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TENTH PARLIAMENT – FOURTH SESSION – 2012

THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS

REPORT OF THE INSPECTION OF KENYA MISSIONS IN VIENNA,
GENEVA AND THE HAGUE AND VISIT TO INTERNATIONAL
ORGANIZATIONS IN AUGUST, 2011

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

NOVEMBER, 2012

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1.0 PREFACE

1.1 Committee Mandate

Mr. Speaker,

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

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

The Committee is also mandated to scrutinize the budget of line Ministries as provided under Standing Order No. 152 states which that:-

- (1) Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental Committees according to their mandates.*
- (2) Each departmental Committee shall consider, discuss and review the estimates committed to it under this standing order and submit its report thereon to the House within twenty one days after they were first laid before the House.*

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

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

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

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

1.2 Membership

The Committee comprise of the following Members of Parliament:-

- The Hon. Adan W. Keynan, MP – Chairperson
- The Hon. Benedict F. Gunda, MP – Vice Chairperson
- The Hon. George O. Nyamweya, MBS, MP
- The Hon. Yusuf Hassan Abdi, MP¹
- The Hon. Jeremiah N. Kioni, MP
- The Hon. Charles M. Kilonzo, MP
- The Hon. Peter E. O. Anyanga, MP
- The Hon. Wilson M. Litole, MP
- The Hon. Martin O. Ogindo, MP
- The Hon. Mohamed Hussein Ali, MP
- The Hon. Julius K. Kilonzo, MP

(¹The Hon. Yusuf Hassan Abdi, MP Kamukunji, replaced the Hon Eugene Wamalwa MP in the Committee after his appointment to the cabinet as Minister for Justice, Constitutional Affairs and National Cohesion on March 26, 2012.)

1.3 Executive Summary

Mr. Speaker,

1.3.1 The Committee undertook an inspection visit of the Kenya Embassies in Vienna-Austria, Geneva-Switzerland and the Hague-Netherlands, between 14th and 22nd August, 2011. The purpose of the visit was three fold; to review the performance of the three Kenya Missions, inspect Mission properties, forge bilateral and multilateral relations and share experiences with counterparts on parliamentary oversight.

1.3.2 The delegation set out to meet these objectives by visiting the Kenya Embassies in Vienna, Geneva and The Hague, holding meetings with their counterparts from the Parliament of Austria and the Netherlands, meeting with Missions' staff, meetings with various UN agencies (IAEA, UNDC, WTO, WHO, UNHCR), Meeting with the Minister for European Affairs and International Cooperation of The Netherlands and meeting with the Kenya Diaspora in Austria, Switzerland and The Netherlands.

1.3.3 The following members of the Committee undertook the visit:-

- (i) The Hon. Adan W. Keynan, MP – **Leader of the Delegation**
- (ii) The Hon. George Omari Nyamweya, MBS, MP
- (iii) The Hon. Wilson Litole, MP
- (iv) The Hon. Mohamed Hussein Ali, MP

The delegation was accompanied by Mr. Emejen Nicholas as secretariat.

1.3.4 The delegation had a successful inspection visit in which it met and held discussions with the following:-

- (i) The Deputy Ambassador, Kenya Embassy to Austria;
- (ii) Officials of the Kenya Embassy, Vienna, Austria;
- (iii) Director General, International Atomic Energy Agency (IAEA);
- (iv) Officials of United Nations Office on Drugs and Crime (UNDC);
- (v) The Austria Parliamentary Committee on Defence;
- (vi) The Kenya Ambassador/Permanent Representative to the United Nations and other International Organizations in Geneva;
- (vii) Officials of the Kenya Embassy, Geneva- meeting discussed the role of the Mission, its performance and challenges;
- (viii) Director General, World Trade Organization (WTO);

- (ix) Director General, World Health Organization (WHO);
- (x) The Deputy Director, United Nations High Commission for Refugees (UNHCR);
- (xi) The Deputy Ambassador, Kenya Embassy the Hague;
- (xii) The Minister for European Affairs and International Cooperation; and
- (xiii) The Foreign Affairs Committee of the House of Representative of the Kingdom of Netherlands.
- (xiv) Kenya Diaspora in Austria, Switzerland and the Netherlands.

1.3.5 OBSERVATIONS AND RECOMMENDATIONS

From the visits the Committee made the following observations and recommendations:-

(A) GENEVA

Observations

- (i) Personal conduct of the Permanent Representative (PR) - Geneva: The Committee noted that the PR had a serious problem with his ego and lacked interpersonal skills. His staff accused him of not being a team player and humiliates the staff through unsavoury remarks and rarely seeks their advice or input even in areas where their expertise is mandatory.
- (ii) General management of the Mission: The PR was managing the Mission as his personal property; making unilateral decisions on matters concerning financial management. The PR has total disregard of the laid down regulations governing procurement as well as financial management. Further, the PR unilaterally made decisions on the hiring and deployment of local staff without involving the Committee responsible for local staff, as it has been the tradition.
- (iii) Representational role: The PR demonstrated his lack of zeal and commitment for his work as well as negligence of his duty especially when he cancelled some key meetings with International agencies that he had previously called or failed to attend without notice, leading to embarrassment and erosion of Kenya's standing in the eyes of other nations.

- (iv) Relation with staff: The morale of employees of the mission was low due to lack of empathy by the PR and who had placed his personal interests above those of his staff leading to frustrations and stress.
- (v) The Mission's main account lacks an alternate signatory which has led to delay in payment of salaries and pending bills.
- (vi) The Mission incurred expenditure in rent of the Ambassador's residence yet it was not being used for 18 months. This resulted in a loss of 25,000 Swiss Francs per month which is equivalent to Kshs. 3.5 million per month. The indecision by the Ministry of Foreign Affairs in appointing an Ambassador for the above period led to the loss.
- (vii) The presence of two Ambassadors in one Mission is creating unnecessary and embarrassing conflict and thus affecting the operations and management at the Mission.
- (viii) The Mission's inability to pay its bills in time as well as pay officers' salaries and the Freight Service Allowance in time has led to accumulation of bills. The Government of Kenya has been reported to the Swiss Embassy which summoned the Permanent Representative to explain the Mission's inability to settle its bills. This is a diplomatic embarrassment to the Republic of Kenya.
- (ix) The Mission has outstanding debts that affect its credit rating among its suppliers and creditors. This is impacting negatively on Kenya's image, credibility and reputation abroad.
- (x) The Mission lacks a Diaspora desk to deal with issues affecting the large Diaspora population in Switzerland.
- (xi) The Mission is employing local staff under Kenyan law yet there are local staff.
- (xii) The Mission lacks fuel management system. Drivers are required to fuel vehicles and seek refund later. Due to its poor credit rating, the Mission is not able to enter into an agreement with petroleum companies to fuel its vehicles.
- (xiii) There is delay in the remittance of payments in form of statutory obligations made by International Organizations.
- (xiv) The management of the Mission is poor taking into consideration the haphazard manner in which duties are allocated and finances are mismanaged among other issues.

Recommendations

- 1) The Kenya's Ambassador and Permanent Representative to the UN in Geneva Dr. Tom Mboya has failed to represent the country. His behavior is wanting. Consequently, he should be urgently removed as a matter of national interest for misconduct and abuse of power.
- 2) The Government should immediately direct the Efficiency Monitoring Unit to carry out investigations on any financial mismanagement and abuse of office by the Kenya's Ambassador and Permanent Representative to the UN in Geneva and any other officer(s) in the mission.
- 3) The accounting officer, Ministry of Foreign Affairs, should ensure that the Mission's accounts have alternate signatories (in accordance with the Ministry's Fund's Management policy) for the smooth and efficient financial management at the Mission.
- 4) The accounting officer, Ministry of Foreign Affairs be held accountable for the loss incurred by the Mission for renting of Ambassador's residence for 18 months at the rate of 25,000 Swiss Francs per month while there was no Ambassador to occupy the residence for the period January 2009 to July 2010. The Government lost over Kshs. 33,750,000 (1CHF =75 Kshs.)
- 5) The Ministry of Foreign Affairs should ensure adequate funding to enable the Mission meet its contractual obligations. The Mission should pay all its pending bills.
- 6) While posting Ambassadors the appointing authority should ensure that one Ambassador is appointed for each Mission and that the duties and responsibilities of each Ambassador are defined in Missions where two or Ambassadors are posted.
- 7) The Mission should review the terms and conditions of employment of its local staff. The Mission should employ the local staff under the laws, terms and conditions of the host country.
- 8) The Mission should develop a fuel and fleet management policy. Poor financial management at the Mission has led to the fueling of vehicles by drivers who are not well re-imbursed.
- 9) The Ministry of Foreign Affairs should prioritize the payment of statutory payments to International Organizations as delay in payments of contributions to international organizations affects

the country's reputation/image, voting rights and related benefits at the international arena.

- 10) The Ministry of Foreign Affairs should put in place clear remittance policies for all monies paid to the Government of Kenya by International Organizations. The funds should be dully accounted for.
- 11)The Government should undertake an audit of funds remitted by the World Intellectual Property Organization (WIPO), since the remittances started and channeled through the Kenya Mission in Geneva, for the development of trade mark and for capacity building of Kenya Intellectual Property Institute (KIPI).
- 12)The officers in the Ministry of Foreign Affairs who failed to take action on the report of the Ministry's inspection team to Geneva should not only be held responsible but also accountable for the funds lost.

