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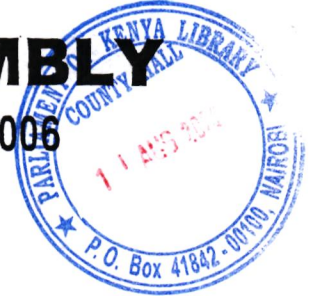
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ANGLO-LEASING

KENYA NATIONAL ASSEMBLY

NINTH PARLIAMENT – FIFTH SESSION - 2006



PUBLIC ACCOUNTS COMMITTEE

REPORT ON

**SPECIAL AUDIT ON PROCUREMENT OF
PASSPORT ISSUING EQUIPMENT**

BY THE

**DEPARTMENT OF IMMIGRATION,
OFFICE OF THE VICE-PRESIDENT AND
MINISTRY OF HOME AFFAIRS**

MARCH 2006

TABLE OF CONTENTS

	PAGE
PREAMBLE	iv
Taking of further audit evidence.....	iv
Committee Members.....	iv
Committee Sitings.....	v
Witnesses who appeared before the Committee	vi
Evidence taking.....	vi
Evidence by John Githongo	vii
Anglo Leasing type contracts.....	viii
Contempt of the Committee.....	viii
Conclusion.....	viii
SPECIAL AUDIT BY THE CONTROLLER & AUDITOR GENERAL	1-5
EXECUTIVE SUMMARY	6
Anglo Leasing contract for procurement of passport issuing equipment.....	6
Anglo-Leasing type contracts.....	6
Status of the contracts.....	6
When were these contracts initiated?	7
Who are the key persons associated with these company / companies?	7
Political culpability.....	7
The Ministry of Finance.....	8
The Attorney General.....	9
PART 1	
SUMMARY OF JOHN GITHONGO'S EVIDENCE	9
The Anglo Leasing and Related Scandals.....	10
The Arrest of Mr. Fred Ojiambo (Advocate)	15
Interconnectedness of Companies.....	19
SUMMARY OF EVIDENCE GATHERED FROM OTHER WITNESSES	20
Mr. Sylvester Mwaliko, former Permanent Secretary in the Office of the Vice-President & Ministry of Home Affairs.....	20
Hon. Kiraitu Murungi, MP(former Minister for Justice & Constitutional Affairs).....	22
Hon.Dr.Chris Murungaru, MP (former Minister of State in the Office of the President).....	23
Mr. Fred Ojiambo, Advocate of the Anglo Leasing & Finance Limited.....	24
Central Bank of Kenya (CBK)	25
Amb. Francis Muthaura – Permanent Secretary, . Secretary to the Cabinet and Head of Public Service.....	29
Mr. Zakayo Cheruiyot– Former Permanent Secretary, Office of the President.....	32

Testimony by Hon. Amos Wako, MP - Attorney General.....	34
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PART 2

GENESIS OF THE PROJECTS.....	36
Forensic Laboratory Project.....	36
Procurement of Passport Issuing Equipment Project.....	37

**OTHER SIGNIFICANT QUESTIONS ARISING FROM THE
ANGLO LEASING CONTRACTS.....**

ANGLO LEASING CONTRACTS.....	39
The Political Leaders mentioned.....	42
The President.....	42
Vice President & Minister of Home Affairs.....	43
Hon. David Mwiraria, Former Minister for Finance.....	44
Hon Kiraitu Murungi, MP, Former Minister for Justice and Constitutional Affairs.....	45

THE ROLE OF CIVIL SERVANTS.....

THE ROLE OF CIVIL SERVANTS.....	46
Mr Sylvester Mwaliko, former Permanent Secretary, Ministry of Home Affairs.....	46
Mr. Zakayo Cheruiyot, former Permanent Secretary, Office of the President.....	47
Amb. Francis Muthaura, Head of Public Service and Secretary to the Cabinet.....	47
Mr. Joseph Magari, former Permanent Secretary, Treasury.....	48
Mr. Joseph Oyula, former Financial Secretary, Treasury.....	48
The Role of the Attorney General.....	49
Mr. Dave Mwangi, former Permanent Secretary, Office of the President.....	
Features of Security Contracts.....	

ATTACHMENTS.....

GENERAL RECOMMENDATIONS BY THE COMMITTEE.....

MINUTES.....

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PREAMBLE

Hon. Speaker,

On behalf of the Members of the Public Accounts Committee and pursuant to provisions of Standing Order No. 162 (2), I take this opportunity to present to the House the report and recommendations of the Public Accounts Committee on Special Audit of the Procurement of Passport Issuing Equipment by the Department of Immigration, Office of the Vice President and Ministry of Home Affairs.

Standing Order No. 147 states that *"there shall be a select Committee to be designated the Public Accounts Committee for the examination of the accounts, showing the appropriation of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit"*

Taking of further audit evidence

The Special Audit Report by the Controller and Auditor General on the Procurement of Passport Issuing Equipment was prepared at the request of the Public Accounts Committee. It was then tabled after which it was forwarded to the Public Accounts Committee for scrutiny. After lengthy deliberations on the Floor of the House, the recommendation that the then Minister for Finance, Hon. David Mwiraria, MP be held responsible for involving the government in such an expensive fraudulent project with a company whose directors were unknown was expunged from the report following a successful amendment motion by the then Minister for Water, Hon. Martha Karua, MP. In addition, the recommendation which stated that Ministers should be held responsible for any fraudulent activities or embezzlement of funds in their ministries was also expunged. The motion for the adoption of the Committee report was consequently rejected on a vote by the House.

The Committee deliberated at length over the way forward after the rejection of the report and resolved that further evidence should be taken to establish the real perpetrators of the Procurement of Passport Issuing Equipment Project and other related projects after which it would table a more comprehensive report.

Committee Members

The Public Accounts Committee consists of the following Members:

- Hon. Uhuru Kenyatta, EGH, MP. (Chairman)
- Hon. Joseph K. Lagat, MP
- Hon. Norman M. G. K. Nyagah, EGH, MP
- Hon. Billow Kerrow, MP
- Hon. Fahim Twaha, MP
- Hon. Zebedeo Opore, MP
- Charles Keter, MP

Hon. Ekwee Ethuro, MP, Hon. Adelina Mwau, MP, Hon. Koigi Wamwere, MP and Hon. Kembi Gitura, MP ceased to be Members when they were appointed Assistant Ministers.

Committee Sitings

The Committee commenced its sittings for the special audit report on 7th February 2006 and held **twenty two (22) sittings** in which various persons appeared before it and gave evidence on the audit report. The Committee also decided to take evidence from the former Permanent Secretary for Governance and Ethics (Mr. John Githongo). Since Mr. John Githongo was willing to give evidence at a time when he alleged to be receiving threats from powerful personalities, the Committee resolved to take his evidence at a suitable place for his safety and convenience and the Kenya High Commission Offices in London were found appropriate. The following Members travelled to London and heard evidence on 11th and 12th February 2006:

The Hon. Uhuru Kenyatta, EGH, MP. **(Chairman)**
The Hon. Joseph K. Lagat, MP
The Hon. Norman M.G. K. Nyagah, EGH, MP
The Hon. Billow Kerrow, MP
The Hon. Fahim Twaha, MP
The Hon. Zebedeo Opore, MP
The Hon. Charles Keter, MP

They were accompanied by a representative of the Controller and Auditor General and four members of Staff from the National Assembly.

Witnesses who appeared before the Committee

The following witnesses appeared before the Committee:

- Hon. Moody Awori, MP- Vice President and Minister for Home Affairs
- Hon. David Mwiraria, MP- former Minister for Finance
- Hon. Kiraitu Murungi, MP - former Minister for Justice and Constitutional Affairs
- Hon. Chris Murungaru, MP- former Minister of State in the Office of the President in charge of Internal Security
- Amb. Francis Muthaura - Head of Public Service and Secretary to the Cabinet and Head of Public Service
- Mr. Dave Mwangi - former Permanent Secretary Office of the President
- Mr. J. H. M Oyula- former Financial Secretary, Treasury
- Mr. Joseph Magari - former Permanent Secretary, Treasury
- Mr. Zakayo Cheruiyot - former Permanent Secretary in the Office of the President
- Mr. Sylvester Mwaliko - former Permanent Secretary, Office of the Vice President & Ministry of Home Affairs
- Hon Amos Wako, MP - Attorney General
- Ms. Dorcas Achapa - Attorney General's Chambers
- Ms. Bernadette Njoroge - Attorney General's Chambers
- Dr. Andrew Mullei - Central Bank Governor

- Mr. Joseph Kinyua - Permanent Secretary – Treasury
- Mr. David Onyonka - former Head of Debt Management Department, Treasury
- Mr. Philip K. Murgor - former Director, Public Prosecutions
- Mr. Fred Ojiambo, - Advocate, Kaplan & Stratton Co.

Evidence taking

Except for a few instances at the initial stages of taking evidence, the witnesses were very cooperative and they gave the Committee vital information. The reasons given against providing evidence were that part or allos of the matters before the Committee were also before the courts, and therefore *sub judice*. As stipulated by the rules of natural justice, the Committee considered reasons given by each of the witnesses and resolved to take their evidence on matters which were not prejudicial to their cases in court.

However, the Committee noted with concern the manner in which some of the witnesses who had no cases pending in court wanted to seek refuge behind the *sub judice* rule so as to escape from giving evidence.

After careful scrutiny and considerations of the provisions of law, especially the National Assembly (Powers & Privileges) Act, Cap 6 of the Laws of Kenya, Standing Orders and Parliamentary Commonwealth Practice by Erskine & May, the Committee found the following excerpts useful:-

- (i) The rule of '*sub judice*' contained in Standing Order No. 74 is based on parliamentary practice and the status (whether a matter is *sub judice* or not) may only be interpreted by the Speaker.
- (ii) on July 20, 2005 the Speaker made a ruling stating that the courts cannot stop the business of the House. He also referred the House to a ruling made in 1966 by the then Speaker Hon. Humphrey Slade who said 'I will be bound by a conclusive decision of a court, but until that decision is made Parliament will continue';
- (iii) Section 14(1) of the National Assembly (Powers & Privileges) Act, Cap 6 of the Laws of Kenya states that "***the Assembly or any Standing Committee thereof may subject to the provisions of Section 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person***".
- (iv) Section 15(1) of the National Assembly (Powers & Privileges) Act, Cap 6 of the Laws of Kenya states that "***any order to attend to give evidence or to produce documents before the Assembly or a Committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk issued by the direction of the Speaker***".
- (v) Section 18(3) of the National Assembly (Powers & Privileges) Act Cap 6 of the Laws of Kenya states that "***except upon the direction of the President, no public officer shall refuse –***

(a) to produce before the Assembly or a Committee any paper, book, record or document; or

(b) give evidence before the Assembly or a Committee ”.

(vi) Section 23 of the National Assembly (Powers & Privileges) Act Cap 6 of the Laws of Kenya states that “ any person who:-

- **disobeys any order made by the Assembly or a Committee for attendance or for production of papers, books, documents or records, unless his attendance or production is excused under Section 17; or**
- **refuses to be examined before or to answer any lawful and relevant question put by, the Assembly or a Committee , unless refusal is excused under Section 17; or**
- **speaks words defamatory of the Assembly or its proceedings**

shall be guilty of an offence and liable on conviction before a subordinate court of the first class, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.

The significance of these excerpts made the progress of evidence taking possible.

The Committee received both oral and written submissions. It also received recorded information. The Committee subjected all evidence received to careful scrutiny and listened to recorded information to satisfy itself that the voices in the recorded evidence resemble those of the personalities mentioned in relation to the information. The evidence received made the production of this report possible.

Evidence by the former Permanent Secretary for Governance and Ethics - Mr. John Githongo

The Committee noted that the former Permanent Secretary for Governance and Ethics (Mr. John Githongo) had been investigating corruption issues affecting Kenya. He had appeared before the Committee on 24th May 2004 and 28th June 2004 and gave evidence. However he had promised the Committee that he would give it his findings after conclusion of investigations. Mr. Githongo however left public service and fled the country in January 2005. The Committee therefore took evidence from him at the Kenya High Commission Offices in London.

Mr. John Githongo was accompanied by his Legal Advisor-Prof. Makau Mutua.

Anglo Leasing type contracts

While taking evidence the Committee noted that Anglo Leasing & Finance Limited is not the only alleged non-existent Finance Company which the government has awarded contracts to but there were several other companies involved.

Hon. Speaker Sir,

The Committee also noted that some of the alleged non-existent Finance companies have ongoing projects in the country. Unfortunately most of these financing companies have been awarded security contracts which make it difficult for Kenyans to establish because of the secrecy that surrounds security aspects of our country.

From the evidence received by the Committee it was alleged that the above mentioned companies share directors, shareholders and many of them use the same addresses as demonstrated in attachments contained in the report.

Contempt of the Committee

The Committee noted with grave concern that Hon. Kiraitu Murungi, MP initially declined to be examined. He cited various reasons that were not valid, and published information accusing Public Accounts Committee (PAC) of partisan agenda and lacking in mandate. He also published parts of Hansard of the evidence by Mr John Githongo. He claimed that the Parliamentary rules, practice and procedure have no room for a Committee of the House to summon an Honourable Member, and that a member could only be "requested". The Committee consequently referred this matter to the Powers & Privileges Committee for further action.

He appeared again before the Committee and repeatedly referred it to the Provisions of Section 17 of the National Assembly (Powers and Privileges) Act, Cap. 6 of the Laws of Kenya and the fact that Kenya Anti-Corruption Commission was investigating him on the same matter

The Committee prepared verbatim reports of the evidence taken. Those reports are available.

Conclusion

All the decisions made by the Committee were arrived at by consensus of all the Members sitting. The Committee presents the report to the House for debate and adoption. The Committee urges the government to implement the recommendations contained in the report as adopted by a resolution of the House without fear or favour. This is the only way that corruption can be minimised or eradicated in our country.

Let me take this opportunity to express and record my gratitude to the Members of the Public Accounts Committee. They endured long sittings and sacrificed both leisure and the interests of their constituencies during the period of taking evidence and compiling of this

report. The Committee would like to thank all the witnesses who appeared before it and especially Mr. John Githongo who was willing to give evidence at a time when he alleged to be receiving threats from powerful personalities. The Committee would also wish to record its appreciation for the services rendered by the Office of the Controller and Auditor General. Indeed it is his audit of the Procurement Passport Issuing Equipment project which led to the discovery of other Anglo Leasing type projects. This discovery has also led Kenyans to worry that many of the loans paid with taxpayers' money may be used to finance projects of Anglo Leasing nature.

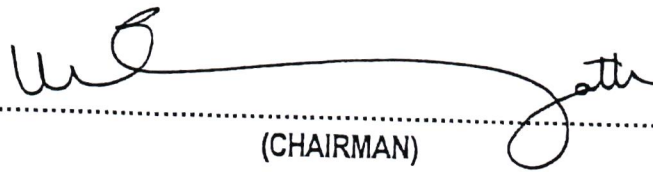
Hon. Speaker Sir,

My Committee wishes to record its appreciation for the assistance given by your office and that of the Clerk of the National Assembly. The procedural advice given by those offices, facilitation, services rendered by the staff of the National Assembly and the Office of the Controller and Auditor General as well as their devotion to duty have contributed a great deal to the production of this report.

Finally the Committee wishes to thank the High Commissioner of Kenya High Commission in London and his officers for facilitating its sittings in London as well as other courtesies which were extended to the Committee.

In conclusion, the Committee wishes to thank all other persons who contributed in one way or another in the production of this report.

SIGNED.....


(CHAIRMAN)

DATE.....

28th March 2006

SPECIAL AUDIT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT BY THE DEPARTMENT OF IMMIGRATION – OFFICE OF THE VICE PRESIDENT AND MINISTRY OF HOME AFFAIRS

A Special Audit of Procurement of Passport Issuing Equipment by the Department of Immigration in the Office of the Vice-President and other related issues was carried out from 28 April 2004 to 7 May 2004. The audit revealed a number of unsatisfactory matters which are summarized in the ensuing paragraphs.

1. In June 2000, the Department of Immigration (DOI) which was at that time within the Office of the President initiated a review of its strategies, systems and procedures with a view to addressing the issues of inefficient procedures and information system, revenue losses arising from fraud and forgeries involving passports and visas amongst other weaknesses within the Department.
2. In a report on "Computerization Needs Assessment" compiled and released by the DOI in September 2000, it was recommended that a modern enhanced and comprehensive computer based system otherwise referred to as "Immigration Information Management System" (IIMS) be designed and implemented.
3. In a letter dated 18 October 2001, the DOI requested the Ministerial Tender Committee (MTC) Office of the President, for authority to procure a Passport Issuing System through restricted tendering, citing the security nature of passports and the issuing system. The Ministerial Tender Committee supported this request and requested for Treasury approval for it. Treasury authority for restricted tendering was granted on 8 January, 2002 and communicated to the DOI in a letter dated 5 February, 2002.

Subsequently, five international firms were selected and invited to tender for the supply of the System under Tender Ref. No. 3/IMM/2001/2002. These firms were:-

- De La Rue Identity Systems of the United Kingdom
- AIT International PLC of the United Kingdom
- Face Technologies of South Africa
- Setec OY of Finland
- Johannes Enschede of Netherlands

Three out of the five firms responded and after an initial analysis of their bids, M/S AIT International PLC was considered as having met both commercial and technical requirements of the tender at a quoted price of Kshs.622,039,944.65.

4. The Recurrent Estimates for Vote R 01-Office of the President for 2001/2002 did not however have any funds allocated for the System under tender consequent upon which the tender was not awarded and was formally cancelled on 5 August, 2002. It is not clear why the DOI would go out to tender for such a project knowing very well that there was no budgetary provision in the Estimates for 2001/2002.
5. Thereafter, in a letter dated 20 August, 2002 the DOI sought authority from the Permanent Secretary, Office of the President to procure the System in the year 2002/2003. The DOI indicated then that it was prudent to modify the specifications of the System to allow for a phased implementation over a period of several years in order to

ease the budgetary constraints experienced in 2001/2002. In a letter dated 17 October, 2002, the Permanent Secretary, Office of the President confirmed that the procurement would still be valid through to the year 2002/2003. In the same month, the revised tender for the System was floated under Tender Ref.I/IMM/2002/2003 and six international firms were selected and invited to submit bids. The six firms were:-

- Face Technologies of South Africa
- GET Group of USA
- De La Rue Identity Systems of the United Kingdom
- Setec OY of Finland
- Johannes Enschede of Netherlands
- AIT International PLC of the United Kingdom

6. Three of the firms responded by the deadline of 28 November, 2002 and quoted as shown below:-

- FACE Technologies—US\$9,946,965—Kshs.779,173,619.95(US\$1to Shs.78.3328)
- GET Groups - US\$10,596,813 – Kshs.830,078,033.35 (US\$1 to Shs.78.3328)
- De La Rue - GBP 7,951,255-Kshs.1,105,753,998.60 (GBP 1 to Kshs.130.6660)

On 6 February 2003, a Technical Committee comprising of Government Information Technology Services (GITS) of the Treasury and DOI carried out an evaluation of the three bids and concluded that all three did not meet the requirements and specifications set out in the invitation for tender and were therefore disqualified.

According to the technical evaluation committee report, the three bidders were disqualified because they did not in their bids specify the product brands, and or models or provide proof of assent to purchaser's operational tests amongst other aspects.

7. GITS subsequently advised that the System should be redesigned and expanded to cover other operations of DOI including border controls and immigration monitoring amongst other components. This advice was adopted and the proposed System was redesigned and enhanced to include the following main components:-

- High Security New Generation Passports
- Secure Passport Issuing System
- High Security New Generation Visas
- High Security Visa Issuing System
- Computerization of machine readable immigration records.

Apparently because of the expanded and enhanced system it was realized that the cost of the proposed system would be high and that donor funding would be required. It was therefore indicated that Treasury was to seek funds from Donor for the System.

8. On 1 August 2003, a firm by the name Anglo Leasing & Finance Upper Parliament Street, Liverpool L 19 AA, UK submitted to Office of the Vice-President and Ministry of Home Affairs an unsolicited technical proposal for supply and installation of Document Control System (ISDCS). In its proposal the firm

and install the System through its officially designated systems subcontractor in the name of Francois-Charles Obethur Fiduciare of Paris, France. The firm also submitted alongside the proposal, a proposed financing agreement explaining the contract and financing terms and conditions. The offer in the agreement proposed a facility of Euros 31,890,000 (Kshs.2.67 Billion) for the System, repayable at 5% (later changed to 4%) per annum quarterly commencing three months after the first payment, upto a period of 62 months.

It is not clear how the financing firm could have prepared and submitted a detailed proposal for a project similar to the one recommended by GITS before a request to do so had been officially made to it by the Government but the indications are that the firm may have had fore-knowledge of the recommendation to enhance and expand the System.

9. Nevertheless, the Ministry accepted the proposal and in a letter dated 5 September 2003, addressed to the Permanent Secretary, Treasury the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs sought for Treasury authority for direct procurement of the ISDCS which authority was granted by Treasury in a letter dated 25 November, 2003.

Although use of direct procurement is provided for in the Public Procurement Regulations (2001) under Section 19 as read together with Section 35, and may also be approved under section 3(2) of the Regulations, it has not been explained why this mode of procurement was adopted for the ISDCS instead of the restricted tendering method which had been used for the earlier tendering process for new generation passports and passport issuing system and which had been accepted as adequately addressing the issue of security and the requirements of the DO1. As a result of direct sourcing, Government was clearly denied the advantages of competitive bidding.

10. In the same letter of 5 September 2003 the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs informed the Permanent Secretary, Treasury of the proposal by Anglo Leasing & Finance Ltd detailing amongst other aspects, the System components and the proposed financing offer of Euros 31,890,000 (Kshs.2.67 Billion) repayable at an initial interest rate of 5% (later changed to 4%) within a period of 5 years. He requested for a technical review of the proposed System.
11. Simultaneously, in a letter dated the same 5 September 2003, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs sought the Attorney General's legal comments and advice on the financing agreement submitted by Anglo Leasing & Finance Ltd. In response in a letter dated 18 September, 2003 to the Permanent Secretary, the Attorney General recommended that a diligence test be performed on the Anglo Leasing & Finance Ltd to determine the number of projects of the same nature the firm had competently supplied and completed as well as its credit rating. Records so far made available however do not show any such test as having been performed and no explanation for the omission has been provided. In addition, it has also not been indicated how the Ministry assessed the authenticity, capacity, experience and track record of the subcontractor Francois-Charles Obethur Fiduciare to determine whether the firm was capable of competently handling a project of the magnitude and complexity of ISDCS.

12. Subsequently, the Supplier's Services and Financing Credit Agreement now under contract No.KENYA/GOK/HA0305/01 for the ISDCS project was signed on 4 December, 2003 between Anglo Leasing and Finance Ltd and Government of the Republic of Kenya, the Government being represented by both Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs and Permanent Secretary, Treasury. And pursuant to article 12.3 of the Agreement, an amount of Euros 956,700 (Kshs.91,678,169.25) in respect of 3% of the credit sum, representing "arrangement", "commitment" and "administration" fees now became due and payable to the financing firm. Accordingly, this amount was paid on 6 February, 2004 through payment voucher No.5319 of the same date.
13. The handling of the ISDCS project and the eventual signing of the financing/supply contract agreement raises a number of unanswered questions and issues among them the following:-
 - (a) The DOI does not appear to have prepared specifications or Terms of Reference for the ISDCS. The basis on which evaluation of the proposal submitted by Anglo Leasing & Finance Ltd was carried out is therefore not clear. Clearly and arising from lack of specifications or Terms of Reference for the System, Government evidently stood disadvantaged in the entire project negotiation and in particular in determining whether or not the price of Kshs.2.67 billion for the project represented a fair and competitive value for money.
 - (b) From the sequence of events, it would appear that the proposal by Anglo Leasing & Finance Ltd was made with fore-knowledge of the recommendation by GITS that the System was to be enhanced and expanded. It has not however been clarified how the firm obtained the fore-knowledge.
 - (c) The request for direct procurement by the Office of the Vice-President and Ministry of Home Affairs and the approval of the same by the Treasury arose as a result of the receipt of the proposal from Anglo Leasing and Finance Ltd and was therefore meant to ensure that the contract was awarded to the firm.
 - (d) Section 5 of the External Loans and Credit Act Cap 422 stipulates inter-alia that "As soon as practicable, after a loan has been arranged or credit obtained under this Act, the Minister shall lay before the National Assembly a report on the transaction specifying the parties, the circumstances giving rise to the transaction, the amount or value of the transaction, the currency in which amount or value is expressed, the terms and conditions as to interest and repayment.....". Although a report on this credit has not so far been laid before National Assembly, it has been indicated that such a report is in the process of being prepared for presentation to the National Assembly.
 - (e) With regard to the payment of Euros 956,700 (Kshs.91,678,169.25) to the financing firm, no explanation has been provided as to what exactly was represented by "arrangement", "commitment" and "administrative" fees and whether or not such payment was included in financing package of Euros 31,890,000 (Kshs.2.67 Billion) as per the Agreement. Further, no Bank Guarantee in respect of the above advance payment was made in favour of Government in event of non-performance by the supplier.

- (f) In the absence of diligence test having been performed on the financing company as advised by the Attorney General and lack of evidence of assessment by the Ministry of the capacity, experience and track record of the subcontractor to handle a project of this magnitude, the basis for determining the ability of the two firms to perform the contract is not clear.
- (g) As also observed by the Office of the Attorney General, it is doubtful as to whether the Ministry in the absence of its own specifications on the ISDCS has the capacity to carry out an evaluation and acceptance test after completion of the project.
- (h) Although the Office of the Attorney General eventually cleared the Agreement subject to Treasury's evaluation and concurrence on the financial and technical aspects, a perusal of the Agreement reveals that it contains many clauses which appear to be disadvantageous to Government. For instance it is observed that under various clauses in Article 31 of the Agreement, the supplier would be entitled to demand the immediate payment of the total sum of the Agreement and the repayment of all sums outstanding arising from the Agreement in the event of default by the Buyer.

EXECUTIVE SUMMARY

Following the rejection of the first Public Accounts Committee report on the special audit of the Procurement of Passport Issuing Equipment, the Committee sought to obtain further evidence. The Committee noted that the investigation into this contract revealed several security related contracts of similar nature. The summary of its findings are as follows:-

Anglo Leasing Contract for Procurement of Passport Issuing Equipment

The contract for the Procurement of Passport Issuing Equipment seems fraudulent because the price of the contract was three times that obtained through restricted tender in 2002. The results of that tender were conveniently cancelled by the former Permanent Secretary Mr. S. Mwaliko, who then proceeded to introduce Anglo Leasing & Finance Ltd into the project.

Evidence adduced before the Committee by the former Principal Immigration Officer (PIO), Mr. Ole Ndiema, revealed that the scope of the contract did not change much. The manner in which the officer responsible for Immigration department (PIO), was left uninformed about the negotiations going on with Anglo Leasing & Finance Ltd on the project was of great concern to the Committee.

Evidence obtained indicate that investigations by the Kenya Anticorruption Commission (KACC) and former Permanent Secretary, Mr. J. Githongo at the time revealed that the Anglo Leasing & Finance Limited purportedly registered in UK and not registered as stated in the contract.

Anglo-Leasing type contracts

The Committee heard evidence and noted that Anglo Leasing & Finance Limited is part of an organized, systematic and fraudulent scheme designed to fleece the government through the so-called special purpose finance vehicles for purported security contracts. The salient features of these contracts are as follows:-

All contracts are supply and finance contracts, in which the contractor is purportedly financed external credit through what is called lease finance. In reality, it is the government that unwittingly upfront for these projects.

