya valuation (Euros 3 million). The Ministry of Foreign Affairs paid for incomplete renovations and furniture yet they were advised by the Ministry of Lands valuer that, in Europe second hand furniture has no value.

64.1.4 There is a lot of unoccupied space in the Chancery particularly at the extension that houses the Visa Section.

CHAPTER SIX: PURCHASE OF PLOT, CONSTRUCTION OF
CHANCERY AND RESIDENCE FOR KENYA HIGH
COMMISSION IN ISLAMABAD, PAKISTAN

65.0 Evidence from the Minister for Foreign Affairs

65.1 The Hon. Moses Wetangula, EGH, MP, Minister for Foreign Affairs appeared before the Committee and adduced the following evidence:-

65.1.1 In 1991 the Government of Kenya bought land measuring 6, 773 metres squared at a cost of KES 1.4 million in a Diplomatic Enclave in Islamabad. In the neighbourhood are the Embassies of Russia, Bulgaria, Libya, Hungary and Sri Lanka.

65.1.2 The construction of the Chancery and Residence was conceptualised in 1997 and drawings for the construction done in 1998 by M/s Atelier International Architects. In 2007 the Ministerial Tender Committee appointed M/S impact designs studio to design and provide consultancy services. Selective tendering was carried out for the procurement of a contractor. Tender documents were sold and four firms submitted their bids which were evaluated on the basis of technical and financial capacity. M/S Consol construction solutions was awarded the contract as the lowest bidder at a sum of 385,821,826 Pakistan Rupees (KES 366, 055, 734.70) with a contract completion period of 18 months from the date of commencement (12th May 2008).

65.1.3 The Contractor through the Consultant sought for variations. A team from the Ministry of Foreign Affairs and Ministry of Public Works visited Islamabad to verify the claims. The Ministerial Tender Committee approved a variation of Pakistan Rupees 53, 040, 163 (KES 50, 388, 155) following recommendation of the Inter-Ministerial team that visited the project. This has raised the total cost to KES 416, 443, 890. Due to the security situation in Pakistan, additional works will be required to enhance security. The Project was to have been completed in October 2009 but faced many challenges due to the security situation in Pakistan which has led to restrictions in the diplomatic enclave.

66.0 Evidence by the Deputy Prime Minister and Minister for Finance

66.1 The Hon. Uhuru Kenyatta, EGH, MP, Deputy Prime Minister and Minister for Finance, informed the Committee that the Project for construction of the Chancery and Residence in Islamabad, Pakistan was started in 2007/2008 and finalized in the last Financial year 2009/2010 at a total cost of KES 532, 834, 080. The buildings were constructed on land given free by the Government of Pakistan. The Government is expected to save approximately KES 10 million as rent expenses per year.

67.0 Inspection visit of the Kenya High Commission, Islamabad – August 23rd to 25th, 2010

67.1 The Committee paid a courtesy call on the Kenya High Commissioner to Pakistan, H.E. Mrs. Mishi Masika Mwatsahu on Monday August 23rd, 2010. The High Commissioner welcomed the Committee to Pakistan. The Committee was thereafter briefed on the operations of the High Commission, Kenya Pakistan relations and the construction of the Chancery and Residence in the diplomatic enclave.

68.0 Evidence on the Construction of the Chancery and Residence

68.1 The High Commissioner, H. E. Mrs. Mishi Masika Mwatsahu accompanied by the Mission staff briefed the Committee as follows:-

68.1.1 The Government of Pakistan has been encouraging diplomatic Missions in Islamabad to relocate to the designated diplomatic enclave for ease of security. Kenya Mission relocated to the new Chancery in spite the fact that it is still under construction.

68.1.2 In 1991 the Government of Kenya bought land measuring 6, 773 metres squared at a cost of KES 1.4 million in an area earmarked as a diplomatic enclave by the Government of Pakistan. In the neighbourhood are the Embassies of Russia, Bulgaria, Libya, Hungary and Sri Lanka.

68.1.3 The construction of the Chancery and Residence was conceptualised in 1997 and drawings for the construction done in 1998 by M/s Atelier International Architects. In 2007 the

Ministerial Tender Committee appointed M/S impact designs studio to design and provide consultancy services. Selective tendering was carried out for the procurement of a contractor. Tender documents were sold and four firms submitted their bids which were evaluated on the basis of technical and financial capacity. M/S consol construction solutions was awarded the contract as the lowest bidder at a sum of 385,821,826 Pakistan Rupees (KES 366, 055, 734.70) with a contract completion period of 18 months from the date of commencement (12th May 2008).

68.1.4 Payments for the contractor (M/s Consol Construction Solutions) have been made in respect of certificates issued totalling 417, 599, 359.78 Pakistan Rupees (KES 416, 045, 103.90) inclusive of an escalation cost of 50, 068, 008.66 Pakistan rupees (KES 47, 564, 608.25). The escalation costs were approved by the Ministerial Tender Committee in March 2009 after which payment was effected by the Mission. The consultant impact designs studio have so far been paid 44, 110, 000 Pakistan Rupees (KES 44, 567, 370).

69.0 Meeting with CEO of Impact Design Studios, Lead Consultant

69.1 The Committee held a meeting with the CEO of impact design studios, the lead consultants, Mr. Usman S. Khan, at the Chancery, Kenya High Commission in Islamabad. He briefed the Committee on the status of the project and progress in the construction as follows:-

69.1.1 The Government of Kenya purchased the plot measuring 53,110 square feet in the diplomatic enclave II. The plot is in block 6

numbered plots 1, 2, 3. The plot was purchased at a price of 8, 100, 000 Pakistan rupees. The plot is on a lease hold of 33 years extendable for two consecutive terms of 33 years each. The annual rates for lease of the plots is 159, 330 Pakistan Rupees.

69.1.2 The construction work for the Chancery and Residence started with the construction of a concrete perimeter wall around the plot at a cost of KES 10 million during the Financial Year 2005/2006.

69.1.3 Impact Design Studios was contracted as the lead consultant with the following associated consultants:-

- Structural Design Consultants – M/s Atiq Associates
- Electrical Consultants – M/s SEM Engineers
- Plumbing Consultants – M/s Sohail Ahmed Associates
- HVAC and Ventilation Systems Consultants – M/s Universal Consultants
- Landscape Consultants – M/s Roots and Shoot

69.1.4 Structural designs and bill of quantities were prepared and sent to Nairobi for perusal and approval by the Ministry of Public Works. Bids were prepared and tenders advertised and short listing completed in December 2007. A technical team from Nairobi comprising officers from Ministry of Foreign Affairs, Ministry of Roads and Public Works visited Islamabad to evaluate the tender documents. M/s Consol construction solutions was the lowest bidder and was awarded the tender. The contract for construction and consultancy services was signed in Nairobi on February 29,

2008 with a contract period of 18 months. The project is currently due in 2 or 3 months time.

69.2 Challenges facing the project

69.2.1 Delays in approval of Architectural drawings by the Capital Development Authority (CDA) of Islamabad - Pakistan.

69.2.2 Delay in completion of project on time necessitated the Mission staying in rented property. The contractor was made to pay for the unexpected rent bills.

69.2.3 Insecurity in Pakistan led to restriction on entry to the diplomatic enclave for workers and materials thus delay in the completion of the project.

70.0 Meeting with Kenyan students in Pakistan

70.1 The Committee was informed that more than 150 Kenyan students are pursuing university education in Pakistan universities. The students informed the Committee of the challenges facing them in Pakistan:-

70.1.1 Visa issuance – the Pakistan authorities issue students with visiting visas yet they require student visas to enable them pursue their studies. The issuance of visas also takes considerably long time thus forcing some students on partial scholarship to lose their scholarships.

70.1.2 Insecurity – the security situation in Pakistan is volatile. The Government should facilitate students in case of emergencies

70.1.3 Low employment opportunities for those students who successfully complete their studies from institution of higher learning in Pakistan.

71.0 Visit to Pakistan Ordnance Factory

71.1.1 The Committee visited the Pakistan ordinance factory and was briefed on the operations of the factory and the arms produced in the factory. The Committee was also informed that the Government of Kenya has been importing small weapons for the police and forest service from the factory.

71.1.2 The factory was established to meet the defence needs of Pakistan and surplus is exported. Products from the factory are exported to more than 36 countries in the world.

72.0 Committee Observations on Islamabad

72.1 The Committee observed that:-

72.1.1 Delay in the completion of the project.

72.1.2 Variations occasioned by delays

72.1.3 Ministry of Public Works has delayed in inspecting progress in the construction works leading to delay in payment and therefore delay in works.

72.1.4 Good working relations between students and the High Commission.

CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS

73.0 Arising from the evidence taken, submissions received and observations, the Committee recommends that:-

73.1 The Ministry of Foreign Affairs should urgently put in place a strategic plan and policy approved by the Cabinet on property acquisition and disposal to meet stringent thresholds.

73.2 The Ministry of Foreign Affairs should explore the option of purchasing floors in safe and suitable already built up buildings as is the case with some western countries instead of purchasing plots and building or purchasing stand alone buildings. This would save the country funds in constructing or purchasing stand alone structures.

73.3 The Accounting Officer, Ministry of Foreign Affairs, should carry out a search and undertake due diligence to ensure that the properties for Kenya Missions Abroad are legally acquired and owned by the Government of Kenya. The accounting officer should use reputable lawyers and other professionals to accomplish this task.

73.4 The Government of Kenya lost close to over KES. 1.1 billion in the procurement transaction in Tokyo, Japan and close to KES 84, 150, 000 in the purchase of a Chancery in Brussels, Belgium. The Government should institute measures to recover the money lost in the aforementioned transactions.

73.5 The Kenya Anti Corruption Commission should institute investigations in respect to the Tokyo transaction.

73.6 Necessary action be taken against the Minister for Foreign Affairs, Hon. Moses Wetangula, EGH, MP, the Permanent Secretary, Ministry of Foreign Affairs, Mr. Thuita Mwangi and the Deputy Head of Mission, Kenya Embassy, Japan, Mr. Allan Mburu, Mr. A. M. Muchiri and any other officer involved in the purchase of properties in Tokyo.

73.7 The property acquired in Tokyo is unsuitable and should be disposed off. The proceeds be used to Purchase the plot offered by the Government of Japan and for construction of a Chancery and Residence on the same.

73.8 While independent and professional valuations by local reputable firms were carried out during the purchase and sale of Government properties in Brussels, Belgium and Lagos, Nigeria respectively, no valuation by an independent, professional and reputable local firm was commissioned by the Ministry of Foreign Affairs during the procurement of properties in Tokyo, Japan.

74.0 Sale of Government plot in Cairo, Egypt

74.1 The Ministry of Foreign Affairs should procure its own premises in a suitable area because of the economic potential and significance of the country.

75.0 Purchase of a Chancery and Ambassador's Residence in Tokyo, Japan

75.1 From evidence gathered, written submissions and price indications by the Lawyer in Tokyo (Mr. Yoshito Kijima), the Architect in Tokyo (Mr. Dick Olango), Ministry of Lands valuer (Mrs. Teresia Kimondiu), the real estate agent from Japan's M/s Coral

Corporation (Mr. Hidehiko Takahashi), and the Ministry of infrastructure of Japan, the Government of Kenya lost close to over KES 1.1 Billion as evidenced by submissions by the lawyer, M/s Coral Corporation and price indications.

76.0 Hon. Moses Wetangula, EGH, MP - Minister for Foreign Affairs –

76.1 The Minister deliberately misled the Committee in the following manner:-

76.1.1 The Minister said that there was value for money while the Government actually lost close to over KES 1.1 Billion as evidenced by submissions by the lawyer, Mr. Yoshito Kijima of Kijima International Legal Office, Real Estate Agent, M/s Coral Corporation and price indications from Meguro Tax Office.

76.1.2 The Minister informed the Committee that hiring a lawyer was expensive and was going to cost the Government 3% of the purchase price which was amounting to KES 45.7 million while a lawyer was actually available at KES 3.4 million (DFR 34). He further claimed that a 'Shihoshoshi' was a lawyer and that he drafted a sale agreement. Evidence adduced by Mr. Ohtake Akiyoshi was that he was not a lawyer but a judicial scrivener (someone with knowledge of the registration process and undertakes administrative duties). He was not involved in the drafting of the sale agreement but only facilitated in the registration of the property. There was a deliberate attempt at not using a lawyer for the transaction.