(B) VIENNA

Observations

The Committee made the following observations:-

- (i) The Mission's objective of marketing Kenya and Kenyan products in Austria has been hampered by inadequate funding and language barrier.
- (ii) The opportunities to market Kenya as a regional economic hub have not been fully tapped because there exists a gap in marketing Kenya in Austria.
- (iii) The official appointment of an Honorary Consul in Austria will hopefully raise the level of marketing of Kenyan products in Austria and increase the level of Foreign Direct Investment.
- (iv) The IAEA is willing to work with Kenya on developing a sustainable energy for Kenya's development.

Recommendations

- 1) The Kenya Investment Authority should work closely with the Mission in marketing Kenya as an investment destination of choice in Austria.

1.4.3 The Committee is also grateful to the United Nations Organizations (IAEA, UNDC, WTO, WHO and UNHCR) for meeting and holding discussions with the delegation.

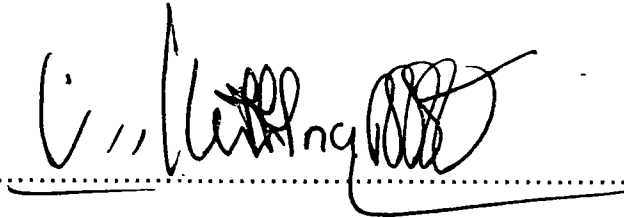
1.4.4 The Committee would also wish to record its appreciation and gratitude to the Defence Committee of the Parliament of Austria and the Foreign Affairs Committee of the House of Representatives of the Kingdom of Netherlands for holding discussions and sharing experiences with the delegation on Parliamentary oversight.

1.4.5 The decisions of the Committee on this report were arrived at after extensive deliberations by the delegation and were unanimous.

Mr. Speaker; --

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

Signed:



THE HON. ADAN W. KEYNAN, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

Date:

15/11/2012

INSPECTION VISIT OF KENYA MISSIONS IN VIENNA, GENEVA AND THE HAGUE

2.0 INSPECTION VISIT OF KENYA EMBASSY TO AUSTRIA

The visit was undertaken on 14th - 16th August, 2011 and held the following meetings:-

- (i) Meeting with Mr. Yukiya Amano, Director General of the International Atomic Energy Agency, (IAEA);
- (ii) Meeting with the officials of United Nations Office on Drugs and Crime (UNDC);
- (iii) Meeting with the Committee on Defence of the Austrian Parliament;
- (iv) Meeting at the office of the Honorary Consul;
- (v) Meeting with Home Based Staff of the Kenya Mission in Vienna, Austria; and
- (vi) Meeting with the Kenyan Diaspora.

The details of each meeting are discussed hereunder as follows: -

2.1.1 Meeting with Mr. Yukiya Amano, Director General of the International Atomic Energy Agency, (IAEA)

The delegation was briefed on the functions and operations of the IAEA as follows:-

- i) The International Atomic Energy Agency (IAEA) is an international organization that seeks to promote the peaceful use of nuclear energy, and to inhibit its use for any military purpose, including nuclear weapons. The IAEA was established as an autonomous organization, independent of the United Nations through the IAEA Statute, on 29 July 1957. The IAEA reports to both the UN General Assembly and Security Council.

The IAEA has its headquarters in Vienna, Austria. The IAEA has two "Regional Safeguards Offices" which are located in Toronto, Canada, and in Tokyo, Japan. The IAEA also has two liaison offices which are located in New York City, United States, and in Geneva, Switzerland. In addition, the IAEA has three laboratories located in Vienna and Seibersdorf, Austria, and in Monaco.

- ii) The IAEA serves as an intergovernmental forum for scientific and technical cooperation in the peaceful use of nuclear technology and nuclear power around the globe. The IAEA encourage the development of the peaceful applications of nuclear technology, provide international safeguards against misuse of nuclear technology and nuclear materials, and promotes nuclear safety (including radiation protection) and nuclear security standards and their implementation.
- iii) The IAEA's Mission is three fold: Safety and Security; Science and Technology; and Safeguards and Verification. This Mission is guided by the interests and needs of Member States and the vision embodied in the Statute establishing the IAEA. The IAEA has three main bodies: the Board of Governors, the General Conference, and the Secretariat.
- iv) The IAEA exists to pursue the "safe, secure and peaceful uses of nuclear sciences and technology" (Pillars 2005). The IAEA executes this Mission with three main functions: the inspection of existing nuclear facilities to ensure their peaceful use, providing information and developing standards to ensure the safety and security of nuclear facilities, and as a hub for the various fields of science involved in the peaceful applications of nuclear technology.
- v) The IAEA has established programs to help developing countries in planning to build systematically the capability to manage a nuclear power program, including the Integrated Nuclear Infrastructure Group, which has carried out Integrated Nuclear Infrastructure Review Missions in Indonesia, Jordan, Thailand and Vietnam. Close to 60 countries are considering how to access nuclear power as a source of energy, 30 of which are eager to introduce nuclear power.
- vi) In 2004, the IAEA developed a Programme of Action for Cancer Therapy (PACT). PACT responds to the needs of developing countries to establish, to improve, or to expand radiotherapy treatment programs. The IAEA is

raising money to help efforts by its Member States to save lives and to reduce suffering of cancer victims. The agency is supporting Kenya in the detection and treatment of cancer by offering equipment to hospitals, training of doctors and scientists in nuclear technology for cancer control.

- vii) In 2011 the Agency has prioritized water management in its programmes. The agency is conducting experiments in its laboratory in Monaco on the use and safety of nuclear technology to make water safe and reliable. The IAEA is also prioritizing the use of nuclear technology to improve food production in the world to curb the ever increasing food deficit.
- viii) Kenya is an active member of the IAEA and there is need to continue cooperating with the agency on nuclear safety by sharing information on radiation protection, waste management and nuclear safety. The Agency is ready to further cooperate with Kenya by offering advice on the best energy alternative and or mix of energy use depending on available resources.

The delegation was further informed that the Fukushima nuclear disaster in Japan has eroded the confidence in the development of nuclear power.

- ix) The delegation expressed concern that the instability in Somalia has led to lack of control of the international waters off the coast of Somalia and that nuclear waste could be dumped by rogue states and multinational Corporations. The delegation called upon the agency and the United Nations to put in place stringent measures to prevent dumping of nuclear waste in the unmanned international waters off the coast of Somalia which could have fatal effects on the ecosystem along the Indian Ocean.

2.2 Meeting with the United Nations Office on Drugs and Crime (UNDC)

The delegation held a meeting with officials of the United Nations Office on Drugs and Crime at the UN offices in Vienna. The meeting deliberated on the Somalia crisis, piracy along the Indian Ocean and the refugee crisis.

The delegation was informed that the UN is trying to build institutions in Somalia though this has been a daunting task in the face of the protracted civil conflict in the horn of Africa. The UN recognizes the important role that Kenya plays in

peace and security in the region in addition to being a humanitarian hub in the sub Saharan region.

On the fight against piracy, the delegation was informed that, the UN has established a piracy trust fund to help in the fight against piracy. The United Nations office on Drugs and Crime has been working closely with the Kenyan Government in the fight against piracy through the trial and incarceration of pirates in Mombasa Law Courts and Shimo la Tewa prison. The UN has made an effort in improving Kenya's judicial and correctional facilities that handle piracy cases. The international community will continue to count on Kenya's support in the fight against piracy and in the stabilization of Somalia.

The delegation called upon the international community through the United Nations to support Kenya through infrastructural development and capacity building of its judicial and correctional institutions. The delegation appealed to the international community through the United Nations to establish a judicial mechanism to prosecute the masterminds of the conflict in Somalia, piracy and human trafficking.

2.3 Meeting with the Committee on Defence of the Austrian Parliament

The delegation held a meeting with the Austrian Parliamentary Committee on Defence. The delegation was informed that Parliament as the political institution works closely with the military. The relationship is important and healthy for a democracy as it ensures inclusivity since the military is a tool of the political arm of Government.

The delegation was further informed that Austria, like the rest of Europe, is reducing its military strength. Austria has for a long time adopted a policy of neutrality thus the need to reduce its military strength. The Austrian Defence budget is less than 1% of the country's GDP. Air power covers the biggest portion of the military budget due to the high cost of equipment.

The meeting agreed to explore ways of cooperation in the areas of defence, trade and investment and Inter-Parliamentary relations.

2.4 Meeting at the office of the Honorary Consul

The delegation held a meeting with the Ms. Jeanette Manadjemi, Director, Sales Projects Consulting (SPC) at the offices of the Kenya Honorary Consul to upper Austria. The delegation was informed that SPC specializes in trade agency, engineering and consulting.

The delegation was also informed that the official nomination of the honorary consulate was done in September 2009. The honorary consul is concentrating on how to improve trade relations between Kenya and Austria by working closely with established companies in Austria as reliable partners willing to invest in the energy, defence, housing and refinery sectors. The delegation was further informed that the honorary consul is organizing a visit to Kenya by strategic investors in February 2012.

The delegation highlighted the investment opportunities available in Kenya and its strategic location as a member of the East African economic block. The delegation impressed upon the honorary consul to aggressively market Kenya as the investment destination of choice.

2.5 Meeting with Home Based Staff

The delegation held a meeting with the officials of the Kenya Embassy at the Chancery.