Evidence received indicates that most of the lease finance companies used in these contracts considered to be possibly non-existent.

Security was used as an excuse to procure these contracts using single sourcing, even projects merely involved the postal services and meteorological department.

The effect of using non-competitive process in procurement is over-pricing of the possible that a few individuals use different companies as fronts to perpetrate these with the support of government officials

Further investigations are likely to reveal that these companies could possibly have shareholders or owners/agents

Status of the contracts

Eighteen separate contracts of Anglo Leasing nature worth over Kshs. 5 billion government between 1997 and 2003. Some of these were complete others were cancelled by the Government.

Political
Section
charge
direction
1 Definition:
payment, sub
goods supplied
servicing the c

A total of Kshs.18 billion was paid on these contracts as at May 2005. Out of these, Kshs1.049 billion was refunded by these companies in unusual circumstances on account of three projects: Infotalent Ltd, and Anglo Leasing & Finance Limited.

Twelve of the projects are still ongoing as the relevant contracts were not legally cancelled. However, no payments have been made on the projects since May 2005. Consequently, the projects have stalled. Total amounts due on these ongoing projects as at February 2006 was Kshs15 billion, including principal, interest and penalties.

Key government officials have misled this Committee into believing that all payments relating to these contracts have been suspended since August 2004. The Committee noted with concern that payments amounting to US \$4.75 million were made to Universal Satspace between that date and May 2005.

When were these contracts initiated?

Pressed for cash following the suspension of donor support amid growing insecurity, the Cabinet in 2001 authorised the use of lease finance and suppliers credit to pay for priority security related projects. It is important to note that Cabinet approved a specific policy (Lease Finance or Supplies Credit) to finance such projects but not specific contracts as alleged by some of the officials who gave evidence before this Committee.

Out of the 18 projects listed, two were contracted in 1997 and 1998 before the policy was adopted by the Cabinet. Ten of the projects were initiated, negotiated, contracted and signed between February 2001 and December, 2002, the remaining eight projects were negotiated, contracted and signed in 2003.

Who are the key persons associated with these company / companies?

The flowchart at the end of this report clearly depicts possible inter-relatedness of Anglo Leasing & Finance Limited and the companies associated with top priority security related projects covered in this report.

The key persons who are either agents, possible owners or possible directors of these companies are as follows:

- A) Mr Deepak Kamani
- B) Mr Anura Perera
- C) Mr Amin juma
- D) Meryn Kettering
- E) Mrs Ludmilla Katuschenko

Legal culpability

Section 22(3) of the Constitution states "*where the Vice President or any other Minister has been entrusted with the responsibility for a department of government, he shall exercise general management and control over that department and, subject to that direction and control, every*

Lease Finance or Supplies Credit is a concept based on prior supply of goods and/or services for later payment of a commitment fee. Repayment of the debt would only commence subject to receipt of the goods. The Idea/concept was noble but was greatly abused. As noted in most of these contracts, payments for debts began even before supply of the goods or commencement of the projects.

department of government shall be under the supervision of a permanent secretary". The import of this is that they are constitutionally responsible for actions of those under their control. The Committee is of the view that the Vice President and the Ministers involved did not exercise due care and diligence in undertaking those responsibilities.

The Committee further heard evidence that in exercising direction and control in their ministries, the political leaders of these ministries were in fact involved in policy implementation. For instance, Hon. Mwiraria, MP approved the Passport Issuing project contract via a memo dated 2nd October 2003; H E Hon. Moody Awori, MP approved the same contract through a memo to his Permanent Secretary dated 8 September 2003; Both however claimed they were unaware of the project, yet evidence obtained and detailed in Part 2 of this report indicate they were well briefed.

The Committee also heard evidence that as a practice in public service, the Permanent Secretaries regularly briefed their Ministers, and hence they were adequately informed as regards these contracts. Evidence in these regard was given by Messrs Magari, Mwaliko and Dave Mwangi among others. All the **three** were former permanent secretaries.

The Committee obtained sufficient evidence that key ministers in the government at the time attempted cover-up of these scandals, and also hindered investigations into the same. These include Hon. Mwiraria, MP and Hon. Murungi, MP and such evidence is available on tape.

The Ministry of Finance

Evidence provided before the Committee reveal that the Ministry abdicated its Treasury role to other ministries in as far as securing external loans and credit is concerned. Although the Ministry is charged with the overall responsibility of financial management in the public sector, its lack of detecting anomalies in the finance lease contracts that led to potential loss of billions of taxpayers' money leaves a lot to be desired. The Ministry's inability in carrying out due diligence on the lease finance contracts and approval of procurement of the so-called security related contracts through single sourcing is of deep concern.

The Committee noted with grave concern that there was a disconnect between Treasury's Debt Management unit and the procuring ministry. The unit processed payments merely on the basis of a repayment schedule without attempting to satisfy itself from the procuring ministry so as to ensure that the supplier was implementing the project and so as to give justification of payments in accordance with government financial regulations.

It also failed to advise the government on the grossly unfavourable terms of the lease finances for example the contract terms for payment to suppliers were not tied to performance of the contract.

The Committee noted that the ministry failed to report to Parliament on the terms of these external credit as required by law, and allowed off-budget financing of these security contracts. The Central Bank also was never involved in consultations over the external loans as required by law. Section 31 of the Central Bank Act, Cap 491 of the Laws of Kenya states that "***the bank shall administer any payment agreements entered into by Kenya and the bank shall be consulted by the government in negotiating any payment agreements***".

The Committee noted that despite the fact that the Treasury had powers to withdraw appointment of accounting officers for flouting the law, those powers have possibly never been exercised nor did it (Treasury) refuse to approve finance contracts it disapproves of.

The Permanent Secretary, Treasury claimed having stopped payments to eighteen (18) contracts, without showing written proof, implying that lack of proof may be lack of stoppage.

In spite of the concerns over these projects, and contrary to what the Committee was told by the Hon Mwiraria, MP no formal instructions were made by the Ministry to suspend payments on the contracts.

The Committee noted with concern that the Permanent Secretary, Ministry of Finance received audit reports relating to the above contracts in October 2005 but has not responded to date, consequently delaying the tabling of the same in Parliament.

The Attorney General

In accordance with Government Financial Regulations and Procedures, Chapter 9 on *Borrowing by Government*, states ... ***"the office of the Attorney General shall be involved at all times during negotiations for loans, drafting or execution of ensuing legal instruments"***

The Committee noted with grave concern that the Attorney General was not involved in negotiations for the contracts as required by the Financial Regulations. Neither did he make any efforts to demand his involvement as the chief government legal advisor. Section 26(2) of the Constitution states that ***"the Attorney General shall be the principal legal advisor to the Government of Kenya."***

Section 26(4) of the Constitution states that ***"the Attorney-General may require the Commissioner of Police to investigate any matter which in the Attorney-General's opinion, relates to any offence or alleged offence, suspected offence and the Commissioner shall comply with that requirement and shall report to the Attorney General upon the investigation"***.

The Committee further noted that the Attorney General merely gives legal opinion to satisfy those contracting with the government in accordance with international norms. He does not however seem to scrutinize the terms of the contract in order to protect the government from possible abuse.

The Committee learnt that his office does not even have the capacity to undertake a statutory verification of those entities transacting with the government, and no effort does seem forthcoming from government to save the situation.

PART 1

SUMMARY OF JOHN GITHONGO'S EVIDENCE

His Appointment, Responsibilities and Tenure

Mr. John Githongo testified that on or about 7th January 2003 he was asked by His Excellency the President to accept an appointment as Permanent Secretary for Governance and Ethics in his new administration. Previously Mr. Githongo worked as the Executive Director of Transparency International and also served on the world-wide board of the organization, based in Berlin, Germany. Mr. Githongo's main function was to serve as an advisor to the President on matters of integrity. He would be answerable directly to the President, a fact which the President emphasized during the initial discussions preceding the appointment. As a result, his office would be within the State House Building, within easy access to the President. Mr. Githongo informed the Committee that within a week, he had wound up his work at Transparency International and started his work at State House.

Arising from his duties as an adviser to the President, he took on a number of specific responsibilities, including as secretary to the Cabinet Committee Against Corruption, whose members included the Minister of Justice and Constitutional Affairs, the Minister of State in the Office of the President, in charge of Internal Security, the Minister for Roads and Public Works, the Minister for Finance, the Minister for Local Government and the Minister for Lands. He also served as Chairman of the governance, justice, law and order sector within the GJLOS programme and also sat on the Commission of Inquiry on Illegal and Irregular Allocation of Land, which was a project of the Cabinet Committee against Corruption. Other projects of this Committee were the Commission of Inquiry on the Goldenberg Affair, the Pending Bills Closing Committee, the project with Kroll and Associates to trace money which is the proceeds of corruption held by Kenyans abroad and the Public Complaints Unit, which was at an advanced stage of creation by the time he left the service of Government. His office also sat on the National Anti-Corruption Campaign and also on the Task Force on Truth and Reconciliation created by the Ministry of Justice and Constitutional Affairs. Further, his office worked with the Committee on the Reform of the Judiciary created by the Chief Justice in March 2003.

Mr. Githongo informed the Committee that during his tenure as Permanent Secretary, he had unimpeded access to the President and that he jealously guarded the arrangements that enabled him to report directly to the President. The reports to the President were in two forms, firstly written memorandums; and secondly, oral briefings. Towards the end, there were complications in these reporting arrangements but by and large, he always succeeded in reporting directly.

The Anglo Leasing and Related Scandals

Mr. John Githongo informed the Committee that his office received information on 3rd March 2004 that a questionable company, called Anglo Leasing and Finance Limited, had been awarded a contract at the Immigration Department worth Kshs.2.7 billion. The company had even been paid Kshs.90 million as a down payment equal to 3% of the value of the contract. Mr. Githongo said he remembered the date, and all the other dates forming part of his testimony because, going back to his high school days, he has always maintained a detailed diary in which he records significant daily events.

The information about the award of a large contract to a dubious company was greatly troubling to him because, he thought, if the public got to know about it, it would cause great difficulty to the corruption credentials of the new administration. He made further inquiries which disclosed that the company was associated with Mr. Deepak Kamani who, according to Mr. Githongo, had a history of entering into contracts with the government that were the subject of scandal. Mr. Githongo gave as an example, the contract in which the government bought motor vehicles for the police in the 1980s of the make Mahindra, which proved singularly unsuitable for use by the police.

Mr. Githongo informed the Committee that on 10th March 2004, he managed to discover that Mr. Deepak Kamani was behind the contract between Anglo Leasing and Finance Limited and the Ministry of Home Affairs. He immediately telephoned the Vice-President, who was also the Minister for Home Affairs, to inform him of this discovery. He provided with the Vice-President the information that he had just received that his country had entered into a contract with a company whose existence was doubtful and whose directors had close associations. He advised that the Ministry should avoid the contract with people who in the past had caused great concern to the Government.

According to Mr. Githongo, the Vice-President promised that he would investigate the matter.

After receiving Mr. Githongo's evidence, the Committee, on return to Kenya, met with the Vice-President Hon. Moody Awori, MP on 22nd February 2006. When asked to comment on Mr. Githongo's assertion, the Vice-President accepted that Mr. Githongo had had a telephone conversation with him in which he expressed concerns over the Anglo Leasing contract. However, the Vice-President claimed that the conversation was much later than on 10th March 2004, and even later than 21st March 2004, the date on which he (Hon. Awori, MP) issued a ministerial statement in the National Assembly on the scandal.

In addition to talking to the Vice-president, Mr. Githongo claimed that he also briefed the President on 4th April, 2004.

He further testified that on 2nd May 2004, the President gave him firm instructions to look into the Anglo Leasing affair with a view to ensuring that Kshs. 91 million, said to have paid to Anglo Leasing under the contract, was recovered. Thereafter, Mr. Githongo testified that, in the company of Minister for Justice and Constitutional Affairs, Hon. Kiraitu Murungi, MP and the Minister of Finance, Hon. David Mwiraria, MP he travelled to London to the offices of Kroll and Associates, who were working for the government and that while at the offices of Kroll, the three of them informally established that Anglo Leasing, which claimed to be registered in the United Kingdom, was indeed not registered there.

Mr. Githongo also further claimed that on the 4th May 2004, he was invited for lunch by the Vice-President, Mr. Awori, MP in his house. This invitation was sent through Hon. Murungi, MP. Also invited to lunch were the Minister for Finance, Hon. David Mwiraria, MP, the Minister for Internal Security, Hon. Dr. Murungaru, MP and Hon. Murungi, MP himself. Hon. Mwiraria, MP, however did not come for lunch. The three made inquiries with Mr. Githongo on the need for investigations given that the Vice President had already given a ministerial statement on the Anglo Leasing matter. He said he found the inquiries a disconcerting, as he thought the three were a little nervous about the goings-on regarding Anglo Leasing.

When interviewed by the Committee, the Vice-President admitted that a lunch meeting took place between him, Hon. Murungi, MP, Hon. Murungaru, MP and Mr. Githongo in his house. However, he could not remember when this happened and what was discussed at the meeting. He explained that his residence habitually hosted meetings, before NARC came into power and after, over meals with government officials and Members of Parliament that these were so many that he could not remember the particular meeting that Mr. Githongo was referring to. Hon. Moody Awori, MP however, admitted that during this lunch meeting he received a briefing from Mr. Githongo on Anglo Leasing as he was baffled as to why there was still so much public debate even after his ministerial statement, which was supposed to have re-assured the public. For his part, Hon. Murungaru, MP said that he had so many meals over meetings at Hon. Awori's place that he could not remember the specific meeting referred to by Mr. Githongo.

Mr. Githongo informed the Committee that the investigations by the KACC were geared towards identifying who was behind the Anglo Leasing & contract, in view of the claim that the company, which had already been paid a substantial amount of money, was possibly a phantom. According to Mr. Githongo, on 10th March, 2004, the key suspects in the attempted fraud had been identified as a result of an investigation by the KACC. During the course of investigations, it was discovered that a further Kshs. 91 million was about to be paid to Anglo Leasing and Finance Ltd, which he stopped. Attempts to identify the parties involved in the transaction from the Permanent Secretary to the Treasury Mr. Joseph Mwangi, were not fruitful.

Mr. Githongo said that on 10th May 2004, he briefed the President on the progress in the Anglo Leasing investigations and that on the same day Hon. Murungi, MP informed him that these investigations were causing some disquiet with the President's personal secretary Mr. Alfred Getonga and Hon. Murungaru, MP.

On 13th May 2004, the Controller and Audit General completed his preliminary investigations on the Anglo Leasing matter and the following day, Mr. Githongo testified that he received information that Anglo Leasing was only one of several phantom companies that were involved in questionable contracts with the government. On that day, he advised the President that another project by the same company for the construction of a forensic laboratory was taking place at the Police Department. In the evening on the same day, Mr. Githongo said he was called by the Head of Civil Service and Secretary to the Cabinet, Ambassador Francis Muthaura, who informed him that the Euro 956700 paid to Anglo Leasing & Finance Limited had been refunded to the government. Eventually, on 17th May 2004, he got documentary evidence of the refund. On the same day, Mr. Githongo said he was visited by Hon. Murungi, MP in his office, who expressed his concern about the investigations that were going on regarding Anglo Leasing. Hon. Murungi, MP wondered whether Mr. Githongo appreciated the political costs of these investigations. Hon. Mwiraria, MP also dropped in on Mr. Githongo and informed him that Mr. Jimmy Wanjigi, a businessman concerned about the Anglo Leasing investigations, had sworn that he would kill Mr. Githongo.

Again, on 17th May, 2004 Mr. Magari and the then Permanent Secretary in the Ministry of Home Affairs, Mr. Silvester Mwaliko, were relieved of their duties as a result of the Anglo Leasing investigations. The head of the public service Ambassador Muthaura informed the Committee that it was his action that led to a decision to relieve the two of their duties.

On 17th May, 2004 according to Mr. Githongo, Hon. Murungi, MP informed him that "they" were planning to attack him through his father. The conversation between the two had established "they" to mean Hon. Murungaru, MP and Mr. Getonga. Mr. Githongo said he was getting increasingly concerned about the discomfort that the Anglo Leasing inquires were causing to a small group of politicians and businessmen.

Mr. Githongo then related an incident, which, he said, took place on 20th May, 2004 in the office of Hon. Murungi, MP. Hon. Murungi, MP had invited Mr. Githongo for a meeting on that day in his office. When he entered, Hon. Murungi, MP showed him a case file from the office of a Nairobi advocate, Mr. A. H. Malik, which related to Mr. Githongo's father. The senior Githongo had obtained a loan from Mr. Malik more than 10 years previously, which he had used to purchase and develop property within Nairobi. The property was currently his home. Later, the senior Mr. Githongo had defaulted in his repayment of the loan from Mr. Malik who had obtained a court judgment on the loan against the senior Mr. Githongo. Hon. Murungi, MP then told Mr. John Githongo that the loan had not been advanced by Mr. Malik as Mr. Githongo believed, but by a Mr. Anura Perera, a businessman.

Further evidence on Mr. Perera is covered later on in this report. Hon. Murungi, MP informed Mr. Githongo that Mr. Perera had called him about the loan matter and was willing to discuss an amicable settlement. He was proposing that in return for Mr. Githongo going easy on the inquiries on Hon. Murungaru, MP and Mr. Getonga which were holding up money owed to him by the government, Mr. Perera would be prepared to go easy on the loan to Mr. Githongo senior.

To corroborate this, Mr. Githongo produced to the Committee a tape recording of the conversation between himself and Hon. Murungi, MP over this matter. He explained that he had decided to make a recording of this conversation with Hon. Murungi, MP because he had realized that nobody would

ever believe the serious allegations he may have to make against such a senior member of the government.

The Committee played and listened to the tape recording. The voices of Hon. Murungi, MP and Mr. Githongo were clearly identifiable on the tape.

Mr. Githongo informed the Committee that the decision to record the conversation between himself and senior members of the government was a difficult choice he had to make when he was in the government. He realized that he would not be believed unless there was some way of corroborating the serious claims he had against senior members of the administration. There being no paper trail, he realized that it would ultimately come to his word against theirs. He realized that much as the administration was chasing old corruption, some members were, at the same time, committing acts of corruption on their own and that the public would find it difficult to believe this. In his view, even the President, when briefed that members of his administration were involved in fresh corruption, did not appear to believe it. Mr. Githongo informed the Committee that he sometimes carried dictaphones to meetings, especially if he thought that important matters would be discussed, and that the President was aware of this practice. When he realised that he would have to leave government, given the way things were going, he took the recording seriously.

The Committee listened to what Mr. Githongo claimed was the conversation between him and Hon. Murungi, MP on 12th February 2006. Members of the Committee are all familiar with the voice of Hon. Murungi, MP and, having been listening to Mr. Githongo, had also become familiar with his voice. The Committee was able to identify Mr. Githongo's voice and that of Hon. Murungi, MP on the recording. Hon. Murungi, MP tells Mr. Githongo on the tape that "Perera is the one who gave the loan. He was the undisclosed principle". He adds that the senior Mr. Githongo was aware of this through Mr. Malik. In the conversation that follows, Hon. Murungi, MP says that Mr. Perera has been involved in the security matters for some time and that he had supported "our chief". In answer to Mr. Githongo's question, Hon. Murungi, MP confirms that Mr. Perera supported "our chief" even when he was in hospital, in 1997 and 2002.

Hon. Murungi, MP is then recorded to say that he had been shown documents by Mr. Malik, which showed that the senior Mr. Githongo had borrowed money from Mr. Malik to develop a property in Kitisuru and that the loan was for Kshs. 5 million. He was also shown a copy of the judgment for Kshs. 50 million against Mr. Githongo. Hon. Murungi, MP then says that Mr. Perera is very close to Alfred and that the general message is that Mr. Githongo should "go a bit slow" in the enquires on the passport case and that, in return, they can go slow on the senior Mr. Githongo regarding his debt to Mr. Malik.

Mr. Githongo is recorded to reject this proposal and to tell Hon. Murungi, MP that the family would rather seek competent legal advice an attempt to fight off the loan claims by Mr. Malik.

The Committee carefully considered the recording in the audio tapes and the accompanying explanation by Mr. Githongo. Hon. Murungi, MP, whom the tapes mention adversely, was sent a notice by the Committee to appear before it and provide a response to the claims by Mr. Githongo.

Back to Mr. Githongo's evidence, he testified that on 25th May 2004. He was called by Ambassador Muthaura who complained about the legal authority of the KACC to conduct anti-corruption investigations. The Head of the Public Service further complained that the KACC had too much power. Mr. Gideon Mutua, then the Acting Director of the KACC, had called Mr. Githongo the previous day to inform him that Ambassador Muthaura had made a similar complaint to Mr. Mutua in

a telephone conversation. Ambassador Muthaura also informed Mr. Githongo of his discovery that the Office of the President had entered into a contract for US\$55 million with Anglo Leasing to provide a forensic laboratory.

Later on the same day, Mr. Githongo testified that he met with Mr. Dave Mwangi, then the Permanent Secretary for Internal Security, at a lunch briefing for the diplomatic community. Mr. Mwangi, adapting an advisory tone, informed Mr. Githongo that the Immigration investigation was causing considerable disquiet within the government and that this threatened the stability of the government. Mr. Mwangi added that his minister, Hon. Dr. Murungaru, MP, and others he did not name, were concerned whether Mr. Githongo realized the political implications of his investigations. At this meeting Mr. Githongo asked Mr. Mwangi to provide him with a copy of the forensic laboratory contract which, Mr. Mwangi informed him, had been signed in 2001 by his predecessor Mr. Zakayo Cheruiyot, and the Permanent Secretary to the Treasury Mr. Mwagazi Mwachozi.

On 27th May 2004, Mr. Githongo again met Mr. Dave Mwangi who informed him that Ambassador Francis Muthaura and himself had decided that they would deal with the Anglo Leasing matter "administratively", because even though the contract had been signed in 2001, no actual work had been done. However, Mr. Githongo added that despite no work having been done, Anglo Leasing had been paid about US \$ 5 million. Mr. Githongo testified that the resurrection of this project had, according to information he received from various sources, been engineered by Mr. Deepak Kamani, Mr. Jimmy Wanjigi, Hon. Dr. Murungaru, MP, Mr. Mwangi, Mr. Alfred Getonga, Mr. Joseph Oyula the then Financial Secretary, among others.

When asked to comment on those of Mr. Githongo's allegations that touched on his conduct, Mr. Dave Mwangi confirmed that he regularly discussed with Mr. Githongo the issues touching on Anglo Leasing, which affected both their departments. He provided Mr. Githongo with a brief on Anglo Leasing, which he had asked for, and "it was agreed" to sugarcoat them, Mr. Mwangi further testified that he never knew the persons behind Anglo Leasing as he was never briefed when he took over the contracts in his office that had been signed with Anglo Leasing and Finance Limited. All he knows about Anglo Leasing realities he has learnt from the newspapers.

On the same day, Mr. Githongo testified that he briefed the President. Further, he briefed the Head of the Public Service on the same day who assured him that he had briefed the President fully on the forensic laboratory project. However when, two days later, Mr. Githongo met the President, the President informed him that contrary to his claims, he had received no briefing from Mr. Muthaura. The President then asked Mr. Githongo for a copy of the forensic laboratories contract which Mr. Githongo furnished.

Two days later on 31st May 2004, Mr. Githongo met Ambassador Muthaura again in his office. At that meeting Ambassador Muthaura informed him that he had fully briefed the President on the forensic laboratories matter and it had been agreed that all payment be stopped and, secondly, that the identity of Anglo Leasing be established.

Mr. Githongo informed the Committee that on 2nd June 2004, he met Hon. Mwiraria, MP and Hon. Murungi, MP in the former's office. Hon. Murungi, MP expressed surprise at the realization as to how high up the Anglo Leasing matter had reached in the government, and further how intricately involved members of their own administration were in the Anglo Leasing matters. At this meeting he informed Mr. Githongo that Mr. Alfred Getonga was concerned about his involvement in the Anglo Leasing investigations even after the monies had been repaid. Hon. Murungi, MP also said he had now realized that Anglo Leasing is "us".

On 3rd June 2003, Mr. Githongo said he wrote to Amb. Muthaura to communicate the contents of a letter he had received that day from the British High Commission who confirmed that Anglo Leasing was not a company registered in the United Kingdom as shown in contract documents. Amb. Muthaura called him that evening to say that the contents of the letter had both shocked and frightened him. The following day Mr. Githongo says he wrote to the Governor of the Central Bank asking him to stop all further payments to the entity called Anglo Leasing & Finance Company pending the completion of investigations.

The Arrest of Mr. Fred Ojiambo (Advocate)

Mr. Githongo testified that Mr. Dave Mwangi had called him at night on 11th June 2004 to complain that a Nairobi, advocate, Mr. Fred Ojiambo, had been arrested. Hon. Murungi, MP informed him that if Mr. Ojiambo spent the night in the police cell, there would be serious problems for the government. Mr. Mwangi admitted having called Mr. Githongo to find out about Mr. Ojiambo's arrest but explained that he did so in order to prepare himself for any queries that his superiors might raise, since he was in charge of internal security. Mr. Githongo testified that the decision to arrest Mr. Ojiambo had been taken by the KACC because of his refusal to honour a summons to attend before them. According to Mr. Mwangi it is Mr. Githongo who made the decision to arrest Mr. Ojiambo. The KACC wanted to speak to Mr. Ojiambo because on 12th May 2004 and again on 25th May 2004 he had put advertisements in the newspapers on behalf of Anglo Leasing, whose identity was at that time a mystery. The same day Hon. Murungi, MP called Mr. Githongo, and sounding agitated, the minister told Mr. Githongo that Hon. Dr. Murungaru, MP had called him from overseas to express concern over the arrest of Mr. Ojiambo. The minister then said he would call on him later that day. Just then, according to Mr. Githongo, Hon. Mwiraria, MP walked in and announced that Anglo Leasing had paid back all the money they had been paid in the forensic laboratories contract since 2001. Hon. Mwiraria, MP then said that he had spoken to the President and he felt that it was the President's view that they should now "go easy" on the matter since the money had been returned. Hon. Murungi, MP then walked in and said the same thing. Hon. Mwiraria, MP, in his testimony, admitted that he was not interested in following up on Anglo Leasing & Finance Limited beyond the recovery of the money.

According to Mr. Githongo, Mr. Mwangi, Hon. Mwiraria, MP and Hon. Murungi, MP, had all expressed concern over the arrest of Mr. Ojiambo ostensibly because he might implicate senior people in the government. Mr. Mwangi, however, explained that he was concerned about Mr. Ojiambo's arrest only because Mr. Ojiambo is his friend.

On 12th June 2004, Mr. Githongo while briefing the President on the ongoing investigations into the Anglo Leasing scandal, was asked by the President who he thought was behind Anglo Leasing & Finance Limited. He answered that he was convinced that Hon. Murungaru, MP, Hon. Mwiraria, MP, Mr. Magari, Mr. Oyula, Mr. Mwaliko and possibly Mr. Mwangi knew who was behind Anglo Leasing.

Mr. Githongo informed the Committee that on 13th June 2004, the Local Newspaper had as its headline, a story to the effect that Hon. Mwiraria, MP had included payments to Anglo Leasing in the budget for the following year which he had read on 10th June 2004. Before publication of the story, Mr. Githongo had been asked about it by the newspaper, and not knowing that it was the case at the time, had denied that Anglo Leasing Projects had been included in the budget. When, after the publication of the story, Mr. Githongo confirmed the inclusion of a proposed payment of Kshs. 222,530,000 in the budget for Anglo Leasing, he called Hon. Murungi, MP about it.