- 76.1.3 The Minister told the Committee that the shape of the plot offered by the Government of Japan was irregularly shaped rendering it unsuitable for construction of both a Chancery and an Ambassador's Residence. This statement contradicts the report of the Architect commissioned by the mission, who advised that the plot offered by the Government of Japan allows more floor space, a tall structure is possible which could also cater for other diplomats apartment hence cut monthly rent. This report was in the Minister's knowledge at the time he made the statement to the Committee. (DFR 23)
- 76.1.4 The Minister informed the Committee that Ambassador Dennis Awori chaired a meeting that decided to purchase the current premises at Meguro-ku. Ambassador Awori however told the Committee that he had already left Japan to attend a Conference for Africa's Development in Gaborone, Botswana, at the time the meeting took place.
- 76.1.5 The Minister stated that the plot allocated by the Government of Japan had on it a caveat registered that allowed the Government of Japan to at any time excavate for archaeological materials. However information received by the Committee from the Kenyan Embassy in Tokyo showed that contrary to the Minister's presentation of the situation regarding the plot, the whole of Tokyo is considered an archaeological area (what the Japanese Law for the Protection of Cultural Property, law No. 214 of May 1950 refers to as a Treasure trove). Countries such as Algeria and

Pakistan had constructed Embassies/High Commissions in the area where the plot is located. The European Union had also commenced construction on a plot purchased next to the plot offered to Kenya. Morocco had also purchased a plot in the same area for construction of an Embassy.

76.1.6 The Minister is therefore in breach of section 21 of the National Assembly [Powers and Privilege] Act, Chapter 6 of the Laws of Kenya which provides as follows:

“21. False evidence

Any person who before the Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence under section 108 of the Penal Code and liable to the penalty prescribed by the appropriate section for that offence.”

76.1.7 The Minister as a public servant is further in breach of section 19 of the Public Officer Ethics Act which provides as follows:

“19. Misleading the Public, etc

A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.”

76.1.8 The Minister totally disregarded of professional advice given by the Real Estate Agent, Valuer, Lawyer, Evaluation and Inspection committee.

- (i) The Real Estate Agent, M/s Coral Corporation in its report of 23rd March 2007 commissioned by the Embassy had advised that *"According to the registration, the building was constructed 16 September 1988 and has aged almost 20 years now. Therefore we do not evaluate the building"*.
- (ii) Ministry of Lands valuer, Mrs. Teresia Kimondiu in her report of 25th May, 2009 had also advised that the *"The property is off Meguro Dorri Road, Yakumo Area. Address at 3-24-3 Yakumo Meguro-Ku Tokyo ... The plot is zoned residential with a site coverage of 60%. Floor space ratio is 150%. Maximum height is 10 metres ... Its noteworthy to mention that the economic lifespan of a building constructed in natural stone is 20 years while a wooden one is 10 years, thereafter only the site is considered valuable. However I will include a depreciated cost of the building which should be disregarded as the selling price is negotiated. The plot does not front the road and a portion of it is used as an access road, hence reducing area available for construction. No embassies are located in the neighbourhood. The plot/buildings are currently leased to the Kenyan Embassy ... As we return our figure the ongoing global economic crises, particularly on property values will be taken into account."*

(iii) The Lawyer Mr. Yoshito Kijima of Kijima International Legal Office, Tokyo, Japan in his letter of June 12, 2009 addressed to the Embassy had advised that

"2.2.3.1 In Japan, we do not pay 80% of the price upfront. We usually pay 10%-20% of the price and pay the balance on the day of changing the registration. This is historically common methods of transaction. This is to avoid all risks arising from the real estate transaction..."

The price that was offered and agreed here is extremely higher than the true values of the properties. The Government should buy these properties in a not fair price because the lack of research and lack of 'tools' to win the negotiation. One of our brief research indicated that the reasonable price of the properties are 1 billion Japanese Yen. The value was calculated including the fact that the Embassy has been paying rent for almost 20 years and the rent was relatively higher than the rent around the area where the Embassy locates. As Mr. Kuriyama is from the family where owns a lot of real estate around the area and knows about real estates and we believe that he knows the true price of the properties where the Embassy locates. To deal with such a person, the Government should negotiate with him with the certificate of the values which is currently issued. Please be kindly informed again that the scheme that the Government agreed above is very unusual and we barely could see such a transaction in Japan. This is not recommended

scheme at all. The lack of the basic research is fatal. So the Government should purchase the property not in the reasonable price. I believe that this could be avoided by involving the experts into the negotiations with the owners. It is very difficult for us to understand why the Government wants to take this kind of risk and why they stepped into the negotiation without basic research required in Japanese deal. I believe that the process is totally different in the usual real estate transaction in Japan. Frankly speaking, the risks are now a hinder for processing the drafting the contracts and complete the transaction safely.

2.4 ... This transaction is very irregular and no experts will agree to step these processes... The end

I know that I stated that the decision of the Government is not totally recommended. Please accept my apologies opposing to the decision. It is because I respect the government of the Kenya and the Embassy so that I want to protect the properties in Japan. Since I have been dealing with the Embassy, I always think of helping the government and the Kenyan people, I thought I should be frankly and honest." [Please note that the above is a translation from Japanese]

(iv) The Architect, Mr. Dick Olango in his architectural analysis report to the Embassy in January 2009 had advised that '*with all the*

factors taken in to consideration, it is clear that staying or buying the present Embassy proves to be costing the embassy more than the option of moving. The landlord quoted very high rate for the purchase of the land. Another factor is that the building will require some renovation, which will be extra cost on top of the present rental fees.'

- (v) The evaluation and validation committee in their report after the visit to Tokyo had *'observed that in order to safeguard Government interests in a transaction of this magnitude, it was imperative to hire services of a legal counsel/estate agent as previously recommended because of the nature of the transaction i.e. different ownership of land and buildings, existing charge on the properties to the sum of 1.94 billion yen, property sits in on different parcel of land and therefore the need to consolidate them and more important, the adequate understanding of conveyance practises in Japan amongst mission staff bolstered by the language barrier.'*

76.1.9 The Minister, while appearing before the Committee, asked the question *"Did the public get value for money?"* He answered the question as follows, *"The answer is a resounding "Yes"'* He then stated that the decision to purchase the property in the manner that the Ministry did was *"wise and prudent and was long overdue."* From all the evidence received by the Committee it is clear that the transaction as carried out was neither wise nor prudent. It was fraught

with irregularities and carried out in a manner that was not in the best interests of the Country. The Kenyan Public actually lost close to over KES 1.1 Billion in the transaction.

76.2 Therefore the Committee recommends that:-

76.2.1 The Hon. Moses Wetangula, EGH, MP, Minister for Foreign Affairs, should take Political responsibility and step aside to pave way for investigations by the Kenya Anti Corruption Commission (KACC) and other investigative arms of the Government.

76.2.2 The Committee further recommends that the appointing authority be advised that the conduct of Hon. Moses Wetangula, EGH, MP, is not compatible with that of a Minister.

76.2.3 Upon investigations and if found guilty by a Court of law the Hon. Moses Wetangula, EGH, MP should be barred from holding any State office in the Republic of Kenya.

76.2.4 The Minister be severely reprimanded and the matter of his breach of section 21 of the National Assembly (Powers and Privilege) Act by deliberately misleading the Committee be referred to the House Powers and Privileges Committee for action.

77.0 Mr. Thuita Mwangi, Permanent Secretary, Ministry of Foreign Affairs

77.1 The Permanent Secretary failed to ensure that the provisions of the Public Procurement and Disposal Act, 2005 were complied with. The Permanent Secretary:-

77.1.1 Did not ensure a valuation was conducted on the properties by an independent local firm in Japan the year the purchase was done despite advise from his own office cautioning the Embassy that the property is over-valued in 2007 (DFR 36), This led to the property being purchased at a price higher than market value. This is contrary to section 18(2)(g) of the Government Financial Management Act which provides as follows:

“Responsibilities of accounting officers - In carrying out his responsibilities under subsection (1), an accounting officer shall do the following in relation to his ministry, department or commission-

(g) ensure that all applicable procedures are followed in the acquisition or disposal of property and that adequate arrangement are made for the custody, safeguarding and maintenance of property;”

77.1.2 Failed to institute investigations after the fire incident (letter on fire no action taken) contrary to provisions of the Government Financial Regulations Procedures. Regulation 12.6 sets out the procedure for handling losses. (Regulation 40)

77.1.3 Failed to ensure that property was insured after the payment of the full purchase price and transfer to the government of Kenya (DFR 58). Again this is contrary to section 18(2) (g) of the Government Financial Management Act.

77.1.4 Allowed payment of the full purchase price before making adequate arrangements to guarantee that the transfer of the property shall be done thereby exposing the Government to risk of financial loss.

77.1.5 Purported to have signed a sale agreement in Tokyo while he was actually in Nairobi.

77.2 The Committee therefore recommends that:-

77.2.1 He should step aside to allow investigations on the purchase of the properties for Kenya Mission abroad.

77.2.2 The Kenya Anti Corruption Commission (KACC) and other investigative arms of the Government should investigate the conduct of the Permanent Secretary, Mr. Thuita Mwangi in the purchase, sale or construction of properties for Kenya Missions abroad and in particular in the purchase of the properties in Tokyo.

77.2.3 If prosecuted and found guilty the Permanent Secretary, Mr. Thuita Mwangi should be barred from holding any State office in the Republic of Kenya.

78.0 Mr. Allan Mburu, Deputy Head of Mission, Kenya Embassy Japan

78.1 Mr. Allan Mburu purportedly signed a sale agreement on behalf of the Government of Kenya without authority from the Minister contrary to section 2 and 4 of The Government Contracts Act, CAP 25 Laws of Kenya which state as follows:

“2. Subject to the provisions of any written law, any contract made in Kenya on behalf of the Government shall, if reduced to writing, be made in the name of the Government of Kenya, and shall be signed either by the accounting officer or by the receiver of revenue of the Ministry or for the department of the Government concerned, or by any public officer duly authorized in writing by the such accounting officer or receiver of revenue, either specially in any particular case or generally for any contracts below a specified value in his department or otherwise as may be specified in such authorisation.”

4. No contract made after the commencement of this Act shall, unless made in the manner hereinbefore provided, be deemed to be made by the authority of the Government.”

78.2 The Permanent Secretary, who is the person authorised in law to sign agreements on behalf of the Government, had to sign another agreement that was to be lodged with the Government of Japan.

78.3 Granting himself a power of Attorney. The form of authorisation is set out in section 7 of the Government Contracts Act and the First Schedule of the Act. This is contrary to section 9(a) of the Public Officer Ethics Act that provides as follows:

"Professionalism

A public officer shall-

(a) Carry out his duties in a way that maintains public confidence in the integrity of his office;" (Authorisation under section 7 of the Act).

- 78.4 Discriminated against other bidders by bargaining and agreeing with the owner of property 3-24-3 Meguro-ku on the purchase price before advertising for bids. The advertising was done in English newspapers which have limited coverage in Japan. The time for submitting bids was also limited.
- 78.5 The advertisement for properties was made in two Japanese newspapers both in the English language and required responses within four (4) days, between 26th to 30th February, 2009. This is contrary to section 54 of the Public Procurement & Disposal Act as a result of failure to take reasonable steps to bring the invitation to tender to the attention of those who may wish to submit tenders Japan being a Japanese speaking country. Regulation 40 of the Rules under the Act further requires tenderers be given at least 21 days to respond to the advertisement.
- 78.6 Disregarded all professional advice and went ahead to purchase property (valuers, technical team, lawyer, letter cautioning property being over valued from Ministry of Foreign Affairs) The valuer and real estate agent advised that buildings should not be included in the purchase price.

78.7 Witnessing falsely a second agreement for sale purportedly signed by Mr. Thuita Mwangi while knowing that he (Mr. Allan Mburu) had already signed an agreement for sale for the same properties.

78.8 Deliberately misled Committee by feigning ignorance of the letter, on town planning regulations and the letter from the Ministry of Foreign Affairs cautioning on over pricing of the property and need for a valuer (DFR 36). This is in contravention of section 21 of the National Assembly [Powers and Privilege] Act.

79.0 The Committee therefore recommends that:-

79.1 He should step aside to allow investigations on the transaction to be conducted.

79.2 The Kenya Anti Corruption Commission (KACC) and other investigative arms of the Government should investigate the conduct of the Mr. Allan Mburu in the purchase of the properties in Tokyo.

79.3 Mr. Allan Mburu should be barred from holding public office conferred by the Republic of Kenya.

80.0 Sale of Government properties in Lagos and construction of Chancery and staff quarters and High Commissioner's residence in Abuja, Nigeria

80.1 The accounting officer should ensure that all pending bills are paid to avoid litigation and escalation of construction costs.

80.2 The accounting officer should further ensure that the ongoing construction works in Abuja, Nigeria are completed on schedule without variations/extra cost on public finances.

80.3 As a matter of urgency the accounting officer, Ministry of Foreign Affairs should ensure that all persons legally involved in the sale of the Government properties in Lagos are paid for services rendered. This will ensure that the Ministry avoids litigation and diplomatic embarrassment.

80.4 The Ministry of Foreign Affairs should accredit the Kenya High Commission in Nigeria to the ECOWAS. The Ministry should further consider the possibilities of opening additional Missions in West Africa particularly in the Francophone countries.

80.5 The Ministry should look for appropriate premises in Lagos as they organise to procure permanent premises for use especially for visa purposes.