The Deputy Ambassador, Mrs. Consolata Kiragu briefed the Committee as follows:-

The key objectives of the Mission include:-

- (i) Bilateral/economic activities with Austria, Hungary and Slovakia – Slovenia
- (ii) Promote international cooperation and protect Kenya's interests within the UN and international organizations in Vienna. To achieve this the Mission undertakes the following:-
 - The Mission actively participates in all preparatory meetings, working groups, seminars, secretariats briefings and regional consultations of all United Nations Organizations in Vienna.
 - The Mission also facilitates participation of Kenya delegations to the meetings of the UN and international organizations held in Vienna.
 - Lobbies for regional meetings to be held in Nairobi.
 - Conveys several vacancy announcements from the UN organizations based in Vienna to the Headquarters.
- (iii) Promote and protect the interests of Diaspora in Austria, Slovakia and the former States of Yugoslavia.

The delegation was further briefed on the challenges faced by the Mission in the execution of its mandate:-

- (i) **Staffing levels** - The Embassy has six home based staff and seven locally engaged staff. Considering the multiple accreditation of the Mission this staff establishment is inadequate.
- (ii) **Financial resources** - The Mission operates a Euro Account although the budget allocation is in Kenya shillings, thus resulting in huge foreign exchange losses when remittances are transmitted to the Mission. The high fluctuation in the exchange rates leads to losses. There is need for funds for promotional activities.
- (iii) **Office space** - The current Chancery in terms of size is inadequate. However the Mission is in the process of addressing this challenge by exploring possibilities of purchasing or building its own property.
- (iv) **High standards of living** - Austria is amongst the richest countries in the euro zone with a developed economy and boasts of high standards of living. The high standards of living translates to high cost of essential items this poses a big challenge to the home based staff.
- (v) **Language Barrier** - Native language is German 'Deutsch' which is a barrier to the smooth operations in the marketing arena.
- (vi) **Diaspora** - The multi ethnic nature of the Austrian community is a challenge in the process of managing the Diaspora. Most of the Kenyan Diaspora are not registered with the Mission and only come to the Mission when under distress.

2.6 Meeting with Diaspora

The delegation held a meeting with Kenyans living in Austria. The delegation was informed that over 400 Kenyans live work and study in Austria but many of them have not registered with the Embassy.

The meeting deliberated on the following issues:-

- i) **Dual citizenship** – the Austrian law does not allow dual nationality. Kenyans seeking Austrian nationality have had to renounce their Kenyan nationality. The Diaspora was advised that Parliament will enact legislation to enable Kenyans to have dual citizenship.

- ii) Visa regime – The Austrian authorities have imposed stringent visa regime for students. The delegation requested the Mission to pursue the matter with the Austrian authorities and institutions of higher learning.
- iii) Voting and representation – The Diaspora sought to know of their rights as regards voting and representation. The delegation advised that the Diaspora need to mobilize and register with the mission so that their demography is known, however enabling legislation will be enacted to provide for the voting by the Diaspora.
- iv) Employment – The Mission was requested to seek ways of establishing labour/employment agreements with the Austrian authorities on employment as per the International Labour Organization.
- v) Investment – The Diaspora sought to know of investment opportunities in Kenya and safe avenues of investment. They were advised that investment opportunities abound and that the Kenya investment authority through the Mission should provide information to Kenyans seeking to invest in Kenya.

The delegation advised the Kenyan Diaspora to register with the Mission, invest in Kenya and be good Ambassadors for Kenya by projecting a good image of the country.

2.7 Committee Observations

The Committee made the following observations:-

- (i) The Mission’s objective of marketing Kenya and Kenyan products in Austria has been hampered by inadequate funding and language barrier.**
- (ii) The opportunities to market Kenya as a regional economic hub have not been fully tapped there exists a gap in marketing Kenya in Austria. The Kenya Investment Authority should work closely with the Mission in marketing Kenya as an investment destination of choice in Austria.**
- (iii) The official appointment of an Honorary Consul in Austria will hopefully raise the level of marketing of Kenyan products in Austria and increase the level of Foreign Direct Investment. The Kenya Investment and Export Promotional Council should work closely with the Honorary Consul through the embassy to capitalize on the opportunity.**
- (iv) The IAEA is willing to work with Kenya on developing a sustainable energy for Kenya’s development.**

2.8 Committee Recommendations

- 1) The Ministry of Foreign Affairs should engage and seek views of the Diaspora through the Mission on laws affecting them such as dual citizenship, voting rights and representation.**
- 2) The Ministry of Foreign Affairs to liaise with the Ministry of Labour and pursue labour / employment agreement with the Government of Austria. These agreements will secure employment for Kenyans and ensure fair treatment of Kenya workers in Austria.**
- 3) The Kenyan Government should work closely with the IAEA on the best energy alternative for Kenya.**

3.0 INSPECTION VISIT OF THE KENYA EMBASSY TO SWITZERLAND

The visit was undertaken on 17th – 19th August, 2011 and held the following meetings:-

- i) Courtesy call on the Permanent Representative
- ii) Meeting with Local Staff
- iii) Meeting with Home Based Staff
- iv) Meeting with the Director General, World Health Organization (WHO)
- v) Meeting with the Deputy High Commissioner, United Nations High Commission for Refugees (UNHCR)
- vi) Meeting with the Diaspora

3.1 Courtesy call on the Permanent Representative

The delegation paid a courtesy call on the Permanent Representative and Kenya's Ambassador and Permanent Representative to the UN in Geneva, Dr. Tom Mboya and the Deputy Permanent Representative Amb. Andanje. The delegation highlighted the purpose of the visit and the role of the Committee as provided for by the Constitution and the Standing Orders.

3.2 Meeting with Local Staff

The delegation held a meeting with the local staff. The local staff raised the following issues:-

- (i) Conditions of service – The terms of service have not been revised since 1986. Long working hours.
- (ii) Local staff are working under terms stipulated by Kenyan laws yet they are employed as local staff and therefore the Swiss labour laws should apply.
- (iii) Contributory provident fund - is a form of savings for the local staff who together with the employer contribute to the fund. However they are not allowed access to the fund when need arises. Home based staff are allowed to access the fund while the local staff are not allowed to access the fund.
- (iv) Leave – they are only allowed 21 days leave contrary to Swiss labour requirements where employees are allowed 28 days leave.
- (v) Poor communication between employer and the local staff.
- (vi) Delayed salaries – this has impacted negatively on their contractual obligations. They are not able to pay bills in time.
- (vii) Delay in payment of claims – Drivers' fuel Mission vehicles and forward claims for processing but payment takes long.
- (viii) Lack of working equipment and tools – local staff that require the use of computers have been forced to use their personal computers/laptops to perform Mission's duties.
- (ix) Insurance cover – The Mission is underpaying insurance cover to the local employees. The Mission pays an insurance of 300 (approx. Ksh. 27,000) Swiss Francs to the local staff yet the Swiss laws require that 500 (approx. Ksh. 45,000) Swiss francs be paid to employees. The insurance cover has not been reviewed for a long period yet the insurance premiums in Switzerland are reviewed annually.

3.3. Meeting with Home Based Staff

The delegation held a meeting with members of the home based staff. The delegation was informed that the Mission is multilateral and accredited to the World Health Organization (WHO), World Trade Organization (WTO) and other international organizations in Switzerland. The Mission also offers visa services but is not accredited to Switzerland.

The following officers briefed the delegation as follows:-

3.3.1 Financial Attaché - Irene Mbogo

She briefed the delegation that:-

Duties include keeping the financial records of the Mission, lease agreements, offering financial advice and custodian of accountable documents.

The Mission operates two accounts; the recurrent account by Ministry of Foreign Affairs and the agency account by the Trade and Labour Ministries respectively. The two accounts are run by the accountant but have separate signatories. The signatories to the main account are the Permanent Representative and the accountant with no alternate signatory, while the agency account has three signatories; the Permanent Representative, the accountant and the trade attaché.

The delegation was informed that Amb. Andanje, Deputy Permanent Representative, is not a signatory to the Missions accounts and the only signatories are the Permanent Representative and the financial attaché or accountant. The Permanent Representative is the only mandatory signatory to the Missions accounts.

Due to failure to pay rent for the home Based staff the Mission has been reported by landlords to the Swiss Embassy in charge of Missions. The Mission was summoned by the Swiss Embassy to explain why the Mission could not pay rent. The inability to pay rent has led to a situation whereby the Mission is not able to secure and rent accommodation to its staff and thus resorting to renting serviced apartments which are expensive as compared to renting houses. **(Annex 1)**

There have been cases when the Mission did not have sufficient funds to pay for salaries and resorted to borrowing money from the agency account, provident fund and from KIPFI funds. The borrowed funds were however returned when the Missions financial situation stabilized. The Mission resorted to renting serviced apartments for officers partly due to lack of sufficient funds since houses require a three months deposit and one month rent and also due to its poor credit rating.

Following the recall of Amb. Maria Nzomo in January 2009 the residence remained unoccupied until July 2010 but the Mission continued paying rent, bills for essential services and employee salaries.

3.3.2 Legal officer – Mr. Nily Kanana

Mr. Kanana informed the delegation that:-

- (i) Following the recall of Amb. Maria Nzomo in 2009 Amb. Owade was in charge of the Mission. During his tenure Amb. Owade was recalled but sought for extensions. In 2008 there was a case involving Amb. Owade and a landlord. Amb. Owade had signed a contract with a landlord through which the Government lost Ksh. 1.2 million because he did not give notice when he was vacating the rented house.
- (ii) In another case involving Ambassador Dr. Tom Mboya the Mission was billed 6,900 Swiss francs (about Kshs. 627,900) because the Ambassador did not hand over the property in time and in good condition as per the lease agreement. The ambassador left his previous residence without notice and there was a personal telephone bill of 5000 Swiss Francs (about Kshs. 455,000).