On 14th June, 2004 Mr. Githongo went to see Hon. Mwiraria, MP in his office. He found the minister preparing a statement, which he said he intended to read in the Assembly the following day on the two Anglo Leasing contracts. Mr. Githongo advised that the statement should await completion of the investigations. He further pointed out that there were other questionable supply of credit payments that the new administration had entered into and which may have been included in the budget. He gave, as an example, Silverson Forensic, which was part of the budget. Hon. Mwiraria then told Mr. Githongo that Kshs. 400 million repaid by Mr. Kamani had been paid only after he had asked Mr. Oyula to pick the telephone and call Mr. Deepak Kamani. It was after this call that the money was returned. Hon. Mwiraria confirmed this in his testimony before he Committee. However, Mr. Oyula denied it and said that he never called Anglo Leasing & Finance Limited as alleged by the former minister. All he did was to write a letter to the company using an address that was on the file, which he then sent by fascimile.

Mr. Githongo informed the Committee that on 16th June 2004, Mrs. Jacinta Mwatela, a senior official of the Central Bank of Kenya, sent by the Governor of the Bank delivered to him a letter which confirmed that the Bank had received US 4,744,444.44 on the 7th June 2004 from Schroder and Co. Bank AG of Zurich on behalf of their client Anglo Leasing & Finance Limited. These monies had been paid to Anglo Leasing as follows: -

Payment Advice Number	Amount	Date paid
073761	\$ 9,00,000.00	23-10-2001
093736	\$ 1,922,222.22	22-12-2003
093864	\$ 1,922,222.22	04-03-2004
Total	\$ 4,744,444.44	

According to Mr. Githongo. Hon. Mwiraria, MP had, on previous occasions, promised to give Mr. Githongo a copy of the letter that Mrs. Mwatela finally brought but had never done so. One occasion, according to Mr. Githongo, Hon. Mwiraria, MP had personally brought a copy of the letter to him at State House and left it with his secretary (as Mr. Githongo was absent) only to return after a few minutes to retrieve the letter. According to Mr. Githongo this letter was useful in advancing the ongoing investigation and the reluctance by Hon. Mwiraria, MP to release it was evidence of reluctance to facilitate the investigations.

On 16th June 2004, Mr. Githongo learnt that a further Euro 5.2 million had been refunded. He later saw official documents from the Central Bank, which confirmed a refund of this amount by an entity, called Infotalent.

His concern was that Anglo Leasing & Finance Limited had refunded USD 4.7 million on the forensic laboratories project, Euro 956,700 in the immigration security project and Infotalent had brought back Euro 5,287,164 on the E-cop security project, all these funds totaling almost Kshs. 1 billion. Yet nobody in the government seemed to know who was making these refunds.

Mr. Githongo informed the Committee that around this time, he had a disagreement with Mr. Muthaura, who accused him of leaking information to the media and that thereafter he become aware that there were plans to remove him from State House in a reshuffle of the government, and to have him report to the Minister for Justice and Constitutional Affairs. A statement issued on 23rd June 2004 by Ambassador Muthaura on the progress in the government in addressing corruption further

isolated him because, according to him, the statement was untrue and appeared like an attempt at covering up on the investigation.

Thereafter, on 28th June 2004, in a meeting at State House, involving Ambassador Muthaura, Hon. Murungaru, MP, Hon. Mwiraria, MP and Hon. Murungi, MP, the State House Controller Mr. Hyslop Ipu, Mr. Githongo, the role of Dr. Melvyn Kettering, who was the subject of wide coverage in the daily newspapers, was discussed. According to Mr. Githongo, the President had previously wanted to know who Dr. Kettering was since there was evidence of his involvement in several security contracts. On a previous occasion, Mr. Mwangi and Ambassador Muthaura had said they knew Dr. Kettering. In the light of the media revelations, which had considerably upset the President, they then claimed they did not know him.

On 28th June 2004, Mr. Philip Murgor, the then Director of Public Prosecutions, called Mr. Githongo to ask him about the progress in the dispatch of letters rogatory (these are legal documents that enable investigations to be undertaken outside the country) which had been sent to several countries where Anglo Leasing connections were thought to exist. These letters had been sent out by the Attorney General seeking to find out banking information on Anglo Leasing & Finance Limited in countries where cheques to the Central Bank had been sent from. Mr. Murgor informed Mr. Githongo that Mr. Alfred Getonga had called him to express disquiet about the dispatch of the letters rogatory and to ask that they be withdrawn.

On 21st February 2006 the Committee interviewed Mr. Murgor. He confirmed that on a date he could not remember in June 2004, he had received a call from Mr. Getonga who asked whether the letters rogatory had been dispatched. When Mr. Murgor confirmed that the letters had been dispatched, Mr. Getonga then asked if it was possible for them to be retrieved. Mr. Murgor said he considered this to be a most unusual request and informed Mr. Getonga that it would not be possible to recall the letters.

Mr. Githongo discussed with the Committee a reshuffle of the government that took place on 30th June 2004, as a result of which he was transferred temporarily from State House to the Ministry of Justice & Constitutional Affairs. When he arrived in the Ministry, Hon. Murungi, MP who had then become his boss, explained that he had done his best to save Mr. Githongo but Hon. Murungaru, MP, Mr. Getonga, Hon. Mwiraria, MP and Ambassador Muthaura had convinced the President to transfer Mr. Githongo, the transfer being regarded as a demotion by all of them.

When on 2nd July 2004 the transfer was reversed by the President he appeared unaware that he had transferred Mr. Githongo in the first place. Mr. Stanley Murage, who was then an official without a designated post at State House, told Mr. Githongo that the transfer had not been sanctioned by the President. Later, Hon. Murungi, MP blamed Ambassador Muthaura and Hon. Murungaru, MP for the botched transfer of Mr. Githongo.

Mr. Githongo claimed that after this he came under some pressure from Hon. Murungi, MP to issue a statement to the effect that "all was ok" as regards the Anglo Leasing & Finance Limited but he refused to issue the statement.

At the beginning of August, 2004, Mr. Dave Mwangi gave Mr. Githongo a document titled 'Summary: Security Contracts under Special Purpose Financing Vehicles in the Office of the President'. The document appeared to have been the subject of the meeting of 28th June, 2004 between several senior officials and the President. Whereas Mr. Githongo had, for months been trying to establish the connection between Mr. Deepak Kamani, Dr. M. Kettering and Anura Perera in the security contracts, without success, this document openly admitted their involvement in these projects.

Mr. Mwangi in his evidence to the Committee denied that he had given this document to Mr. Githongo. He explained that Mr. Githongo had many sources which would brief him on various aspects of his work and that he must have genuinely been mixed up as to who gave him the document.

On 9th August 2004, Mr. Githongo said he met Mr. Mwachofi (a former Permanent Secretary to the Treasury) in London, and asked him to shed some light on how the questionable contracts, which commenced during his watch at Treasury, were signed. Mr. Mwachofi informed him that the International Monetary Fund had hired the services of the British Merchant Bankers, Lazard Brothers to scrutinize these contract and that the bankers "could not find the creditors/banks/suppliers – some of them did not exist". According to Mr. Mwachofi this caused them to doubt the integrity of the forensic laboratories contract.

Mr. Githongo informed the committee that towards the end of August, 2004 Mr. Dave Mwangi called to inform him that another company had paid back money paid to it in 2001 by cheque. The cheque, when he saw it, was drawn on "Silverson Forensic" and was for US\$10,000 dated 01-02-2004, drawn on a bank in Liechtenstein Landbank AG in favour of the Permanent Secretary Office of the President of the Government of Kenya. This brought the amount of money paid back to Kshs. 1 billion. Mr. Mwangi however, denied the account by Mr. Githongo as to how the cheque from Silverson arrived. He claimed that the cheque could only have been sent directly to the Treasury and was certainly not sent to him as Mr. Githongo claimed.

Still in August, 2004 Anura Patel contacted Mr. Githongo requesting for a meeting in London. Mr. Githongo asked him to put his request in writing, which he did, and then Mr. Githongo declined to attend the meeting.

On 1st September, 2004 Mr. Githongo and Hon. Murungi, MP had a long meeting during which Hon. Murungi, MP admitted that Anglo Leasing & Finance Limited and such other deals were essentially part of the "resource mobilization" carried out on behalf of their political party and that Hon. Murungaru, MP and Mr. Getonga were in charge of the resource mobilization. He indicated that the President was aware of their activities.

When, however, Hon. Murungaru, MP appeared before the committee on 2nd February 2006 the question was put to him whether he was the Chairman of or had any role in, the resource mobilization efforts of the party. Dr. Murungaru, MP strenuously denied any knowledge of, or involvement in, resource mobilization as alleged by Mr. Githongo.

Mr. Githongo said that he then briefed the President and advised that in view of all these mysterious refunds of money, there would be a special audit of the security contract, by the Controller and Audit General. Mr. Evan Mwai, the Controller and Auditor General commenced an audit of the contracts about October 2004, and where he could, Mr. Githongo encouraged him to go on. In November, Mr. Mwai, looking nervous, visited Mr. Githongo in his office and pointed out that he was surprised by the discoveries he was making when auditing the security contracts. He added that the response from Mr. Dave Mwangi to audit queries had frightened him and he then feared for his safety.

Thereafter, Mr. Githongo said he inquired into another Anglo Leasing – type contract, the contract for the building of a navy ship. His letter to the Permanent Secretary in charge of Defence led to a meeting between him, the then Permanent Secretary Mr. Sammy Kyungu and Ambassador Muthaura and Mr. Mwangi. Ambassador Muthaura said he would send to Mr. Githongo a report on the procurement of the navy ship, which he said was a highly sensitive, matter.

Mr. Githongo testified that he had established that the contract for the navy ship was linked to Mr. Anura Perera, who in late December, 2004 sent General Mohammad Mohammed, the retired Chief of General staff, to Mr. Githongo asking for an appointment so that he (Anura Perera) would explain by himself. His primary complaint, according to General Mohammad, was that the efforts of Mr. Githongo were holding up his payments at the Treasury. Thereafter, the Permanent Secretary to the Treasury Mr. Joseph Kinyua, informed Mr. Githongo that he was under tremendous pressure from his minister and Ambassador Muthaura to pay some of the contracts under audit. This pressure was also being experienced by the Controller and Auditor General Mr. Mwai who was expected to complete his audit as quickly as possible so that the payments could be made. Together, they tried to strengthen each other to withstand the pressure in an effort to expedite matters. Hon. Murungi, MP suggested a meeting between himself, Hon. Mwiraria, MP and Mr. Githongo to find a way of paying these contracts transparently. He explained that party elections were around the corner and that the financing of the elections was going to be done out of the payment of the contracts.

On this, the Governor of the Central Bank informed the Committee that as soon as the Anglo Leasing matter was raised in the National Assembly, the bank which had outstanding Payment Advise notes in respect of the questioned security contracts, wrote to the Permanent Secretary, Treasury, Mr. Joseph Magari on 13th May, 2004 seeking his clearance to honour the advices. The Governor explained that the Bank was under no obligation to make the inquiry since the Pay Advices, on their face, were valid and payable. But it considered that in view of the parliamentary query, prudence required such clearance to be sought. The following day, the Governor of Central Bank wrote an identical letter to Mr. Oyula, as Mr. Magari was relieved of his duty on the same day. Mr. Oyula replied on 21st May 2004 giving the Bank a list, out of the questioned contracts, of what the Bank should honour. The rest were not honored and according to the governor, have remained unpaid to date.

Later, in the company of Hon. Murungaru, MP, Hon. Murungi, MP again suggested that the payments must be made at once again, they admitted that all along these contracts were for purpose of financing politics. Mr. Githongo said he was greatly surprised by this complete opening up by Hon. Murungi, MP and Hon. Murungaru, MP to him, who showed no concern that he, may report them to the President. He then realized that this would be the final act and that having bared their souls to him, his position was untenable. On 24th January 2005, Mr. Githongo resigned from the government while on a trip to London.

Interconnectedness of Companies

Mr. Githongo testified at length about the inter-connected nature of the companies that have been the beneficiaries of the questioned security contracts awarded by the government between 1997 and 2004.

There are three legitimately registered companies. There are Rajath Leasing and Finance registered in India and whose directors are Mr. Deepak Kamani, H. M. Pai and C. Kamani. The second of the legitimately registered companies is Sagaar Associates, registered in Liverpool in the United Kingdom. Its directors are Sudha Ruparell, Chantal Kamani, Deepak Kamani, Ashwin Kamani and David Dogle. The two companies are, therefore, controlled by or associated with Mr. Deepak Kamani. The third of the legitimate companies is LBA International registered in Scotland with Andrew McGill and Mrs. Ludmilla Katuschenko Mc Gill as the directors.

Anglo Leasing and Finance Limited, which was awarded the forensic laboratories contract, had two addresses. The first address is the same as for Sagaar Associates and the second is the same as Dynatech International, a company whose existence has not been established and which has as a

director Dr. Melvyn Kettering. Dr. Kettering is also a consultant in LBA International. LBA International was awarded five security contracts in Kenya, the first in 1997 for US\$ 24.6 and two others in 2002 for Euro 5.6 million and US\$ 16.6 million.

A company called Sound Day Communications was awarded five contracts, the first for US\$ 36 million in 1998, three others in 2002 worth more than US\$ 56 million, and a further contract in 2003 for Euro 40 million. Sound Day Corporation has the same address as LBA International and is also connected with another company called Apex Finance Corporation, which has been its financier in two of the contracts. In turn, Apex Finance Corporation has a shared directorship with Silverson Establishment of Sheraton Cambridge. Silverson remitted a cheque for US\$ 910,000 to the Permanent Secretary, Office of the President in 2004, a reimbursement for a downpayment for a contract that did not materialize. The cheque was drawn on a bank in Liechtenstein.

Silverson has the same address as Globotel Inc., which was awarded a contract worth 49.6 million for the installation of a telecommunications network for the Administration Police in 2003.

SUMMARY OF EVIDENCE GATHERED FROM OTHER WITNESSES

Mr. Sylvester Mwaliko, Former Permanent Secretary, Office of the Vice-President & Ministry of Home Affairs

Mr. Mwaliko appeared before the Committee on 28th February 2006, accompanied by Ms. Jane Ondieki, his advocate.

Right at the start, the Committee explained to Mr. Mwaliko its understanding of the *sub judice* rule, since the Committee was aware that Mr. Mwaliko had been charged with a criminal offence, whose trial was pending resulting from the procurement of Passport Issuing Equipment project.

Mr. Mwaliko's advocate made a spirited attempt to absolve her client from participating in the proceedings of the Committee on the grounds of the *sub judice* rule, notwithstanding the Committee's decision on the matter.

In addition to the *sub judice* rule, Mr. Mwaliko claimed the right against self-incrimination, which he said is provided for under section 77 of the Constitution. His argument was that answers given to the Committee might be used in respect of the pending court case to his prejudice.

The Committee allowed Mr. Mwaliko, in the circumstances, not to answer questions if he considered that it would be self-incriminating to do so, and his testimony was taken on that basis.

Mr. Mwaliko read section 22 of the Constitution, which provides as follows:-

"Where the Vice-President or any other Minister has been charged with the responsibility for a department of Government, he shall exercise general direction and control over the department and subject to that direction and control, every department of Government shall be under the supervision of the Permanent Secretary."

According to him, therefore, the director and controller of the Ministry of Home Affairs, for which he was the Permanent Secretary at the relevant time, was his Minister, H.E. the Vice-President and Minister for Home Affairs, Hon. M. Awori, MP.

The genesis of the procurement of Passport Issuing Equipment project, he said, was that the Ministry received proposals from various companies. One of them was from South Africa, another from Canada and a third company Francois Charles Oberthur Fiduciaire from France. Some time in August – the Ministry received a proposal from Anglo Leasing & Finance Limited which indicated that they could finance the project. The French company was not able to finance the project and would have had to look for a financier. When the negotiations started, Mr. Mwaliko took the necessary guidance from his Minister, whom he kept adequately informed, and the Minister was fully involved.

Mr. Mwaliko said he had almost daily meetings with his minister, the Vice-President and that he was fully aware, after being adequately briefed.

The Vice-President on his part said that the briefing he received covered only the French company and that Anglo Leasing & Finance Limited had not come into the scene.

Whereas Mr. Mwaliko produced to the Committee the Memorandum in which the Vice-President authorized him to submit the proposal on Anglo Leasing to Treasury for its evaluation and approval, he refused to produce his own memorandum, dated 5th September, 2003 through which he had briefed the Vice-President and Minister. He explained that to produce to the Committee his own memorandum would compromise his court case.

Mr. Mwaliko explained that he withheld his letter dated 5th September, which was to send the proposal to the Treasury, awaiting the direction of the minister and that the date of receipt can be confirmed at the Treasury and would support his case.

According to Mr. Mwaliko, passports have always been considered to be high security equipment in the Government, and dealt with accordingly.

Mr. Mwaliko recalled a meeting held on 27th August 2002 involving the Treasury, himself, Principal Immigration Officer and the Director of Government Information and Technology Services (GITS) to discuss the need to develop a comprehensive system of the Immigration Department. Out of the meeting it had been agreed that GITS prepares a comprehensive proposal on the matter for further consideration.

When asked whether by going ahead with the Anglo Leasing and Finance Limited proposal Mr. Mwaliko had disregarded the decision of that meeting, he said that this was part of his evidence in court.

Mr. Mwaliko could not remember the names of any of the representatives of the companies he dealt with regarding this matter.

Mr. Mwaliko admitted that only one French company was asked to submit cost proposals because it was the only company that was considered serious.

Mr. Mwaliko declined to answer the question as to how the contract was signed by himself, Mr. Magari and the Anglo Leasing & Finance Limited saying that this would be compromising his court case.

Mr. Mwaliko was not sure whether or not Anglo Leasing & Finance Limited had been paid by the French company (Francois-Charles Oberthur Fiduciaire) to start implementation of the project. He said that when he left office in May, 2004 implementation had begun.

Mr. Mwaliko declined to answer questions as to whether he had heeded the advice given to him by the Attorney General's office in a letter dated 13th September 2003 where the Attorney General advised that his Ministry should perform due diligence on Anglo Leasing. He explained that to do so would compromise the case against Mr. Magari and a Mr. Wilson Sitonik.

Mr. Magari, on the other hand, testified that no due diligence was done, or necessary, because Anglo Leasing and Finance Limited was already doing business with the government.

Mr. Mwaliko testified that he was involved in the preparation of the ministerial statement issued on 27th April 2004 by the Vice-President. The statement was a collaborative effort between him, The Vice President, Hon. M. Awori, MP and Amb. Francis Muthaura, Permanent Secretary & Secretary to the Cabinet.

Mr. Mwaliko denied that Mr. Githongo ever called him to advise against the issuance of the ministerial statement by the Vice-President. He said that he never at any time, talked to Mr. Githongo on the ministerial statement, or on any other matter.

On the question that he acted improperly in the award of a very large contract to a company whose principals he does not know, Mr. Mwaliko sought refuge in the pending court case, failing to answer the question.

Mr. Mwaliko said he never met Mr. Jimmy Wanjigi at anytime when he was in the government and that he has never met Mr. Deepak Kamani.

According to Mr. Mwaliko, the French company (Francois-Charles Oberthur Fiduciare) is a well-known company, which has been in existence for more than 150 years.

Mr. Mwaliko said that he never met Mr. Colin Flyn who was said to represent Anglo Leasing & Finance Limited and that he only dealt with him through correspondence.

Mr. Mwaliko said that Mr. Merlyn Kettering once popped into his office, informally, to discuss the progress in the negotiations on the Anglo Leasing matter. He had never met Mr. Kettering and did not know who he was. He referred Mr. Kettering to the Treasury where, he told him, the proposal had been sent. Mr. Kettering introduced himself as a British National, although Mr. Mwaliko then understood him to be an American.

Mr. Mwaliko denied ever having met Mr. Kettering in the Office of the President in Harambee House where, before he became a Permanent Secretary, he had worked for more than 18 years. This is despite the fact that Mr. Kettering also had an office there.

Hon. Kiraitu Murungi, MP (former Minister for Justice & Constitutional Affairs)

Hon. Murungi, MP appeared before the Committee on 22nd February 2006, in the company of his legal advisor, Mr. Kioko Kilukumi. The Committee explained to him that the purpose of calling him was to afford him a chance to respond to various adverse claims made against him by Mr. Githongo.

Mr. Kilukumi, on behalf of Hon. Murungi, MP raised a series of objections to Hon. Murungi, MP testifying before the Committee. These may be summarized: according to Mr. Kilukumi, the Ministry of Justice and Constitutional Affairs, for which Hon. Murungi, MP had been the Minister during the relevant period, had not been engaged in the procurement that was now the subject of the query

before the Committee and, in the circumstance, Hon. Murungi, MP had no useful information for the Committee; secondly, the Committee, in taking Mr. Githongo's evidence, was playing the role of an investigator which was outside its powers as provided on Standing Order No. 147; thirdly, that the Chairman of the Committee had been quoted in the media to have said while in London, where he had gone to take Mr. Githongo's evidence, that the evidence was wholly true. This according to him was evidence of bias; fourthly, there were several cases pending in court against a number of civil servants arising from the queried transactions and that the matter was therefore, *sub judice* and could not be dealt with by the Committee; fifthly, under section 46 of the Official Secrets Act, a public official is forbidden from disclosing to unauthorized persons information obtained in the course of employment. Hon. Murungi, MP as minister had been a public officer, and was covered, in relation to the Committee, by this rule; sixthly, that under section 18 of the National Assembly, (Powers and Privileges) Act, the consent of the President is required before a public officer can give evidence on naval, military or airforce affairs to a Committee of the Assembly; and finally, that under section 132 of the Evidence Act a public officer cannot be compelled to disclose communication made to him in the course of official duty.

Mr. Kilukumi protested that the extensive coverage that had been given to Mr. Githongo dossier in the media meant that Hon. Murungi, MP could no longer receive a fair hearing before the Committee.

Mr. Kilukumi also expressed doubt as to the impartiality of the Committee. According to him, the Anglo Leasing contract and similar other contracts, had been approved by the KANU administration and the Committee's queries were an exercise in removing a speck in eye of the present administration before removing the log in the eye of the previous administration.

For the reasons contained in the objections by his advocate, Hon. Murungi, MP said he was unable to give evidence before the Committee in response to Mr. Githongo's evidence. The Committee, having pointed out the above matters to no avail, felt obliged to release Hon. Murungi, MP from the proceedings.

Hon. Dr. Chris Murungaru, MP (former Minister of State in the Office of the President)

Hon. Dr. Murungaru, MP, appeared before the Committee on 2nd February 2006 and raised issues almost identical to those raised by Hon. Murungi, MP.

In answer to Hon. Murungaru's objections, the Committee made a number of rulings, which also apply, to the objection by Hon. Murungi, MP. With regard to the objection that this query in the subject of the *sub judice* rule, the Committee ruled that Hon. Murungaru, MP had not been charged with an offence arising from the transactions under query as to amount to *sub judice*. Further the Committee made the following findings:-

The rule of *sub judice* continued in Standing Order No.74 is based on parliamentary practice. Whether a matter is *sub judice* or not, may only be interpreted by the Speaker and in this case by the chair.

The Committee also relied on the ruling by the late Mr. Humphrey Slade, then Speaker of the Assembly, made in 1966 who said:

"I will be bound by a conclusive decision of a court but until that decision is made Parliament will continue."

The Committee further pointed out the opinion of the authoritative Erskine and May parliamentary practice on sub judice in the following terms:

"The House has resolved that no matter awaiting or under adjudication by a court of law should be brought before it by a motion or otherwise. This rule may, however, be waived at the discretion of the Chair and exceptions have been made on matters before courts which relate to ministerial decisions or concern issues of national importance."

On page 624, Erskine and May write:

"The Statement of the House's practise with regard to matters that are awaiting judgment makes no mentions of proceedings in Select Committees. Nevertheless, the principle that such matters should not be prejudiced by public comment holds good in Select Committees. The bar does not however operate when evidence is being taken in private and since there is no restriction on the right of the House to legislate, the proceedings of a Select Committee, for example, on a Bill, need not be affected by it at all."

The Committee, therefore, concluded that the *sub judice* rule would not affect the hearing of evidence before it under the circumstances. The Committee, however, readily conceded the point that no evidence concerning the naval, military or airforce matters of Kenya can be adduced before it without the consent of the President. Since consent had not been sought, any part of the query that concerns military contracts would not be open to the interrogation of the committee.

Hon. Dr Murungaru, MP, who was accompanied by his lawyer, Hon. Paul Muite, MP then proceeded to answer questions put to him by the committee.

Mr. Fred Ojiambo, Advocate for the Advocates of the Anglo Leasing & Finance Co. Ltd

The Committee heard the testimony of Mr. Fred Ojiambo, Advocate on 22nd February 2006. Mr. Ojiambo confirmed that he had placed advertisements in local newspapers on 12th May 2004 and again on 25th May 2004. The first of the two advertisements was in respect of Francois Charles-Oberthur Fiduciaire, a company that claimed to be a financier of Anglo Leasing and Finance Limited. The second advertisement was in respect of Anglo Leasing and Finance Limited.

Mr. Ojiambo said that the instructions to place the advertisements in the newspapers were given to his firm, Kaplan and Stratton, Advocates, by a firm of solicitors, Powell Forman Kelly LLP of Liverpool, United Kingdom. The content of the advertisements had been prepared by the solicitors and sent to him by fascimile and all he did was to arrange for publication in the press. His client, under the circumstances, was the firm of solicitors and not the two companies they were purporting to represent. He said he did not know anything about the two companies, which were the subject of the content of the advertisement.

Mr. Ojiambo told the Committee that upon publication of the advertisements he received a letter from Mr. Githongo who asked him to contact Anglo Leasing and Francois Charles-Oberthur, which he believed to be clients of Mr. Ojiambo, for the details about their shareholders and directors. Mr. Ojiambo wrote back and said he did not have the information requested and that he would pass on Mr. Githongo's letter to his client. He added that the next thing that happened is that he received a summons from the KACC requiring him to appear before them without particularizing the matters

under investigation. He responded to the summons in writing explaining what he considered to be the applicable legal limits to co-operating with their investigations. Next, KACC caused him to be arrested on the grounds that he had failed to attend court.

When taken to court, he was able to demonstrate that he had never been served with a notice to attend court and could, therefore, not have failed to do so and that the magistrate then ordered his release.

Mr. Ojiambo said he was not aware of any high level concern about his arrest. He was not contacted by any person in authority during or after the arrest and he was not aware that there had been any high level intervention which resulted in his release. He said that, in retrospect, the allegations about high level interest in his arrest is quite believable as this would explain pressure that KACC was under instructions to arrest him, even without any justifiable cause.

Regarding the subsequent developments on Anglo Leasing and Finance Limited, Mr. Ojiambo informed the Committee that he had written to his client, the firm of solicitors, to take up his concerns about the possible dubious nature of Anglo Leasing. However, he declined to disclose to the Committee the exact nature of his communications with the firm of solicitors in this respect, claiming that to do so would be a breach of advocate/client confidentiality.

CENTRAL BANK OF KENYA (CBK)

The CBK was represented by:

- Dr. A. Mullei – Governor;
- Mrs J. Mwatela – Deputy Governor;
- Mr J. Bett – Director, External Payments & Foreign Exchange Reserves;
- Mr J. Gikonyo – Director, Governor's Office;
- Mr J. Birech – Deputy Director, External Payments & Foreign Exchange Reserves;
- Mrs J. Kamita – Senior Assistant Manager, External Payments & Foreign Exchange Reserves.