80.6 The High Commission in Abuja did not remit the entire proceeds of the sale of Government properties in Lagos to CBK. GBP 70, 000 was used to pay rent for the immigration attaché in Lagos without authority from Treasury.

81.0 Purchase of a Chancery in Brussels, Belgium

81.1 Considering that Brussels is the Headquarters of the European Union, the Minister for foreign affairs should ensure that the officers posted and stationed in Brussels have the technical capacity to handle the critical role that the Mission is expected to play so as to be able to realise maximum returns for the country.

81.2 The purchase price, Euros 3.85 million, for the Chancery in Brussels was way above the market price by the independent valuer, S.A

Atisreal (Euros 3.316 million) and Ministry of Lands, Kenya valuation (Euros 3 million). The Ministry included the cost of renovations and furniture in the purchase price, this is in spite the advice from the Ministry of Lands valuer in the report and valuation dated 26th July 2007, that "unlike in third world countries, the market for second hand items especially in Europe is almost non existent or poor due to low demand. Furniture is not an exception and it was the visiting groups considered view that that furniture should not be part of the purchase of the Chancery. Consideration should therefore be given to purchase of new embassy furniture to enhance the image of the same." (DFR 03) Renovation work was not complete and the furniture was more than ten years old before the Mission leased the property and therefore valueless. The Government as a result, lost close to Euros 85, 000 (KES 84, 150, 000) in the transaction.

82.0 Construction of Chancery and Ambassador's Residence in Islamabad, Pakistan

82.1 The Accounting Officer, Ministry of Foreign Affairs should ensure that the building is completed before the final certificate is issued. There must be close supervision of the construction works.

82.2 The accounting officer should ensure that the ongoing construction works in Islamabad, Pakistan are completed on schedule without further variations/extra cost on public finances.

- 82.3 The Ministry of Foreign Affairs should strive to meet its contractual obligations on time to avoid escalation of construction costs in Islamabad.
- 82.4 The Ministry of Public Works should conduct periodic and timely inspection of construction works for various Kenya Missions abroad.
- 82.5 As the Government meets its financial obligation the contractor should be made to meet his contractual obligation and complete the construction within the agreed time frame.

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS, THURSDAY, 23TH SEPTEMBER 2010, HELD IN THE CONFERENCE ROOM, SERENA HOTEL, MOMBASA.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Charles Kilonzo, M.P.
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Kiema Kilonzo, M.P.
The Hon. Joshua Kutuny, M.P.
The Hon. George Nyamweya, MBS, M.P.
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Peter Edick O. Anyang, M.P.

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Jeremiah Ngayu Kioni, M.P.
The Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mrs. C.W. Munga – Deputy Director Committees
Mr. Nicholas Emejen – Second Clerk Assistant
Mr. Ahmad Kadhi – Third Clerk Assistant
Mr. Anthony Njoroge – Legal Counsel
Mr. Oscar Nabulindo – Hansard Reporter

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer.

MINUTE 235/2010: CONSIDERATION OF THE DRAFT REPORT

The Committee was taken through the draft report and made the following observations:-

Sale of Government plot in Cairo, Egypt

The Committee noted that the sale of the plot was the best decision by the Embassy considering that the neighbourhood was deteriorating and recommended that the

Ministry of Foreign Affairs should procure its own premises in a suitable area because of the economic potential and significance of the country.

Purchase of Chancery and Ambassador's Residence in Tokyo, Japan.

- (i) The property acquired be disposed off and proceeds be used to Purchase GOJ plot and construction of chancery and residence

The Committee further made the following recommendations:-

- (i) Ministry of Foreign Affairs should urgently put in place a strategic plan and policy adopted by the Cabinet on property acquisition and disposal to meet stringent thresholds.
- (ii) Ministry of Foreign Affairs should explore the option of purchasing floors in safe and suitable already built up buildings as is the case with most western countries instead of purchasing plots and building or purchasing stand alone buildings. This would save the country funds in constructing or purchasing stand alone structures.
- (iii) The Accounting Officer, Ministry of Foreign Affairs, should ensure that immediate investigations commence on the activities of the internal audit, procurement committee and other departments involved during the period of the transaction in the stated diplomatic missions.
- (iv) Necessary action be taken against the Minister for Foreign Affairs for misleading the Committee in accordance with the Standing Orders and the Powers and Privileges Act.

Sale of Government properties in Lagos and construction of Chancery and Residence in Abuja

The Committee noted that the proceeds realized from the sale of Government properties in Lagos were allegedly transferred to purchase properties in Tokyo instead of being used in construction of chancery and residence in Abuja.

The Committee made the following recommendations:-

- (i) The accounting officer should ensure that all pending bills are paid to avoid litigation and escalation of construction costs.
- (ii) As a matter of urgency the accounting officer, Ministry of Foreign Affairs should ensure that all persons legally involved in the sale of the Government properties in Lagos are paid for services rendered. This will ensure that the Ministry avoids litigation and diplomatic embarrassment.

- (iii) The Ministry of Foreign Affairs should accredit the Kenya High Commission in Nigeria to the ECOWAS. The Ministry should further consider the possibilities of opening additional Missions in West Africa particularly in the Francophone countries.
- (iv) The Ministry should look for appropriate premises in Lagos as they organise to procure permanent premises for use especially for visa purposes.

Purchase of Chancery in Brussels, Belgium

- (i) Members noted that renovations that were alleged to have been done by the vendor were not complete as witnessed during the inspection visit by the Committee. The Committee resolved to seek a clarification from the Ministry of Public Works on the nature of renovations done and the certificate issued for completed works.
- (ii) Considering that Brussels is the Headquarters of the European Union, the Minister for foreign affairs should ensure that the officers posted and stationed in Brussels have the technical capacity to handle the critical role that the Mission is expected to play so as to be able to realise returns for the country.

Purchase of plot and construction of Chancery and High Commissioners' Residence in Islamabad, Pakistan

The Committee expressed concern over the lack of supervision that was occasioning delays in construction works resulting in price variations. The Committee resolved to seek a progress report from the Ministry of Public Works on the construction works at the Mission.

The Committee further recommended that:-

- (i) The accounting officer should ensure that the building is completed before the final certificate is issued. There must be close supervision of the construction works.
- (ii) The Ministry of Foreign Affairs should strive to meet its contractual obligations on time to avoid escalation of construction costs in Islamabad.
- (iii) The Ministry of Public Works should conduct periodic and timely inspection of construction works for various Kenya Missions abroad.
- (iv) As the Government meets its financial obligation the contractor should be made to meet his political obligation.

The Legal Counsel took members through the various legal aspects and statutes touching on the public procurement, responsibilities and conduct of Public Officers and financial management in relation to the recommendations by the Committee.

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 7TH SEPTEMBER 2010, IN
COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. George Omari Nyamweya, MBS, M.P.
The Hon. Jeremiah Ngayu Kioni, M.P.
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Joshua Kutuny, M.P.

ABSENT WITH APOLOGY

The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Peter Edick O. Anyanga, M.P.

ABSENT

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Kiema Kilonzo, M.P.
The Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Ahmad Kadhi – Third Clerk Assistant.

IN ATTENDANCE

Mr. Robert Osogo – Former Official Ambassador's Cook, Kenya Mission, Tokyo Japan

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer.

MINUTE 226/2010 : MEETING WITH MR. ROBERT OSOGO, FORMER COOK TO
KENYA AMBASSADOR TO JAPAN

The Chairman introduced the Committee members, explained the mandate of the Committee and what it was investigating and thereafter called upon Mr. Robert Osogo to brief the Committee on the circumstances that caused the fire incident that gutted down the Ambassador's Residence in Tokyo, Japan.

The Committee was informed that:-

- (i) He was hired as a local staff in January 2007 for a contract period of two years to manage the Ambassador's Residence in the capacity of a Chef and assist in any other duties assigned to him from time to time.
- (ii) After the substantive Ambassador left the Charge D' Affaires assigned him duties at his residential house to cook for various guests.
- (iii) In February 13, 2010 a fire broke out at the Ambassador's Residence. During the day there was a TV exchange programme between Kenyan and Japanese children. The children prepared Kenyan food (Samosa's and tea) with the assistance of Ms. Dorothy Nthiwa and Ms. Eri Osakabe (Tourist Assistant). On direction of Mr. Allan Mburu he (Osogo) prepared food for Ambassador Ruth Solitei, Director of Protocol Office of the Prime Minister at the Residence.
- (iv) Later Mr. Mburu requested him to prepare more Samosas for guests who were at the Chancery and since there weren't enough materials he rushed to purchase them. He prepared the Samosa's and switched off the cooking stove and went to the Chancery to prepare tea for the guests. A fire broke out at the residence while he was at the Chancery kitchen.
- (v) On February 12, 2010 some (two men and a lady) strangers in the company of Mr. Allan Mburu left their car, a RAV 4, overnight at the Chancery. The three strangers left the Chancery on 13 February, 2010 while the fire was being put out.
- (vi) The handling of the cooking equipment by those working for the TV filming session was not supervised as he busy doing other duties and chores.
- (vii) Several guests were accommodated at the Ambassador's Residence after Ambassador Awori left the service including officers from the Ministry of Foreign Affairs, Armed Forces, Brand Kenya, and Office of the Prime Minister among others.

The members were given a list of some of the officials from Kenya who had recently put up residence at the Ambassador's Residence.

Members noted that on the material day, there were a lot of uncoordinated activities taking place at the Embassy, that the cook was an experienced/professional having an impeccable service record and knew of sound safety measures in the kitchen.

MINUTE 227/2010 : ANY OTHER BUSINESS

The Committee appreciated that the CPA conference would be ongoing the following week however it was resolved that they may be a need to invite the Minister for Internal Security to know whether any investigations into the fire had been undertaken.

The Committee resolved to interact with the Commissioner of Police to establish if the police had conducted investigations and whether there was any foul play.

MINUTE 228/2010 : ADJOURNEMENT

The meeting ended at fifty seven minutes past four O'clock. The date of the next meeting would be 16th September 2010.

Signed.....signed.....
(Chairperson)

Date:7/10/2010.....

MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 7TH SEPTEMBER 2010, IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. George Nyamweya, MBS, M.P.
The Hon. Jeremiah Ngayu Kioni, M.P.
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Wilson Mwotiny Litole, M.P.

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Kiema Kilonzo, M.P.
The Hon. Eugene Wamalwa, M.P.
The Hon. Peter Edick O. Anyanga, M.P.
The Hon. Joshua Kutuny, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejen – Second Clerk Assistant
Mr. Ahmad Kadhi – Third Clerk Assistant.

IN ATTENDANCE: CENTRAL BANK OF KENYA

Prof. Njunguna Ndungu – Governor
Mr. Gerald Nyaoma – Director, Banking Services.

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer. The agenda of the day was adopted.

MIN. NO. 223/2010 : MEETING WITH THE GOVERNOR, CENTRAL BANK OF KENYA

The Committee was informed that:-

- (i) The Central Bank of Kenya is a fiscal agent and banker to the Government of Kenya (GOK) and amongst others is responsible for effecting foreign currency payments on behalf of Government Ministries and Departments. Likewise, the

Bank receives offshore inward remittances in favour of Government Ministries and Departments with Central Bank of Kenya (CBK) retaining the foreign currency and paying the equivalent amount in Kenya Shilling to respective Ministries/Departments.

(ii) In case of receipt of funds for Government Ministries and Departments, CBK received SWIFT FN 103/202/910 messages from respective correspondent banks. Each message normally contained the following information:

- a) Ordering customer
- b) Currency of funds
- c) Amount
- d) Beneficiary's name, bank and account number
- e) Purpose of the funds.

(iii) Once the payment details have been established, CBK raises the necessary accounting entries by crediting the beneficiary's Government Ministry/Department account with the Kenya Shillings equivalent of the foreign currency amount using the prevailing CBK bid rate on that date.

(iv) Thereafter, the Ministry/Government Department would be notified of the credit via a letter signed by two authorised signatories of the Bank and a copy of the SWIFT messages and credit voucher issued.

(v) As regards the Receipt of Proceeds of Sale of Government Property in Lagos, Nigeria members were told that, On 16th December, 2008 CBK received a copy of a letter of similar date from the Permanent Secretary, Ministry of Foreign Affairs (MFA) advising the Kenya High Commissioner in Abuja, Nigeria, to transfer the entire proceeds of Great Britain Pounds (GBP) 8,815,000 .

(vi) On 2nd December, 2008, CBK received a Swift FIN910 from the Bank of England advising a credit of GBP 8,730,805 from the Kenya High Commission, Abuja Nigeria. On 3rd December 2008, CBK received a letter from the Ministry of Foreign Affairs advising Central Bank of Kenya to credit the amount of GBP 8,730,805 to their development bank account No. 01-010-D004.

(vii) CBK raised entries to transfer funds on 30th December, 2008, which amounted to KES equivalent of 984,709,080.40 and advised MFA accordingly vide a letter dated 31st December, 2008.