3.3.3 Deputy Permanent Representative – Amb. Anthony Andanje

Mr. Andanje informed the delegation that:-

Lavish lifestyle

- (i) The current Ambassador's residence is in an expensive area. The Mission can save money by renting a suitable residence and save money to be used in renting residences for other officers who are currently residing in hotels and serviced apartments.

Lack of adherence to financial regulations

- (ii) He is not one of the signatories to the missions major account despite the assertion of the PR that he is one of the signatories.

Poor leadership skills

- (iii) The arbitrary allocation of duties to officers has affected performance. Those officers who excel in certain area are reshuffled. Junior officers are assigned duties where Ambassadorial representation is required. For example disarmament is assigned to a Third Secretary while it is high profile and requires ambassadorial representation. Another example is the case in point where the Deputy Permanent Representative

is assigned human rights desk as an observer. This arbitrary allocation of duties and reshuffle has affected Kenya's representation at the high level meetings.

Unauthorized appropriation of WIPO funds

- (iv) Every year in March WIPO funds are allocated to countries. The funds are channeled through the Mission for onward transmission to KIPI. The Mission used the funds to pay certain commitments in contravention of fiscal regulations as there was no authorization for use of the funds.
- (v) He categorically denied being a signatory of any of the accounts.

3.3.4 Labour Attaché - Mr. Peter Wamoto

Mr. Wamoto informed the delegation that:-

Delay in Payment of salaries and essential bills

- (i) The issues of finances of the Mission relate to management. The Permanent Representative has refused to have an alternate signatory. This has led to delay in payment of salaries and other essential bills such as rents leading to notices and warnings issued to officers by landlords. This in turn affects the morale of officers in performing their duties.

Irregular appropriation of funds

- (ii) In the past, money meant for labour issues was transferred to Ministry of Foreign Affairs account to cater for other expenses without the approval of the AIE holder. The funds should have been returned to the Ministry of Labour.

3.3.5 Trade Attachés – Mr. Elijah Manyara and Mr. Daniel Owoko

Messrs. Manyara and Owoko briefed the delegation as follows, that:-

- (i) The World Intellectual Property Organization (WIPO) was established in 1967 through the WIPO convention. The organization has 184 member states. Kenya joined the organization in 1997. The organization granted Kenya Swiss Francs 264,000 for the development of trade mark and an additional Swiss Francs 200 000 for capacity building of Kenya Intellectual Property Institute (KIPI).

World Intellectual Property Funds

- (ii) Every year in March the WIPO funds are allocated. The funds are channeled through the Mission for onward transmission to KIPi.

Understaffing and lack of capacity

- (iii) The trade section is understaffed and constrains the capacity of the Mission to fully represent the country. The World Trade Organization cognizant of the capacity challenge faced by developing countries in WTO matters assists countries through capacity building. The Embassy had requested for an additional officer. The request for an intern was granted and WTO was to cater for all the needs of the officer while the Mission was only to provide a desk for the officer at the Chancery. Despite the request being granted by the WTO, the Permanent Representative, Dr. Tom Mboya, blocked the posting of a trade officer as a WTO intern.

(Annex 2)

- (iv) The Trade Attaché is a signatory to the agency account but the Permanent Representative is the mandatory signatory. Prior to the Ministry of Foreign Affairs team visiting the Mission in March 2011 the trade attaché was not aware of his capacity to transact the account.

Unauthorized transfer of agency funds to the Ministry of Foreign Affairs

- (v) In the past agency funds were transferred to the Ministry of Foreign Affairs without the authorization of the agency AIE holders. The funds were transferred by the accountant and the Permanent Representative. The refund of the funds has not been effected and the matter is still in abeyance. The transfer was effected in contravention of financial regulations.

Desertion of responsibilities

- (vi) The Permanent Representative has not been attending important WTO meetings that require ambassadorial representation yet Kenya is the coordinator of the African group. Members of the African group have raised concern over the performance of the Permanent Representative and his inconsistency in attending crucial meetings thus affecting Kenya's

image and stature among members of the African group and the International Community.

3.3.6 Third Secretary - Ms. Anastacia Osundwa

Ms. Osundwa informed the delegation that:-

- (i) She had been assigned the WHO and disarmament desks despite the fact that disarmament is represented at an ambassadorial level.

Specific allegations against the PR

Poor leadership skills

- (ii) Work schedules are not discussed and reshuffles are done haphazardly by the Permanent Representative. The staff are not accorded the opportunity to discuss their performance and challenges with the Head of Mission.

Unilateralism in decision making

- (iii) Management at the Mission lacks consultation on issues affecting the diplomatic community at the Embassy. The decisions of various committees at the Embassy are not adhered to and the Permanent Representative edits minutes of such meetings to reflect his interests.

Lack of adherence to financial regulations

- (iv) In the absence of the Permanent Representative it is not possible to transact any business since the Permanent Representative is the sole mandatory signatory to the Missions accounts.

Delay in payment of bills and emoluments

- (v) Payment of Bills and personal emoluments are delayed. The Head of Mission rejects payments of such bills and emoluments and only pays them at will and not as required by law.

3.3.7 Third Secretary – Ms. Anne C. R. Keya

She informed the delegation:-

- (i) Handling environment and humanitarian sectors but reshuffled to handle disarmament which is supposed to be represented by an Ambassador.
- (ii) Officers are staying in serviced apartments due to financial challenges. The Missions housing committee seeks houses and once found and contract

prepared the permanent representative never approves them. The permanent representative has issued a ceiling of 500 Swiss Francs per month for leasing houses which is way below any housing rent in Geneva and therefore no houses are leased.

- (iii) Welfare – The Permanent Representative refuses to authorize payment of medical bills. Doctors have consequently refused to check on staff and particularly her, due to pending medical bills.

3.3.8 Immigration Attaché – Mr. Tom Anyim

Mr. Anyim informed the delegation that:-

He was Posted to handle immigration issues but assigned to cover United Nations High Commission for Refugees (UNHCR), World Health Organization, office of the coordinator of humanitarian affairs and International Organization for Immigration (IOM). Based on the United Nations calendar events the activities of the above agencies coincide making it difficult for him to handle all of them.

3.3.9 Administrative Attaché – Mr. Daniel Muange

Mr. Muange informed the delegation that:-

He was living in a house illegally and constantly harassed by the landlord due to delay in payment of rent.

Vehicles are long overdue on service and are driving on winter tyres.

The Mission lacks a system of fuel management and drivers fuel vehicles and are reimbursed. Reimbursement however takes long. The ideal would be to have a card management system.

3.3.10 Confidential Secretary – Ms. Harriett Murungi

Ms. Murungi informed the delegation that:-

- (i) The problems at the Mission started upon the confirmation of Amb. Dr. Mboya as the Permanent Representative. The Amb. Dr. Tom Mboya was a medical attaché to the world health organization prior to confirmation as the Permanent Representative.
- (ii) The Permanent Representative stopped the posting of a trade intern to the WTO because he was not consulted. The person proposed for the

internship, Mr. Wanjala who previously served as a trade attaché, who had a case for his rented house and was to be surcharged.

- (iii) The Mission faces financial challenges and is unable to pay its bills. She has been issued with a notice to vacate by the landlord who has refused to renew contract due to delay in rent payment.
- (iv) The presence of two Ambassadors at the Mission is undermining the performance of the Mission.

3.3.11 Permanent Representative - Ambassador Dr. Tom Mboya

The Permanent Representative informed the delegation that:-

- (i) The Mission is facing financial difficulties leading to delay in salaries and pending bills (rent and medical insurance). When he was appointed as the permanent representative the Mission had a huge pending bills amounting to 3,000 Swiss Francs (approx. Ksh. 270,000). The Mission could not therefore meet its financial obligations. This was communicated to the Ministry which advanced Kshs. 15 million to the Embassy. The Mission resorted to 'borrowing' from the provident fund as well as from the KIPFI funds to pay salaries.
- (ii) The currency fluctuation has affected the Mission's budget. The Swiss Franc had been gaining against the major currencies. The foreign exchange loss has impacted negatively on the Mission's financial status.
- (iii) Having two Ambassadors in the same Mission, one accredited as the Permanent Representative and the other deputizing, has affected the performance, operations and management in the Mission. The performance of the Mission staff has also been affected therefore compromising the effectiveness and efficiency of representation. There is therefore need to define the responsibilities of each ambassador.
- (iv) The Embassy undertakes consular services but is not accredited to Switzerland or any other state. Previously the Kenya High Commission to the United Kingdom was the one handling the bilateral matters of the Mission but this has been changed and Geneva is now handling its bilateral issues. The Mission is to open an office in Bern to handle bilateral matters but this will happen after clearing all pending bills as directed by the Swiss Authorities.