The Governor was informed that the Public Accounts Committee had previously met a team from the CBK in June 2004, when the delegation was led by the then Deputy Governor of the bank Dr. Sambili.

The Committee asked the governor to explain payment of Euro 956,700 made to Anglo Leasing & Finance Limited for which the recipient was indicated as ABN-AMRO Bank although the payment advice also indicated a different institution as the beneficiary. The Governor explained that ABN-AMRO in Amsterdam is the CBK's overseas correspondent, i.e. it holds funds for CBK and when CBK wants to transmit funds overseas, it advises ABN-AMRO to transmit funds to the beneficiary.

The Governor explained the procedure used to originate and make overseas payments on behalf of the Ministries. The Ministries are given blank Payment Advices (PAs) which they use to give payment instructions to Central Bank. The bank checks that the PAs are authentic, are properly drawn, indicate sufficient details of the beneficiary, are properly authorised by the Accounting Officer and the other authorised account signatories, and that the Ministry seeking to make payment has sufficient funds in its accounts with the Central Bank of Kenya.

The Governor explained that the Pay Advice for Euro 956,700 originated from the Office of the Vice-President and Ministry of Home Affairs. It was signed by Ms Nancy Kinyua and Mr George O. Ouma, as authorised signatories for the account. Ordinarily, that would have been sufficient to process the payment, however, the Governor explained that to give this particular transaction more weight, they

insisted that the Pay Advice had to be counter-signed by the Permanent Secretary, Ministry of Finance. Consequently, the Pay Advice was also signed by the then Permanent Secretary/Treasury, Mr. Joseph Magari.

The Committee asked the governor whether there were other instances around that time, or subsequently, when the bank officials found similar payment authorities that raised suspicion and questions about their validity, and for which payment was stopped. He replied that, after Hon. Maoka Maore, MP raised the issue in Parliament, the bank stopped payment of various Pay Advices and sought clarification from the Permanent Secretary, Ministry of Finance on whether CBK should proceed. The Governor confirmed that he took the initiative to seek clarification from the Ministry of Finance.

The Governor confirmed that while clarification was sometimes sought from the relevant Ministry in terms of the completeness of documents, the bank would not ordinarily raise any queries with regard to the issue of specifics as to whether a transaction should be paid or not.

Answering another question from the Committee with regard to the specific Pay Advice above, the Governor confirmed that the beneficiary's bank, to which the ABN-AMRO bank transferred the funds on behalf of CBK, was reputable because it was in the system of 'swift'. The Governor clarified that the 'swift' system is a security system used only by financial institutions that are handling financial transactions and an institution that is not of repute is unlikely to be in swift system. Asked further by the Committee whether a bank of repute would open an account for a company like Anglo Leasing without checking whether the company exists, or whether it is registered and operating, the Governor explained that they could only vouch for the due diligence procedures that would apply under the Kenyan Banking Act, including the "know your customer" requirement. However, the rules that apply in Kenya may not necessarily apply in some other countries. Additionally, the Governor explained that while he can establish the authenticity and repute of the banks it deals with, it is not possible to establish the credibility or authenticity of the other banks' customers.

In respect of seeking clarification on the validity of various Pay Advice, the Governor confirmed that he initially wrote to the Permanent Secretary, Treasury, Mr. Joseph Magari, who was however dismissed before he replied. The Governor wrote again to Mr Oyula who was the acting Permanent Secretary/Treasury. Mr. Oyula replied authorising payment for certain companies on the list that had been submitted for clearance. Mr Oyula also promised to get back to the Governor on some of the other companies that were on the list, however, Mr Oyula also left the Ministry soon after that. The Governor wrote to Mr. Joseph Kinyua, who succeeded Mr. Oyula, requesting that he goes through the list and confirm whether treasury was satisfied that they were, indeed, the companies for which proper authority had been granted for payment. The CBK undertook to hold unpaid the relevant PAs until Treasury provided the required authority.

Mr Oyula wrote to the bank on 21 May, 2004 attaching a list of Pay Advice (PA) that Treasury had authorised to be paid. Mr Oyula's letter also stated that Treasury would write regarding the status of the other Pay Advices once they found them from their files. The Governor acted on Mr. Oyula's letter and continued to pay the PAs that Mr Oyula authorised for payment. The value of the said PAs totalled US\$213.7 million and Euro 218.3

The Governor stated that they had not received any other report from Treasury and consequently, CBK was still holding payment of the PAs that were not included in Mr. Oyula's letter of May 2004. The three PAs queried by the CBK that were not included in Mr Oyula's letter of May 2004 were in respect of:

- Anglo Leasing – Forensic Lab – US\$54.56 million;
- Siverson Establishment – Security Vehicles – US\$90 million; and,
- Apex Finance Corp – Police Security – US\$30 million.

The Governor subsequently provided the Committee with details of amounts paid against each of the contracts listed in the letter he wrote to Mr. Magari on 13th May, 2004.

The Committee also asked the governor, in respect of the Pay Advice for the Euro 956,700, and in the process seeking to confirm that the Ministry that was making payment had sufficient funds in its accounts with the Central Bank of Kenya (CBK), whether the CBK had also confirmed that Ministry had an allocation of funds intended for the project that was being paid for. The governor also stated that it is not within their mandate to confirm that payments are within the budgetary allocation of paying Ministries.

The Committee took the governor to task on the bank's role in establishing the validity or otherwise of the PAs before effecting payment. He stated that it is not within the bank's mandate to confirm whether the PA was valid, and represented the requisite value of goods received or services rendered. Once it has been confirmed that the PA comes from a bona fide Ministry, the signatures are tested and found to be correct and the particular account found to have sufficient funds, there is very little that CBK can do to stop such payments.

He further explained that when payment is to be made out of a Ministry's budget allocation, the procuring Ministry would prepare and approve the relevant PA. However, the PA would still have to be counter-signed by the Ministry of Finance before it can be submitted to CBK to execute payment. Consequently, in these circumstances, the Ministry of Finance cannot originate a PA and sign it without reference to the procuring Ministry.

The governor explained that, when the debt is being paid out of the Consolidated Fund Services, then the only Ministry responsible for the account is the Ministry of Finance and, in that case, the Ministry of Finance would raise the PA directly without reference to the procuring Ministry. This arises because the Ministry of Finance is, by law, authorised to contract Public Debt. The procedure is that the Minister contracts the debt (by signing the contract) and, thereafter, the Permanent Secretary for Treasury approves the PAs to service the debt.

He confirmed that two refunds were made in respect of Anglo Leasing & Finance Ltd, the first, Euro 956,700, described as commitment fees for the Immigration Security project and the second, US\$4,744,444, related to the Forensic Science Laboratories project. Central Bank of Kenya repaid the Kenya Shillings equivalent of the amounts refunded to the relevant Ministries as was specified in the remitting instructions. Another company, Infotalent, also returned Euro 5,287,164 that was described as commitment fees, while Siverson Establishment returned US\$910 that was also described as commitment fees.

The governor stated that he did not know what would happen to the interest on the PAs that were on hold until payment instructions were received from the Treasury. This was because CBK officials did not participate in the preparation of the contracts and could not therefore know the terms and conditions under which the contracts were carried out.

The Committee demanded to know what corrective measures the governor had put in place to correct the due diligence and control issues that could, and had led, to the loss of billions of shillings by the Government and he explained that some of the measures taken included the following:

- a) The bank had become more alert on the possibilities that there could be problems in the completion and submission of PAs.
- b) The Bank had gone into discussion with the Ministry of Finance to make sure that the said Ministry was looped into the payment requests coming from parent Ministries to ensure that such payments were legitimate and within the budget allocations of the Ministries.
- c) To improve the system of management, the Central Bank of Kenya is working with the Ministry of Finance and the Commonwealth Secretariat to improve data sharing. This would be achieved by connecting the Treasury's data bank with the CBK, hence ensuring that as debt is being incurred, the information is transmitted to CBK. Thereafter, CBK would ensure that only payment instructions for debt that appears on the database are processed.

Although CBK Act Section 31 and 32, provides for the CBK to be consulted during negotiations of external loans and debt negotiations, the CBK is not always invited to participate in such negotiations. If the CBK were involved in the negotiations, it would have a copy of the understandings and would, when making payments (the staff would) check against the terms and conditions of the agreements. Consequently, the CBK should be involved in such negotiations in future.

There is also a disconnect between Section 31, which requires that CBK be consulted in debt negotiations, and Section 45, which requires the CBK to honour payments that are generated by the Government. CBK should be given a backing in law that authorises it to refuse to process payments where (a) the CBK was not involved in contract negotiations and / or (b) the Treasury and the relevant Ministry do not provide evidence that goods have been received or services have been rendered.

The governor agreed to take the following measures, which could be done within the existing law:

- a) Provide advisory services to the Minister for Finance in the context of strengthening the CBK Act;
- b) Insist that Ministries involve the CBK in loan negotiations;
- c) Undertake some level of due diligence on the participating parties to the contract;
- d) Require to receive and review a copy of the contractual agreement, and to only process and pay PAs on the basis of the contract as has been approved.

Other Recommendations:

- a) CBK should be able to advise Government on the reasonableness / competitiveness of the interest charged on foreign loans and other borrowings;
- b) CBK should use its contacts; within the Banking Industry to assess the credibility of proposed financiers for the loan contracts; whether companies exist as legal entities and have the capacity to provide the required financing;
- c) CBK should provide input in the Government's development of its procurement regulations (which is ongoing);
- d) CBK should review the systems and management of the Government's Public Debt and determine how existing laws should be amended to address inherent weaknesses;
- e) CBK should redesign its documentation, especially in regards to PAs, to enhance transparency and build in effective checks and balances;
- f) CBK needs to work with Ministries to build in effective checks and balances and the Ministries. Among the things that need to be clearly defined are:
 - Who in the Ministry should always be required to give instructions to the CBK?
 - What information must the CBK have from the relevant Ministry?

The above matters should be put into law to make it possible for the CBK to be much more effective in ensuring that payments are as legitimate as they should be.

AMB. FRANCIS MUTHAURA – PERMANENT SECRETARY, SECRETARY TO THE CABINET AND HEAD OF PUBLIC SERVICE

Amb. Muthaura was accompanied by Mr. T. Mwangi – Principal Administrative Secretary and Assistant Secretary to the Cabinet.

Amb Muthaura read a written statement stating the following, among others:

1. The design, approval, procurement and administration of a security project like the Forensic Laboratory would be under the responsibility of Permanent Secretary, Provincial Administration and Internal Security, who would be the Accounting Officer.
2. The Permanent Secretary, Office of the President, Secretary to the Cabinet and Head of Civil Service is not the Accounting Officer for the Office of the President.
3. He at no time interfered with or in any way obstructed the investigations on the Forensic Lab project and that the Press Release issued by the Government on 23rd June 2004 sought to clarify the facts relating to the Forensic Laboratory project and in no way precluded ongoing investigations.
4. The previous Government signed the contract for the Forensic Laboratory Project in August 2001. The last communication by the previous Government was dated 14th November 2002, appointing Mr Philip Sika as the Project Manager. The first correspondence by the NARC Government on this project was in March 2003, through a letter from the Permanent Secretary, Provincial Administration and National Security to the Ministry of Roads and Public Works. The letter was meant to trigger implementation of the project as per the terms of the agreement.
5. Thereafter there was communication related to the design of the buildings, formation of a technical implementation committee and availability of adequate land. The communication was between the Permanent Secretary, Provincial Administration and National Security, and his colleagues in the Ministry of Roads, Public Works and Housing, and the Ministry of Environment and Natural Resources.
6. The NARC Government was legally bound to honour bona fide agreements entered into by the previous Government unless and until there is an audit query raised or a legal basis to dishonour such agreements.
7. The agreement for the Procurement of Passport Issuing Equipment project was signed by the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, the Permanent Secretary, Treasury and Anglo Leasing & Finance Ltd on 4th December 2003 and he was in no way involved in the design and procurement of the project.
8. When the special audit report was completed, he took immediate action on the report leading to two Permanent Secretaries and two senior officers being sent on compulsory leave on 13 May 04. When further investigations by the KACC identified three other officers who were adversely mentioned in the Forensic Lab and Procurement of Passport Issuing Equipment projects, the officers were issued with letters of interdiction within two days of receipt of the letter from KACC.
9. He received information about the refunds in respect of the two Anglo Leasing projects from the Permanent Secretary, Provincial Administration and Internal Security. He also counter-checked with the Governor of the Central bank about the refund. He never had any contact with or saw anybody who identified himself or herself as an employee or owner / director of Anglo Leasing & Finance Limited.

10. In line with the then institutionalisation of the KACC pursuant to the Anti-Corruption and Economic Crimes Act, (2003), he had some discussion with Mr Githongo who had effectively assumed the role of Government Spokesman on anti-corruption and who was spearheading several anti-corruption investigations. It was felt that with the institutionalisation of KACC, the Department of Governance and Ethics should resume its primary function which was formulation of policy and advising the President, while KACC executes its legal mandate, which was mainly anti-corruption investigations. Mr. Githongo might have interpreted this to mean that there was an attempt to restrict the scope of his work, which Amb. Muthaura stated was not the intention. However, the objective was to rationalise roles and responsibilities to avoid conflict and to operate in a manner consistent with the new legal framework.

Following his opening statement, the Committee asked Amb. Muthaura to list some of the major weaknesses found in the procurement sector. He stated that the main problems included single sourcing since it compromises pricing and quality. The other problem was lack of transparency and accountability.

He also stated that the Inter-Ministerial Committee on security related procurements was not activated because, after studies to see how other countries do it, the Government came up with a formula whereby a project's security classification would be done through joint consultations between the procuring Ministry and the Directorate of Procurement. All other procurement for Ministry of Defence or the Police would be done through normal procurement committees. This procedure is more transparent and results in better control for procurement of security classified goods and services.

The Committee reminded him that according to the constitution, the overall responsibility of a Ministry lies with the Minister and asked why he found it necessary to take action against public servants and not the Ministers. He replied that the Government was acting on reports from the Controller & Auditor General (CAG) and the KACC, and the reports did not mention the Ministers at all.

The Committee asked him to explain the role of the Cabinet in approving security contracts and whether during his tenure as Secretary to the Cabinet, there were any proposals for procurement of security equipment that was tabled before cabinet. He explained that major security projects that require intervention in between the budget are taken to Cabinet for authorisation. However, the limit of expenditure beyond which Cabinet approval must be sought has not been defined. He also said that no security projects had been taken to Cabinet during his tenure.

Turning to the advertisement that he put in the papers on 23 June, 2004 the Members asked him why he had said that there had been no wrong doing by anybody. Specifically, two payments had been made while no work had been done. He admitted that that was one of the serious weaknesses in some of the projects because payment was not pegged on performance of the projects. However, this was the responsibility of those charged with making the payment, in this case the Debt Management department. He stated that those facts had not come to light at the time the advertisement was put out.

Asked about his role in Mr Githongo's temporary transfer from State House, Amb Muthaura said that such appointments and transfers were the President's prerogative. He dismissed any suggestion that he was behind the transfer as speculated.

Asked to state his involvement, and the specific role he played in the Anglo Leasing & Finance Ltd projects Amb Muthaura said that he wanted to emphasize, "again and again", that he never had any contact or met anybody claiming to be an employee or owner of Anglo Leasing & Finance Ltd. He

stated that he had never had any communication with Anglo Leasing, either written, verbal or through telephone, and that anything he got about them was from Accounting Officers who were responsible for the projects. He also got information from Mr Githongo, who kept him informed, and Mr Gideon Mutua who was the Acting Director of KACC. He also stated emphatically that any information he got from the above people was shared with Mr Githongo.

Amb. Muthaura also stated that the Public might be judging him because they do not understand the role of the Head of Civil Service. He clarified the roles of the Head of Civil Service as:

- a) Permanent Secretary to the President, hence doing anything that the President wants done;
- b) Co-ordination of Government business. He explained that such co-ordination normally comes when there are problems or conflicts within Ministries when his work is to bring harmony and understanding. Therefore, when things are running properly, he has no role and every Permanent Secretary has full mandate with his Minister to manage the affairs of their Ministries. Amb Muthaura also explained that he is the only Permanent Secretary together with the Permanent Secretary/Treasury, who are not Accounting Officers for their Ministries. The Accounting Officer for Amb Muthaura's department, the Cabinet Office, is the Principal Administrative Secretary.

Amb Muthaura clarified that in the one month when he was Permanent Secretary, Internal Security, in January 03, no work was done on the Anglo Leasing projects as that was a transitional month when the new NARC administration was settling down and putting down the administrative structures. When asked whether he considered Mr Githongo to have been a perennial liar, or unreliable, during their joint period of service, Amb Muthaura stated that he had no reason to think Mr Githongo was a liar. The Committee reminded him that Mr. Githongo's testimony had stated that the Head of Civil Service had attempted to stop investigations into the Anglo Leasing contract to try to divert attention. Asked about having called both Mr Githongo and Mr. Gideon Mutua and demanding that investigations be stopped, he stated that it was untrue and there was no time that he told them to stop conducting investigations.

Asked whether he played any role in the removal of Mr Ole Ndiema from his post as the Principal Immigration Officer, Amb Muthaura replied that he chairs a committee responsible for deciding on inter-Ministerial transfers, however, according to him Mr. Ole Ndiema's transfer had nothing to do with the Anglo Leasing project.

Amb Muthaura also said he did not know, and had never met, Mr Kettering.

The Committee informed Amb Muthaura that the evidence it had received was that the issue of Anglo Leasing projects had been discussed within Government circles for a while before it became known. The PAC wanted to know why no action was taken at that time. Further, the Committee had information that some of the Anglo Leasing type security projects were still on going, and the projects were being handled by the same individuals involved in Anglo Leasing & Finance Ltd and the payments were still being made.

The Committee gave the example of an entity called Apex Finance Corporation that was involved in a security project for the police and to whom a payment had been made on 14 June 2004. Another firm, Universal Satpace had received a series of payments the last payment being on 24 May 2005. The PAC also had in its possession a document summarising all the security contracts that had been done under the so-called Special Purpose Financing Vehicles in the Office of the President. The document clearly indicated the company involved, the project it was doing and so on. The Committee wanted to know why the projects were still on going.

Amb Muthaura expressed surprise at the information. He informed the committee that he counter-checked with the Ministry for Finance that, for all security related projects, all payments were stopped and the Minister for Finance ordered for a comprehensive audit on the projects. He stated that the results of the audit were yet to be discussed by the Government but that a decision to pay the contracts had not been taken.

The Committee informed Amb Muthaura that it had received different interpretations about the role of the Attorney General (AG) in the preparation and execution of contracts and legal documents on behalf of the Government. The AG had informed the Committee that the issue of due diligence lies with the procuring Ministry, and not the AG's office. The Ministry of Finance had said that such role belongs to the AG while the line Ministries say that the responsibility lies with the AG and Ministry of Finance. Amb Muthaura stated that the AG should be involved in all stages of contract negotiations, but he admitted that sometimes it did not happen. His opinion was that the Attorney General should advise the line Ministry of the need for due diligence and see that due diligence is accommodated properly. His recommendation was that after the line Ministry has rectified all the issues raised by the AG, the contract should still be given to the AG for final review and to give the go ahead.

Mr. Zakayo Cheruiyot – Former Permanent Secretary, Office of the President

Mr Cheruiyot was accompanied by Mr. Chemwok, his legal adviser.

Mr. Cheruiyot was making his third appearance before the Committee. During the first appearance, Mr Cheruiyot objected to giving evidence before the Committee claiming that it would be *sub judice* given that he was already facing a criminal case touching on role in the one of the Anglo Leasing Contracts.

During the second appearance, the Committee explained why Mr Cheruiyot's claims were invalid. He however was still of the opinion that giving evidence before the Committee would be prejudicial to the ongoing criminal case as he could give evidence that would subsequently be used against him. The Committee explained that Mr Cheruiyot would not be obliged to answer any questions that he considered prejudicial to his pending case. However, the Committee ruled that the matter of what was prejudicial should be dealt with on a question-by-question basis without Mr Cheruiyot making a blanket refusal to testify before the Committee. Mr Cheruiyot had requested a postponement to enable him consult his lawyer. Additionally, Mr Cheruiyot, citing the fact that he was no longer in Government, had requested Committee's assistance in accessing some of the official records that he needed to refer to in his evidence.

At the third appearance, the Committee informed Mr Cheruiyot that because PAC had been unable to secure records relating to all security projects, the committee would dwell only on the Anglo Leasing projects and specifically on the Forensic Lab project which was under the Office of the President.

The Committee reminded Mr Cheruiyot that he had signed the agreement for the Forensic Laboratory Project on behalf of the Ministry, when he was the Permanent Secretary, Office of the President with Anglo Leasing & Finance Company. The Committee wanted Mr Cheruiyot to explain what he knew about the agreement, what he knew about the company, and how much he was involved in the transaction. Mr Cheruiyot confirmed that he signed the Forensic Science Laboratories and Anglo Leasing & Finance Limited contract agreement to build forensic laboratories for the Police. He stated that this was after years of consultation for the project, and having fulfilled procedures and regulations which were in existence in the Office of the President and Government at that time.

Pushed by the Committee to explain in detail his involvement in the project, Mr Cheruiyot stated that the project was initiated by the Criminal Investigation Department (CID) which justified the need for it sometimes in 1997 before he was even the Accounting Officer. He stated further that during one of the budgetary meetings where the Office of the President was bidding for funds for its priority projects, it was decided that whatever funding was available in the budget could not meet the budgeting for security projects in the Office of the President. Therefore, the Minister for Finance, (Hon. Chris Okemo, MP) was directed to chair meetings to come up with financing arrangements or possibilities of a financing agreement. Thereafter Hon. C. Okemo, MP chaired such meetings and Mr Cheruiyot recalled that Treasury officers were the ones who came up with the lease financing concept. Mr Cheruiyot further stated that the Treasury asked Office of the President to explore firms that would provide that lease financing. It was also decided that Cabinet approval would be necessary for use of lease financing as a policy that would be adopted by the Government. A joint memo was prepared between Treasury and the Office of the President and presented to Cabinet. The Cabinet deliberated and approved the recommendations of the memo. The Treasury and Mr Cheruiyot, as the Permanent Secretary in charge of Administration in the Office of the President were directed to implement the project.

Mr Cheruiyot stated that after the office of the President got the draft agreements, they were given to Treasury to approve the financing method that had been recommended. Treasury was also to approve the financing required and to give approval as to the procurement procedures that were to be adopted. Further, as a matter of procedure, the Attorney General's legal opinion was sought. He received the AG's opinion that the agreement was in order and that he could sign it on behalf of the Kenya Government. The Attorney General wrote to Mr. Cheruiyot that the people who could sign on behalf of the Government and Treasury had been given a copy of the same.

Mr. Cheruiyot confirmed that the Cabinet's decision approving the project to go ahead was delivered to him by Dr. Sally Kosgey (the then Head of Civil Service and Secretary to the Cabinet). He believes this was either in late 2001 or early 2002.

Asked by the Committee to state whether the 18 security related projects were approved by the Cabinet during his tenure as a Permanent Secretary, Mr Cheruiyot said without access to relevant records, he would not do so from memory. He also re-affirmed that a Treasury Committee chaired by the then Minister Hon. Okemo, MP approved both the policy to be adopted and the firm which the Office of the President had already negotiated with.

The Committee showed Mr Cheruiyot a document, which he confirmed to be the extract of the decision of the Cabinet. The document approved the lease financing policy and not the company, therefore, the committee wanted Mr Cheruiyot to elaborate whether there was another approval for a particular company. He again stated that the document provided by the Committee was the only approval that he saw and should be read together with the Cabinet's minutes.

Mr. Cheruiyot said he could not remember whether financing was sought by Treasury or the Office of the President.

Mr. Cheruiyot stated that the Forensic Laboratory Project was very viable as currently, Kenya has to rely on South Africa or Egypt. The facility would also have been made available to other countries in East and Central Africa.

Mr. Cheruiyot cited lack of suitable adequate land as the major problem in the implementation of the Forensic Science Laboratory Project. When such land was identified, the Green Belt Movement

objected to further excision of the (Karura) forest. Pressed why the Government signed the contract without securing all the necessary facilities including land, Mr. Cheruiyot said that the ensuing political resistance could not be predicted.

Mr. Cheruiyot was reminded that apart from the commitment fees, two other scheduled payments fell due and were paid although the project had not started. Asked why the scheduled payments were made, Mr. Cheruiyot stated that he was not in Government when the payments were made in 2003. Asked by PAC who should have taken action to stop the scheduled payments because no work had been done, Mr. Cheruiyot stated that "the person paying should have checked whether the service had been rendered".

The Committee asked Mr. Cheruiyot why the Office of the President could not make a deliberate move to inform Treasury that the project had not taken off, and whether the Office of the President did not know that there was an agreement with scheduled payments. Mr. Cheruiyot said he shared the PAC's opinion.

Asked by the Committee whether any due diligence was done to confirm the authenticity of the company the Government was dealing with, Mr. Cheruiyot said that he sought advice of the Attorney General and wrote the AG asking, "who do I sign with" and the AG told him, "go ahead and sign", so Mr. Cheruiyot signed. He stated that the contract was signed in his office, however, he could not remember who signed it on behalf of Anglo Leasing and Finance Limited. According to the record, Mr. Cheruiyot signed the contract on 15 Aug 2001 while the PS, Treasury, Mr. Mwachofi, signed on 16 Aug 2001; the dates on which Forensic Lab and Anglo Leasing Finance Company signed was not indicated. Asked specifically whether the Minister in charge of Internal Security authorised him to sign the contract, Mr. Cheruiyot stated that the Minister of State, Office of President, and his Finance counterpart are the ones presented the project's memos to Cabinet, so they were aware of the contracts.

Testimony by Hon. Amos Wako, MP - Attorney General

According to Hon. Amos Wako, MP, once the views of the Attorney General (AG) have been taken into account, the parties go ahead and sign the contract, for which they take responsibility. Once this has been done, the document is sent back to the AG for what is called a Legal Opinion. The purpose of the Legal Opinion, according to him, is to assure the investor or the person giving rights under the contract that the agreement has complied with the provisions of Kenya Law. A Legal Opinion, therefore, is a statement of comfort to the investor that the contract is legally enforceable under Kenya Law.

According to him, due diligence is defined by Regulation 13 of Government Procurement Regulations (2001) and means, "***that the company has a professional qualification competence, financial resources, equipment, managerial capacity and experience***"

On the question of the non-existent nature of the companies involved in the contract, his view was that this was the sole responsibility of the procuring ministries concerned since it forms part of the due diligence. In the case of Anglo Leasing, the parties expressed to him that they knew each other very well at that this removed from his office the need to advise about verifying the identity of Anglo Leasing & Finance Limited. All that his office confined itself with was the provision of advice on the issue that the ministry raised.

Regarding the obviously disadvantageous terms of the agreements entered into the AG testified that the terms of any contract are the result of the dynamics of negotiation. The stronger the government's negotiating position, the better the terms it gets out of a contract. The onerous terms that are contained in some of the security contracts are, therefore the result of a weak-negotiating position by the government.

On the question of the fate of the contracts that have been questioned in request of which the government has already issued a number of promissory notes, the opinion of the AG on whether these are payable was that it will depend on the terms of each contract and the extent to which there has been performance in accordance to its terms. He was of further view that the status of the contracts will partly be determined by the findings of the audit by the Controller & Auditor General and Kenya Anti-Corruption Commission, which is on going. Some of the contracts have already been performed and the government would have to pay. However, for those that are tainted with corruption there may be some room for manoeuvre.