(viii) In relation to the receipt of proceeds of sale of government property in Cairo, Egypt, the Committee heard that, On 24th December, 2007 CBK received a SWIFT FIN 103 from Bank of New York, N.Y. advising receipt of funds as follows:

- a) Ordering customer – Kenya Embassy, Cairo, Egypt
- b) Currency of funds – USD
- c) Amount – 677,246
- d) Beneficiary's name, bank and account number – MFA CBK, 01-010-R004

- e) Purpose of the funds – Remittance of 90 percent balance on sale of government plot in Dokki area, Cairo, Egypt.

Subsequently, CBK raised entries to transfer funds on 7th January 2008, which amounted to the KES equivalent of 42,395,599.60 and advised the Ministry of Foreign Affairs accordingly vide a letter dated 7th January, 2008.

- (ix) Once the CBK receives instructions where to credit the receipts of funds, they may not know how the funds are allocated.
- (x) The Central Bank of Kenya indeed noted the difference in amounts and notified the Ministry of Foreign Affairs on the same, and that they are not aware if the proceeds of sale were surrendered to Treasury.
- (xi) As the Central Bank pays out and receives huge remittances on behalf of Government Ministries and Departments on a daily basis, it was not in a position to tell whether any further payments were received on account of the two transactions until supporting document is produced for reference and confirmation.

Members were gravely concerned of the high Bank charges amounting to GBP 14,000 and the fact that not all the money realised from the sale was remitted as had been directed. The amount remitted to CBK was less by GBP 70, 000 in addition to GBP 14,000 for the bank charges. In response the governor informed the committee that CBK had no power to negotiate these tariffs charged by foreign banks who act as intermediary and further that CBK does not inquire into the use of funds by government. It only receives money on behalf of government ministries or departments.

MINUTE 224/2010 : ANY OTHER BUSINESS

Chairman briefed members who were not part of the delegation about the visit to Lagos and the Committee observations while there.

The Committee had included gathering evidence and it was resolved that a retreat to write the Report on the matter under investigation was in order. The Secretariat was instructed to make the necessary arrangements.

MINUTE 225/2010: ADJOURNEMENT

Thee being no other business the Meeting was adjourned at twenty three minutes past 11'Oclock.

Signed.....signed
(Chairperson)

Date:7/10/2010.....

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS, HELD ON THURSDAY 12TH AUGUST 2010, IN THE COMMITTEE ROOM, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.30 AM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. George Nyamweya, MBS, M.P.
The Hon. Jeremiah Ngayu Kioni, M.P.
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Peter Edick O. Anyanga, M.P.

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Kiema Kilonzo, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Joshua Kutuny, M.P.
The Hon. Eugene Wamalwa, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejen – Second Clerk Assistant.

IN ATTENDANCE : MINISTRY OF FOREIGN AFFAIRS

Hon. Moses Wetangula, EGH, M.P. –	Minister
Hon. Richard Onyonka, M.P. –	Assistant Minister
Mr. Thuita Mwangi –	Permanent Secretary
Ambassador Wamoto –	Political and Diplomatic Secretary
Mr. J. K. Ndathi –	Director of Administration
Mr. Khadiagalla –	CFO
Mr. Kariuki Mugwe –	Principal Accountant
Mr. A. Kihurani –	Deputy Director, Political Affairs
Mr. F. Matuanga –	Personal Assistant to Minister
Mrs. Judy Ngunia –	Head of Press and Communication
Mrs. Soila Kasaine –	Third Secretary

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer. The agenda of the day was adopted.

MIN. NO. 218 /2010: CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

The Confirmation of the previous minutes was postponed to another sitting of the Committee.

MIN. NO. 219/2010: MEETING WITH THE MINISTER ON ACQUISITION OF MISSION PROPERTIES ABROAD

The Chairman welcomed the Minister and his team and started by clarifying that the Committee was still investigating the matters before it and had not reached any conclusions, he therefore impressed upon the media to be responsible and report accordingly.

In his brief, the Minister informed the Committee that:-

- (i) The Federal Government of Nigeria had offered sites for Embassies to relocate to the new Capital city in Abuja following which approval for disposal of the plots located in Ikoi, Lagos was granted by Treasury, and that was because they were costly to maintain as well as avoiding deterioration.
- (ii) The Permanent Secretary, Ministry of Foreign Affairs moved to implement the decision to dispose of the property as there were of no political or economic benefit to keep. In March 2008, a team visited Lagos to start the process of disposal with the market value of US \$ 6,022,000. The property was advertised between 11th - 15th April 2008, followed by a meeting of the Tender Committee which resolved to sell the property to the highest bidder, 21st Century Global at Sterling Pounds 8,815,000. The proceeds from the sale of the property in Lagos were transmitted to the Treasury.
- (iii) The Nigerian Government had allocated many countries properties and Kenya was allocated three plots by the Federal Capital Territory administration. The plots were located within a diplomatic enclave where various Countries with diplomatic presence in Nigeria had put up their Chanceries and Residences.
- (iv) An open tender prequalification for contractors was carried out followed by tender evaluation for the bids received. This was carried out by the consultant, M/s. D&B Limited together with officers from the Ministry of Public Works and the Ministry of Foreign Affairs. The Ministerial Tender Committee in its meeting vide MFA/MTC/04/2008-09 approved award of the contract and the construction of the proposed Chancery, High Commissioner's Residence and staff houses to M/s Diamatrix Limited of Nigeria. The project consultant, M/s D&B Limited submitted contract documents and other mandatory requirements

including a performance bond of 11 million Naira and an advance payment guarantee of 414 million Naira.

- (v) As regards Islamabad, the Government of Kenya bought land set aside by the Islamic Republic of Pakistan in a diplomatic enclave in 1991 at Kshs 1.4 million. Construction of a Chancery and an Ambassador's residence was conceptualized in 1997 and preliminary designs were drawn by M/s Atelier International Architects in October, 1998. The project did not take off until 2007/08 financial year when a budgetary allocation of Kshs 200 million was voted for the construction work to begin. M/s Consul Construction Solutions, rated as the lowest responsive bidder and awarded the contract at a sum of Pakistan Rupees 385,821,826 an equivalent to Kshs 366,055,734,700.
- (vi) The Ministerial Tender Committee in its meeting vide Minute MFA/MTC/05/2008/009 held on 12th March, 2009 discussed the application of the contract variation to meet the escalation of costs and approved a variation of Pakistan Rupees 53,040,163 or an equivalent of Kshs 50,388,155. The Chancery had since been completed and operations have shifted from the rented premises to the new Kenyan-owned Chancery. Some works were still pending at the Residence.
- (vii) On Brussels, plans to acquire the Chancery in Brussels dated back to 1999, the task force recommended the purchase of a detached building citing various advantages which included convenience, image, and prestige. The search for a property eventually narrowed down to a building that the Embassy was occupying and it had occupied for nearly ten years. In 2005, a team of senior officials from Nairobi visited the Embassy with a view to discussing the proposal to purchase in addition to assessing what was available in the market. A meeting was held with the owners of the building that the Embassy was occupying during this mission. The owner of the property emphasized the suitability of the property especially its location along one of the major streets of Brussels. The owner confirmed that they were in possession of the property ownership documents and the property had been valued recently at 5 million Euros and offered to sell to the Government of Kenya at 4.5 million Euros. The price was inclusive of the building, furniture, fixtures and fittings.
- (viii) The owners also undertook to renovate the building and to provide a guarantee upon sale. Evaluation had been requested from S.A Atisreal Company which returned a gross market value of 3.316 million Euros and a net market value of 2.940 million Euros in May, 2007.
- (ix) Another valuation by the Deputy Commissioner for Lands from Nairobi had also been carried in 2007 which returned a value of three million Euros for the property in its current state excluding the required repairs on the roofs, wiring et cetera.
- (x) An inspection team comprising officers from the Ministry of Foreign Affairs, Roads and Public Works visited Brussels between 21st to 24th February, 2008 with a main objective of carrying out an inspection of the renovation identified by the team that had visited in 2007 and make recommendations regarding finalization of the purchase of the proper. The report indicated satisfaction. The

Ministry of Roads and Public Works Officers were satisfied with the repairs that had been carried and made recommendation to the Ministry of Foreign Affairs to go ahead and finalize the purchase.

- (xi) The Ministerial Tender Committee held on March, 19th, 2008, approved the purchase of the Chancery in Brussels under minute No.MFA/MTC/O11/09/2007-08. A sale agreement was drawn and the property transferred to the Government of Kenya. The total purchase price of the Chancery was 3,850,000 Euros or an equivalent of Kshs 381,150,000 which was provided by the Treasury. Records from the Mission indicate that the full payment was made to the sellers by June, 2008.

MIN. NO. 220/2010: CONCERNS BY THE COMMITTEE

Members raised the following concerns from the presentation by the Minister

- (i) Why did the Ministry ended up paying 3,800,000 Euros which is more than the valuation of the property?
- (ii) Whether the property had any historical significance to the Municipality of Brussels or by extension to the Government of Belgium or whether they were at liberty to redevelop it.
- (iii) If it was the visiting group's considered view that furniture should not be part of the purchase of the Chancery and yet, they took into consideration furniture when purchasing.
- (iv) That in almost several instances the long periods taken to conclude matters was what was causing all the problems including large price variations.
- (v) The fact that the buildings with time may not be suitable for the intended purpose and without an option of redevelopment may be insignificant to Kenya's Foreign Policy.
- (vi) whether indeed the Minister was getting the correct facts from his officers as what he had previously informed the committee had turned out to be a misrepresentation to what the Committee observed when they visited the missions
- (vii) What is the variation percentage that is reasonably acceptable on the Islamabad property?
- (viii) What is the justification for seeking to be exempted from the Public Procurement and Disposal Act and going on to do what was advised against by the Public Procurement Oversight Authority?
- (ix) What informed the decision not to retain one plot in Lagos against what was advised?
- (x) Was the Attorney General involved in any of the transactions or was there a lawyer involved in both the purchase and disposal?

MIN. NO. 221/2010: MINISTER'S RESPONSE

The Minister in response informed the Committee that:-

- (i) The value that he had made reference to, was exclusive of furniture and repairs.

- (ii) He was not aware of any special conditions and limitations of the Brussels property.
- (iii) The teams that visited Brussels several times established that if they were to furnish that Chancery, it would have cost not less than 1 million Euros, yet the property had been furnished properly and was in use by the Embassy.
- (iv) That there was no contradiction in terms of the location of the Chancery in Belgium and the policy they were pursuing as it was close to the EU which is Kenya's primary engagement in Europe.
- (v) The issue of how long it takes to procure is a concern that runs across all Ministries. First of all, budgets are annual, and sometimes they would be allocated money and the procurement process under the Act was so cumbersome that by the time they went over the procurement, the financial year was over.
- (vi) To the best of his knowledge all the information submitted was accurate and in the event that it was not, he would inform the Committee accordingly.
- (vii) The variation on the Pakistan construction is an equivalent of 13.74 per cent of the contract sum. Whereas the recommended ceiling by the Ministry of Public Works is 15 per cent. So, it was reasonable.
- (viii) The authority given by the Treasury was to dispose of the three plots and the three plots were hence disposed of in Lagos.
- (ix) That the Ministry of Foreign Affairs has a fully fledged team of lawyers who are also advocates of the High Court of Kenya and a good number of them were part of the Attorney General's team and were seconded from the AG's office in addition to being State Counsels. However, when it is necessary to involve the Attorney General, they do so.

MINUTE 222/2010 : ADJOURNEMENT

There being no other business, the Meeting was adjourned at Twenty six minutes past One o'clock.

Signed.....Signed.....
(Chairperson)

Date:7/10/2010.....

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY 10TH AUGUST 2010, IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 10.30 AM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Eugene Wamalwa, M.P.
The Hon. Jeremiah Ngayu Kioni, M.P.

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Kiema Kilonzo, M.P.
The Hon. Joshua Kutuny, M.P.
The Hon. Peter Edick O. Anyanga, M.P.
The Hon. George Omari Nyamweya, MBS, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejien – Second Clerk Assistant.

IN ATTENDANCE : THE OFFICE OF THE DEPUTY PRIME MINISTER AND MINISTER FOR FINANCE

Hon. Uhuru Kenyatta, EGH. MP. - The Deputy Prime Minister and Minister for Finance
Mr. Joseph Kinyua - Permanent Secretary
Mr. O.N. Ontweja - Deputy Director
Mr. P. Ndungu - Internal Auditor-General

PRELIMINARIES

Prayers were said followed by the Chairman introducing himself and other Members of the Committee.

MIN. NO. 213/2010: CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

The Confirmation of the previous minutes was postponed to another sitting of the Committee.