- (v) Bank signatory – the Mission operates two accounts; the main account by the Ministry of Foreign Affairs and the agency account. The signatories to the main account are the Permanent Representative and the financial attaché and the Deputy Permanent Representative while the signatories to the agency account are the Permanent Representative, the financial attaché and the trade attaché. The signatories to the provident account are the same as those to the main account since it is a sub account of the main account.
- (vi) Staff duties are negotiated with the respective staff and their duties or assignments communicated to the Ministry Headquarters. In 2011, there was a review of the staff posting due to the posting of new and senior officers. The new posting reflects the status and importance that Kenya attaches to the international organizations that the Mission is accredited to. This was done in line with the responsibilities vested on the permanent representative and in the interest of the country. There was disquiet among affected officers.
- (vii) The Permanent Representative informed the Committee that he has had good working relations with all the staff except with his deputy which has affected the Mission's performance.

3.4 Meeting with the Director General, World Health Organization (WHO)

The delegation met with Dr. Margaret Chan, Director General, WHO. The Director General welcomed the delegation to the WHO headquarters and briefed them on the important role that Kenya plays in the World Health Organization and the role of the institution in delivering health.

The Director General briefed the delegation as follows:-

- 3.4.1 Development partners have reduced their contributions to the WHO due to the financial crisis and foreign exchange fluctuations. WHO will however continue to the momentum on world health and marshal support for health in the Horn of Africa.
- 3.4.2 The international community must support Kenya in provision of health to its citizens and the refugees fleeing conflict in the region and seeking refuge in Kenya. Kenya as a country must invest in health since disease outbreak poses a security threat to any nation. Diseases also impoverish a society as resources are diverted to cure diseases. The government must

therefore build capacity of its people on health sector and in particular empowering women.

3.4.3 The developing countries should focus on health promotional activities, preventive services and investment in drugs manufacture and clean water and sanitation.

3.5 Meeting with the Director General, World Trade Organization (WTO)

The delegation held meeting with Mr. Pascal Lammy, the Director General of the World Trade Organization. The delegation was briefed on the role of the WTO, the need to conclude the Doha round of talks.

3.5.1 Mr. Lammy informed the delegation that Kenya has an important role to play at the WTO and particularly being the coordinator of the African group. He informed the delegation that African group should spearhead the conclusion of the Doha rounds of talks. The delegation was further informed that for Kenya to play a more active role at the WTO it should deploy its human capacity in negotiations as well as in monitoring aspects of WTO.

3.5.2 The delegation was further informed that WTO had acceded to Kenya's request for capacity building on trade. Kenya has however not taken advantage of the assistance to build its capacity.

3.6 Meeting with the Deputy High Commissioner, United Nations High Commission for Refugees (UNHCR)

The delegation held a meeting with Mr. Alexander T. Aleinikoff the Deputy High Commissioner, United Nations High Commission for Refugees. The meeting deliberated on the on the instability in the horn of Africa region and in particular the refugee crisis as a result of the protracted civil conflict and instability in Somalia.

3.6.1 The delegation briefed the Deputy High Commissioner on the refugee crisis in northern Kenya and the strain that the influx of refugees has placed on Kenya's resources. The delegation appealed to the international community to play a more active role in alleviating the challenges posed by the refugee influx such as environmental destruction, and proliferation of small arms.

3.6.2 The delegation assured the Deputy Director that Kenya as a responsible member of the international community will continue to shoulder its

responsibility as a member of the international community as a humanitarian hub in the region but the international community should focus and dedicate more resources on stabilizing Somalia.

3.6.3 Mr. Alexander informed the delegation that the international community recognizes the important role that Kenya plays among the community of nation as a humanitarian hub. He further informed the delegation that UNHCR recognizes the burden that the refugee crisis has placed on the local community and has put in place support mechanisms for the local communities that host Dadaab and Kakuma Refugee Camps. The UNHCR is also working closely with the Kenyan authorities in registering refugees. He appealed to Kenya to continue supporting refugees especially at this dire moment where many people have been displaced as a result of drought and conflict in Somalia.

3.7 Meeting with Diaspora

The delegation met with members of the Kenya Diaspora in Switzerland.

3.7.1 The delegation highlighted the need for the Diaspora to register with the Kenya Embassy in Geneva. The Diaspora was further requested to be good Ambassadors by promoting and projecting the interest and reputation of Kenya. The Diaspora was requested to invest back at home by taking advantage of the good investment opportunities created by the Government. The Diaspora was further requested to organize themselves in readiness for the voting in general elections as provided for by the Constitution.

3.7.2 The Diaspora raised the following issues:-

- (i) Dual citizenship – The Constitution provides for dual citizenship. Legislation will be put in place to operationalise the dual nationality provision in the Constitution
- (ii) Investment opportunities – raised concern over the security of investment in Kenya. Diaspora to seek sound advice on investment opportunities from relevant authorities and invest wisely.
- (iii) Voting rights and representation – mechanisms for Diaspora voting and representation – informed that Parliament will legislate on the modalities for voting as provided for by the constitution

3.7.3 The Diaspora raised the following issues with regard to the Embassy:-

- (i) Lack of a Diaspora desk at the Mission to cater for Diaspora issues.
- (ii) Poor communication – communication and contact between the Diaspora and the Mission is poor. During the tenures of Amb. Amina Mohammed and Amb. Maria Nzomo there existed a good relationship between the Diaspora and the Mission. Lack of availability of information.
- (iii) The Mission does not promote Kenya as a tourist and investment destination of choice.
- (iv) Integrity – The leadership of the Mission has lost integrity among the diplomatic community members. There has been concern over the manner in which an employee at the Ambassador’s residence was treated and later forced to return to Kenya under unclear circumstances.
- (v) The Diaspora further raised concern over the cost of the residence rented for the ambassador and which was not occupied for close to 18 months.

3.8 Ministries’ report on conduct and work performance of Amb. Tom Mboya, Kenya’s Permanent Representative to UN - Geneva

According to a report (**Annex 3**) of an Inspection team from the Ministry of Foreign Affairs that visited the mission between 5th to 9th March, 2011, the following information is recorded: -

“1.0 Introduction

Amb. Mboya was appointed Kenya’s Permanent Representative (PR) to the United Nations – Geneva on 13th September 2007. Prior to this appointment, he was serving as Medical attaché JG ‘P’ in the same mission. An Inspection team visited the mission between 5th and 9th March, 2011 to look into serious allegations made against the Head of Mission on his personal conduct, relations with the staff, his representational role and the general management of the Mission’s affairs. This report is an abstract from the main Report on the findings and recommendations of the Inspection Team that visited four of Kenya’s Missions in Europe between 27th and 11th March, 2011.

2.0 Specific Allegations against Amb. Mboya

2.1 Personal Conduct

It has been observed that the PR has a serious problem with his ego and a habit of dropping names of prominent personalities to intimidate both staff and his

peers/interlocutors. He does not take instructions from headquarters seriously amidst claims that they are from 'junior staff'. He is accused of failing to take official appointments and his technical work seriously, not being a team player with poor working relations with his staff, peers and stake holders at the station.

2.2 **Relations with Staff**

- (i) The Permanent Representative is not empathetic towards his staff and does not take issues of their welfare seriously. He is accused of not being a team player and humiliates the staff through unsavoury remarks and rarely seeks their advice or input even in areas where their expertise is mandatory.
- (ii) The Cook to the Permanent Representative M/s Jeddah Okanga complained in writing that on the night of 15th September, 2010, the Ambassador physically assaulted her for no apparent reason. The assault case was reported to the Swiss police on patrol but due to diplomatic immunity, they did not have authority to enter the Ambassador's residence, no action was therefore taken. She also claims that she was unlawfully confined in the residence and later deported without following the laid down procedure among other incidents of mistreatment. Her engagement and exit from the Mission was similarly irregular. The incident was likely reported in our local press.

2.3 **General Management of the Mission**

The Permanent Representative has been accused of making unauthorized and unnecessary trips outside Geneva. A case in point was his recent trip to Davos despite being advised that the Rt. Hon. Prime Minister would not be attending the summit.

Other accusations are: -

- Withdrawal of the alternative signatories to the Mission's bank account leaving him the sole signatory as the holder.
- Refusal to sign the lease to the house occupied by the Administrative Attaché who is now threatened with eviction by the landlord.
- Locking up the official seal so that other officers have no access and therefore none can issue note verbales, an important commercial tool between missions or international organizations.
- Refusal to approve procurement of furniture and other household items for the DPR and other officers.
- He has refused to approve payment of the rent and other contractual obligations.

- Processing of F.S.A. is unnecessarily delayed thereby embarrassing his staff since they are unable to pay their debts on time.

2.4 **Representational Role**

The Permanent Representative has failed to provide leadership on the management of multilateral issues to such an extent that the country is neither being heard nor felt in negotiations, despite the fact that it is now playing a critical coordinating role for the African Group. The African Group has always looked up to Kenya to provide leadership in negotiations and the country is now unable to push its agenda in the WTO, the Human Rights Council and other bodies to which the mission is accredited. There is talk within the African Group that they are contemplating electing another person to take over the chairmanship.