On the issue of the applicable law to a contract, he stated that this again is a matter of negotiation and there can be very many different formulations. Some contracts provide that the law of each party applies to its side of the contract, or that private international law applies etc.

On the apparent exoneration of politicians from responsibility for the questionable contracts, the AG said that it is the responsibility of KACC to investigate and establish culpability and that he has only commenced prosecutions against those who, in accordance with the evidence by KACC, were culpable.

On Dr. Kettering, he pointed out that he had specifically directed that investigations against him be kept live until he is apprehended.

Regarding the enforcement of the regulations that require involvement of his office before contracts are signed, he had brought this to the attention of Permanent Secretaries. In June 2005, his office drafted "something" which is under consideration by Permanent Secretaries and which will strengthen the regulations.

On desired legal reforms, he said that he was not sure but he may have put in a provision in the Anti-Corruption and Economic Crimes Act which makes it an offence to breach financial regulations and that if it is not in the law, it needs to be included.

Secondly, Permanent Secretaries will need to be reminded to enforce the regulations in their Ministries and, thirdly, improved terms of service would have to be considered for his officers so that they can provide support services to government departments adequately.

PART 2

1. GENESIS OF THE PROJECTS

Forensic Science Laboratory Project

The Forensic Science Laboratory project was initiated by the Criminal Investigations Department (CID) in 1997 when the then Director of the CID, Mr Sang, prepared a memo detailing justification of the project for the Office of the President.

The Government considered the Forensic Lab project as viable given that then, and now, such facilities were available only in South Africa or Egypt and Kenya had to rely on either of the two countries. It was also expected that other countries in East and Central Africa would utilise Kenya's forensic lab once completed.

During one of the budgetary meetings where the Office of the President was bidding for funds for its priority projects, it was decided that whatever funding was available in the budget could not meet the budgeting for security projects in the Office of the President. Therefore, the Minister for Finance, Hon. Chrisanthus Okemo, MP was directed to chair meetings to come up with financing arrangements or possibilities of a financing agreement. The lease financing concept was agreed upon during those meetings and Treasury asked the Office of the President to explore firms that could provide the lease financing.

It was also decided that Cabinet approval would be necessary for use of lease financing as a policy that would be adopted by the Government. A joint memo was prepared between Treasury and the Office of the President and presented to Cabinet.

The Secretary to the Cabinet sent an Action Extract from the Minutes of the Cabinet meeting held on 27 July 2001 to the PS, Provincial Administration. The extract from the Cabinet's minutes was titled "**The Priority Security Projects for the Police Force**" and stated that the Minister of State had presented a Memorandum, CAB(01)62, which sought approval for specified financing arrangements for priority security projects for the Police Force. The extract indicated that Cabinet noted the contents of the memorandum and approved:-

- i. Use of Lease Financing as the appropriate mode of funding for the high priority security projects of housing, transport and forensic laboratory; and,
- ii. Use of Suppliers' Credit for essential security equipment and supplies.

Cabinet directed the Minister of State responsible for Provincial Administration and Internal Security and the Minister for Finance to take up the necessary action.

The contract for the forensic laboratory was signed by the then Permanent Secretary, Provincial Administration and Internal Security, Mr. Zakayo Cheruiyot and the then Permanent Secretary, Treasury, Mr. M Mwachofi, on behalf of the Government, and Anglo Leasing & Finance Limited and Forensic Laboratories. Mr Cheruiyot signed the contract on 15 August 2001 while Mr. Mwachofi signed on 16 August 2001; the date on which Forensic Laboratories and Anglo Leasing signed was not indicated on the contract.

Implementation of the project was delayed partly due to lack of adequate suitable land. When such land was identified next to the current location of the new CID Headquarters, a lot of political

pressure, including objections by the Green Belt Movement to further excision of the Karura forest, further delayed project implementation.

The contract value was US\$54.6 million. A sum totalling US\$4.7 million representing the commitment fee was paid in two instalments on the due dates per the lease financing agreement despite the fact that the project implementation had not started and no work had been done.

Following raising of the matter relating to the awarding to Anglo Leasing & Finance Limited of the contract for the Procurement of Passport Issuing Equipment project in Parliament, and the ensuing investigations, all the money paid against the contract, US\$ 4.7 million, was returned through the Central Bank of Kenya.

Procurement of Passport Issuing Equipment Project

In June 2000, the Department of Immigration (DOI), which was then within the Office of the President, initiated a review of its strategies, systems and procedures with a view to addressing the issues of inefficient procedures and information system, revenue losses arising from fraud, and forgeries involving passports and visas amongst other weaknesses within the Department.

The DOI released a report in September 2000 recommending that a modern enhanced and comprehensive computer based system, otherwise referred to as "Immigration Information Management Systems" (IIMS) be designed and implemented. The Department of Immigration (DOI) requested the Ministerial Tender Committee (MTC), Office of the President, for authority to procure a Passport Issuing System through restricted tendering, citing the security nature of passports and their issuing system. The MTC supported the request and requested Treasury's approval. Treasury's approval for restrictive tendering was granted on 8 January 02 and communicated to the DOI in a letter dated 5 February 02.

Five internationally-recognised firms were requested to tender for the supply of the system and three of them responded. After initial analysis of their bids, one firm, AIT International, was considered as having met both commercial and technical requirements at the quoted price of KSh 622 million. However, the tender was not awarded because funds had not been provided under the Recurrent Estimates. It was formally cancelled on 5 August 2002. It is not clear why the DOI went to tender while knowing that there was no budgetary provision in that year 2001/2's Estimates.

Thereafter, the DOI requested the Permanent Secretary, Office of the President, to procure the system in year 2002/3. The DOI also recommended a phased implementation over several years. The Permanent Secretary, Office of the President confirmed that the procurement would still be valid through to year 2002/3. In Aug 2002, six firms were selected and invited to submit bids for the revised tender. Three firms responded by the deadline of 28 November 2002 and quoted the following:-

- | | |
|------------------------|--|
| i. Face Technologies - | US\$9.95 million (equivalent to KSh779.2 million); |
| ii. GET Groups - | US\$10.6 million (equivalent to KSh830.1 million); |
| iii. De La Rue - | GB£7,95 million (equivalent to KSh1.1 billion) |

In February 03, a Technical Committee comprising the Government Information Technology Services (GITS) of the Treasury and DOI evaluated the three bids and concluded that all three did

not meet the requirements and specifications set out in the Invitation to Tender (ITT), and were therefore disqualified.

Subsequently, GITS apparently advised that the system should be re-designed and expanded to cover other operations of DOI including border controls, immigration monitoring and other components. However, no written communication has been provided to support this statement, never the less, the proposed system was redesigned and enhanced to include the following components:-

- High Security New Generation Passports;
- Secure Passports Issuing System;
- High Security New Generation Visas;
- High Security Visa Issuing System; and,
- Computerisation of machine-readable immigration records.

However, the Principal Immigration Officer, Mr Ole Ndiema, adduced evidence before the committee that no such a single system exists anywhere in the world and advised that it should be implemented in phases. This advise was not considered by the PS. The import of this advise was that the contract value would have remained the same as that tendered restrictively in 2002, and consequently the Anglo Leasing price of Kshs 2.7 billion was fraudulent.

The project was now referred to as the Immigration Security and Documents Control Systems (ISDCS) Project.

On 1 August 03, Anglo Leasing and Finance Ltd, which gave a Liverpool, UK, address, submitted to the PS, Office of the Vice-President and Ministry of Home Affairs, an apparently unsolicited technical proposal for supply and installation of the ISDCS. Anglo Leasing indicated that it would supply and install the system through its officially designated systems subcontractor, Francois-Charles Obethur Fiduciaire of Paris, France. Anglo Leasing also submitted alongside the proposal a financing agreement for a facility of Euro 31.89 million (equivalent to KSh2.67 billion), repayable in quarterly instalments over a period of 62 months, at an interest rate of 4% per annum. The first instalment was due three months after project commencement.

On 5 September 2003, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, wrote to the Permanent Secretary, Treasury seeking authority for direct procurement of the ISDCS; Treasury granted the authority by letter dated 25 November 2003.

On the 5 September 2003, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, wrote a separate letter to the Permanent Secretary/Treasury, providing details of the Anglo Leasing proposal and requesting for a Technical review of the proposed system. Simultaneously, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, wrote to the Attorney General seeking legal comments and advice on the financing agreement submitted by Anglo Leasing & Finance Ltd.

On 8 September 2003, the Vice-President and Minister for Home Affairs wrote a Memo to the then Permanent Secretary Mr. S.M. Mwaliko, in reference to Mr. Mwaliko's Memo of 5th September 2003. The Vice-President's Memo authorised the Permanent Secretary to go ahead and submit the proposal to Treasury for technical evaluation, submit the proposed contract document to Attorney General for legal opinion, and finally to request Ministry of Finance to consider and approve the project if it found it viable.

The contract for the ISDCS project was signed on 4 December 2003 between Anglo Leasing & Finance Limited and the Government of Kenya; the Permanent Secretary/Treasury and the Permanent Secretary, Vice-President and Minister for Home Affairs signing on behalf of the Government.

When the Public Accounts Committee of Parliament (PAC) asked the Controller and Auditor General to do a special audit on the ISDCS project, the Controller & Auditor General's report, dated 5 May 2004, raised a number of issues including:-

- i. The DOI does not appear to have prepared technical specifications and Terms of References for the project so it is not clear the basis on which Anglo Leasing & Finance Limited's proposal was evaluated.
- ii. The decision to use direct procurement instead of restricted tendering disadvantaged the government because it had no reasonable basis for determining whether the price quoted was fair and competitive.
- iii. No explanation was given of what the payment of Euro 956,700, to Anglo Leasing, described as arrangement, commitment and administrative fee, represented.

Following the raising of issues relating to the Anglo Leasing & Finance Limited in Parliament, the contract was cancelled and the total amount paid, Euro 956,700 was refunded through the Central Bank of Kenya.

2. OTHER SIGNIFICANT QUESTIONS ARISING FROM THE ANGLO LEASING CONTRACTS

The other significant questions that need to be noted arising from the Committee's investigation of the Anglo Leasing & Finance Limited contracts include:

a) Was there any Cabinet approval of the Projects?

No evidence was provided to the Committee to confirm that Cabinet approved the Anglo Leasing & Finance Limited and other similar security projects.

The only evidence produced for the Committee was Cabinet's approval of the financing option as described under the genesis of the Forensic Laboratory project, above.

b) What is the extent to which the Government has entered into other Anglo Leasing type security-related contracts?

The Committee was presented with a list of eighteen (18) security related projects that were funded through foreign supplier/credit arrangements. The Committee requested the Controller & Auditor General to conduct audits of the 18 projects. The Kenya National Audit Office conducted the audit and presented the report to the Minister for Finance for tabling in Parliament. The Minister for Finance has so far not tabled the report.

Information availed to the Committee indicates that the total value of the 18 security related supplier/financier credit contracts was US\$396.5 million plus Euro 308.1 million (approximately Kshs.62.6 billion, which represents the equivalent of 20% of the Kenya Government's annual gross expenditure. Because it was all committed using debt instruments, the commitment was made entirely outside the Government budgetary process.

Further information availed to the Public Accounts Committee indicates that against the total commitment of KShs.62.6 billion, approximately KShs.15.8 billion had been paid out by 30 June 2005.

The same information indicates that competitive bidding, or restrictive tendering, was not used in the awarding of any of the 18 contracts.

c) Did the Government take steps to stop payment against the 18 security-related contracts?

The Government does not appear to have taken any steps to stop payment against the 18 security-related contracts. In his evidence before the Committee, the Governor of the CBK produced copies of letters that he wrote to the Treasury regarding continuation of payment of sums due on contracts with external private creditors that were payable through the Post Master General's (PMG's) Consolidated Fund Services.

The Governor's first letter, listing the relevant pending payments, was sent to the then PS, Treasury, Mr. J. Magari, on 13 May 04. Following Mr. Magari's dismissal from Treasury, the Governor wrote another letter to Mr. J. Oyula, the Acting PS, on 14 May 04, requesting the same information. Mr. Oyula wrote to the Central Bank of Kenya on 21 May 04 attaching a list of Pay Advice that Treasury had authorised to be paid. Mr. Oyula's letter also stated that Treasury would write to CBK regarding the status of the other Pay Advices (PAs) once they found them from their files.

Following Mr Oyula's dismissal, the CBK wrote to the Treasury Permanent Secretary, Mr Joseph Kinyua, who succeeded Mr. Oyula, on 9 Aug 2004, requesting that he goes through the list and confirm whether Treasury was satisfied that they were, indeed, the companies for which proper authority had been granted for payment. The CBK undertook to hold unpaid the relevant Pay Advice until Treasury provided the required authority.

The Governor informed the Committee that Mr. Kinyua had not responded to their letter. In the meantime, the Central Bank of Kenya, acting on Mr Oyula's letter of 21 May 04, continued to pay the PAs that Mr Oyula authorised for payment. The value of such PAs totalled US\$213.7 million and Euro 218.3

d) Did the Treasury fail to play its Role by Ensuring that Payments were only made for Value Received?

First treasury approved the project on a single sourcing basis well aware that it had previously passed under the restricted basis. It is common knowledge that over-pricing is usually undertaken under this practise.

Secondly treasury performed the ceremonial role of effecting scheduled payments without ascertaining whether there was commensurate services or goods delivered by the supplier. Treasury was very much aware that this was a lease financing arrangement which involved the delivery of goods or services before payments are effected, but yet took no precautionary measures to counter-check.

Treasury abdicated its responsibility of securing external loans and credit on behalf of the republic of Kenya. It failed to undertake due diligence on the financiers and hence the country

did not benefit from the expertise of the department especially in terms of negotiations on interest, grace period on repayment and guarantee on product which was reduced to only one year for such expensive equipment.

The department failed to report to parliament on the terms of the external credit as required by law and allowed off budget financing of the contract.

e) Did the Central Bank of Kenya Fail to Play its Role by Ensuring that Payments were Valid?

While Central Bank mechanically effected payments as per laid down systems, it was not consulted as required in section 31 of the Central Bank of Kenya Act. The act requires that the bank must be consulted when external loans are being negotiated. The committee was concerned that while the bank was aware of its exclusion in the negotiations, it none the less proceeded to effect payments.

The Committee was however, impressed by the proactive initiative of the bank in requesting for reconfirmation on the status of other security projects. A response from Mr. Joseph Kinyua the current Permanent Secretary, Ministry of Finance ,is yet to be received to date.

f) Has Kenya Anti-corruption Commission (KACC) expeditiously prosecuted the case and fairly?

The Committee noted that KACC was initially eager to investigate the case. This is demonstrated by the preliminary report that named the vice president, Minister for Finance and their respective permanent secretaries and civil servants as among the individuals that could provide useful information.

The Committee was however, concerned that when the final list of names was presented to the Attorney General for prosecution, only the names of permanent secretaries and other civil servants were included. The names of political figures were notably missing and this is inspite of the Constitutional provision Section 22(3) that gives the ministers the power to exercise control and direct the operations of ministries.

The Kenya Anticorruption Commission forwarded files for direction on prosecution to the Attorney General in February, 2005 without the results on foreign investigations. There was in fact a specific recommendation that foreign investigations should cease as players such as Meryn Kettering could not be traced. However, the Hon AG advised that foreign investigations must continue. It is difficult to understand how meaningful criminal charges could be preferred without the evidence of foreign players.

The Committee heard evidence given by the former Director of Public Prosecutions Mr. Philip K. Murgor that he was asked to draft some '*letus rogatory*' for submission to other countries. They were sent to several European Governments. The Attorney General signed them as the competent legal authority in the country. The letters made general inquiries as to the existence of the companies. No information was given to the Committee on the responses received in connection with the '*letus rogatory*.'

The Committee therefore is not convinced about the ability of Kenya Anti-Corruption Commission (KACC) to prosecute the case fairly given its selective exclusion of political figures.

Have prosecutions been undertaken expeditiously and fairly?

- (i) The case was registered in court and Mr. Philip Murgor was directed as Director of Public Prosecutions in the case. Since the case was set for hearing on 23rd May 2005 he went to court on that date, indicated that he was ready to proceed and that he had four witnesses to call.
- (ii) Under the Kenya Anticorruption and Economic Crimes Act, Special Magistrates must hear cases under it and therefore as a result Maureen Mboya who had been a Special Magistrate for a year was assigned the case. However shortly before the case took off the Chief Magistrate de-gazetted her as a special magistrate and all the cases assigned to her stalled. Another magistrate was appointed but she stated that she could not proceed with the case until the fate of the other magistrate was determined. Two days later Mr. Murgor was sacked as Director of Public Prosecutions through an anonymous email from State House. One and a half months later the Head of State signed a gazette notice revoking his appointment and appointing the new Director, Mr. Keriako Tobiko, who was the Chief Defence Counsel for the case involving Mr. Zakayo Cheruiyot and others on Forensic Science Laboratory project.

The Committee therefore noted with concern that the case was frustrated by the de-gazettement of the special magistrate and the appointment of the new director of public prosecutions who was an interested party in some of these cases, (i.e. presence of conflict of interest).

From the foregoing, the Committee did not foresee any possibility of fair prosecution, and possible effort to pursue the matters expeditiously.

THE POLITICAL LEADERS MENTIONED IN THE EVIDENCE TENDERED BEFORE THE COMMITTEE ON ANGLO LEASING INCLUDE THE FOLLOWING:-

The President

The Committee accepts Mr. Githongo's evidence that he regularly briefed the President on the Anglo Leasing contracts and the related contracts from the time Anglo Leasing became the subject of a parliamentary query. In support of this the committee accepts the memorandum tendered in evidence by Mr. Githongo which he sent to the President as a brief on the Anglo Leasing contracts. Since Mr. Githongo worked directly for the President to whom he reported, and since one of Mr. Githongo's important responsibilities, according to the evidence of other witnesses, was the resolution of the Anglo Leasing matter, it would be difficult to conclude that he did not brief the President on the Anglo Leasing contract.

The fact that top civil servants were sacked on authority of the President, clearly points to adequate information having been provided to him, a fact that was confirmed in testimony by the head of public service. It is worth noting that the president directed Mr. Githongo to investigate who Mr. Kettering was and to ensure that the funds are refunded.

Even if it is accepted that Mr. Githongo never briefed the President, as may be claimed, other persons also testified that the President received appropriate briefing. These included Hon. Mwiraria, MP, and the Head of the Public Service and Secretary to the Cabinet, Amb. Muthaura.

The Committee believes that KACC reports were availed to the president and especially that his Governance & Ethics Ps dealing with corruption issues kept him fully informed.

Vice President & Minister of Home Affairs

The Committee also considered the evidence received in respect of the Vice President and Minister for Home Affairs, H.E. Hon. Moody Awori, MP. Hon. Awori, MP painted the picture of un-involvement in the affairs of his Ministry and this surprised the Committee. If, the Vice President wanted the Committee to believe that he only had a peripheral role in the processing of the Anglo Leasing contracts, this would be an abdication of his responsibility. As a Minister section 22 (3) of the Constitution requires that he exercises direction and control over his ministry.

The Vice President in his evidence explained to the Committee that it has been the practice for the Permanent Secretaries to perform many tasks in the Ministry without reference to his Minister. That Ministers may not even be aware of the progress of any implementation once a policy document has been approved and forwarded to the Permanent Secretary. The Committee however established that the law is not in agreement with the practise.

There is abundant evidence on record that the Vice President and Minister for Home Affairs was, contrary to his evidence before the committee, sufficiently involved in the implementation of the Anglo Leasing contract as to take responsibility for its shortcomings.

First, on the evidence of his Permanent Secretary, the Vice President was involved in the procurement of the contract and was kept informed at every stage. As evidence of his involvement, which the committee accepts, the Permanent secretary wrote to him a brief dated 5th September, 2003, and in which he sought the guidance of the Vice president. The VP gave his approval via a memo dated 8th September 2003. In the Memo, the Vice President authorised the Permanent Secretary to submit the contract documents to the Attorney General and Treasury for necessary action. He requested that the interest rates should be reduced. It is therefore evident that the Vice President was adequately informed about the project.

Secondly, on the Vice President to read a ministerial statement in Parliament in which he exonerated himself from any wrong doing in respect of the contract and further informed Parliament that the passports contract with Anglo Leasing & Finance Limited was valid. In the light of subsequent events, this statement was misleading. The Vice President could only have read the ministerial statement with either the intention of facilitating a cover up, or he was unconcerned as to whether or not the statement was true. The responsibility to verify the facts in the statement cannot be delegated as the Vice President tried to do when he testified before the Committee. The Committee was concerned that even after more information emerged, the vice president has never taken the liberty to apologise to parliament which is further testimony that he has little or no regard for the supreme institution in the country.

Thirdly, the Vice President misleadingly defended the reputation of Anglo Leasing in his ministerial statement. He chose to justify this on the grounds that he mistakenly referred to Francois Charles Obertrur Fiduciaire (FCOF), the reputable French company that was going to be the supplier of the passports, when he referred to Anglo Leasing and Finance Limited. The truth is that Anglo Leasing

and Finance Limited was, and still is an unknown entity and did not meet the praise, which, in the event, was calculated to mislead. Whose responsibility was it to verify the facts for him? Again, the Vice President must take responsibility for asserting that Anglo leasing was a company of good repute when the evidence available is contrary.

Fourthly, the Committee accepts the evidence of Mr. Githongo that he warned the Vice President before the contract with Anglo Leasing was signed, that this was a questionable contract. Notwithstanding his warning, he abdicated responsibility which allowed Anglo leasing to sign a contract that was outrightly disadvantageous to the public interest.

Fifthly, the Committee accepts the evidence of Mr. Githongo that he briefed the Vice president on his concerns about Anglo Leasing during the lunch meeting in his house. Indeed, the Vice President also accepted that he was briefed by Mr. Githongo on many issues. His inaction, when his ministry was involved in a procurement process that was questionable is completely inexcusable.

Further, it would be difficult to believe that a head of a critical department such as immigration and even then under scrutiny could be moved without the knowledge of at least the Vice President. This is a small ministry with one officer who had done a commendable job in refusing to participate in the irregular procurement process. The Vice President never defended the transfer of the Principal Immigration Officer (Mr. Ole Ndiema).

For the foregoing reasons, the Committee finds that a case has been made out for investigations into the conduct of the Vice President, Hon. Moody Awori, MP, in respect of procurement of passport issuing equipment contract.

Hon. David Mwiraria, Former Minister for Finance

The Minister for Finance, Hon. David Mwiraria, MP displayed a most cavalier attitude towards the Anglo Leasing and related contracts, failing to give the much needed leadership in the search for the resolution of these contracts. To begin with, according to his own testimony before the Committee, Hon. Mwiraria, MP was only interested in the recovery of the money paid to Anglo Leasing and Finance Limited and once this had been recovered, he considered himself discharged from any further responsibility. In the view of the Committee, Hon. Mwiraria, MP displayed great fear in finding out who was behind the Anglo leasing contracts, as if he already knew.

The evidence of Mr. Githongo, which the Committee accepts, was that Hon. Mwiraria, MP had instructed Mr. Oyula to call the principals of Anglo leasing and ask them to refund the money. The Minister also accepted this in his own testimonies but Anglo Leasing remained a mystery contract throughout. There is evidence of expensive trips to Europe that were made by law enforcement officers with a view to establishing the owners of Anglo Leasing when, all along, Hon. Mwiraria and his Financial secretary appear to have known them. Mr. Oyula's own testimony also confirmed that he was instructed by Hon. Mwiraria, MP to seek a refund from Anglo Leasing & Finance Limited.

The Committee accepts evidence about the discussion between Mr. J. Githongo and Hon. Mwiraria, MP as authentic which is supported by the recorded conversation between them in which Hon. Mwiraria, MP states the country will fall if the investigations continue.

When the Anglo Leasing contracts came under question, other Anglo leasing type-contracts that were also in place with various government departments also came into question. The Committee notes that the Central Bank of Kenya, which had outstanding Pay Advices in respect of these contracts

sought the direction of the Treasury on whether, in view of the questions on Anglo Leasing, these contracts should be paid or not.

Although Hon. Mwiraria, MP knew of these contracts, and also of the Bank's inquiry, he failed to provide leadership on how these should be dealt with, allowing matters to drift on their own. As a result, until the time he resigned, he had not addressed this problem. Some of the contracts have, in the meantime, been paid and others will continue to be paid in future.

Hon. Mwiraria, MP ordered a special audit on the Anglo Leasing contracts. The National Audit office, in pursuance of the audit, sent the audit query to the Treasury in October 2005. This has not been replied to and is holding up the production of the audit report. Hon. Mwiraria's response on this was that it is not his work but the work of the Permanent secretary to deal with such matters.

The Committee notes that Hon. Mwiraria, MP has already resigned his position as Minister for Finance. The Committee is concerned that in the evidence, Hon. Mwiraria, MP was either out rightly incompetent and was overwhelmed by the responsibilities of his office, or was deliberately remiss with a view to giving the Anglo Leasing principals an advantage. The Committee recommends that he should also be investigated with a view to taking appropriate action.

Hon. Kiraitu Murungi, MP, Former Minister for Justice & Constitutional Affairs

Hon. Kiraitu Murungi, MP was the Minister for Justice and Constitutional Affairs. It was one of his responsibilities to provide leadership in the fight against corruption. The evidence received by the Committee indicates that Mr. Githongo enjoyed a good personal relationship with Hon. Murungi, MP. Hon. Murungi, MP also had a good personal relationship with Dr. Murungaru, MP with whom, according to Mr. Githongo, he shared a history. Throughout Mr. Githongo's tenure at State House, Hon. Murungi, MP had a conflict of loyalties. He owed friendship to Mr. Githongo at a personal level and, perhaps he also owed Mr. Githongo a protective duty, as the Minister in charge of the anti-corruption programme. But he also owed a duty of friendship to Hon. Murungaru, MP and Alfred Githonga and, perhaps, also a duty of loyalty. Hon. Murungi, MP casts Hon. Murungaru, MP as an aggressive person, whose qualities are necessary for raising party funds together with Githonga and hence required protection. Hon. Murungi, MP failed to offer Mr. Githongo undivided support although, from time to time, he played the role of an informer to Mr. Githongo, giving him early warning of impending danger.

Hon. Murungi's role as an emissary is also revealed in the case of Mr. Githongo senior, whose problems are used to exert influence on his son. The Committee accepts evidence about the discussion between him and Hon. Murungi, MP as authentic which is further supported by tape recorded conversation between them. The Committee finds that there is credible evidence to suggest that Hon. Murungi, MP gave protection to Anglo Leasing principals. The Committee further finds that, based on Hon. Murungi's various discussions, the principals behind Anglo Leasing projects were probably a front for persons within President Kibaki's administration.

This would explain the insertion with which the Anglo Leasing investigations have been carried out. The mysterious refunds of money further suggest this finding. It is not possible that independent business people, whether or not they have complied with their part of a contract, would so readily refund money merely because the government has asked them to do so. The ready refunds point to the existence of a ring of conspirators, who have orchestrated schemes to defraud the revenue. When the risk of being found out struck them, they were ready to suffer the temporary set back of refunding more than KShs.1 billion to the Treasury, in exchange for self-preservation.

Hon. Murungi, MP advised Githongo to go slow on corruption investigations in return for similar favour being extended on his father's case pending in court. This was obviously a bribe by a minister in charge of justice punishable under the public ethics act 2004.