MIN. NO. 214 /2010: MEETING WITH THE MINISTER ON ACQUISITION OF MISSION PROPERTIES ABROAD

The Committee was informed that:-

- (i) The policy of the Government is to acquire rather than to lease properties abroad and the strategy to acquire both residential and non-residential properties was based on the fact that there are huge savings generated once a property was acquired.
- (ii) The Status of funding for the Missions was as follows:-
 - (a) Tokyo, the final payment was made the last financial year and the cost was approximately Kshs. 1.524 billion.
 - (b) The plot in Cairo was sold at Kshs 47,106,221.30 and the funds were remitted to the Treasury account at the Central Bank.
 - (c) The Chancery in Brussels was bought during the Financial Year 2007/2008 at a cost of Kshs 378,250,950.
 - (d) As for Lagos and Abuja, the building in Lagos was sold at Kshs 984,709,080 and these funds were received and credited to the Exchequer on 15th January, 2009.
 - (e) Islamabad, Pakistan - the project for construction of the Chancery and Ambassador's Residence started during 2007/2008 Financial Year and was finalized in the last Financial Year, 2009/2010 at a total of Kshs. 532,834,080. It was allocated to the vote of the Ministry of Foreign Affairs under the same period. The buildings are constructed on land given free by the Government of Pakistan and it is expected that approximately Kshs. 10 million will be saved as rent expenses each year.

MIN. NO. 215/2010: CONCERNS BY THE COMMITTEE

Members of the Committee then raised the following queries

- (i) On the issue of purchase of properties, they had observed in other countries that there is the possibility of buying floors rather than buying a whole plot or building. And whether such considerations are taken into account by the ministry before allocating funds.
- (ii) What factors were considered before giving such colossal sums of money?
- (iii) How it came to be that all the funds were paid in full before the transfers were effected. Whereas it is well established practice that when dealing with properties, one only pays in full when the transfer is effected in ones name. Was it the

procedure within the Government to buy property, pay the owner and then later transfer the property in the name of the Government?

- (iv) The Ministry of Finance being in charge of the national resource envelope would have been prudent to ask whether there was valuation for that particular property in Tokyo and if there was a structure in place and whether there was a report by the Ministry of Public Works.
- (v) When did it come to their knowledge that there was a problem in the Japan Mission or any other Mission?
- (vi) Had the Internal Audit completed their work? If so, whether the Minister for Finance was comfortable that the deal was good value for money?
- (vii) What was the take of The Ministry of Finance on issue of viability of the project?

MIN. NO. 216/2010: RESPONSE BY THE DEPUTY PRIME MINISTER

The Minister, assisted by his team of technocrats, responded to the concerns raised by the Committee as follows:-

- (i) The Foreign Affairs policy is driven by the Ministry of Foreign Affairs and so they would be the best people to respond, as ultimately it is their business to know what it requires to execute its mandate.
- (ii) The process for allocating money to the Ministries is guided by a determination on the resources, in accordance with the development strategy guiding the development agenda of the country which clearly articulates the areas which, as a country, were given priority in promoting the ultimate national objectives.
- (iii) The criteria in place, for funds to be allocated involves sectorised meetings where the Ministry of Foreign Affairs, participates in the Finance, Administration and Planning sub-sector. The Treasury gives a ceiling for each sector. The Ministries in that sector then go and put in place priorities within that subsector in accordance with the national objectives of the Government.
- (iv) On the question of the execution of the budget, there was a very clear mandate of what Treasury and line Ministries do. There are laws and financial regulations that govern that. When it comes to procurement whether it is of a building or a road construction, the Treasury will not be directly involved in signing the agreement.
- (v) Treasury does not earmark resources as in the case of allocating receipts from the Lagos sale to be utilised in Japan. What the Committee may have seen in the communication with the Ministry of Foreign Affairs is that they were trying to make up their case. This was because initially in view of other areas that Treasury would have felt there were perhaps, more important priorities for the Government.
- (vi) As regards the question on the issue of viability of the project. Treasury would not be involved. It was the Ministry which should take the responsibility to liaise with the Ministry of Lands so that they get viability as when undertaking purchases or construction, they do not have the capacity. Therefore it is only prudent that they have to do the work through the Ministry of Public Works which was the one

mandated. They, however, must have a way of supervising so that they ensure that they get value for money that has been given to them

(vii) There were reports that were appearing in the Newspapers, which raised reason to believe that there could be some problems. Thereafter the internal audit took up that matter and called in the Internal Auditor General to carry out an audit so that Treasury would have confidence that everything was regular. In the assumption that the internal auditor would be given the full co-operation and necessary information.

(viii) In totality the Ministry of Finance, Internal Audit, relied on documentary evidence that came into their possession and given to them by the Ministry of Foreign Affairs when investigating into the allegations they had picked up from the media reports. In the report that was shared with the Ministry of Foreign Affairs, they had a lot of evidence to demonstrate how they arrived at that conclusion.

MINUTE 217 /2010 : ADJOURNEMENT

There being no other business, the Meeting was adjourned at fifty minutes past eleven o'clock.

Signed.....signed.....
(Chairperson)

Date:7.10.2010.....

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON MONDAY 9TH AUGUST 2010, IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 3PM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Eugene Wamalwa, M.P.
The Hon. Jeremiah Ngayu Kioni, M.P.
The Hon. Peter Edick O. Anyanga, M.P.
The Hon. George Omari Nyamweya, MBS, M.P.

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, M.P. – Vice Chairperson
The Hon. Kiema Kilonzo, M.P.
The Hon. Joshua Kutuny, M.P.

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejen – Second Clerk Assistant.

IN ATTENDANCE : PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Mr. M. Juma - Acting Interim Director-General
Mr. P. Ndung'u - Acting Deputy Manager, Compliance
Mr. C. Gachanja - Compliance Officer

PRELIMINARIES

Prayers were said followed by the Chairman introducing himself and other Members of the Committee.

MIN. NO. 207/2010: ADOPTION OF THE AGENDA

The Committee went through the agenda of the day which was subsequently adopted.

MIN. NO. 208/2010: CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

Confirmation of the minutes was postponed to a later date.

MIN. NO. 209/2010: MEETING WITH THE PUBLIC PROCUREMENT OVERSIGHT
AUTHORITY

The Chairman welcomed the team to the meeting and quoted the letter inviting the Director from the Clerk of the National Assembly which required the PPOA to give an overview of public procurement procedures on acquisition of properties in the Government with specific reference to Kenya diplomatic Missions Abroad.

The Committee was informed that:-

- (i) Public procurement in the public sector, including disposal are governed by the Public Procurement and Disposal Act, 2005 and its attendant regulations of 2006.
- (ii) The Public Procurement and Disposal Act were operationalised in January 2007. With respect to procurements in the Ministry of Foreign of Affairs and Kenya Missions abroad, they were all expected to comply with the requirements of the procurement law during acquisition of properties by Government.
- (iii) Regarding procurement under the procurement law, there were various procurement methods. On the use of alternative procurement methods, then the Tender Committee of the respective public entity must approve that procurement method. The approval must be made in writing and it has to be prior to initiating the procurement process.
- (iv) The role of Public Procurement Oversight Authority (PPOA) on the purchase and or sale of Government properties as regards Tokyo, is that PPOA recommended that the Ministry of Foreign Affairs must procure the property in accordance with the Public Procurement and Disposal Act and the regulations.
- (v) On Cairo, Egypt, the records do not show that PPOA was consulted and the same applies to Brussels, Belgium. In Lagos and Abuja, the Ministry of Foreign Affairs only reported to PPOA on the use of direct procurement method. The PPOA raised concern on the method that was applied then, and needed some clarifications and raised these concerns through the letter of dated 24th October, 2007. The Ministry responded and explained the justifications that they had in their application of direct procurement method.
- (vi) On Islamabad, Pakistan, PPOA was not consulted during the procurement process, but the Ministry reported the use of direct procurement to PPOA and again, they raised some concerns via letter of 24th October, 2007. The Ministry subsequently responded to the issues raised on 1st November, 2007.

MIN. NO. 210/2010: COMMITTEE'S CONCERN

Members sought to know from the Director General:-

- (i) Whether it was mandatory for government ministries and departments to seek intervention of the PPOA when transacting.
- (ii) If Treasury itself had to countersign or participate in the agreements for sale as was the practice previously.
- (iii) Where the Government purchases property is being bought and the services of a valuer from that country where the property is being bought are not used or if under the law, there was a mandatory provision that property must be valued?
- (iv) Whether they had received any request from the Ministry of Foreign Affairs in any of the matters seeking authorization for direct procurement?
- (v) If there was a legal provision that requires the Attorney-General to be consulted or whether a Ministry rely on any other legal advice.
- (vi) Whether they have been contacted by any other of the many bodies that are looking into this matter such as the KACC, Office of the Prime Minister or any other.
- (vii) How long the advertisements should be run supposed to be in the media as per the provisions of the Act?
- (viii) As the person in charge of the Public Procurement Oversight Authority (PPOA) how the Director General would term such a transaction?

MINUTE NO. 211/2010: RESPONSE BY THE INTERIM DIRECTOR GENERAL, PPOA

In response, the Members of the Committee were informed that:-

- (i) The role of the Authority (PPOA) as enshrined in the procurement law is basically to give guidance and advice, to public entities where they seek intervention on issues of procurement and disposal and on the use of specially permitted procurement procedure which they must approve. But the other methods, from the outset to the finality, entities may procure without reference to Public Procurement Oversight Authority (PPOA).
- (ii) Public entities initiate their procurement processing and enter into contracts with the successful firms without reference to Treasury. Before the coming into effect of the Public Procurement and Disposal Act, 2005 treasury was involved in counter signing contracts.
- (iii) One of the functions of a disposal committee is to carry out a valuation which is provided for, in the Procurement Act, related with the procurement regulations and also the general procurement manual which was issued to public entities.
- (iv) The PPOA does not approve the use of procurement methods other than specially permitted procurement procedure in Section 92. They had not received any request of on the use of direct procurement. What they had advised the Ministry of Foreign Affairs on request to use specially permitted procedure was to use the other conventional methods that are contained in the procurement law.
- (v) The guidance that is available on property valuation is that the value of the property as given by the experts would be the guiding amount that will be used by the public entity to make a decision. Further the margin of price variations is not clearly outlined in law, but the general procurement manual that was in place gives an outline of how the amount that has been valued should be treated. The

- figure that the valuers would have come up with would form the basis for the negotiation committee to discuss with the other party that is selling the property.
- (vi) In terms of consulting with the Attorney-General on matters that border on contract agreement, in the Public Procurement Law, there is no provision for consulting the Attorney-General. On signing of contracts, the Accounting Officer is responsible for signing all procurement and disposal contracts on behalf of a procuring entity.
- (vii) The Public Procurement Oversight Authority is required under the Procurement Law to monitor how procurement is being implemented in Kenya. We do this through the use of assessments and we visit public entities to determine whether they are complying with the procurement law. They also carry out procurement reviews which are deeper than procurement assessments.
- (viii) The law requires the Authority to carry out investigations and report findings to the KACC.
- (ix) As regards, open tendering the period of advertisement required is 21 days and is the same for procurement of services. However when it came to terms of issuing the request for proposals to those who have been prequalified, the requisite period is two weeks.
- (x) If the procurement laws were not adhered to then the procurement process was flawed.

The Chairman thanked the Team but informed them that they may be called back should the Committee feel that any of the Issues required clarification.

MINUTE 212/2010 : ADJOURNEMENT

There being no other business, the Meeting was adjourned at ten minutes past Five o'clock.

Signed.....signed.....
(Chairperson)

Date: 7/10/2010.....

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 22ND JUNE, 2010, IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.30 AM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. George Nyamweya, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Peter Edick O. Anyanga, MP
The Hon. Eugene Wamalwa, MP

ABSENT WITH APOLOGY

The Hon. Benedict Fondo Gunda, M.P.
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. Jeremiah Kioni, MP

ABSENT

The Hon. Hassan Ali Joho, MP – Vice Chairperson
The Hon. Joshua Kutuny, MP
The Hon. Kiema Kilonzo, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Emejen Nicholas – Second Clerk Assistant
Mr. Ahmad Kadhi – Third Clerk Assistant

WITNESS

Ambassador Dennis Awori – Former Kenya Ambassador to Japan

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer.

MIN. NO. 166/2010: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of minutes of the previous sitting was postponed to the next sitting.

MIN. NO 167/2010 – MEETING WITH AMBASSADOR AWORI – FORMER KENYA
AMBASSADOR TO TOKYO, JAPAN

The Chairperson began by highlighting the mandate of the Committee and the agenda of the meeting. The Chairperson thereafter invited Ambassador Dennis Awori to brief the Committee on the purchase of Government property for Kenya Mission in Tokyo, Japan.