3.0 **Findings**

3.1 Personal Conduct and Representational Role

- (i) The Permanent Representative started on a wrong footing by failing to present Credentials without valid reasons to the World Trade Organization Director General as scheduled by cancelling a confirmed appointment. This caused embarrassment and lowering of Kenya's standing at the WTO. In addition he deliberately misled his peers and other stakeholders in Geneva that an MOU on security partnership in Dadaab Refugee Camp had been concluded. This is a serious source of concern and embarrassment. The MOU has to date not been signed.
- (ii) Kenya is at the risk of losing its current role as coordinator of the African Group at the WTO due to failure to provide leadership by Kenya under Amb. Mboya. The co-ordination role involves scheduling and chairing consultative meetings at both Ambassadorial and expert level, including representing African Ambassadors in the green room meetings chaired by the Director General – WTO. This also involves attending informal multilateral and bilateral meetings to network and gather intelligence on trade negotiation matters. The PR has deliberately failed to attend those consultative meetings, including informal interactions.
- (iii) The Permanent Representative has cancelled some key meetings he had previously called or failed to attend without notice, leading to embarrassment and erosion of Kenya's standing in the eyes of other nations. Our reputation is now at its lowest ebb.
- (iv) The mission failed to roll out a workshop it had organized for the Africa Group and did not give any reason for this cancellation further damaging the image of Kenya in the eyes of the other African Heads of Mission.
- (v) The Permanent Representative cancelled the nomination of an officer from Ministry of Trade to undertake an internship at the WTO and who

was identified using the normal procedure during his absence. He however, later explained that the intern was an officer who had previously served at the mission for seven years, and therefore does not qualify for this appointment. He was unable to explain whether the criteria for qualification was his own or that of the WTO.

- (vi) The Head of Mission explained that he had to lock up the official seal as it was being used to procure duty-free cigarettes outside the laid down procedure, which would put the mission on a collision course with the Swiss authorities. The said cigarettes were procured for sale at a profit. The Head of Mission is yet to make a formal report on this occurrence. By focusing on the cigarettes procurement, the PR seriously interfered with work of all the other officers who needed to use the seal for their official work.
- (vii) The PR refused to meet an emissary (the Deputy Director General) sent by the Director General of the WTO. His explanation was that he does not deal with 'deputies' or junior persons. The Deputy Director General is a lady from Rwanda who has given important intelligence to previous Kenyan Heads of Mission in Geneva on the WTO and its activities.
- (viii) The Mission's journal whose main purpose is to inform the outside world on the mission's activities and improve the mission's as well as the country's image has instead had the opposite effect. The Mission's journal is solely edited and produced by the PR. He is also the sole contributor; it is not professionally done and sometimes contains sensitive information which should not have been shared with third parties. It has also come to our attention that some reports and achievements presented as factual may actually not have been entirely true.
- (ix) The Permanent Representative is dismissive of advice from his officers and therefore ends up being ineffective in his technical work. At the senior staff meetings, he makes disparaging remarks about officers and dismisses their suggestions without giving them a hearing. He is accused of routinely amending recommendations of this committee alone in his office to suit his interest and agenda.

3.2 Relations with Staff

- I. The Head of mission has established his own Performance Appraisal System (PAS) which does not conform to the one developed by the Ministry of State for Public Service standardized for the entire Civil Service. The PR never sets targets with his staff and neither does he involve them in the evaluation of the performance, whose results including those of his colleague, the DPR are circulated openly to all staff, contrary to the laid down procedure.

- II. The Head of Mission is not empathetic and tends to place his personal interests above those of his staff leading to frustrations and stress. A case in point is his decision to use the entire one quarter allocation to procure a new representational vehicle and pay school fees for his children, while rent for officers and their children's fees remained unpaid. Additionally, their house lack basic necessities which provided for in the Foreign Service Regulations.
- III. According to established practice, the Committee responsible for local staff interviews prospective candidates for employment. However, the Head of Mission unilaterally decides on the hiring and deployment of local staff. The PR deployed the Translator/ Documentalist as a Chef to his residence, contrary to his job description. The individual is devastated.
- IV. The official cook's employment and termination was un-procedural as it was contrary to the local staff regulations. The employment was never documented and she was being paid without a valid contract. The employee was later assaulted and illegally deported out of the country. the PR was not able to explain the circumstances under which her engagement and subsequent termination was done. The mission's image has been dented by this saga and it may end up being sued for damages as this matter appears to have permeated the Kenyan Diaspora and even local press here in the country.

3.3 General Management of the Mission

The Ambassador's lone approach to the management of the mission and failure to establish committees as required, together with his failure to consult both headquarters and relevant officers in his mission has resulted in the following serious financial and administrative shortcomings that may require him being called upon to explain and in some cases being surcharged for failure to provide leadership in his capacity as the accounting officer of the mission.

- a) Accounting, finance and administrative matters
 - i) Pending Bills and Outstanding Debts from Previous Financial Years
 - The mission has accumulated a total of over Kshs.33 million in pending bills which have not been cleared. It has been apparent since July, 2010, that the mission carried over debts from previous financial years. The debts were not properly documented. In some cases, it is difficult to understand why the debts were incurred.
 - In a number of instances, the mission has neither honored provisions in the Lease Agreement nor handed back the premises on the date stipulated thereby incurring penalties. This is a source of some of the debts.
 - ii) Late Payment of Rents

- The mission's inability to pay rents on time has undermined its rating among Estate Agents in Geneva. They are a closely knit community and operate as a cartel. In keeping with the practice here, landlords consult estate agents before leasing their properties to the prospective tenants. The agents not only set rents but also act as a clearance house. Naturally, they are biased to African Missions. This situation is further exacerbated by the fact that over 6,500 foreign companies, most of which are headquartered in and around Geneva because of favourable tax environment, are able to pay premium rents and as a result, they get preference.
- Due to some inexplicable reason, the PR has arbitrarily set for officers Annual rent cap of Swiss Francs 5,000.00 (approx. Ksh. 450,000). No one is able to explain how this decision was reached as there is nothing on record. However, what is clear is that the rent cap does not reflect the prevailing rates for residential premises in Geneva since November, 2010, the pressure from Estate Agents and landlords seeking prompt payment of rents in accordance with the provisions in the Lease Agreements has been relentless. In keeping with the practice elsewhere, late payments incur penalties.
- In February, an Estate Agent acting on behalf of two landlords from whom the mission rents premises, informed the mission in writing of his intention to terminate the lease agreement of one of the Third Secretaries and the Financial Attaché due to late payment of rent. Another landlord has also taken similar measures with respect to the apartment rented to the other Third Secretary. His lawyers have written to inform that should there continue to be delays in payment of rent they would be left with no alternative but to pursue the matter in court.
- Since no response has been forthcoming from the mission, they have resorted to putting pressure on individual officers occupying their premises by threatening them with eviction. Some of the younger officers are extremely stressed.
- Upon posting to this mission, a majority of officers have had to be accommodated in serviced apartments, where, payment is based on a daily rate which is very exorbitant. A number of officers have stayed in serviced apartments upon arrival in Geneva for periods between two to six months due to the difficulty of finding someone willing to lease their house or apartment to the mission because of its reputation. They are as follows:

| <u>NAME</u> | <u>DURATION</u> |
|---|-----------------|
| a) Mr. Nilly Kanana, First Secretary Hotel Mon Repos | 6 months |

| | |
|---|----------|
| b) Mr. Dan Owoko, First Secretary, (Trade) | 6 months |
| Hotel Mon Repos | |
| c) Ms. Anne Keah, Third Secretary | 4 months |
| Hotel Mon Repos | |
| d) Mr. Peter Wamoto, First Counsellor, (Labour) | 3 months |
| Hotel Mon Repos | |
| e) Ms. Anastancia Osundwa, Third Secretary | 2 months |
| Hotel Mon Repos | |

Considering that there is no budgetary provision for the payment of accommodation of officers in serviced apartments, the arrangement has proved to be extremely costly.

- Household furniture:

Though this is provided for under the Foreign Service Regulations, actual provision has been both inadequate and unfair. In some cases officers have had to purchase their own furniture. Two of the Houses were visited to establish the state of the houses as well as furniture provided which was found to be wanting.

iii) Maintenance of Leased Houses:

Although responsibility for maintenance of leased property is normally stipulated in the lease agreement, the mission is not observing these requirements. Inspection of houses when one officer is vacating and another taking occupancy are not being carried out. Hence responsibility for damages is not normally easily determined.

- iv) There are two cases where officers have caused damages to leased houses, resulting in court cases, with landlords claiming damages. The two cases are in respect of officers who have since left the mission, namely Mr. Omondi and Mr. Wanjala who were the Labour Attaché and Trade Attaché respectively. The Mission informed that this information has been sent to the relevant ministries with copies to MFA. This matter will be followed up with the relevant ministries.

v) Committees

- Needless to state, the various committees established in the mission have an important role to play in promoting a culture of integrity and compliance with the relevant rules, policies and procedures. However, their views and recommendations are not respected by the Head of Mission especially when these do not accord with his personal views. The Committee minutes are therefore, amended after they have been written and therefore do not reflect the input of Members. The recommendations are usually in conflict with the laid down rules, policies and procedure which has occasioned financial loss to the

Government particularly on issues touching on vacation of houses and settlement of outstanding debts.

Crucial committees such as the Finance and Disposal Committee as well as the Acceptance Committee have not been set up. These committees advise the Head of Mission on Financial matters such as prioritization of expenditure and procurement processes and ensure the relevant regulations are followed.