The Committee was satisfied that Hon. Murungi, MP acted to protect Hon. Murungaru, MP and Mr. Gitonga and hence obstruct justice given that he was in charge of this ministry. Further investigation is required to establish his interference in the judiciary as a whole including the appointment of Tobiko, a counsel in one of the cases and the removal of special magistrate for corruption cases. Hon. Murungi, MP should be investigated for the attempts he made to cover up the scandal, including the pressure he brought to bear on Mr. Githongo, through the Anura Perera matter.

THE ROLE OF CIVIL SERVANTS

The evidence received by the Committee touched on the following civil and servants:-

- i. The former Permanent Secretary in the ministry of Home Affairs, Mr. Sylvester Mwaliko;
- ii. The former Permanent Secretary to the Treasury, Mr. Joseph Magari;
- iii. The former Financial Secretary Mr. Joseph Oyula;
- iv. The Head of the Public Service Ambassador Muthaura; and
- v. The former Permanent Secretary in the office of the President, Mr. Dave Mwangi.

Mr Sylvester Mwaliko, former Permanent Secretary, Ministry of Home Affairs

The Committee noted that Mr. Mwaliko kept his minister informed about the passports contract as evidenced by the exchange of briefings already discussed. However, he acted arbitrarily in causing to be awarded to Anglo Leasing the passports contract, by disregarding previous bids by companies that had preceded Anglo Leasing and Finance Limited in his ministry.

The Committee does not accept that the arrival of Anglo Leasing and Finance Limited on the scene could have been as a result of anything other than a conspiracy. They had tailor-made solutions for the ministry, suggesting insider information.

Whereas Mr. Mwaliko produced to the Committee the memorandum through which the Vice-President authorized him to submit the proposal to Treasury for evaluation and approval, he declined to show the Committee his own memorandum of 5th September to which the Vice-President was responding citing that it formed part of his evidence in court.

Whereas Mr. Mwaliko attended a meeting at Treasury on 27th August 2002 at which the Government Information and Technical Services (GITS) was tasked to prepare comprehensive proposals on the modernization of the issuance of passports, without waiting for the proposal, he went ahead with the procurement of the project with Anglo Leasing and Finance Limited.

The Committee finds that Mr. Mwaliko's action in this regard was arbitrary and unilateral.

The Committee further finds it difficult to believe, as Mr. Mwaliko would like, that the contract with Anglo Leasing was brought to him to sign in the absence of all the other signatories.

The Committee also disbelieves Mr. Mwaliko when he says that Mr. Merlyn Kettering walked from the streets into his office, without an appointment, and managed to discuss with him, the intricacies of the passports project whose procurement was considered secret. It would have been most irresponsible

of him to classify a project as secret, and then proceed to discuss its procurement with a total stranger walking in from the street. Mr. Mwaliko must have known Dr. Kettering with whom he acted in conspiracy. Mr. Mwaliko denied ever meeting Mr. Colin Flyn who signed the agreement for procurement of Passport Issuing Equipment with.

The Committee finds that the pre-printed due diligence that Mr. Mwaliko says was done by his officers on Anglo Leasing was most wanting. Moreover, he could not state what exactly was done in pursuance of due diligence. Moreover, he was contradicted by the Permanent Secretary to the Treasury Mr. Magari, who said that due diligence was not necessary, and was not done, because Anglo Leasing was doing business with the government already.

Mr. Mwaliko also misled the Committee that all the comments forwarded to his office from the Attorney General had been incorporated in the final document. The committee established that this was in fact not undertaken. This is a serious offence given the serious legal consequences of such omissions.

The Committee notes that Mr. Mwaliko already faces a number of criminal charges for his role in the Anglo Leasing contracts but it is of the view that he did not act alone. Investigations to establish those he acted with, and who should stand with him in court, should be under taken.

Mr. Zakayo Cheruiyot, former Permanent Secretary, Office of the President

The Committee found Mr. Zakayo Cheruiyot, the former Permanent Secretary in charge of Internal Security to be most evasive and unreliable. He appeared not to remember only those matters that were prejudicial to him and remembered the details of everything else. For example, he could not remember whether it was his ministry or Treasury which sought financing. Mr. Cheruiyot could not remember whether he performed any due diligence on Anglo Leasing, Mr. Cheruiyot said he relied on the advice of the Attorney General that he should just go ahead and sign. The committee notes that the signing was based on fulfilling the necessary legal requirements as stipulated in Government financial regulations.

Mr. Cheruiyot played a role in the Forensic science laboratory project and not in the passport issuing equipment. Parliament should therefore order an audit in this project to establish how Cheruiyot came to sign a contract with a company he refused to explain how it was sought. Further inquiry involving persons who worked with Mr. Cheruiyot, for example his minister and the Head of the Public Service at the time need to be undertaken to clear his role.

Amb. Francis Muthaura, Head of Public Service and Secretary to the Cabinet

The Committee, finds it difficult to believe that Amb. Muthaura issued an advertisement merely to clear the confusion that there were two Anglo Leasing and Finance projects. The head of civil service had in the advertisement misled the public that there had been no wrong doing by anybody. In any case payments had been done on the two projects without commensurate work being undertaken. Accordingly therefore the committee is of the view that the advertisement was calculated to reduce the mounting public pressure then on action to be taken on corruption in Government.

The Committee found it difficult to believe that the head of civil service could prepare such an advertisement without the involvement of Mr. John Githongo whose docket/brief included advising the president on matters on corruption and clearly within his knowledge that Mr. Githongo was fully responsible.

The Principal Immigration Officer (PIO) was transferred with the knowledge of the head of the public service fully aware he was one of the few officers who were opposed to the manner in which the passport project was handled. In fact he could not offer an explanation as to why Mr. Ole Ndiema was transferred. The Committee found it difficult not believe that he was not transferred because of being a 'stumbling' block in the passport procurement contract.

Amb. Muthaura misled the committee that all security related contracts had their payments stopped pending finalisation of audit by Controller & Auditor General (C&AG). In fact he expressed surprise when informed by the committee that no payments had indeed been stopped. A decision of such magnitude where billions of money on various security contracts is involved could not have been made verbally. Clearly the matter involved various ministries and the head of Public service had stated that one of his responsibilities was to coordinate ministries. To date no official document has been availed on suspension of payments.

The head of the civil service as detailed above either deliberately misled the Committee or is incompetent in his duties. Further investigation is desirable to establish these facts.

Mr. Joseph Magari, former Permanent Secretary, Treasury

The Committee finds that Mr. Joseph Magari acted and signed the Procurement of Passport Issuing Equipment contract with full appropriate authority and consultation with his Minister. His excuse that the company was already doing business with the government and does not require due diligence is debatable. His evidence that he briefed his Minister is true and documented.

Mr. Joseph Oyula, former Financial Secretary, Treasury

The Committee finds that Mr. Joseph Oyula knows much more than he ever volunteered to the committee. It is not believable that he merely sent a facsimile to Anglo Leasing and Finance Limited which led to a refund of money without questions. It is more likely, and this is supported by Hon. Mwiraria's evidence, that he called the principals, whoever they are. After all, he admitted to being introduced to Mr. Deepak Kamani by the late Agili (Financial Secretary), considered the person behind Anglo Leasing and Finance Limited. The Committee finds that there must be a special relationship between Mr. Oyula and Anglo Leasing and Finance Limited, which made them readily heed the request to refund money. Further, the committee finds that there must be a conspiracy between Mr. Oyula and Hon. Mwiraria, MP which made the latter trust Mr. Oyula to the extent of asking him to seek the refund.

The letter which Mr. Oyula wrote to the Central Bank was written in the height of inquires in the National Assembly on the genuineness of Anglo Leasing and similar type contracts. Whereas the Bank had hoped for a wholistic review of such contracts, Mr. Oyula appears to have interested the Bank's request as merely requiring the fulfilment of formalistic requirements, so that the Bank could go ahead and pay. There is no evidence that he ever consulted the Minister on the fundamental issues such as the fact that the contracts had all the formal requirements. Mr. Oyula, therefore, facilitated the payment for some of the pending 18 contracts when circumspection would have led to a more harvest review of the contracts.

The Committee finds that Mr. Oyula consistently took refuge in formalism to give advantages to Anglo Leasing. The Committee finds, further, that Mr. Oyula is inescapably one of the civil servants that aided in the performance of these questionable contracts.

The Committee considers Mr. Oyula unreliable and inconsistent and hence concluded that he was unwilling to give information. It is difficult not to believe that having worked in treasury for over twenty years; he was one of the chief architects of the civil servants that promoted the use of single sourcing for the procurement of security equipment and hence overpricing of the same. They had however perfected the art of ensuring that proper authorisation was sought and hence difficult to find him culpable on paper.

The Role of the Attorney General

The role of the Attorney General on Government is provided for in Chapter 9 (nine) of Government Financial Regulations. The understanding of that role by different people in the government is according to the evidence, varied. The Head of the Public Service, for example, stated that the Attorney General should be involved in all stages of the procurement process, and should advise the line ministry of the need for due diligence and also sees that due diligence is performed properly.

The Treasury, on the other hand, expressed the view that due diligence is the responsibility of the Attorney General. Mr. Magari, specifically, blamed the Attorney General for bringing a criminal case against him for failure to exercise due diligence when the duty to do due diligence is in Mr. Magari's view, vested in the Attorney General himself. The Attorney General, Hon. S. Amos Wako said that his office should be involved in all stages in the procurement process but, that, the practice has evolved that the Attorney General is only contacted at the end. The only role of the Attorney General is to provide *an geinicen* to the effect that the persons who have signed the contract on behalf of the government have the authority to bind the government. This he said, is for the comfort of the investors who would like to feel protected when dealing with the government.

The Committee finds that whereas the provision of the procurement regulation empower the Attorney General to participate in all stages, he has not done so in practice. This, in the view of the Committee is an abdication of his responsibilities.

Secondly, the Attorney General has taken an unbalanced and partisan view of his role in government contracts. He feels obliged to protect the interests of the foreign investors but not those of the government for which he is the advisor.

Thirdly, in accordance with government procurement regulations (2001), Section 13 (1) in order to participate in public procurement, candidates must qualify by meeting the following criteria and such other criteria as the procuring entity considers appropriate under the circumstances:-

- (a) that they possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation, and the personnel to perform the contract;
- (b) that they have the legal capacity to enter into the contract;
- (c) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended and they are not subject of legal proceedings for any of their foregoing;
- (d) that they have fulfilled their obligations to pay taxes and social security contributions, and for that purpose, documentary evidence to be provided by a foreign candidate to demonstrate

that it meets the criterion in this paragraph may consist of a written declaration to that effect by the candidate.

It is therefore evident that the duty to carry out due diligence in respect of a government contract must rest with the line ministry which is procuring. However, due diligence has many components which include financial due diligence, technical due diligence and legal due diligence. The role of the line ministry is to conduct the first two aspects of due diligence and further to satisfy itself that the other forms of due diligence have been conducted before it can clear the contract for signature. Had the AG participated in the negotiations as required by the act, the due diligence process would clearly have been undertaken.

The Attorney General in giving a legal opinion was merely for the comfort of the financier, it is difficult to understand why such a comfort was not required by the Government. His office misled the Committee that all the comments suggested for inclusion in the final document had been incorporated. The Office of the Attorney General had raised serious issues and misnomers in the agreement entered into with Anglo Leasing & Finance Limited. The Attorney General's office had questioned why Anglo Leasing and Finance Limited did not provide reasons for the administrative fees charges in the agreement, why Anglo Leasing and Finance Limited should not be paid in Letters of Credit as opposed to Promissory Notes, why the contract does not provide an assurance or a guarantee that Anglo Leasing and Finance Limited will perform its part of the contract, why the payment is not pegged on specific performance indicators, why the warranty period is only for a paltry one year.

The Committee established that many of the comments as forwarded by the Attorney General's office had not been captured in the final document yet the Attorney General's office approved the contract agreement. This is clearly a case of serious negligence.

While taking evidence, the Committee was taken through a host of reforms the Attorney General intends to undertake in his department to ensure better results are realised by the Government. Since the Attorney General has been in office from 1991 to date, it is difficult to believe that he was not aware of the weaknesses of his department for the entire period. The Committee finds him negligent in representing his client but keen on paper work to shield himself.

The Committee noted that the Attorney General has been unable to exercise the functions of his office. In the Passport Issuing Equipment Project, the Attorney General was unable to show that he took adequate steps to ensure that the Agreement signed was favourable to the Government.

The Committee found him incapable of advising his client adequately and a little too late to be charged with undertaking any meaningful reforms in the Kenya Law Office.

Mr. Dave Mwangi, former Permanent Secretary, Office of the President

Mr. Dave Mwangi was not involved in the Passport Issuing Equipment Project. However, the Committee noted that two instalments pertaining to the Forensic Science Laboratory Project were returned during the tenure of Mr. Mwangi as Permanent Secretary in the Office of the President without his knowledge. Further that he signed two security contracts with Messrs Globotel and Infotalent Ltd.

Given the similarity in procurement of these projects, Parliament should grant authority for audit and investigations into these contracts to establish the role of Mr. Mwangi.

Features of security contracts

The Security contracts all have the same design and features. The contracts are all for large sums of money, and have been entered into by single sourcing. In each case, there are two role players, a financier and a supplier. As has been demonstrated, the financing company and the supplier are sometimes related companies. At other times, the supplier is a reputable international company. Invariably, the financing company is a shadowy entity whose exact identity could not be legally verified.

It seems that the role of the financing company is to necessitate the creation of debt by the government, as opposed to outright payments for the goods or services procured. Once debt is created, it is the responsibility of the Treasury to service it through the Consolidated Fund Service, as opposed to the line ministry paying for it through its voted funds. This immediately creates disconnect between implementation of the project, which remains the responsibility of the line ministry, and paying for it, which is the work of Treasury. From the documents examined, the Committee noted that Treasury mechanically remits payment for the contracts without regard as to whether or not, on the ground, the contract is performing.

In effect, therefore, the government paid money to the financing company which then paid the supplier, using that money, who then supplied the goods or services. The government then paid interest to the financing company on its own money.

This arrangement is not possible without the most elaborate collusion on the part of all concerned. In the view of the Committee, the collusion involves three levels of people.

First, there are the business people who are involved in the supply of goods and services to the government in security contracts.

Secondly, there are the civil servants. The evidence of Mr. Githongo emphasized the important role of civil servants in bringing about these sham contracts. They are the ones who negotiate the terms and prepare the documentation. They are the first line of possible resistance to the corruption that is represented by these contracts. They are also the first line of recruits in these scams. Most likely, they manipulated their superiors and also provide inside information to the business people.

Thirdly, there is the political level. People at the political level do not always document their participation and it is most difficult to prove it. In the Anglo Leasing contracts, it took the extraordinary efforts of Mr. Githongo, an insider in the government, to provide evidence of participation of this level of people. In the view of the Committee, politicians provide the space in which the businessmen and civil servants carry out the corrupt schemes. Politicians give protection from law enforcement in the event of the schemes being discovered.

Here below are attachments relating to possible inter-relationships of Anglo Leasing related companies and contracts.

ATTACHMENTS

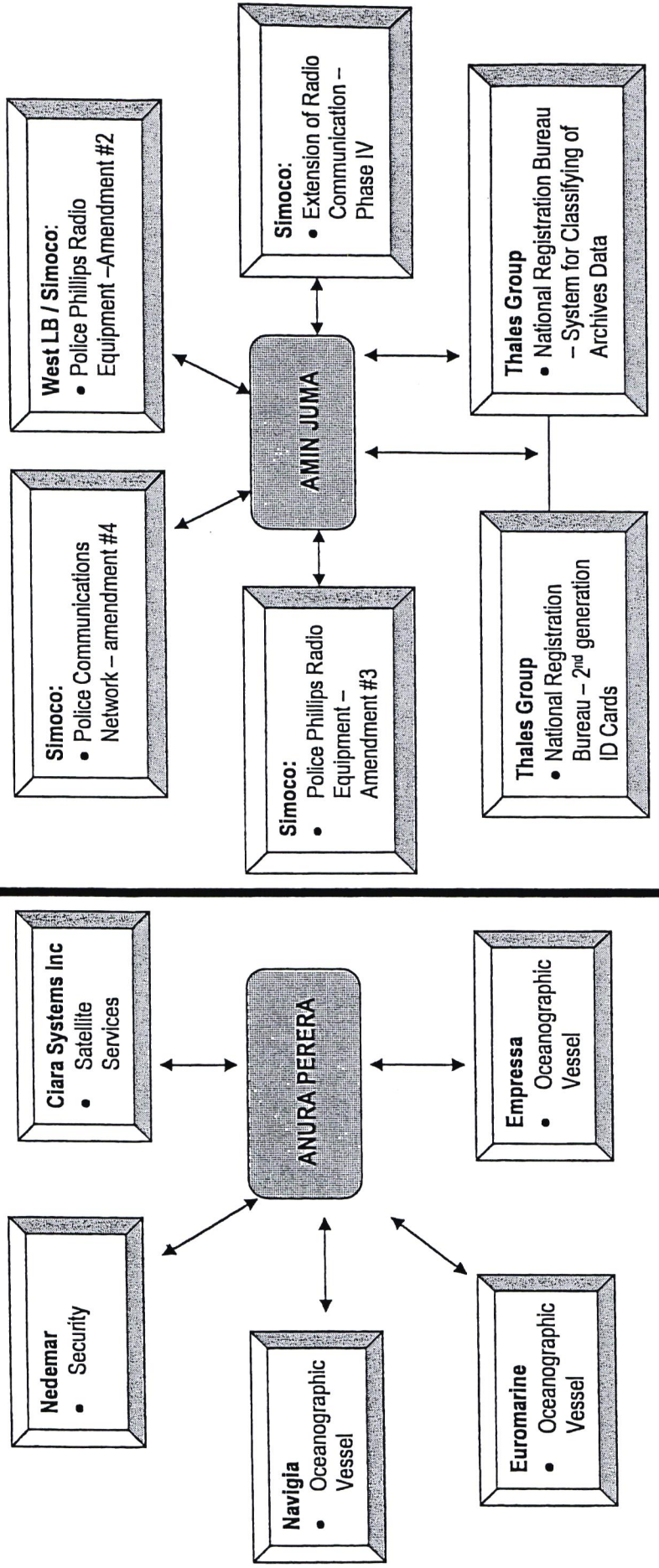
ANALYSIS OF 18 SECURITY PROJECTS FUNDED THROUGH FOREIGN SUPPLIER/CREDIT ARRANGEMENTS

	Project	Date Agreement Signed	Equipment/ Consultant Supplier	Funding / Credit Provider	Main Types of Equipment Consultancy	Foreign Currency Value	Total Paid to Supplier as at 30.6.05
1.	Kenya Prisons Security and Telecommunications Project Phase 1	1997	LBA Systems	LBA Systems	Digital Multichannel Security Telecommunications Network	US\$24.6 million	US\$24.6 million
2.	Kenya Police Airwing Project	8.6.98	Sound Day Communications	Apex Finances Corporation	4 Mi 17 Helicopters	US\$36 million	US\$36,000,000
3.	Export Lease Purchase	18.8.01	Leyland Export Ltd	Silverson Establishment	Security vehicles for Police	US\$90 million	Not known. Refunded – KSh72.8 Million
4.	Forensic Science Laboratory	16.8.01	Anglo Leasing & Finance Ltd	Anglo Leasing & Finance Ltd	Establishment of a Forensic Science Laboratory	US\$54.6 million	US\$4.7 million – amount has been refunded.
5.	Kenya Prisons Security and Telecomm Project II	19.1.02	LBA Systems	LBA Systems	Digital Multi-Channel Security Telecommunications Network	Euro29.7 million	Euro 5.6 million – Refunded KSh572.8 million
6.	Kenya Police Security Equipment – Addendum 2	9.4.02	Sound Day Communications	Sound Day Communications	Various security equipment for the Kenya Police	US\$30 million	US\$ 30 million; KSh2.3 billion & interest KSh572.8 million
7.	National Early Warning System	7.6.02	LBA Systems	LBA Systems	Supply & Installation of Early Warning Radar Systems	US\$35 million	US\$16.6 million; KSh 1.3 billion & interest KSh171.5 million
8.	Kenya Police Security Equipment – Addendum 2	14.6.02	Sound Day Communications	Sound Day Communications	Various Security Equipment for the Kenya Police	US\$31.8 million	US\$18.7 million; KSh 1.8 billion & interest KSh161.5 million
9.	Bandwidth Spectrum and Network	11.7.02	Universal	Universal	Independent Data Network and	US\$28.1 million	US\$13.2 million;

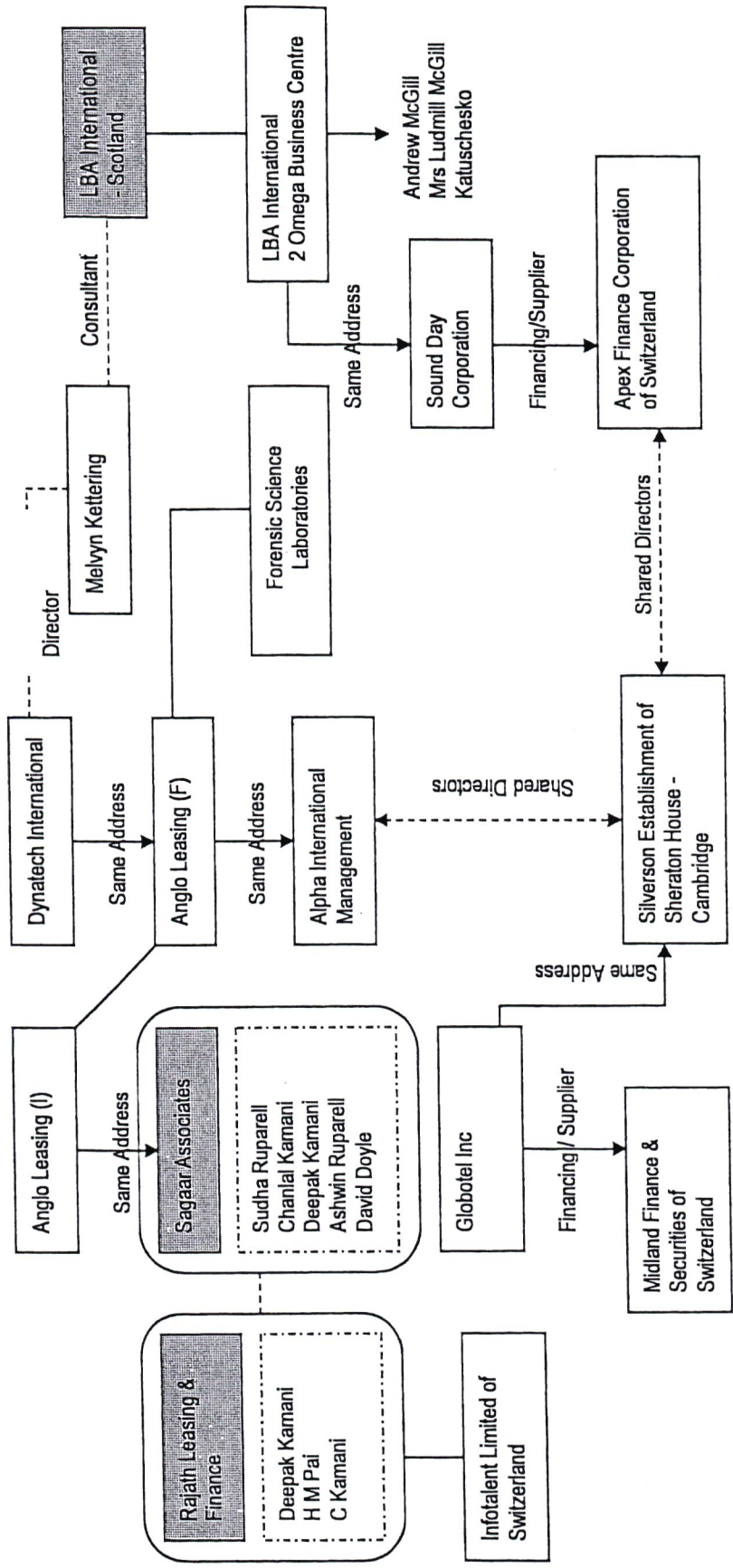
	Project	Date Agreement Signed	Equipment/ Consultant Supplier	Funding / Credit Provider	Main Types of Equipment Consultancy	Foreign Currency Value	Total Paid to Supplier as at 30.6.05	
	Operations Control Project		Satspace (North America)	Satspace (North America)	Internet Satellite Service Link – Postal Corporation of Kenya		KSh1.2 billion & interest KSh32 million	
10.	Broad Band Communications Equipment	11.7.02	Space Net Corporation	First Mercantile Securities Corp	Broad Band Communications Equipment for Postal Corporation of Kenya	US\$11.8 million	US\$5.9 million; KSh1.1 billion & interest KSh8 million	
11.	Kenya Police Airwing Support Project II	12.7.02	Sound Day Communications	Apex Finance Corporation	Procurement of Operational Technical Support & Warranty Services M. 17 Helicopters	US\$12.8 million	US\$8.1 million; KSh635 million & interest KSh69.8 million	
12.	Project Nexus – DOD	18.11.02	Nedemar Technology	Nedemar Technology	Drawing & Execution of various works; delivery and installation of various security & communication equipment at the DOD	Euro38.9 million	Euro12.5 million; KSh 1.26 billion	
	Total Contracted Pre-December 02						US\$355 million Euro 67 million KSh35 billion	
13.	Oceanographic Survey Vessel	15.7.03	Euro Marine Industries	Euro Marine Industries – Imprensa de Financas International Ltd	Construction of Survey Vessel – One Navy Ship	Euro10.9 million	Euro4.55 million; KSh432.5 million & interest KSh40.5 million	
		15.7.03		Imprensa de Financas International Ltd		Euro17.8 million.	Euro1.9 million; KSh180 million & interest KSh63.7 million	

Project	Date Agreement Signed	Equipment / Consultant Supplier	Funding / Credit Provider	Main Types of Equipment Consultancy	Foreign Currency Value	Total Paid to Supplier as at 30.6.05
	15.7.03		Navigia Capital International Ltd		Euro31.6 million	Euro3.3 million; KSh313 million & interest KSh124.4 million
Sub-total Oceanographic Survey Vessel						
14.	29.9.03	Globotitel	Midland Finance	Multi Channel Security Telecomm network for Administration Police	Euro49.6 million	Euro9.8 million; Euro6.5 million; KSh613 million & interest KSh74.2 million
15.	19.11.03	Infotalent Ltd	Infotalent Ltd	Installation, commissioning & establishment of Police Law & Order Security Systems	Euro59.7 million	Euro5.3 million – Amount since refunded
16.	4.12.03	Anglo Leasing & Finance Ltd	Anglo Leasing & Finance Ltd	Passport and Visa Issuing Systems	Euro31.9 million	Euro956,700 – amount since refunded
17.	17.12.03	Sound Day Corporation	Apex Finance Corporation	Modernisation of Police Equipment	Euro40 million	Euro1.2 million
18.	20.1.04	Ciara Systems Inc	Ciara Systems Inc	Design, supply and Installations of Various Electronic Facilities	US\$41.8 million	US\$2.7 million; KSh213.6 million
Total Contracted post-December 02						
					<u>US\$42 million</u>	
					<u>Euro242 million</u>	
					<u>KSh28 billion</u>	
Grand Total						
					US\$397 million	
					Euro309 million	
					KSh63 billion	

INTER-RELATIONS OF THE FINANCING COMPANIES INVOLVED IN SECURITY PROJECTS



INTER-RELATIONS OF THE FINANCING COMPANIES INVOLVED IN SECURITY PROJECTS (continued)



GENERAL RECOMMENDATIONS

The Committee recommends that:-

- (i) The Director, Kenya Anticorruption Commission should liaise with the Attorney General, the Police Commissioner, and other relevant bodies with a view to prosecuting persons who were involved in negotiations and approval of the procurement of Passport Issuing Equipment project.
- (ii) The Attorney General should ensure that of the eighteen (18) projects, those which have not taken off are legally terminated to avoid accumulation of pending payments and penalties until investigations are complete, while those which have commenced should be renegotiated with strict adherence to the laid down procurement regulations and procedures. The Attorney General should give the legal position on the status of the 18 projects.
- (iii) In future, no financial agreement should be signed before the relevant Minister and the Accounting Officer of the procuring Ministry the Attorney General and, Treasury are satisfied that due diligence has been done on the supplying/financing company. Equally no payment should be made before due diligence requirement is complied with.
- (iv) The use of promissory notes as a means of financing government expenditure should be restricted and vetted to avoid misuse. Government programmes, whether security related or otherwise should be included in the National Budget which is presented to Parliament. For security equipment and or services this will be done without necessarily disclosing the nature of goods/services planned to be procured.
- (v) The Accounting Officer, Office of the President in charge of Internal Security should ensure that security equipment is categorized in order to ascertain their degree of secrecy. Any equipment such as telecommunication materials and vehicles whose operations do not involve secrecy should be sourced through normal tendering.
- (vi) Since the Controller and Auditor General has audited the eighteen (18) security related projects, he should ensure that the audit reports are urgently tabled in Parliament as provided for in law.
- (vii) A Departmental Committee called a *Parliamentary Security Committee* should be formed to deal with National security related issues. It should

have a life length equivalent to the life of a Parliament and its Members should be vetted to deal with security projects. Section 18 of the Powers and Privileges Act should be amended. The fact that the President has to give consent before any security issues can be discussed by Parliamentary Committees has led to abuse of the provision.