Ambassador Dennis Awori briefed the Committee as follows:-

MIN. NO: 168/2010 – PURCHASE OF GOVERNMENT PROPERTY IN TOKYO,
JAPAN

- (i) In August 2006 the Ministry of Foreign Affairs wrote to all Missions informing of the new policy of property acquisition proposed by the Ministry of finance so as to mitigate the high rent paid by Missions. In response to this request the Mission wrote back in November 2006 forwarding a proposal to purchase the premises that were being rented by the Mission based on the price asked by the landlord which was subject to independent valuation. With the proposal the Mission recommended the Government to borrow the purchase price from the Mission's bankers Tokyo Mitsubishi UFG with payments less than the monthly rentals.
- (ii) The Ministry informed the Mission in April 2007 that treasury had turned down the proposal to borrow money from the commercial bank. The Ministry further advised that the purchase price was high and that an independent valuer be procured to value the property and put the valuation price in the 2007/2008 budget. The Mission contracted M/s Coral corporation of Japan to value the property. The property was valued at Japanese yen 1.09 billion against the landlord's asking price of Japanese yen 1.9 billion. The landlord turned down the offer of the Mission which was pegged on the valuation by M/s Coral Corporation.
- (iii) Following the refusal by the landlord to lower the price the Mission approached the Government of Japan to assist in identifying a plot or property since that would be a Government to Government transaction as opposed to a private individual. The Mission was seeking plot or property that had proximity to the Government offices, commercial hub, transport, international schools, other embassies, ease of development and building codes, good topology of the lands and quality neighbourhood.
- (iv) The process of identifying suitable plot took close to 14 months and involved meetings and negotiations with Government officials in the ministries of foreign affairs and finance of Japan. This culminated in the offer of several plots and in October 2008 the Mission zeroed in on two plots and eventually to one plot measuring 700 meters squared based on

its proximity to Government offices for political diplomacy, Central business district for economic diplomacy (ten minutes drive as opposed to 45 minutes for the current location of the Mission. The plot was also close to a train station and located in an up market neighbourhood within 8 embassies as direct neighbours and 79 others in the neighbourhood. The neighbourhood allowed a building permission of 60% coverage of the plot with a 30 metre height restriction as compared to 10 metres for the current premises. Putting up a new building would have meant more space with a multi storey building. The Plot also had a road frontage meaning easy access, road parking and visibility as compared to the current premises that has no road frontage.

- (v) The Mission informed the Ministry of the decision to bid for the plot and subsequently applied to the Government of Japan for the plot. Following pressure from the Government which included a meeting between President Kibaki and Senator Yano, Vice Chairman of the Africa Japan parliamentary league, the Mission was going to get the plot at a fair price. The Mission was advised by the Japanese Government that they would first commission independent valuations and offer the plot at the valuation price.
- (vi) After valuations the plot was offered at Japanese yen 1.3 billion. This price was communicated to the embassy together with a recommendation for an inter-ministerial team to assess and value the plot before actual purchase. The evaluation team arrived in January 13 to 17 2009 and he (Awori) showed them the plots, and took them for meetings with Government officials and senator Yano but did not participate in the evaluation committee sittings assessing the plots because as the Ambassador and the person recommending it wasn't right for him to do so.
- (vii) Prior to the arrival of the evaluation team in Japan he had requested the resident to release him from Ambassadorial duties by March 31st 2009. He left Japan to Kenya to lead a delegation of Japanese tea importers who came to study Kenya's tea industry and returned to Tokyo on 5th February 2009.
- (viii) On 20th January 2009 the landlord sent an offer of 1.9 billion yen to the evaluation team and the team advertised intention to purchase the property. On 26th January 2009 the Mission advertised seeking plots to purchase and bidders were to submit bids by 30th January, 2009 and due to the short time for bids the response was poor.
- (ix) 2nd February the embassy procurement committee met with the landlord and negotiated for price reduction and settled on 1.75 billion yen and this was communicated to the Ministry on 3rd February, 2009.
- (x) On 5th February he returned to Tokyo from Nairobi and on March 2nd the Ministry sent a process matrix to guide the purchasing of the premises occupied by the Mission. The matrix included:-
 - 26th February – Valuation

- 2nd to 6th March – Ministerial tender board
 - 9th and 20th March – Consultations with treasury
 - 23rd March – Public Works inspection
 - 6th April – Negotiations and feedback
 - 14th April – Ministerial Tender Committee deliberation approval or rejection
 - 20th April – Letter of acceptance
 - 2nd and 30th May – appointment of lawyer, verification of status and preparation of sale agreement
 - 15th June – payment of 10 % deposit
 - 30th July – registration and transfer of Title
 - August 2009 – final payment
- (xi) March 17th, 2009 he left Tokyo for an international conference for Africa's development in Botswana and while he was away on 20th march the Mission received confirmation of authorization to purchase the building. On 31st march he chaired a meeting informing the landlord that the Government of Kenya had agreed to purchase the property based on the approval from treasury, but subject to each party was to appointing a lawyer, thorough inspection of the building, independent valuation and final price to be negotiated by a negotiating team from Nairobi. At this juncture he informed the Japanese Government that the Government of Kenya had turned down the offer to buy the plot.
- (xii) He never chaired a meeting of the team that decided to purchase the current premises. He personally was not happy about that decision sine the plot offered by the Government of Japan was better in the long term and short term than the current premises. The current premises measured 1, 100 meters squared.

MIN. NO 169/2010 – COMMITTEE OBSERVATIONS

From the evidence adduced by the Ambassador Awori the committee observed that:-

- (i) The Government of Kenya had exerted political and diplomatic pressure on the Government of Japan to sell to it a suitable plot to develop a Chancery and Residence for the Embassy and there was assurance from the Government of Japan on the same and further that a suitable plot had been identified by the Mission and offered for sale by the Government of Japan.
- (ii) No independent valuation was conducted in 2009 apart from that done by the Ministry of Lands.
- (iii) The Government did not appoint a lawyer during the transaction

- (iv) The Ministry of Public Works was not involved in determining the structural suitability of the premises in spite the process matrix indicting when they were to undertake the inspection.
- (v) The Mission advertised for bids within a limited locality and the time for submitting bids was limited and therefore the low number of bids.
- (vi) Negotiations started way before the normal procurement procedures were followed.
- (vii) Ambassador Awori did not chair the valuation committee meeting that decided to purchase the current premises over the plot offered by the Government of Japan.
- (viii) The Ministry decided to purchase the property at rates way above the valuation prices.

MIN. NO. 170/2010 - FIRE INCIDENT AT THE AMBASSADOR'S RESIDENCE IN TOKYO, JAPAN

The Ambassador informed the Committee that he had already left the diplomatic service when the fire consumed the Ambassador residence in Japan.

MIN. NO.171/2010: ADJOURNMENT

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

Signed.....Signed.....
(Chairperson)

Date:5/7/2010.....

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON THURSDAY, 3RD JUNE, 2010, IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Hassan Ali Joho, MP – Vice Chairperson
The Hon. Wilson Mwotiny Litole, M.P.
The Hon. George Nyamweya, M.P.
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Charles Kilonzo, M.P.
The Hon. Peter Edick O. Anyanga, MP

ABSENT

The Hon. Joshua Kutuny, MP
The Hon. Jeremiah Kioni, MP
The Hon. Kiema Kilonzo, MP
The Hon. Eugene Wamalwa, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Emejen Nicholas – Second Clerk Assistant

MINISTRY OF FOREIGN AFFAIRS

Hon. Moses Wetangula – Minister
Hon. Richard Onyonka – Assistant Minister
Mr. Thuita Mwangi – Permanent Secretary
Mr. J. Ndathi – Director of Administration
Amb. Patrick Wamoto – Director for Political Affairs
Mr. A. M. Kiurani – Deputy Director for Political Affairs
Mr. Johnson Weru – Director Economic Division
Juliet Gicheru – Principal State Counsel
Dr. M. Gachuru – Assets Manager
Soila Kasaine – Third Secretary

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer.

Confirmation of minutes of the previous sitting was postponed to the next sitting.

MIN. NO 154/2010 - MEETING WITH THE MINISTER FOR FOREIGN AFFAIRS

The Chairperson began by highlighting the mandate of the Committee and the agenda of the day. He then invited the Minister to brief the Committee on the Government policy on acquisition of properties abroad; the status of funding for the purchase and sale of Government properties for Kenya Missions in Japan, Egypt, Belgium and Lagos/Abuja and the status of the Tokyo Mission after the fire incident.

The Minister briefed the Committee as follows:-

MIN. NO: 155/2010 - GOVERNMENT POLICY ON ACQUISITION OF PROPERTIES ABROAD.

The Committee was informed that:-

- (i) The Ministry is formulating the broad policy of Government to own or build property in Missions abroad. The policy will take into consideration the political, economic and strategic importance of countries where Kenya Missions are located as well as rent paid by the Government for leasing properties.
- (ii) The Government owns land buildings and other movable assets in some diplomatic Missions abroad which include 47 residential and 15 non residential properties.
- (iii) The acquisition of properties has been gradual but in the past it was prompted by the needs of specific Heads of Mission. With expansion of Kenya's diplomatic presence abroad demand for space and acquisition of properties will continue.
- (iv) Treasury is the largest source of revenue for property acquisition.
- (v) Property acquisition is in line with the Ministry's strategic plan and the report of the taskforce on rationalization, restructuring and strengthening of the Ministry. In line with the aforementioned report the Ministry should establish an asset management unit so as to manage existing properties, create a comprehensive data base of all assets and recommend prioritization and acquisition of properties for Missions, consider joint acquisition of properties with partner's states of EAC as well as consider policies for funding the acquisition of properties.
- (vi) The Ministry will share with the Committee the general policy on property acquisition once it is finalized.

The Minister further briefed the Committee on the procurement process. He informed the Committee that in any tender there must be an inter Ministerial

Committee which must adhere to the Public Procurement and Disposal Act and that treasury's authorization must be sought before proceeding with the acquisition or disposal.

MIN. NO 156/2010 – PURCHASE OF PROPERTY IN TOKYO, JAPAN.

The Minister for Foreign Affairs briefed the Committee as follows:-

- (i) Kenya opened its Embassy in Tokyo in 1979 and in 1989 the then Amb. Ole Leken identified a plot and negotiated with the owner to construct a chancery and residence to the Mission's specifications for leasing. The Mission moved into the property the same Year (1989) after construction. In June 1990 the Ambassador further advised the Government to purchase the Chancery and the residence at a price of Yen 5.5 Billion.
- (ii) In November 2006, Amb. Awori revived the issue of purchase of the property that was being leased by the Mission. The Amb. wrote that the property had easy accessibility and located among 15 other Embassies. In the letter the Amb. sought authority to initiate discussions with the property owners who offered to sell the property at Yen2, 208,834,000 equivalent to Kshs. 1,484,336,448. In January 2007 Amb. Awori proposed that funds for the purchase be raised through credit from Tokyo Mitsubishi UFJ bank, with the Government guaranteeing the loan but treasury advised against borrowing from a commercial bank due to its negative effects on the country's external debt situation. The Ministry instead advised the Mission that the offer price be factored in the Ministry's development budget.
- (iii) The decision to purchase the property in Tokyo was based on Japan's strategic importance, the high rent (4.3 million Japanese Yen) paid by the Mission per month to lease the property and the fact that the property was built to the Mission's specifications.
- (iv) In July 2008 the Mission wrote to the Ministry of foreign affairs of Japan requesting for assistance to identify a property to purchase. The Government of Kenya in the same month in a meeting between president Maw Kibaki and senator Yano officially requested the Japanese Senator who was the Vice Chair of the to help the Government of Kenya to be allocated Government land for purposes of construction of a chancery.
- (v) In October 2008 the Government of Japan identified a plot in Minato Ku measuring 700.39 meters squared with an indicative price of 900 million Yen but was subject to valuation. The property was later valued at 1.307 billion yen.
- (vi) In January 2009 upon advise from amb. Awori an evaluation and inspection team was constituted and dispatched to Tokyo with the mandate of assessing the suitability of the plot offered by the Japanese Government and the property leased by the Mission. The inspection and valuation team comprised officers from the Ministry of Foreign Affairs (Mr.

Muchiri), Ministry of Finance (Mr. Kimemia) and Ministry of Lands (Mrs. Teresia Kimondi).