- Though the procurement committee exists, there is no formal appointment. Members are only listed in a sheet of paper which has not been signed by the Head of Mission.
- The Mission had no Annual Procurement Plan in place purchases are done on an ad hoc basis. However their procurement committee meets to list the Mission requirements.

b) Procurement Matters

The Procurement Procedures in the Mission have not been observed. Purchases of household items including those of the DPR approved by the Procurement Committee have never been made because the Head of Mission states that they are not "a matter of priority". Some purchases have been carried out without adherence to procurement procedures such as the purchase of one lap top for the Head of Mission at SF. 1,500.00. Lap tops are available at media market from SF. 400.00. Any Lap top beyond SF. 1,500.00 is for individuals dealing in data processing or specialized software.

i) Stock Control

It was noted that the Mission maintains a small store located in the corridor. The S13 (Counter Receipt and Issue Voucher) and s3 cards (stores ledger and Stock Control) were not being used. Therefore it was not possible to verify if the items bought were received and taken on charge. The S11 (Counter Requisition and issue voucher) is not in use.

ii) Disposal of Stores

There was no record to indicate that the mission has boarded the items recently. It was noted that the mission had items that need to be boarded.

iii) Payment of contractual obligations

Whenever funds are available, payments of rents and school fees have been given priority. However, the payments in the mission are made selectively. In December, 2010, the Head of Mission unilaterally paid school fees of four of his children from the Provident Fund of the local staff stating that his affairs took priority over everything else. To date, the fees of the children of other members of staff are still outstanding. The settlement allowances of three officers who reported to the mission six months ago have

not been paid. They have been informed it is not a matter of priority thereby causing pain and suffering to the concerned officers and their families.

c) Accounting and transport matters

i) Bank accounts

- At present, the mission has two signatories to the mission's bank accounts. They are the Ambassador and the Financial Attache'. Despite efforts by the Ministry headquarters to ensure that there are three signatories, the Head of the Mission has used all sorts of subterfuge to avoid complying. On one occasion, he had the audacity to convey to the Ministry headquarters the names of A.I.E holder as bank signatories. Whenever the Head of Mission is away from the duty station, everything comes to stand still because the Mission cannot effect payments.
- The Head of Mission, conscious of the impending visit of the inspection team on Wednesday, 2nd March, 2011, he formally appointed Ms. Anne Keah, Third Secretary as an alternate bank signatory. Ms. Keah politely declined the appointment. However, the PR explained that the reason why he has been reluctant to appoint the DPR as the alternate signatory was that on several occasions, he authorized procurement of goods and services without ascertaining availability of funds in the relevant item. An explanation, the team found to be unacceptable as there are mechanisms to control this area which may include disciplinary action against the concerned officer.

ii) Visa collection

The mission has introduced e-banking. Visa applicants are only required to present banking slips and are issued with a receipt. Surrender of the visa collection is timely.

iii) Cash Management

The team observed that the mission's bank account is operated by both the Permanent Representative and the Financial Attache'. The Head of the Chancery is not a signatory. This has caused delays in payment especially when the Permanent Representative is out of station. As the alternate A.I.E holder, the Head of Chancery should also serve as the bank signatory to facilitate seamless management of the mission

iv) Utilization of funds

The team noted that the mission has not spent allocated funds on the following items in spite of serious need for furnishing for the Home Based Officers:-

- a) Purchase of office fittings
- b) Purchase of appliances
- c) Purchase of household items

v) Transport

The mission has a fleet of six vehicles, three of which are attached to the Permanent Representative. The team noted that work tickets for the vehicles are not maintained as required by the regulations. They are also not forwarded to the headquarters on a monthly basis as required by regulations. Two of the three vehicles have been allocated by the PR to his spouse and son for their personal use contrary to the Foreign Service Regulations. Fuelling of the vehicles is also done using public funds.

4.0 Conclusion and Recommendations

- Amb. Mboya appears not to realize the gravity of his failure to attend to multilateral issues and other technical matters that require his personal attention, and its impact on the mission and the country at large. As earlier mentioned, the country is at the risk of losing its coordinating role due to his arrogance and lackluster performance. His high handedness, lack of empathy and casual manner in which he handles HRM, Financial, Procurement as well as Administrative matters has left the mission disunited and unable to meet its financial and contractual obligations. He does not prioritize expenditure and ends up spending resources on non-priority areas e.g. procurement of a vehicle at the expense of pending contractual obligations.
- The procedure used to employ the official cook, her remuneration and subsequent termination was unprocedural and has caused embarrassment to the mission and the country. Permanent Representative should be called upon to account for this.
- There is need to ascertain officers responsible for the accrued debts and ensure they are surcharged for loss of public funds.
- Procurement and disposal must be done in accordance with the laid down procedures and regulations. The house for the Administrative Attaché should be leased and any outstanding claims such as the medical claims given priority and honored.
- The mission's newsletter should be given a professional touch and an editorial board which include all professions in the mission be appointed to oversee its publication including vetting of the content.
- All contractual obligations should be honoured by the mission without exception. The Finance and Disposal Committee should be given leeway to prioritize expenditure in order to ensure that contractual obligations are honoured to avoid harassment of officers by landlords.
- All vehicles allocated to the family of the Permanent Representative should be withdrawn immediately. The Ambassador should be surcharged for misuse of the two vehicles. Each vehicle must have a work ticket while ensuring that monthly motor vehicle returns are made to the ministry headquarters. Since the mission has six vehicles, any vehicles in excess of the authorized establishment should be disposed to cut on costs and loss of value.

In light of the foregoing, it appears that the only viable solution to poor leadership at the mission is for the Government to consider redeployment of the current Head of Mission to a less demanding and sensitive station as a matter of urgency.

Report prepared by: -

- | | | |
|-------------------------|---|---|
| 1. Mr. J.K. Ndathi | - | Director of Administration |
| 2. Amb. J.L. Lanyasanya | - | Director, Asia and Australia Directorate |
| 3. Mrs. Alice W. Muita | - | Secretary/HRM, Ministry of State for Public Service |
| 4. Mr. W.M. Musau | - | Head/Human Resource Division |

.....”

(i) Personal conduct of the Permanent Representative - Geneva: The Committee noted that the PR had a serious problem with his ego and lacked interpersonal skills. His staff accused him of not being a team player and humiliates the staff through unsavoury remarks and rarely seeks their advice or input even in areas where their expertise is mandatory.

(ii) General management of the Mission: The PR was managing the Mission as his personal property; making unilateral decisions on matters concerning financial management. The PR has total disregard of the laid down regulations governing procurement as well as financial management. Further, the PR unilaterally made decisions on the hiring and deployment of local staff without involving the Committee responsible for local staff, as it has been the tradition.

(iii) Representational role: The PR demonstrated his lack of zeal and commitment for his work as well as negligence of his duty especially when he cancelled some key meetings with international agencies that he had previously called or failed to attend without notice, leading to embarrassment and erosion of Kenya's standing in the eyes of other nations.

(iv) Relation with staff: The morale of employees of the mission was low due to lack of empathy by the PR and who had placed his personal interests above those of his staff leading to frustrations and stress.

(v) The Mission's main account lacks an alternate signatory which has led to delay in payment of salaries and pending bills.

(vi) The Mission incurred expenditure in rent of the Ambassador's residence yet it was not being used for 18 months. This resulted in a loss of 25,000 Swiss Francs per month which is equivalent to Kshs. 3.5 million per month. The indecision by the Ministry of Foreign Affairs in appointing an Ambassador for the above period led to the loss.

(vii) The presence of two Ambassadors in one Mission is creating unnecessary and embarrassing conflict and thus affecting the operations and management at the Mission.

(viii) The Mission's inability to pay its bills in time as well as pay officers' salaries and the Freight Service Allowance in time has led to accumulation of bills. The Government of Kenya has been reported to the Swiss Embassy which summoned the Permanent Representative to explain the Mission's inability to settle its bills. This is a diplomatic embarrassment to the Republic of Kenya.

(ix) The Mission has outstanding debts that affect its credit rating among its suppliers and creditors. This is impacting negatively on Kenya's image, credibility and reputation abroad.

(x) The Mission lacks a Diaspora desk to deal with issues affecting the large Diaspora population in Switzerland.

(xi) The Mission is employing local staff under Kenyan law yet there are local staff.

(xii) The Mission lacks fuel management system. Drivers are required to fuel vehicles and seek refund later. Due to its poor credit rating, the Mission is not able to enter into an agreement with petroleum companies to fuel its vehicles.

(xiii) There is delay in the remittance of payments in form of statutory obligations made by International Organizations.

(xiv) The management of the Mission is poor taking into consideration the haphazard manner in which duties are allocated and finances are mismanaged among other issues.

3.10 Recommendations

1) The Kenya's Ambassador and Permanent Representative to the UN in Geneva Dr. Tom Mboya has failed to represent the country. His behavior is wanting. Consequently, he should be urgently removed as a matter of national interest for misconduct and abuse of power.

- 2) The Government should immediately direct the Efficiency Monitoring Unit to carry out investigations on any financial mismanagement and abuse of office by the Kenya's Ambassador and Permanent Representative to the UN in Geneva and any other officer(s) in the mission.
- 3) The accounting officer, Ministry of Foreign Affairs, should ensure that the Mission's accounts have alternate signatories (in accordance with the Ministry's Fund's Management policy) for the smooth and efficient financial management at the Mission.
- 4) The accounting officer, Ministry of Foreign Affairs be held accountable for the loss incurred by the Mission for renting of Ambassador's residence for 18 months at the rate of 25,000 Swiss Francs per month while there was no Ambassador to occupy the residence for the period January 2009 to July 2010. The Government lost over Kshs. 33,750,000 (1CHF = 75 Kshs.)
- 5) The Ministry of Foreign Affairs should ensure adequate funding to enable the Mission meet its contractual obligations. The Mission should pay all its pending bills.
- 6) While posting Ambassadors the appointing authority should ensure that one Ambassador is appointed for each Mission and that the duties and responsibilities of each Ambassador are defined in Missions where two or Ambassadors are posted.
- 7) The Mission should review the terms and conditions of employment of its local staff. The Mission should employ the local staff under the laws, terms and conditions of the host country.
- 8) The Mission should develop a fuel and fleet management policy. Poor financial management at the Mission has led to the fueling of vehicles by drivers who are not well re-imbursed.
- 9) The Ministry of Foreign Affairs should prioritize the payment of statutory payments to International Organizations as delay in payments of contributions to international organizations affects the country's reputation/image, voting rights and related benefits at the international arena.
- 10) The Ministry of Foreign Affairs should put in place clear remittance policies for all monies paid to the Government of Kenya by International Organizations. The funds should be duly accounted for.
- 11) The Government should undertake an audit of funds remitted by the World Intellectual Property Organization (WIPO), since the

remittances started and channeled through the Kenya Mission in Geneva, for the development of trade mark and for capacity building of Kenya Intellectual Property Institute (KIPi).