- (viii) The Minister for Finance should report regularly to Parliament on all external loans contracted by the government pursuant to provisions of the External Loans and Credit Act, Cap. 422 of the Laws of Kenya.

Although the loans are reported to the House by the Controller and Auditor General in his annual reports, the House should set aside time when the Minister can present his reports on external loans.

- (ix) The Pay Advice from Treasury to Central Bank of Kenya must be countersigned by the Accounting Officer of the user Ministry or department as commitment that the required goods have been supplied or services rendered.
- (x) An implementation monitoring Committee should be formed urgently to follow on Committee recommendations adopted by the House as well as assurances made by Ministers on the floor of the House. After adoption of recommendations by the House, the government should give "*action taken report*" to the House within sixty days. Action taken on assurances made by the Ministers should also be treated in the same way.

The government should give response to the House on assurances and adopted recommendations within sixty days.

- (xi) Since the House passed a resolution in Year 2002 for live televising and broadcasting of Parliamentary and Committees proceedings all future proceedings of Committees should be opened to the public. Committees should be at liberty to decide when to carry on with their proceedings in private.
- (xii) The Standing Orders Committee must urgently ensure that Standing Order No.161 which prohibits premature publication of evidence is re-examined.
- (xiii) The Attorney General should move bills in Parliament providing for stiff penalties on officers who fail to adhere to the laid down laws as well as

financial regulations and procedures when sourcing for goods and services on behalf of the government.

- (xiv) KACC should hasten its investigations and make its report public as soon as possible.
- (xv) All major government projects whether security related or otherwise should receive cabinet approval before the signing of any contract agreement or payment of any funds. They must also be budgeted for adequately.
- (xvi) Since the 18 Anglo Leasing type projects are all security related and the Auditor General has audited them, the President should give consent for public officers to give evidence before the Committee and to produce relevant documents as provided for in section 18 of the National Assembly (Powers and Privileges) Act Cap. 6 of the Laws of Kenya. Unless this is done it will be impossible to take evidence on the Reports of the Controller and Auditor General.

All other recommendations included in the body of this report also form part of the Committee recommendations.

- x -

**MINUTES OF THE FIRST SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HELD ON
TUESDAY, FEBRUARY 07, 2006 IN COMMITTEE ROOM NO. 9
PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT: The following Members were present.

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. F Charles Keter, MP
Hon. Fahim Twaha, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. C.W. Munga - Principal Clerk Assistant
Mr. J. Ariwomoi - Third Clerk Assistant

MIN. NO.1/2006 EVIDENCE FROM MR. JOHN GITHONGO

The Committee deliberated on current graft revelations by the former Ethics & Governance Permanent Secretary Mr. John Githongo.

Since the Special Audit Report on the Procurement of Passport Issuing Equipment by the Department of Immigration was negated by the House, on a vote members resolved to take more evidence on the project and prepare a more comprehensive report for adoption by the House. In this regard they further resolved to travel to London from 9th – 16th February 2006 so as to take evidence from Mr. John Githongo after which more evidence would be taken from other relevant persons.

The Committee noted that following the reconstitution of the Cabinet in December 2005 and further to their appointment as Assistant Ministers, the following ceased to be Members of the Committee:

Hon. Ekwee Ethuro, MP
Hon. Adelina Mwau, MP
Hon. Kembi Gitura, MP
Hon. Koigi wa Wamwere, MP

MIN. NO. 2/2005 ADJOURNMENT

The Chairman adjourned the meeting at 11.40 am.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HELD IN KENYA HIGH COMMISSION PREMISES - LONDON ON FEBRUARY 11TH 2006 AT 9.00 A.M.

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)

Hon. Norman M.G.K. Nyagah, EGH, MP

Hon. Billow Kerrow, MP

Hon. Joseph K. Lagat, MP

Hon. Zebedeo Opore, MP

Hon. Fahim Twaha, MP

Hon. Charles Keter, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk

Mr. Stephen Mutungi - Assistant Hansard Editor

Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

MIN. NO. 3/2006 EVIDENCE: PASSPORT ISSUING EQUIPMENT

Mr. John Githongo, the former Permanent Secretary for Governance and Ethics accompanied by his lawyer, Prof. Makau Mutua, appeared before the committee and gave evidence on the Passport Issuing Equipment Project.

MIN. NO. 4/2006 CHAIRMAN'S REMARKS

The chairman welcomed the witness and his lawyer and thanked them for their appearance. He informed them that Mr. Githongo would give evidence under oath pursuant to provisions of **Section 16 of the National Assembly (Powers & Privileges) Act Cap 6 (Laws of Kenya)**.

MIN. NO. 5/2006 ADMINISTRATION OF OATH

The Committee Clerk administered the Oath to Mr. John Githongo.

MIN.NO. 6/2006**REPORT ON PASSPORT ISSUING EQUIPMENT
AND SIMILAR PROJECTS**

The Committee was informed that Mr. Githongo compiled and submitted the report of his findings on Anglo Leasing type contracts to the President of the Republic of Kenya in November 2005. He gave a similar report to the Chief Executive of Kenya Anti Corruption Commission (Justice Aaron Ringera) in December 2005 with different covering letters.

The report to the President was more detailed than the one submitted to Justice Ringera but there was no material difference between the two reports. The letters were handed over to the two parties by hand.

MIN. NO. 7/2006 PAPERS LAID

The following papers were laid during the evidence:-

- (i) Confidential statement
- (ii) Memorandum dated 10th May 2004
- (iii) Suppliers Financing Agreement for Kenya E-cops security, law and order systems project for Kenya Police Department, between Infotalent Limited and the Government of the Republic of Kenya.
- (iv) Export Lease - Purchase Finance Agreement No. Kenya/OP/FSL/2001/01 Forensic Sciences Laboratory for the Criminal Investigation Department (CID) of the Office of the President of the Government of Kenya.
- (v) Security contracts under special purposes financing vehicles in Office of the President.
- (vi) DVD - BBC Post Production Format Transfer Services 020 857 60444 News-night Kenya dated 8th February 2006.
- (vii) Security related procurements from 2001 to-date.
- (viii) Copies of letters written to the Controller & Auditor-General, Mr. Evan Mwai on security related foreign suppliers' credit contract dated 3rd and 10th January 2005.
- (ix) CD with three in one recordings.

MIN. NO. 8/2006**ADDITIONAL INFORMATION**

The witness gave a chronology of events in the probe on the passport issuing equipment (Anglo Leasing) project and other Anglo Leasing type contracts. The committee was informed that:-

- (i) in march, 2004 the department of Governance and Ethics was provided with information which suggested that a non-existent company called Anglo Leasing and Finance had been awarded a contract by the Immigration Department in the Ministry of Home Affairs and a 3% down payment of about Kshs. 90 million had been paid.
- (ii) during his investigations into the matter he established that various payments were made to non-existent companies and that the Government had no legal recourse on these payments in the event of non-performance by the suppliers. The Government started repayment before implementation of the projects had started.
- (iii) his investigation experienced political interference mainly by the then Minister for Finance (Hon. David Mwiraria MP), Minister for Justice & Constitutional Affairs (Hon Kiraitu Murungi MP) and the Head of Public Service and Secretary to the Cabinet (Amb. Francis Muthaura) among others who wanted him to slow the pace of his investigation. When he failed to do so he received warnings and threats.
- (iv) he informed the Head of State on several occasions both verbally and in writing but no action was taken on the persons who had been identified as perpetrators of the project. The alleged perpetrators were also not afraid of the fact that the President was aware of what was happening.
- (v) The Controller and Auditor-General audited other Anglo Leasing type contracts some of which had been submitted to the Cabinet for perusal while the others were still being audited at the time of his resignation. The Permanent Secretary, Treasury was under pressure to pay the pending bills on Anglo Leasing type projects from the said Head of Public Service and Secretary to the Cabinet and the said Minister for Finance.
- (vi) the threats spread to his immediate family. The said Minister for Justice and Constitutional Affairs, and the former Minister for National Security, Hon. C. Murungaru, MP informed him that the security related projects were for political financing purposes and the President was aware of their financing hence on 24th January 2005 he resigned.

MIN. NO. 9/2006

ADJOURNMENT

The Chairman adjourned the meeting at 1.20 p.m.

AFTERNOON SITTING

The Committee assembled at 2.30 p.m.

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Norman M. G.K. Nyagah, EGH, MP
Hon. Billow Kerrow, MP
Hon. Joseph K. Lagat, MP
Hon. Zebedeo Opore, MP
Hon. Fahim Twaha, MP
Hon. Charles Keter, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk
Mr. Stephen Mutungi - Assistant Hansard Editor
Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

MIN. NO. 10/2006 EVIDENCE

Mr. John Githongo, the former Permanent Secretary for Governance and Ethics accompanied by his lawyer, Prof Makau Mutua, appeared again before the committee and gave evidence on the Passport Issuing Equipment Project and other similar projects.

MIN. NO. 11/2006 OTHER ANGLO LEASING TYPE PROJECTS

The Committee was informed that there are about eighteen other contracts and the creditors/financiers of most of the projects were same people.

PROJECT	AGREEMENT DATE	CREDITOR/FINANCIER
(i) Project Police Communication	14/2/1992	Philips Telecommunications Radio - Barclays PLC (A.

Network		Juma)
(ii) Philip Radio Equipment for the Police	30/5/1997	Barclays U.K. Simco (A. Juma)
(iii) Comprehensive Aviation Operation Technical Support and extended warranty services for Kenya Police Air wing	12/7/2002	Apex Financing Corporation (Deepak Kamani)
(iv) Export Leasing purchase Financing Agreement of Security vehicles	16/8/2001	Silverston Establishment (Deepak Kamani)
(v) Export Lease Purchase for C10 forensic Science laboratory	16/8/2001	Anglo Leasing Finance (M. Ketering, C. Flynn, Deepak Kamani)
(vi) supply of system for Classification and Archive Data National Registration Bureau	10/12/2002	Idamties SA & Thomson CSF (Amina Juma)
(viii) Kenya E-Cops Security law and Order System Project Kenya Police Department	19/11/2003	E-Cops (Rt. CPT. Raju, C. Harris, Deepak Kamani)
(viii) Phase IV Extension of Philip Radio Communication project		Philips Radio Communications SIMOCO (Amina Juma)
(ix) nationwide Multi Channel Security system	29/5/2003	Globotel Inc. (Deepak Kamani)

MIN. NO. 12/2006

ADDITIONAL INFORMATION

The Committee directed the witness to submit copies of documents which he submitted to the Kenya Anti-Corruption Commission (KACC)

and the President on his findings following investigations into the Anglo Leasing project.

The Committee directed the controller & Auditor-General to submit information confirming whether further payments have been made since the resignation of Mr. John Githongo.

The Committee was informed that the Controller and Auditor General had audited the other Anglo Leasing type projects.

MIN. NO.13/2006 **RECORDING OF CONVERSATIONS BETWEEN MR. GITHONGO AND PEOPLE HE INTERACTED WITH**

The Committee was informed that Mr. Githongo recorded conversations between him and important personalities especially in government. He was concerned that the said personalities would deny their involvement in the Anglo Leasing and other related projects. The Committee listened to the recordings.

MIN. NO. 14/2006 **ADJOURNMENT**

The Chairman adjourned the meeting at 5.30 p.m.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HELD IN KENYA HIGH COMMISSION PREMISES - LONDON ON FEBRUARY 12TH 2006 AT 9.00 A.M.

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, MP EGH (**Chairman**)

Hon. Norman M. G.K. Nyagah, MP EGH

Hon. Billow Kerrow, MP

Hon. Joseph K. Lagat, MP

Hon. Zebedeo Opore, MP

Hon. Fahim Twaha, MP

Hon. Charles Keter, MP

IN ATTENDANCE
NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk

Mr. Stephen Mutungi - Assistant Hansard Editor

Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

WITNESSES

Mr. John Githongo - former Permanent Secretary, Governance & Ethics

Prof. Makau Mutua - Lawyer to Mr. John Githongo

MIN. NO. 15/2006

EVIDENCE

The former Permanent Secretary for Governance and Ethics (Mr. John Githongo), accompanied by his lawyer, Prof Makau Mutua, appeared before the committee and gave evidence on the Passport Issuing Equipment Project and other similar projects.

MIN. NO. 16/2006

ADDITIONAL INFORMATION - RELATIONSHIP BETWEEN CREDITORS/FINANCIERS OF THE ANGLO LEASING AND OTHER RELATED PROJECTS

The Committee was informed that there was a link between the officials of the Anglo Leasing related projects. The companies shared directors, consultants and at times they used the same address.

MIN. NO. 17/2006

PAPER LAID

Mr. John Githongo laid the following paper during the evidence:-

Hand written network showing the companies which financed Anglo Leasing like projects showing those which shared directors, consultants and addresses.

MIN. NO. 18/2006

ADDITIONAL INFORMATION

The Committee directed Mr. John Githongo to submit the following:-

- Copy of the letter written by Mr. Anura Pereira to him over his father's debt.
- The reply written by him to Mr. Anura Pereira over the matter.
- Copies of submissions given by him to the Anti - Corruption Commission over his findings.

NIN. NO 19/2006

ADDITIONAL INFORMATION -TAPE RECORDINGS

The Committee listened to recordings of conversations between Mr. John Githongo, the then Minister for Finance (Hon. Mwiraria MP), and then Minister for Justice and Constitutional Affairs, (Hon. Kiraitu Murungi MP) on the following dates:- 20th May 2004, 11th June, 2004 and 2nd September, 2004.

MIN. NO. 20/2006

ADDITIONAL INFORMATION

The Committee was informed that Mr. John Githongo had been asked in writing by the Attorney General to appear before the Kenya Anti-Corruption Commission. The Committee directed Mr. John to submit:

- (i) a copy of the letter written to him by the Attorney General and the response he made to that letter
- (ii) documents relating to Pereira's role in Anglo Leasing projects

MIN. NO. 21/2006 **ADJOURNMENT**

The Chairman adjourned the meeting at 1.20 p.m.

AFTERNOON SITTING

The Committee assembled at 2.30 pm

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Norman M. G.K. Nyagah, EGH, MP
Hon. Billow Kerrow, MP
Hon. Joseph K. Lagat, MP
Hon. Zebedeo Opore, MP
Hon. Fahim Twaha, MP
Hon. Charles Keter, MP

IN ATTENDANCE
NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk
Mr. Stephen Mutungi - Assistant Hansard Editor
Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

WITNESSES

Mr. John Githongo - Former Permanent Secretary of Governance and Ethics

Mr. Makau Mutua - Mr. Githongo's Legal Advisor

MIN. NO. 22/2006 **ADDITIONAL INFORMATION**

The Committee directed Mr. John Githongo to submit:

- (i) information showing that the Directors of Anglo Leasing related projects changed after investigations commenced.
- (ii) the list which he gave to the Cabinet Sub Committee on corruption showing the names of officers who signed for payments of most of the Anglo Leasing related projects.

MIN. NO. 23/2006

SHARED ADDRESS

The Committee was informed that Impresa de Financiers of Spain and Navigia Capital International of Spain shared the same address in Madrid. However investigations had revealed that such companies did not exist.

MIN. NO. 24/2006

ONGOING PROJECTS

The Committee was informed the following Anglo related Companies had ongoing projects in Kenya.

- (i) LBA Systems of Scotland
- (ii) Apex Finance Corp of Switzerland

MIN. NO. 25/2006

ADDITIONAL INFORMATION

The Committee directed the Controller and Auditor General to submit copies of paragraphs relating to value for money audit done on Anglo Leasing related projects.

MIN. NO. 26/2006

NEED FOR FURTHER EVIDENCE ON ANGLO LEASING AND OTHER RELATED PROJECTS

The committee noted that while taking evidence the following persons, who were either mentioned, or had their names in the submitted documents, were said to have information which could assist in establishing the truth on Anglo Leasing and related projects.

- General Kibwana then Chief of General Staff
- Mr. Anura Pereira businessman
- Dorcas Achapa Officer in the Attorney General's office

- Mr. Philip Murgor then Director of Public prosecutions
- Amos Wako Attorney General
- Hon. Chris Okemo then Minister for Finance (early project stage)
- Hon David Mwiraria then Minister for finance (later stage)
- Hon. Kiraitu Murungi, then Minister for Justice and Constitutional affairs
- Hon. C. Murungaru then Minister of State in the office of the President (in charge of Internal Security)
- Hon Moody Awori then Minister for Home Affairs
- Sylvester Mwaliko then Permanent Secretary, Ministry of Home Affairs
- Joseph Magari then Permanent Secretary, Treasury later
- Amb. F. Muthaura Head of Public Service and Secretary to the Cabinet
- Andrew Mulei Central Bank Govenor
- Zakayo Cheruiyot Permanent Secretary Office of the President (early stage)
- J. H. M. Oyula then financial Secretary, Treasury
- David Onyonka then head of debt m management department, Treasury
- Benedette Njoroge Attorney General's Office

MIN NO. 27/2006

ADJOURNMENT

The Chairman adjourned the meeting at 5.30 p.m.

HON. UHURU KENYATTA, EGH, MP

**SIGNED.....
(CHAIRMAN)**

15TH MARCH, 2006

DATE.....

MINUTES OF THE FOURTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HELD IN KENYA HIGH COMMISSION PREMISES - LONDON ON FEBRUARY 13, 2006

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH MP (**Chairman**)
Hon. Norman M. G.K. Nyagah, EGH
MP Hon. Billow Kerrow, MP
Hon. Joseph K. Lagat, MP
Hon. Zebedeo Opore, MP
Hon. Fahim Twaha, MP
Hon. Charles Keter, MP

IN ATTENDANCE
NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk
Mr. Stephen Mutungi - Assistant Hansard Editor
Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

MIN. NO. 28/2006 **WAY FORWARD**

The committee deliberated on the way forward and resolved that it should extend its stay by two days and that the committee Chairman should call the Clerk of the National Assembly and inform him about the decision. The Committee would hence leave London for Nairobi on Thursday 16th August 2006. The Secretariat was directed to confirm tickets for that date. They also resolved that:

- (i) the Hansard verbatim recordings should be transcribed and printed so that members could read them before departure.
- (ii) each Hon Member would read through the previous report of the Public Accounts Committee on Passport Issuing Equipment and purpose sections which would be included in the new report
- (iv) the following persons should appear before the committee after it returns to Nairobi:-

- Hon. Moody Awori, MP- Vice President and Minister for Home Affairs
- Hon. Kiraitu Murungi MP – then Minister for Justice and Constitutional Affairs
- Hon. C. Murungaru MP- then Minister of State in the Office of the President in charge of Internal Security
- Amb. Francis Muthaura – Head of Public Service and Secretary to the Cabinet
- Mr. Dave Mwangi – then Permanent Secretary Office of the President
- Mr. J. H. M – then Financial Secretary
- Mr. Joseph Magari – then Permanent Secretary, Treasury
- Mr. Zakayo Cheruiyot – Former Permanent Secretary in the Office of the President
- Mr. Sylvester Mwaliko – then Permanent Secretary Office of the Vice President and Ministry of Home Affairs
- Hon Amos Wako, MP – Attorney General
- Dr. Andrew Mullei – Central Bank Governor
- Current Permanent Secretary in the Office of the President
- Current Permanent Secretary – Treasury
- Mr. J. H. M. Oyula - former Financial Secretary – Treasury

MIN NO 29/2006

ADJOURNMENT

The Chairman adjourned the meeting at 1.00 p.m.

HON. UHURU KENYATTA, EGH, MP

**SIGNED.....
(CHAIRMAN)**

15TH MARCH, 2006

DATE.....

MINUTES OF THE FIFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HE WAS RESOLVED THAT THE PREFACE OF THE REPORT SHOULD CONTAIN LD IN KENYA HIGH COMMISSION PREMISES – LONDON ON FEBRUARY 14TH 2006

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Norman M. G.K. Nyagah, EGH, MP
Hon. Billow Kerrow, MP
Hon. Joseph K. Lagat, MP
Hon. Zebedeo Opore, MP
Hon. Fahim Twaha, MP
Hon. Charles Keter, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Consolata Munga - Principal Clerk
Mr. Stephen Mutungi - Assistant Hansard Editor
Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbo - Director of Audit

MIN. NO. 30/2006

COMMITTEE REPORT

The Committee resolved that the Preface of the report should contain the following.

- A brief explanation showing that the Committee prepared a report on the Passport Issuing Equipment which was debated and negated by the House. This led to the need for the Committee to take further evidence.
- Information on the agreement signed between the Government of Kenya and Anglo Leasing Finance Company.
- The role played by the Central Bank of Kenya in the payments to Anglo Leasing Company.
- Role played by Kenya Anti Corruption Commission in the investigations of the Anglo Leasing projects.
- Anglo Leasing related projects

MIN. NO. 31/2006

APPEARANCE OF WITNESSES

The committee resolved that the following should appear to respond to the issues stated as follows.

- (i) Hon. Moody Awori, MP- , Vice President and Minister for Home Affairs. His Ministry was the user of the equipment which was being sourced. The agreement was signed by his Permanent Secretary Mr. Sylvester Mwaliko on behalf of the Ministry. He defended the Anglo Leasing project on the Floor of the House.
- (ii) Hon. Chris Murungaru, MP - then Minister of State in the Office of the President in charge of Internal Security. It was alleged that he interfered with investigations. Some Anglo Leasing type projects were paid for when he was the Minister.
- (iii) Hon David Mwiraria – former Minister for Finance. The Permanent Secretary in his Ministry signed the Anglo Leasing Agreement on behalf of the Ministry. His Ministry dispatched and later recalled promissory notes. The Minister provided for Anglo Leasing money in the budget knowing very well that this was a fake Company. The Committee heard that he interfered with investigations.
- (iv) Hon. Kiraitu Murungi, MP – then Minister for Justice and Constitutional Affairs. The Committee heard that he interfered with investigations telling the Witness (Mr. Githongo) to go easy on them because they might implicate senior government officers who the government could afford to lose.
- (v) Hon Amos Wako, MP - Attorney General. His office first required that due diligence be done on Anglo Leasing Company. Later the office approved the agreement without satisfying the due diligence requirement. His office cleared all Anglo Leasing type projects for signature.
- (vi) Amb. Francis Muthaura – Head of Public Service and Secretary to the Cabinet. He gave a press release disputing the irregularity of the Anglo Leasing projects. The Committee also heard that he interfered with the investigations.
- (vii) Mr. Joseph Kinyua - Current Permanent Secretary Treasury. He should inform the Committee whether

any other funds have been paid to Anglo Leasing on Passport Issuing Equipment or for any other project since the refund of the money which had been paid to Anglo Leasing as Commitment fees. He should be accompanied by the officer who is in charge of debt management.

- (viii) Dr. Andrew Mullei – Central Bank Governor. He should give evidence about the money which was paid to Anglo Leasing and later wired back. He should be accompanied by the officer who is in charge of the Antifraud unit of the bank.
- (ix) Mr. Dave Mwangi – then Permanent Secretary Office of the President. Some of the Anglo Leasing type projects were paid for when he was in office. The Committee was informed that he interfered with investigations.
- (x) Mr. J. H. M Oyula – then Financial Secretary. He wrote some letters on the project and the Committee heard that he used to communicate on telephone with some directors/consultants of Anglo Leasing related projects. He recalled and tabled promissory notes when they were required by the committee.
- (xi) Mr. Joseph Magari – then Permanent Secretary, and Accounting Officer, Treasury. He signed the agreement on behalf of Treasury. He also signed the Promissory notes.
- (xii) Mr. Zakayo Cheruiyot – Former Permanent Secretary in the Office of the President. He signed the Forensic Science Laboratories agreement which was also signed by a director of Anglo Leasing Company.
- (xiii) Mr. Sylvester Mwaliko – then Permanent Secretary Ministry of Home Affairs. The Committee heard that he used to communicate with the Directors of the Anglo Leasing Finance Company. He signed the agreement on behalf of the Ministry of the Home Affairs. He kept the user department in the dark about the events leading to signing of the agreement.
- (xiv) Mr. Alfred Gitonga – then Personal Assistant to the President. The Committee heard that Hon. Murungi,

MP did not want investigations on Anglo Leasing saga to continue because they might implicate him. The Committee was informed that he called the then Public Prosecutor, Mr. Murgor and asked him to recall the letters of mutual assistance.

(xv) Fred Ojiambo – a lawyer who put advertisements in the newspapers for Anglo Leasing. He should explain the authenticity of the Company which hired him and reveal its physical location in the world.

(xvi) Philip Murgor – the then Director of Public Prosecution. He should explain circumstances leading to writing of letters of mutual Assistance and the outcome of those letters.

(xvii) Other to be summoned to appear before the Committee includes:-

- Mr. Jimmy Wanjigi – a businessman
- Mr. Deepak Kamani - a businessman
- Mr. Ketering – a businessman
- Anura Pereira – businessman
- Benedete Njoroge and Dorcas Achapa - Attorney General's Office
- Mr. David Onyonka - then head of Debt Management Department, Treasury
- General (Rtd) Kibwana and General (Rtd) Mohamoud – former Chiefs of General Staff.
- Brigadier (Rtd) Boinet – former in charge of NSIS.
- Mr. Mwachofi, former Permanent Secretary Treasury;

MIN NO.32/2006 ADJOURNMENT

The Chairman adjourned the meeting at 2.15 p.m.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON PASSPORT ISSUING EQUIPMENT PROJECT HELD IN KENYA HIGH COMMISSION PREMISES - LONDON ON FEBRUARY 15TH 2006

PRESENT

The following Members of the Committee were present

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Norman M. G.K. Nyagah, EGH, MP
Hon. Billow Kerrow, MP
Hon. Joseph K. Lagat, MP
Hon. Zebedeo Opore, MP
Hon. Fahim Twaha, MP
Hon. Charles Keter, MP

IN ATTENDANCE **NATIONAL ASSEMBLY**

Mrs. Consolata Munga - Principal Clerk
Mr. Stephen Mutungi - Assistant Hansard Editor
Mr. Okongo Airo - Hansard Reporter

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony Gatumbu - Director of Audit

MIN. NO. 33/2006 **CONFIRMATION OF MINUTES**

The committee read through minutes of the previous meetings and deferred confirmation to a later date.