- (vii) In took he inspection and evaluation team visited seven plots identified through a real estate management and the Ministry of foreign affairs of Japan. The team found most of the plots unsuitable on account of exorbitant prices, inappropriate locations, irregular shapes and some had already been sold. The plot offered for sale by the Japanese Government was found to be undeveloped, measured 700.39 meters squared as compared to the property leased by the Mission which was 1,431 meters squared, its neighbourhood was surrounded by high rise residential apartments, expensive, irregularly shaped, had a caveat for excavation and therefore unsuitable for an Embassy and difficult for the Government to acquire it.
- (viii) In January 17, 2009 in a meeting chaired by Amb. Awori the team decided that the property occupied by the Mission was the most suitable for purposes of purchasing for a Chancery and residence. The decision was based on the facts that the property was in one of the most prime neighbourhoods, home to two international schools, thirteen other Embassies in the neighbourhood and that it was in good condition (would not require maintenance for the next ten years).
- (ix) In a meeting chaired by amb. Awori the inspection and evaluation team held meetings with the property owners to discuss the possibility of buying the property. The owner consulted with his family and on January 17th, 2009 returned an offer of 1.9 billion Yen (Kshs. 1.654 billion). After the offer the Government advertised in the local dailies for other plots within the same ward or area where the Mission property is located. Five plots were identified and valuation done and found to be unsuitable on grounds of high cost and unsuitable for use as an Embassy. The property housing the Mission was found to be the most suitable and offered best value for money.
- (x) The property occupied by the Mission was valued by the Ministry of lands at Japanese Yen 1.431300 billion (Kshs. 1,245,231 billion) for land only. Upon further negotiations with the owner (Mr. Kuriyama) of the property, the owner agreed on January 19, 2009 to reduce the price to JPY 1.75 Billion (Kshs. 1, 524, 000, 000). The team settled on this price and recommended the property be purchased on the terms negotiated and agreed upon with the landlord. The terms negotiated included payment in installments; transfer and registration upon receipt of the first installments after which there would be no further payment of rent.
- (vii) In March 30th, 2009 the Government of Kenya communicated to the Japanese Government of its decision to relinquish interest in the Government plot after which the team led by Amb. Awori zeroed in on the property leased by the Mission.
- (viii) The final decision to purchase the property was passed on May 25th, 2009 in an Inter-Ministerial tender Committee and the Mission was directed to procure the services of a lawyer. The Mission advertised in two local dailies

on April 27, 2009. The lowest bidder quoted a fee of 2.8 percent of the sale price translating to Kshs. 45.7 million as legal fees. Due to the exorbitant fees the Ministry directed the Mission to liaise with the Japanese Ministry of Foreign Affairs which advised that a licensed solicitor be hired instead. Amb. Awori chaired a meeting on 1st June 2008 and confirmed that there shall be such a solicitor. The Ministerial tender Committee approved the use of a solicitor who undertook background checks, tax exemptions, and participated in the drawing of a sale agreement and finalization of the transaction. The solicitor was paid Kshs. 383, 000 as fees.

- (ix) The funding of the purchase was done with the approval of Treasury. The Ministry requested Treasury to allocate Kshs. 984,709,080.040 realized from the sale of a Government property in Lagos. The balance of the purchase price was to be funded from reallocation of funds from other areas in the 2008/2009 budget. This was achieved when Kshs. 215,290,920 was factored in the Ministry's 2008/2009 development budget. The initial payment was done in June 2009 and the final installment was to be made in September but due to budgetary constraints was paid in January 2010.

The Minister further informed the Committee that for the last two and half years he had not been to the Mission in Japan.

MIN. NO. 157/2010 - FIRE INCIDENT AT THE AMBASSADOR'S RESIDENCE IN TOKYO, JAPAN

The Minister informed the Committee that:-

- (i) Fire broke out at the Embassy building, residence, on February 13, 2010 and substantially destroyed the building but did not affect the chancery.
- (ii) The Mission requested the Tokyo fire department to investigate the cause of the fire which established that the fire was caused by a frying pan that was left with cooking oil on a fully lit gas cooker by the Ambassador's Cook.
- (iii) A new Ambassador, Mr. Benson Ogutu, has since been appointed to the Embassy following the departure of Amb. Dennis Awori.

MIN. NO. 158/2010: PURCHASE AND DISPOSAL OF PROPERTY IN CAIRO, EGYPT

The Committee was informed that:-

- (i) In 1989 the Government of Kenya purchased a plot located at No. 4 Kassem Street, Doki Location, Giza, Gavenret in Cairo. The plot measured approximately 698 metres squared and was purchased at a price of US \$377, 244.
- (ii) Proposals for funding to develop the plot were made to treasury but no funds were allocated and efforts to get alternative funding were not approved by treasury and therefore the plot remained undeveloped.
- (iii) At the time of purchasing the plot it was located in a prime area but the neighbourhood deteriorated and became slumatised and hence unsuitable for an Embassy. The Mission therefore recommended that it be sold and the proceeds be used to acquire a chancery or residence elsewhere.

- (iv) In November 2005 an inter Ministerial inspection team comprising of Ministries of Foreign Affairs, Finance, Lands, Public Works visited the plot, valued it at US \$ 1.2 million and recommended that the plot be disposed due to the deteriorated neighbourhood and the proceeds be used to acquire an Ambassador's residence. Treasury upon request from the Ministry of Foreign Affairs approved the disposal of the plot. The proceeds from the sale were to be forwarded to treasury. In 2007 the Ministry undertook an independent valuation of the plot and returned a value of Egyptian pounds 6,000 to 7,000 per square metre.
- (v) Mission advertised for the sale of the plot and the highest bidder, M/s Modern Power Systems offered Egyptian pounds 6, 000 per square metre and was awarded the sale. A sale agreement was signed on March 19th 2007 between the Kenya Ambassador to Egypt and the buyer. 10% of the sale price was paid to the Embassy in Egypt upon execution of the agreement and the remaining 90% (US \$677, 246) was transferred to the Ministry's Account No. 01010 R004. The money was later transferred to Treasury.

MIN. NO. 159/2010 – COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) The inter-Ministerial Committee that was sent to Tokyo to inspect and value the property notably did not involve the Ministry of Public Works whose role is critical in determining the structural suitability of the property for the intended purpose and therefore the structural suitability of building that were more than ten years old could not be professionally determined.
- (ii) The Ministry of Land Valuer recommended that the value of the building should not be included in the bargaining price yet the Ministry purchased the property at a price extremely higher than the valuation price.
- (iii) The Ministry did not involve the services of an independent valuer from Japan in 2009 except for a valuation done by M/s Coral Corporation done in 2007. The use of a local valuer with real estate knowledge of properties and valuation in Japan would have given the Ministry the actual valuation of the property and therefore good basis for bargaining. The Ministry did not also use the services of the chief Government legal advisor, the Attorney General during the transaction and instead opted to hire the services of a Japanese solicitor.
- (iv) The Ministry advertised for properties within a very limited area, Meguro ward alone where the Embassy is located, instead of casting the net wider so as to get more bids. The limited time of returning bids could also have affected the number of bidders.
- (v) The property purchased by the Ministry does not front the road but instead a portion of it is used as access – this is as per the valuation report by the Ministry of Lands.
- (vi) At the time the property burnt down, it was not insured. The vendor had terminated his insurance and the Embassy had not procured insurance for the property.
- (vii) The Ministry paid the vendor an amount equivalent to rent as compensation for delayed payments yet the terms of purchase stipulated that no more rent shall be paid after the first instalment.

MIN. NO.160/2010: ANY OTHER BUSINESS

The Committee was informed that the East African Legislative Assembly, Kenya chapter had organised a sensitization workshop on the East African Common Market for members of the Committee on Defence and Foreign Relations and the that of Finance Planning and Trade. The Chairperson impressed upon members to attend the workshop as it related to the Committee's mandate.

The Committee deliberated on the issue of purchase of property in Tokyo and resolved to invite Ambassador Dennis Awori, former Kenya ambassador to Japan to shed more light on the purchase of the property.

MIN. NO.161/2010: ADJOURNMENT

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

Signed.....signed.....
(Chairperson)

Date:5/7/2010.....

MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS, THURSDAY 13TH MAY 2010, HELD IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Wilson Mwitiny Litole, M.P.
The Hon. George Nyamweya, M.P.
The Hon. Peter Edick O. Anyanga, MP
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Jeremiah Kioni, MP.

ABSENT WITH APOLOGY

The Hon. Charles Kilonzo, M.P.

ABSENT

The Hon. Hassan Ali Joho, MP – Vice Chairperson
The Hon. Joshua Kutuny, MP
The Hon. Kiema Kilonzo, MP
The Hon. Eugene Wamalwa, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Rana Tiampati – Second Clerk Assistant
Mr. Ahmad Kadhi – Third Clerk Assistant

MINISTRY OF LANDS

Hon. James A. Orengo, EGH, MP – Minister.
Ms. Dorothy Angote, CBS – Permanent Secretary.
Mr. Anthony Itui – Chief Valuer.
Mrs. Teresia Kimondu – Deputy Valuer.

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer, followed by brief introductions by Members of the Committee and the Minister and his team thereafter.

MIN. NO. 134/2010: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sittings was postponed to the next meeting.

MIN. NO. 135/2010: MEETING WITH THE MINISTER OF LANDS.

PAPERS LAID:

The Minister tabled before the Committee the Report on the procedure followed by the Ministry in the valuation of property and their reports of valuation – in respect of the Kenya missions in Abuja/Lagos- Nigeria, Tokyo -Japan, Brussels – Belgium, Cairo – Egypt.

The Minister then informed the Committee that:-

- (i) The role of the Ministry of Lands in the acquisition of Government property is advisory and Technical and is on request by the service consumer, in the case of acquisition of property by Kenya Missions abroad, the Ministry of Foreign Affairs requested for a Valuer to accompany the team;
- (ii) The Ministry was involved in the valuation process only, of the four properties in Lagos/Abuja-Nigeria, Tokyo-Japan, Brussels-Belgium, Cairo-Egypt; and report of the process and valuation were prepared for each of the properties; see paper laid;
- (iii) The Permanent secretary, Ministry of Lands appoints an officer upon request by Ministry of Foreign Affairs for the process of acquisition of property to accompany the team designated for work by the Ministry of Foreign Affairs;
- (iv) The officer nominated from the Ministry is mostly a Valuer, who prepares a valuation report of already identified property, the report is then sent to the Ministry of Foreign Affairs; the Ministry of Lands does not identify property at all;
- (v) Ministry of lands has not received any feedback on the reports submitted if they were acted upon or not;
- (vi) Most of the properties acquired were not in the so called diplomatic enclave in the respective countries; some like in Cairo were in *slumatised* (Slum) areas ;
- (vii) On the Tokyo property, the Committee heard that an evaluation of the property at Kshs. 1.245 billion which was not within the diplomatic enclave, furthermore the building was old and dilapidated;
- (viii) On Brussels property, the Committee heard that the building had been residential prior to the purchase. It was valued at 4.5 million Euros including furniture, though this shouldn't have been the case as second hand furniture has no value in Europe unless the items are antiques.
- (ix) The acquisition of property by the Government of Kenya is subject to Kenyan laws and the laws of the respective countries in which the property is located;
- (x) The Ministry did not participate in the Interministerial Committee which was set up before, however the Valuer participated by way of report presentation in the later stages;
- (xi) The Valuer tries to acquire information on the property from both the Government and real estate agents/local valuers. The report shows that the Valuer did acquire limited information on various properties and the qualification of the real estate agents contacted, were questionable;
- (xii) Before any purchase there should be thorough consultative meetings which should involve all relevant Government departments, however without sufficient

legislation on procurement on this area, it would ensure that questionable transactions such as the ones the Committee was investigating would not arise.

MIN. NO. 136/2010: ISSUES ARISING FROM THE BRIEF

Members raised the following concerns from the presentation by the Minister

- Whether the advice given by the Ministry is followed?
- Whether the Ministry was part of the Inter-Ministerial Committees that are set up prior to Government buying property abroad?
- If the Ministry sources local expertise from professional Valuers in the host country?
- What information was exchanged by the Kenyan architect from Japan who met the Valuer from the Ministry of Lands?
- Is it prudent for the Ministry of foreign affairs to have involved the Ministry of Lands at an earlier stage instead of at the time just before purchase?
- Are there other reports from Japanese Officials apart from the ones from Kenyan officers?
- What is the rationale of the purchaser and seller to use the same lawyer and Valuer apart from saving costs?
- What procedures should be followed by the Ministries when purchasing property and if the Ministry of Foreign Affairs embezzled public funds?

MIN. NO. 137/2010: COMMITTEE OBSERVATIONS

From the Minister's presentation the Committee observed that:-

- (i) There is need for the Government of Kenya to acquire or have a Government property inventory in future;
- (ii) There are many challenges facing the Grand Coalition Government but also expressed grave concern that the Ministry of Foreign Affairs was not prudent enough when disregarding advice from other Ministries and sometimes not even seeking professional advice from relevant arms of Government;

MIN. NO. 138/2010: ADJOURNMENT

The meeting was adjourned at Five o'clock. Next meeting will be held on Friday May 14, 2010 in Committee Room 4, 4TH Floor, Continental House at 10.00 am.

Signed.....signed.....
(Chairperson)

Date: ...2/6/2010.....

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS, WEDNESDAY 12TH MAY 2010, HELD IN COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 AM.

PRESENT

The Hon. Adan Keynan, M.P. – (Chairperson)
The Hon. Charles Kilonzo, M.P.
The Hon. Peter Edick O. Anyanga, MP
The Hon. Benedict Fondo Gunda, M.P.
The Hon. Jeremiah Ngayu Kioni, MP
The Hon. George Nyamweya, M.P.
The Hon. Kiema Kilonzo, MP

ABSENT WITH APOLOGY

The Hon. Hassan Ali Joho, MP – Vice Chairperson
The Hon. Joshua Kutuny, MP
The Hon. Eugene Wamalwa, MP
The Hon. Wilson Litole, MP

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejien – Second Clerk Assistant
Mr. Ahmad Kadhi – Third Clerk Assistant

IN ATTENDANCE: MINISTRY OF PUBLIC WORKS

Hon. C. M. Obure, EGH, MP – Minister
Leah Adda Gwiyo, CBS – Permanent Secretary
Architect Gideon Mulyungi – Works Secretary
Architect Maweu J. M – Chief Architect
Architect P.S. Wasike - Senior Principal Supt. Architect
Engineer J. M. Kamau - Senior Principal Supt. Architect
M. A. Nyakiongora – Chief Quantity Surveyor

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer, followed by brief introductions.

MIN. NO. 126/2010 : CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sittings was postponed to the next meeting.

MIN. NO. 127/2010: MEETING WITH THE MINISTER FOR PUBLIC WORKS

The Chairperson informed the Minister that the agenda of the meeting was for the Minister to brief the Committee on its role in the acquisition and or disposal of properties abroad by the Government. The Minister for Public Works tabled before the Committee a copy of his brief to the Committee on the role of his Ministry in the acquisition of government properties for missions abroad.

The Minister informed the Committee that the Ministry of Public Works undertakes technical assessment on the viability and suitability of buildings for intended purposes upon invitation by concerned government Ministries. The Ministry undertakes this by sending its professionals to the actual sites. The Ministry also assesses on invitation the need for repairs of public buildings but the actual rehabilitation is normally undertaken by the parent Ministry. When government decides to lease or dispose property, the Ministry of public works is not involved in the process.

The Minister further briefed the Committee on the four mission properties that the Committee had sought to be briefed on: -

(a) Brussels, Belgium

The Minister informed the Committee that :-

- (i) The Ministry of Public Works was involved in assessing the condition of the property and after the assessment they recommended its acquisition. A technical team comprising of officers from the Ministry of Foreign Affairs, Finance and Public Works and Housing visited Brussels in October 3rd to 6th, 1998 to assess the property. The technical team recommended the acquisition of the building with an estimated value of 70, 000,000 Belgium francs.
- (ii) The Contract Agreement was signed by the Ministry of Foreign Affairs after the report of an inter Ministerial Committee.
- (iii) In May 2007 another team comprising officers from the Ministry of Foreign Affairs and Ministry of Lands visited Brussels to assess the property again. During the visit they held meetings with the landlord who offered to sell the property at a cost of Euro 4.5 million, equivalent to Kshs. 410 Million. This included renovations to be undertaken by the landlord and a guarantee of 15 years.
- (iv) In July 2007 another technical team comprising officers from the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Lands and Ministry of Public Works visited Brussels and agreed to prepare a TO , draft sale agreement, and collate relevant information related to the acquisition. The team also met with the landlord Mr. Chalouhi and recommended significant renovations to be undertaken before the purchase.

(b) Tokyo, Japan

The Minister informed the Committee that the chancery building was purchased by the Government one and half years ago (1 1/2 years) however the Ministry of Public Works was not involved in any way.

(c) Cairo, Egypt

The Committee was informed that:-

- (i) The Ministry of Public Works and Housing was in August 1988 requested by the Ministry of Foreign Affairs to identify consultants to design, document and supervise the construction of a new chancery in Cairo. Architect C. D.K Muya - Ag. CSA and Engineer M.M. Munzyu – SSE (Structural) visited Cairo on August 21st to 24th 1988 to undertake the assignment. The proposed project was however later shelved.
- (ii) In October 2005 a team comprising of officers from the Ministry of Foreign Affairs, Ministry of Roads and Public Works and Ministry of Lands visited Cairo and recommended the purchase of a chancery and an Ambassadors residence to save on cost from rent. The Ambassador was tasked to scout for suitable premises and advise the parent Ministry accordingly.

Lagos and Abuja, Nigeria

The Minister informed the Committee that:-

- (i) Following the relocation of the political capital of Nigeria to Abuja the Federal Government of Nigeria freely allocated all foreign diplomatic missions plots for construction of chanceries and ambassadorial residences in Abuja.
- (ii) Initially the construction of the proposed chancery was pegged on the sale of the property in Lagos but after the sale of the Lagos property the funds were diverted to purchase a property in Japan. Construction of the chancery commenced in February 2010 and works are currently ongoing after the contract was awarded to M/s Diamatrix Ltd of Nigeria and contract agreement signed on February 12th, 2010.
- (iii) The project was scaled down From 1, 183, 695, 249.15 Nigerian Nira to 1, 019, 753, 456.93 Nigerian Nira due to budgetary constraints.

MIN. NO. 128/2010: COMMITTEE OBSERVATIONS

Following the presentation by the Minister for Public Works, the Committee observed that:-

- (i) The work of the Ministry of Public Works was to assess the structural integrity of and suitability for the intended purpose of properties for the government. The parent ministries handle the financial aspect of the purchase, disposal and renovations.
- (ii) Ministry of public works was never involved in the acquisition of the government property in Tokyo, Japan.
- (iii) Funds from the sale of the Lagos property were diverted to purchase the property in Tokyo, Japan and not to build the chancery in Abuja has had been planned.
- (iv) The then Ambassador in Cairo, Egypt never reported on his search for a suitable property to be purchased in Cairo.
- (v) The Ministry is mandated to keep an inventory of Government properties but currently the inventory is with the Ministry of Housing.
- (vi) The Public Procurement and Disposal Act, 2005 was never followed in the purchase and or sale of the government properties abroad.

MIN. NO. 129/2010 : ANY OTHER BUSINESS

The Committee was informed that as a result of the introduction of the Public Procurement and Disposal Act ,2005 which repealed Chapter 17 of the Financial regulations, and gave powers to other ministries to act independently of the Ministry of Public Works in respect to Government property, the ability of the Ministry to undertake an assessment of the structural suitability of properties had been curtailed since ministries and government agencies are free to contract private companies.

The Minister further informed the Committee that he was not aware of any property that had been attached as a result of Government debts, though there were threats of the same in particular incidents.

MIN. NO. 130/2010 : ADJOURNMENT

The meeting was adjourned at thirty six minutes past twelve o'clock to the same day at 2.30 pm.

Signed.....Signed.....
(Chairperson)

Date:2/6/2010.....

MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, MARCH 30, 2010 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

The Hon. Adan Keynan, MP - (Chairperson)
The Hon. Charles Kilonzo, MP
The Hon. Wilson M. Litole, MP
The Hon. Jeremiah Kioni, MP
The Hon. Eugene Wamalwa, MP

ABSENT WITH APOLGY

The Hon. Benedict Fondo Gunda, MP
The Hon. Peter Edick O. Anyanga, MP

ABSENT

The Hon. Ali Hassan Joho, MP - (Vice Chairperson)
The Hon. Joshua Kutuny, MP
The Hon. Kiema Kilonzo, MP
The Hon. George Nyamweya, MP

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. Emejien Nicholas - Second Clerk Assistant

OFFICE OF THE ATTORNEY GENERAL

Hon. S. Amos Wako, EGH, MP – Attorney General
Mr. Keriako Tobiako – Director of Public Prosecutions
Ms. Muthoni Kimani – Senior Solicitor General
Ms. Dorcas Achapa – Deputy Solicitor General
Mr. Jacob Ondari – Senior Principal State Counsel
Mr. James Waweru – Principal State Counsel
Mr. Alex Mbuvi – State Counsel

PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer. The Chairperson introduced the agenda of the meeting which was adopted by the Members.

MIN. NO. 103/2010: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of Minutes of the previous sittings was postponed to the next meeting.

MIN. NO. 104/2010: BRIEFING FROM THE ATTORNEY GENERAL

The Attorney General (AG) appeared before the committee and tabled a report and documents/letters on the issue of MOUs on piracy. The AG informed the Committee that:-

- (i) The State Law office was not involved in the policy decision that informed the entering into MOUs by Kenya and neither was it involved in the drafting or preparation of the agreements.
- (ii) The State Law Office was invited to the process at the last stages when the talks and negotiations had reached a level of signing of the agreements. He was invited to attend a seminar organized by UNISOM in conjunction with Ministry of Foreign Affairs held in December 2008 on tackling piracy, a few days to the seminar and the signing of the agreements.
- (iii) Kenya through the Ministry of Foreign Affairs might have entered into the agreements in fulfillment of its international obligations. The issue was never discussed in cabinet but might have been discussed at the National Security Committee or cabinet subcommittee on security.
- (iv) The Agreements are a strain on the fiscal and human resource capacity of the concerned Ministries and Government Departments (Judiciary, State Law Office, the Police, Prisons etc) with little or no support from the international partners.
- (v) After the signing of the MOUs, the State Law Office was compelled to implement the provisions of the agreements as part of the national obligation and to this end he sought for support from the international partners in terms of capacity building for departments involved, upgrading of prison facilities and legal assistance for transferred persons but no assistance was forthcoming.
- (vi) He raised concern over the MOUs vide a letter to the Head of the Civil Service and Secretary to the Cabinet citing jurisdictional challenges, the enormous burden placed on Kenya by the MOUs and the lack of assistance to Kenya from the international partners as well as the security risks posed by the trial and holding of the pirates in Mombasa to the country.
- (vii) In spite raising concern over the MOUs the Ministry of Foreign Affairs entered into further agreements on piracy with China and Canada.
- (viii) Kenya is the only country in the region and the only one close to the area of operation (piracy) to prosecute pirates. Initially the number of cases was under estimated but recent developments have shown the number

of cases prosecuted in Kenya to be rising. There are thirteen cases in Kenyan courts out of which two have been concluded with eighteen pirates convicted and serving sentences of between seven and twenty years. The other eleven cases involving one hundred pirates are yet to be determined. Tanzania refused to prosecute the pirates citing jurisdictional challenges.

- (ix) Following concerns over the implementation of the MOUs and the lack of support or assistance from the international community, the Government is in the process of terminating the MOUs. A notice has already been issued to the partners with the intention of terminating the agreements.

The Committee raised the following concerns with regard to the six MOUs signed by Kenya in relation to the fight against piracy:-

- (i) The MOUS place greater responsibility on Kenya in the fight against piracy. International partners are not fulfilling their obligations.
- (ii) The Implementation of the MOUs places Kenya at great security risk considering that piracy is connected to terrorism.
- (iii) The MOUs are silent on what will happen to the pirates after release.
- (iv) The AG's office was not consulted in the drafting and policy stages of the MOUs and further that his advise, to stay all other MOUs was not taken even after he objected to the agreements.
- (v) The MOUs impose on the Kenyan judicial authorities the kind of penalty to be meted on the pirates and further that the cases be expedited at the expense of local cases.
- (vi) The international community has not been sincere in their support for Kenya. Pirates are brought to trial in Kenya yet the international partners rubbish Kenya's courts in other International Fora.

The Attorney General informed the Committee that he was not involved in the acquisition of some of the properties and undertook to avail information relating to the acquisition of properties for Kenyan missions abroad. The Committee directed that the information be availed in one week's time.

The Committee deliberated further on the matter and resolved that:-

- (i) Kenya should renegotiate the MOUs with a view to placing greater responsibility on the international community or terminate the agreements altogether.
- (ii) Kenya should not be a dumping ground for pirates. Kenya should not take in additional suspected pirates.
- (iii) In future the Ministry of Foreign Affairs should seek the opinion of the government legal advisor before entering into international agreements.
- (iv) Before entering into any agreements, in future, the Ministry of Foreign Affairs should conduct a national security assessment.

- (i) Relevant government agencies should develop an integrated and coordinated approach towards the fight against piracy and terrorism in view of their impact on Kenya's economy and security.

MIN. NO. 105/2010: ANY OTHER BUSINESS

Members noted with concern that there has been a rise in the number of reported cases of Kenyans being harassed, mistreated, maimed and even killed while working outside Kenya. Members were further concerned that the cases of mistreatment and killings of Kenyans in Saudi Arabia and other Asian countries have risen in the past.

Members also noted that Kenyans in South Sudan have been harassed, property destroyed and even killed yet Kenya has hosted South Sudanese for many years and played a great role in the establishment and signing of the Comprehensive Peace Agreement (CPA).

The AG informed the Committee that the harassment of Kenyan's in the Asian countries has been targeting domestic workers and called for machinery for regulation of domestic workers in foreign countries.

The Committee noted that the Ministry of Foreign Affairs needs to work closely with the Ministry of Labour so as to regulate the activities of recruiting agencies and the entire process of recruitment of Kenyan's seeking employment outside Kenya. The Committee further deliberated on the matter and resolved to launch investigations on the matter in view of the concern expressed by the public and the increasing number of reported complaints.

MIN. NO. 106/2010: ADJOURNMENT

The Chairperson adjourned the meeting at fifteen minutes past one O'clock.

Sign:Signed.....

Date:25th May, 2010.....

(Chairperson)