MIN. NO. 34/2006 **MATTERS ARISING**

- (i) **Under Minute No. 28/2006** the Members were informed that the Chairman called the Clerk over the extension of the Committee's stay in London and the Clerk had accepted the request. The Clerk had also accepted to send funding for facilitation of Members. The Committee was further informed that the tickets had been confirmed for the evening of Thursday 16th February 2006 night flight of Kenya Airways.

- (ii) **Under Minute No. 29/2006** it was resolved that Hon Moody Awori MP should also be referred to as Vice President and Minister for Home Affairs.

MIN. NO. 35/2006 **WAY FORWARD**

The committee resolved that it would hold a consultative meeting with the Controller and Auditor General on Monday 20th February 2006 at 2.30 pm. The Committee also resolved that appearance of witnesses before it would be as follows:-

MIN. NO. 36/2006 **ADJOURNMENT**

The Chairman adjourned the meeting at 1.00 p.m.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE SEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON MONDAY, FEBRUARY 20, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

ABSENT:

Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. S.W. Ndindiri	-	Clerk of the National Assembly
Mrs. Consolata W. Munga	-	Principal Clerk Assistant
Mrs. Florence Abonyo	-	Second Clerk Assistant
Mr. Julius Ariwomoi	-	Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Evan N. Mwai	-	Controller and Auditor General
Mr. Anthony S. Gatumbu	-	Director of Audit

MIN. NO.37/2006

CORRECTION OF MINUTES

The Committee directed that further corrections be made on the previously confirmed minutes.

MIN NO. 38/2006

SPECIAL AUDIT REPORTS OF SECURITY PROJECTS

Various issues were raised and resolved as follows:

- (i) The Committee deliberated on the Special Audit Reports of the security projects and resolved that the Controller and Auditor General would provide (within two days) the said reports so as to incorporate their linkages to the Committee report.
- (ii) The Controller and Auditor General would also facilitate the tabling of the

- Special Audit Reports of the security projects to be considered by the House.
- (iii) The Controller and Auditor General was also requested to provide signed vouchers for the commitment fees of the security projects, in addition to the letters by the Attorney General confirming satisfaction of legal aspects of the contract Agreements.

MIN. NO.39/2006

SUMMONS TO WITNESSES

The Committee directed that letters/summons to witnesses should be detailed and comprehensive to avoid possible excuses by witnesses.

MIN. NO. 40/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 5.20 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE EIGHTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON TUESDAY, FEBRUARY 21, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.41/2006 EVIDENCE

Mr. Philip Murgor, former Director of Public Prosecutions appeared before the Committee and gave evidence on the various steps previously taken by the office of Public Prosecutions in relation to the Anglo Leasing affair.

The Committee was informed that the Anglo Leasing cases in court were only on abuse of office and not fraud.

MIN NO. 42/2006 ADDITIONAL INFORMATION

The Committee directed Mr. Murgor to provide: -

- (i) A gazette copy of 23/5/2005 showing the de-gazettement of Maureen Odera Mboya as a Special Magistrate.
- (ii) Copy of letters by the Director, KACC to the Attorney General recommending that the overseas investigations should cease.

- (iii) The names of the officers who traveled with letters rogatory to overseas, the names of the persons and countries visited.

MIN. NO. 43/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 7.00 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON WEDNESDAY, FEBRUARY 22, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.30 AM

MORNING SITTING

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.44/2006 EVIDENCE

Hon. Kiraitu Murungi, MP and former Minister for Justice & Constitutional Affairs accompanied by his legal advisor Mr. Kioko Kilukumi appeared before the Committee and declined to give evidence, citing various reasons.

The Committee resolved to take Hon. Kiraitu's written submission as his formal evidence.

MIN. NO. 45/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 11.20 am until this afternoon.

AFTERNOON SITTING (AT 2.30PM)

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.46/2006 **EVIDENCE**

- (a) His Excellency the Hon. Dr. Arthur Moody Awori, EBS, MP, Vice-President and Minister for Home Affairs accompanied by his legal advisor Mr. D. Oyatsi and the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs Amb. Dr. Hukka Wario, MBS appeared before the Committee and gave evidence on the Ministry's involvement in the signing of the contract agreement.

The Committee directed the Permanent Secretary to provide a copy of the minutes of the meeting held in Treasury on 27/08/2003 concerning the Passport Issuing Equipment.

- (b) Hon. Daudi Mwiraria, MP and former Minister for Finance accompanied by his legal advisor Mr. Riunga Raiji appeared before the Committee and declined to give evidence, citing sub judice rule.

The Committee resolved to take Hon. Mwiratia's written submission as his formal evidence.

- (c) Mr. Fred Ojiambo of Kaplan & Stratton Advocates appeared before the Committee and gave evidence concerning the advert placed by his firm about Anglo Leasing Company.

MIN. NO. 47/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 4.05 pm until Thursday 23rd February 2006.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE TENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON THURSDAY, FEBRUARY 23, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.48/2006 **EVIDENCE**

Mr. Zakayo K. Cheruiyot, former Permanent Secretary, Office of the President appeared before the Committee and declined to give evidence, citing sub judice rule.

MIN. NO. 49/2006 **ANY OTHER BUSINESS**

After lengthy deliberations, the Committee resolved to take necessary disciplinary and legal actions against witnesses who failed to give evidence to the Committee (for contempt of Parliament).

The Committee also directed that the other witnesses should be given a chance to appear and give evidence.

MIN. NO. 50/2006 **ADJOURNMENT**

And there being no other business, the Chairman adjourned the meeting at 1.15 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE ELEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON TUESDAY, FEBRUARY 28, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

ABSENT WITH APOLOGY:

Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga	-	Principal Clerk Assistant
Mrs. Florence Abonyo	-	Second Clerk Assistant
Mr. Julius Ariwomoi	-	Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu	-	Director of Audit
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MIN. NO. 51/2006 EVIDENCE

Mr. Sylvester Mwaliko, former Permanent Secretary, Office of the Vice President and Ministry of Home Affairs, accompanied by his legal advisor Ms. J.W. Ondieki appeared before the Committee and gave evidence on his involvement in the conception of the project and the signing of the contract agreement.

MIN. NO. 52/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 1.35 pm until this afternoon.

AFTERNOON SITTING (AT 2.30 PM)

PRESENT: (The following members were present)

Hon. Joseph K. Lagat, MP (**Ag. Chairman**)
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY:

Hon. Uhuru Kenyatta, EGH, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 53/2006 **EVIDENCE**

Dr. Andrew Mullei, Central Bank Governor
accompanied by: -
Mrs. Jacinta Mwatela - Deputy Governor
Mr. John Gikonyo - Bank Secretary
Mr. Jonathan A. Bett - CBK Director
Mr. John Birech - CBK Deputy Director
Ms. Jane Kamita - Snr. Asst. Manager

appeared before the Committee and gave evidence on the Bank's involvement in the payments to and receipt of the refunded money from the Anglo Leasing Company.

The Committee directed the Governor to provide the following documents:

- (i) Copies of specific authorization by the Minister for Finance i.e. Payment Authorities (PA's) for the 18 security contracts;
- (ii) List of payments still being made to date even after the Governor's letter dated 13/5/2004 to the Permanent Secretary - Treasury declining to make further

payments to the 18 contracts until further notification.

MIN. NO. 54/2006

ADJOURNMENT

And there being no other business, the Ag. Chairman adjourned the meeting at 4.35 pm until Wednesday 1/3/2006.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE TWELFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON WEDNESDAY, MARCH 1, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.55/2006

EVIDENCE - SPECIAL AUDIT REPORT

- a) Hon. Daudi Mwiraria, MP and former Minister for Finance accompanied by his legal advisor Mr. Riunga Raiji appeared before the Committee and requested to be given more time to prepare the documents necessary for his evidence. The Committee accepted his request and resolved to invite him on Tuesday 7/3/2006 at 2.30pm.
- b) Mr. Joseph Magari, former Permanent Secretary - Treasury appeared before the Committee and gave evidence on his involvement in the signing of the contract agreement and the subsequent servicing of the public debt.

MIN. NO. 56/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 1.15 pm until this afternoon.

PRESENT: (The following members were present)

Hon. Joseph K. Lagat, MP (**Ag. Chairman**)
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY:

Hon. Uhuru Kenyatta, EGH, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 57/2006

EVIDENCE

Mr. Zakayo K. Cheruiyot, former Permanent Secretary, Office of the President appeared before the Committee and requested to be given more time to prepare the documents necessary for his evidence.

MIN. NO. 58/2006

ADJOURNMENT

And there being no other business, the Ag. Chairman adjourned the meeting at 4.02 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON THURSDAY, MARCH 2, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.59/2006 EVIDENCE

Hon. Chris Murungaru, MP and former Minister for State, Office of the President accompanied by his legal advisor Hon. Paul Muite, MP appeared before the Committee and gave evidence on the involvement of the Anglo Leasing Company and other similar companies on various security projects.

MIN. NO. 60/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 2.18 pm until this afternoon.

AFTERNOON SITTING (AT 2.30 PM)

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Charles Keter, MP

Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY:

Hon. Norman M.G.K. Nyagah, EGH, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 61/2006 EVIDENCE

- a) Ms. Bernadette Njoroge, State Counsel, Department of Treaties and Agreements in the Office of the Attorney General appeared before the Committee and gave evidence on her involvement in providing legal opinion to the contract agreement.
- b) Ms. Dorcas Achapa, Chief State Counsel, Department of Treaties and Agreements in the Office of the Attorney General appeared before the Committee and gave evidence on her involvement in providing legal opinion to the contract agreement.

MIN. NO. 62/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 4.40 pm.

HON. UHURU KENYATTA, EGH, MP

**SIGNED.....
(CHAIRMAN)**

15TH MARCH, 2006

DATE.....

MINUTES OF THE FOURTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON FRIDAY, MARCH 3, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Joseph K. Lagat, MP (**Ag. Chairman**)
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

ABSENT WITH APOLOGY:

Hon. Uhuru Kenyatta, EGH, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 63/2005 COMMITTEE PROGRAMME

The Committee deliberated on its programme of activities and resolved that since the House is about to be re-opened, the taking of evidence for the Special Audit Report should not extend beyond Wednesday 8th March 2006. It will thereafter proceed for Report-Writing Retreat.

MIN. NO. 64/2005 ADJOURNMENT

And there being no other business, the Ag. Chairman adjourned the meeting at 11.40 am.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE FIFTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON MONDAY, MARCH 6, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO.65/2006 EVIDENCE

Amb. Francis K. Muthaura, EGH, Permanent Secretary, Secretary to the Cabinet and Head of the Public Service accompanied by Mr. Thuita Mwangi, Principal Administrative Secretary, Office of the President (Assisting Secretary to the Cabinet), appeared before the Committee and gave evidence on the involvement of the Anglo Leasing Company and other similar companies on various security projects.

MIN. NO. 66/2005 ADDITIONAL INFORMATION

The Committee directed the Permanent Secretary to provide the following documents: -

- (i) A copy (or copies) of Cabinet Approval for the 18 security projects;
- (ii) A copy of the letter from office of the President to the Minister for Public Works for the commencement of works for the Forensic Science Laboratories;

- (iii) A copy of the letter that appointed Eng. Philip Sika as the project manager of Forensic Science Laboratories;
- (iv) A copy of the letter of authority to stop further payments to all Anglo Leasing related contracts; and
- (v) A copy of the Letter by the Attorney General to the Head of the Public Service advising on Ms. Dorcas Achapa's re-instatement after a compulsory leave.

MIN NO. 67/2006 ANY OTHER BUSINESS

The Committee resolved to undertake a Report-Writing Retreat on the Special Audit Report during the week commencing Monday 13th March 2006 in Nyali Beach Hotel - Mombasa.

MIN. NO. 68/2005 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 5.10 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE SIXTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON TUESDAY, MARCH 7, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 69/2006 **EVIDENCE**

- a) Mr. Zakayo K. Cheruiyot, former Permanent Secretary, Office of the President accompanied by his legal advisor Mr. Michael Chemwok appeared before the Committee and gave evidence on the involvement of the Office of the President in the conception and implementation of the Forensic Science Laboratories project.
- b) Mr. Dave M. Mwangi, former Permanent Secretary, Office of the President appeared before the Committee and gave evidence on three contracts: - Globotel, Infotalent and the Forensic Science Laboratories Ltd; together with the involvement of the Anglo Leasing Company and other similar companies on various security projects.

MIN. NO. 70/2006 **ADJOURNMENT**

And there being no other business, the Chairman adjourned the meeting at 1.35 pm until this afternoon.

AFTERNOON SITTING (AT 2.30 PM)

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY:

Hon. Norman M.G.K. Nyagah, EGH, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S.M. Gatumbu - Director of Audit

MIN. NO. 71/2006

EVIDENCE

Hon. Daudi Mwiraria, MP and former Minister for Finance accompanied by his legal advisor Mr. Riunga Raiji appeared before the Committee and gave evidence on payments made by the Government to various companies which were alleged to be non-existent.

MIN. NO. 72/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 4.30 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE SEVENTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON WEDNESDAY, MARCH 8, 2006 IN COMMITTEE ROOM NO. 9 PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

ABSENT WITH APOLOGY:

Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S. Gatumbu - Director of Audit

MIN. NO. 73/2006 EVIDENCE

Hon. S. Amos Wako, E.G.H., E.B.S., S.C., M.P., the Attorney General accompanied by Ms. Dorcas Achapa, Chief State Counsel, Department of Treaties and Agreements in the Office of the Attorney General appeared before the Committee and gave evidence on the involvement of the State Law Office during negotiations for loans, drafting and execution of ensuing legal instruments for all the agreements signed between the government and the contracted companies.

MIN. NO. 74/2006 PAPERS LAID

The following papers were laid on the table:

- (i) A copy of the brief on Government Legal Advisory Services
- (ii) A copy of the Press Statement dated 16th February 2005 by the Attorney General on

- the Files to the KACC on Irregular Award of Contract to Anglo Leasing & Finance Ltd for the Supply of Equipment to Immigration Department
- (iii) A copy of the letter of Dorcas Achapa to the Attorney General dated 19th May 2004
 - (iv) A copy of the Staff Memorandum to the Attorney General arising out of the suspension of the Chief State Counsel (Department of Treaties Agreements) dated 20/5/2004
 - (v) A copy of the Strategic Plan for State Law Office
 - (vi) A copy of the letter by the Permanent Secretary, Governance & Ethics dated 2nd June 2004 to the Attorney General indicating that Dorcas Achapa was not considered a suspect.

MIN. NO. 75/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 12.55 pm until this afternoon.

AFTERNOON SITTING (AT 2.30 PM)

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (**Chairman**)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP

ABSENT WITH APOLOGY:

Hon. Fahim Twaha, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Anthony S.M. Gatumbu - Director of Audit

MIN. NO. 76/2006

EVIDENCE

Mr. Joseph H. Oyula, former Financial Secretary - Treasury appeared before the Committee and gave evidence on payments made by the Government to various companies which were alleged to be non-existent.

MIN. NO. 77/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 5.06 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON MONDAY 13TH MARCH 2006 IN COMMITTEE ROOM NO. 9, PARLIAMENT BUILDINGS AT 2.30 P.M.

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Billow Kerrow, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mrs Florence Abonyo - Second Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Benson Kariuki - Principal Auditor

MIN. NO. 78/2006 - EVIDENCE

Mr. J.H.M. Oyula former Financial Secretary, Treasury appeared before the Committee and gave evidence on Passport Issuing Equipment.

MIN. NO. 79/2006 - TREASURY ROLE IN PASSPORT ISSUING EQUIPMENT

The Committee was informed that the main role of Treasury was to make payments on behalf of the line Ministries, to ensure that the payment within the limits set by Parliament.

MIN. NO. 80/2006 - PAPERS LAID

- (i) Memo written to H.E. The President by the then Minister for Finance (Hon. D. Mwiraria) on Forensic Sciences Laboratory Project dated 29th May, 2004.
- (ii) Copy of Minutes of a meeting held on 14th February 2001 at the Treasury Building 14th Floor Small Conference Room at 3.25 p.m. to discuss matters related to security projects. (The meeting was attended by Hon. Chris Okemo, EGH., MP – Chairman; Mr. Martin L. Oduor-Otieno, Permanent Secretary, Treasury.

Mr. Z. K. A. Cheruiyot, MGH, SS	– Permanent Secretary, Office of the President
Mr. Mwachofi	– Financial Secretary, Treasury
Mr. Philemon Abong’o	– Police Commissioner
Mr. G.N. Gicheru	– Director Budgetary Supply Department
Maj. (Rd) M.H.K. Arap Langat	– Director, NYS
Mr. S.K.A. Sang, CBS	– Director, Criminal Investigation Department.
Mr. J.H.M. Oyula	– Accountant General, Ministry of Finance
Mr. J.F.A. Agili	– Senior Finance Officer/Police Headquarters Administrative Secretary
Mr. A. Arina	– Under Secretary – G.S.U.
Mrs M.M. Byama	– Senior Finance Officer, Ministry of Finance

- (iii) Copy of Minutes of a meeting held on 17th May 2001 at 9.30 a.m. at the Treasury Building, 14th Floor Small Conference Room to discuss matters related to security projects. (It was attended by Okemo, Mwachofi, Cheruiyot, Bundotich – Financial Secretary, Abong’o, Langat, Sang, Samson K. Cheramboss – Commandant – G.S.U., Gicheru, Agili, Mr. T.M. Mocha – Senior Finance Officer/Administrative Secretary/Police Headquarters and Byama.
- (iv) Copy of Minutes of a meeting held on 16th September, 2000 at Treasury 14th Floor Small Conference Room at 3.45 p.m. to discuss Special Critical Security Projects under the Office of the President. (It was attended by Okemo, Oduor Otieno, Cheruiyot, Mwachofi, Abong’o Sang, Langat Cheramboss, Gicheru, Oyula, Mr. E. Muli Mbusi, SS – Chief Finance Officer, Office of the President, Mr. T. M. Mocha, Byama.
- (v) Copy of Minutes of a meeting held on 20th September, 2000 at Treasury Building 14th Floor Small Conference Room at 9.00 a.m. to discuss security projects (it was attended by Okemo, Oduor-Otieno, Cheruiyot, Mwachofi, Langat, Gicheru, Sang, Oyula, Agili Mocha, Byama, Miss A.R. Arina – Administrative Secretary, G.S.U.; Mr. Namenya Onyango – Senior Finance Officer, Criminal Investigation Department.

MIN. NO.81/2006 - EVIDENCE

Mr. Joseph Kinyua Permanent Secretary, Treasury accompanied by:-

Mr, Mutua Kilaka – Finance Secretary
Mr. John Murugu – Director of Debt Management

Mr. Haron Sirma – Deputy Director, Debt Management
Mr. M.M. Gatimu – Ag. Accountant General
Mr. Livingston O. Bumbe – Asst. Secretary, Debt Management
Department.

Mr. Hubert H. Anyanga – Accounts Assistant I, Debt Management Department appeared before the Committee and gave evidence on Passport Issuing Equipment Project and other similar projects.

MIN. NO. 82/2006 **ADDITIONAL INFORMATION: EXTERNAL
BORROWING**

The Committee was informed that the government prefers to borrow from multilateral and bilateral lenders, who provide loans on highly concessional terms (below market interest rate and with long repayment period), to finance its development programmes.

The Committee was further informed that here are four key departments of Treasury that are involved in contracting and managing external loans namely:-

- (i) External Resources Department which coordinates the process of negotiation for external loans.
- (ii) Debt Management Department which carries out rigorous analysis of planned external borrowing to ensure that borrowing is within ceiling allowed by External Loans and Credit Act. It records new loans in its public debt and arranges for debt serving by the Public Debt Section.
- (iii) Accountant General Department which advises on all accounting matters including expenditure reporting, disbursements, banking and procurement modalities and auditing. The department ensures that financing agreements are consistent with government financial regulations.
- (iv) Attorney General's office which gives legal opinion before the Minister for Finance appends signature on a financing agreement.

MIN. NO.83/2006 **EVIDENCE**

Mr. David Onyonka, former Head of Debt Management, Treasury appeared before the Committee and gave evidence on Passport Issuing Equipment Project and other related projects.

MIN. NO.84/2006 **ADDITIONAL INFORMATION; DEBT**

MANAGEMENT

The Committee was informed that Mr. Onyonka received instructions directly from the Minister for Finance, Permanent Secretary, Treasury and Financial Secretary/Treasury. He never made any payment without the approval of one or more of the above mentioned officers.

MIN. NO. 85/2006

ADJOURNMENT

The Chairman adjourned the meeting at 7.00 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

15TH MARCH, 2006

DATE.....

MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON WEDNESDAY, MARCH 15, 2006 IN NYALI BEACH HOTEL, MOMBASA AT 9.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Benson Kariuki - Principal Auditor

MIN. NO. 86/2006 **CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS**

The Minutes of the following sittings were confirmed (with amendments) by the members present and signed by the Chairman:-

- a) **Minutes of the First sitting** held on February 07, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Charles Keter, MP.
- b) **Minutes of the Second sitting** held on February, 11, 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Fahim Twaha, MP.
- c) **Minutes of the Third sitting** held on February 12, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Fahim Twaha, MP.
- d) **Minutes of the Fourth sitting** held on February, 13 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Charles Keter, MP.

- e) **Minutes of the Fifth sitting** held on February 14, 2006 proposed by Hon. Zebedeo J. Opore, MP and seconded by Hon. Billow Kerrow, MP.
- f) **Minutes of the Sixth sitting** held on February 15, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Zebedeo J. Opore .MP.
- g) **Minutes of the Seventh sitting** held on February 20, 2006 proposed by Hon. Fahim Twaha, MP and seconded by Hon. Norman M.G.K. Nyagah, EGH, MP.
- h) **Minutes of the Eighth sitting** held on February 21, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Charles Keter, MP.
- i) **Minutes of the Ninth sitting** held on February, 22, 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Fahim Twaha, MP.
- j) **Minutes of the Tenth sitting** held on February 23, 2006 proposed by Hon. Zebedeo J. Opore, MP and seconded by Hon. Billow Kerrow, MP.
- k) **Minutes of the Eleventh sitting** held on February 28, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Zebedeo J. Opore .MP.
- l) **Minutes of the Twelfth sitting** held on March 01, 2006 proposed by Hon. Fahim Twaha, MP and seconded by Hon. Norman M.G.K. Nyagah, EGH, MP.
- m) **Minutes of the Thirteenth sitting** held on March 02, 2006 proposed by Hon. Charles Keter, MP and seconded by Hon. Zebedeo J. Opore, MP.
- n) **Minutes of the Fourteenth sitting** held on March 03, 2006 proposed by Hon. Billow Kerrow, MP and seconded by Hon. Norman M.G.K. Nyagah, EGH, MP.
- o) **Minutes of the Fifteenth sitting** held on March 06, 2006 proposed by Hon. Charles Keter, MP and seconded by Hon. Fahim Twaha, MP.
- p) **Minutes of the Sixteenth sitting** held on March 07, 2006 proposed by Hon. Zebedeo J. Opore and seconded by Hon. Billow Kerrow, MP.

- q) **Minutes of the Seventeenth sitting** held on March 08, 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Zebedeo J. Opore, MP.
- r) **Minutes of the Eighteenth sitting** held on March 13, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Charles Keter, MP.

MIN. NO. 87/2006

MATTERS ARISING

The Committee deliberated on Hon. Kiraitu Murungi's letter to the Committee on his request to be offered a second chance to provide his evidence. It was resolved that the witness be given a chance to appear on Monday 20 March 2006 at 2.30pm.

MIN. NO. 88/2006

THE COMMITTEE'S DRAFT REPORT

The Committee deliberated on its draft report on the Procurement of Passport Issuing Equipment of the Department of Immigration and made various recommendations.

MIN. NO. 89/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 1.06 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....
(CHAIRMAN)

27TH MARCH, 2006

DATE.....

MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON THURSDAY, MARCH 16, 2006 IN NYALI BEACH HOTEL, MOMBASA AT 9.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY

Hon. Billow Kerrow, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Benson Kariuki - Principal Auditor

MIN. NO. 90/2006 THE DRAFT REPORT

The Committee deliberated on its Draft Report and made several amendments to its earlier recommendations.

MIN. NO. 91/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 1.32 pm.

HON. UHURU KENYATTA, EGH, MP

**SIGNED.....
(CHAIRMAN)**

27TH MARCH, 2006

DATE.....

MINUTES OF THE TWENTY FIRST SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON FRIDAY, MARCH 17, 2006 IN NYALI BEACH HOTEL, MOMBASA AT 9.00 AM

PRESENT: (The following members were present)

Hon. Uhuru Kenyatta, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY

Hon. Billow Kerrow, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

KENYA NATIONAL AUDIT OFFICE

Mr. Benson Kariuki - Principal Auditor

MIN. NO. 92/2006 THE DRAFT REPORT

The Committee deliberated on its Draft Report and made few amendments to its earlier recommendations.

MIN. NO. 93/2006 ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at 1.00 pm.

HON. UHURU KENYATTA, EGH, MP

**SIGNED.....
(CHAIRMAN)**

27TH MARCH, 2006

DATE.....

MINUTES OF THE TWENTY-SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE ON SPECIAL AUDIT REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT HELD ON MONDAY, MARCH 27, 2006 IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT: (The following members were present)

Hon. Uhuru Keenote, EGH, MP (Chairman)
Hon. Joseph K. Lagat, MP
Hon. Norman M.G.K. Nyagah, EGH, MP
Hon. Charles Keter, MP
Hon. Zebedeo J. Opore, MP
Hon. Billow Kerrow, MP
Hon. Fahim Twaha, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mrs. Consolata W. Munga - Principal Clerk Assistant
Mr. Julius Ariwomoi - Third Clerk Assistant

MIN. NO. 94/2006

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

The Minutes of the following sittings were confirmed (with amendments) by the members present and signed by the Chairman:-

- a) **Minutes of the Nineteenth sitting** held on March 15, 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Zebedeo J. Opore, MP.
- b) **Minutes of the Twentieth sitting** held on March 16, 2006 proposed by Hon. Norman M.G.K. Nyagah, EGH, MP and seconded by Hon. Zebedeo J. Opore, MP.
- c) **Minutes of the Twenty First sitting** held on March 17, 2006 proposed by Hon. Joseph K. Lagat, MP and seconded by Hon. Charles Keter, MP.

MIN. NO.95/2006

EVIDENCE

Hon. Kiraitu Murungi, MP and former Minister for Justice & Constitutional Affairs accompanied by his legal advisor Mr. Kioko Kilukumi appeared again

before the Committee and gave evidence on the involvement of Ministry of Justice & Constitutional Affairs in investigating Anglo Leasing scandal.

MIN. NO. 96/2006

ADOPTION OF THE SPECIAL AUDIT REPORT

The Committee adopted its Special Audit Report and resolved to present it to the House the following day (Tuesday 28 March 2006) for consideration.

MIN. NO. 97/2006

ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting *sine die* at 5.12 pm.

HON. UHURU KENYATTA, EGH, MP

SIGNED.....

(CHAIRMAN)

27TH MARCH, 2006

DATE.....