12) The officers in the Ministry of Foreign Affairs who failed to take action on the report of the Ministry's inspection team to Geneva should not only be held responsible but also accountable for the funds lost.

4.0 INSPECTION VISIT OF THE KENYA EMBASSY TO THE KINGDOM OF NETHERLANDS

The visit was undertaken on 20th – 22nd August, 2011 and held the following meetings: -

i) Meeting with Embassy Officials – Home Based Staff

ii) Meeting with the Minister for European Affairs and International Cooperation

iii) Meeting with Sub Saharan Africa Department

iv) Meeting with Local Staff

v) Meeting with the Diaspora

The delegation also undertook Inspection of Mission Properties

4.1 Meeting with Embassy Officials – Home Based Staff

The delegation held a meeting with officials at the Embassy and were briefed as follows:-

6.1.1 History of the Kenya Embassy at The Hague - The Kenya Embassy to The Hague was established in 1985. In 1989 ABNAMRO bank gave a loan for the purchase of three residential properties and funds for the construction of the chancery. The loans were serviced through the development allocation to the Mission up to 1995 when the balance of the loans was taken over by treasury as public debt. The loans have now been fully serviced.

6.1.2 Staffing - The Mission has seven home based staff and six local staff. The home based staff comprises the ambassador, counselor/head of chancery, two third secretaries (legal and political), immigration attaché, financial attaché and administrative attaché.

6.1.3 Objectives of the Mission - The objectives of the Mission are guided by the Mission of the Embassy which is to safeguard Kenya's strategic interest in support of sustainable growth and development through effective diplomatic bilateral and multilateral engagements. The objectives of the Mission include:-

- Automatic data processing machines,
- Clothing & clothing accessories,
- Household items,
- Linen & furnishings,

The leading imports from the Netherlands comprise:

- Food,
- Live animals,
- Coffee & Tea,
- Infrastructure development,
- Fruits & vegetables,
- Fish & tobacco.

Kenyan exports include:-

6.1.5 Kenya Netherlands Trade relations - Kenya's export to the Dutch market comprise mainly of horticultural produce. The Netherlands is the largest buyer of Kenyan flowers, mainly for re-export to other markets. Other Kenyan exports include:-

- Development of Arid and semi arid lands,
- Rural domestic water supply & sanitation,
- Health Environment & Urban development,
- Infrastructure development,
- Agricultural research & Human Resources Development

6.1.4 Kenya Netherlands relations - Kenya and the Netherlands have maintained warm and cordial relations with both countries having resident Ambassador in each other's capital. Over the years the Netherlands extended development assistance to Kenya through the following project:-

- (i) Promote and project Kenya's image and interest in the countries of accreditation and amongst international organizations based in the host country.
- (ii) Promote international cooperation and multilateralism.
- (iii) Enhance partnership with the Kenya Diaspora in the countries of accreditation.
- (iv) Foster strategic and friendly bilateral relations in countries of accreditation.
- (v) Enhance economic, political educational and social cultural cooperation.

6.2.1 Chancery - Located on Nieuwe parkaan 21 and wagneraarweg. The chancery was built on a plot purchased by the government of Kenya through a loan from ABNAMRO bank. The property was built on a modern design and furnished with quality Materials and furniture. The delegation observed that the property is well maintained and is in good condition.

The delegation was informed that the Government of the Republic of Kenya owns four properties at The Hague in Netherlands. The properties consist of three residential houses and a Chancery.

The delegation inspected the four properties owned by the government of Kenya in Netherlands.

4.2 Inspection of Mission Properties

During the last Financial Year, fifteen Emergency Certificates (travel documents) were issued to facilitate Kenyans who wished to return home voluntarily and those on deportation from the Netherlands.

Kenya continues to be a favorite tourist destination for Dutch citizens and a lot of Dutch visitors also prefer to obtain visas on arrival at our international airports.

However, this is subject to the political climate in the country as we approach another election year.

The Consular Section collects between Kshs. 2,000,000.00 – 3,000,000.00 per month for various services rendered. During the Financial Year 2010/2011, there was an increase in revenue collection amounting to over Kshs. 6,000,000.00 from the previous financial year. This is a great improvement from the previous year when the country was recovering from the post-election disturbances. A further increment in revenue collection is anticipated this year because of the revision of the visa fees from Euro 20.00 to Euro 40.00 per visa, which took effect on 1st July 2011.

6.1.6 Consular section - Undertakes visas processing and issuance, passports, travel documents. The section liaises with the Dutch Ministry of interior, police and Government of Kenya.

- Chemicals,
- Machinery & transport equipments,
- Dairy produce,
- Plastics & electronics

The delegation held a meeting with Mr. Ben Knapen, the Minister for European Affairs and international cooperation of the Netherlands. The meeting deliberated on bilateral relations between Kenya and the Netherlands, Somalia crisis, the refugee situation, piracy in the Indian Ocean as well as the political situation in Kenya.

Cooperation

4.3 Meeting with the Minister for European Affairs and International

The delegation was further informed that an inspection team from the Ministry of Public Works, Housing, Foreign Affairs, and Treasury inspected the properties in 2009. However, no funds have been allocated for the repair and maintenance of the properties despite their deplorable state of disrepair.

6.2.4 Immigration Attachés residence - The property was purchased in 1988 and located in Waalsdorperweg 128 which is a prime location in The Hague. The house has deteriorated due to poor maintenance as a result of lack of funds. Due to the age of the property it is becoming expensive to maintain. The delegation observed that the property is in a poor state of maintenance with leaking roof and rusty pipes. There is need for urgent and major renovations and repairs for the house to be in suitable condition for habitation.

6.2.3 Counselor's residence - Purchased in 1987 and located in Tapitweg 6. Located in a prime area of The Hague close to the Chancery. Poor maintenance has led to the deterioration of the property coupled with a weakened structure due to the construction of an underground tunnel (road) right underneath the property. The delegation observed that the residence is properly maintained and only requires routine maintenance. The third floor of the house requires reconstruction due to disrepair.

6.2.2 Ambassador's residence - The property is located in an exclusive prime residential area in Waldeck Pyrmontlaan 27, Wassenaar close to The Hague where most embassies own or rent residences. Security in the area is tight due to ambassadorial residences, royal family as well as senior government official's residences. The delegation observed that the property is in good condition and properly maintained. The kitchen is currently undergoing major renovations.

The Commercialization of piracy has impacted negatively on Kenya's economy affecting the tourism, security and trade sectors. The delegation appealed for the international community to establish mechanism for leaders in Somalia to be held accountable.

6.3.3 The delegation raised concern that the issue of piracy can only be tackled with the economic and political stabilization of Somalia. They reiterated the role that Kenya has played in the fight against piracy through naval patrols as well as the prosecution of suspected pirates. The delegation appealed for a more active role by the international community in supporting Kenya through infrastructural development of its judicial and correctional institutions as well as capacity building to enable it handle piracy issues.

Piracy

The delegation noted that the refugee crisis in Somalia has led to insecurity, environmental degradation. Kenya has long been a haven of peace and stability for refugees fleeing from conflicts throughout East Africa.

6.3.2 The instability in Somalia and the ravaging drought has led to an increase in the influx of refugees to Kenya. There is a new refugee camp in dada, IFO II. Expressed concern that there is delay in the finalization in the construction and eventual opening of the camp for use by the ever increasing number of refugees fleeing the conflict and drought in Somalia. The Minister appealed for the opening of the camp to ease congestion in the already congested refugee camps in the area.

Refugee's crisis

The Netherlands is focusing on strengthened economic development involving the private sector to foster bilateral cooperation. The meeting resolved to further strengthen the cordial relations between the two countries for the economic development and well being of the people of the two nations.

6.3.1 The Netherlands has changed its policy by reducing countries cooperation from 33 to 15. Kenya is still in the group of 15 countries for continued bilateral cooperation. The delegation was further informed that a Dutch company, Heineken, is in the process of opening up a branch in Kenya.

Bilateral Relations

Political developments in Kenya

6.3.4 The delegation briefed the Minister that the political situation in Kenya is calm and that progress is being made in the constitutional implementation process. The implementation of the Constitution is going to be expensive for the nation and appealed for assistance from the Dutch Government.

4.4 Meeting with Sub Saharan Africa Department

6.4.1 The delegation held a meeting with the head of sub Saharan Africa department in the Ministry of Foreign Affairs of the Netherlands and deliberated on the refugee crisis in the sub-Saharan Africa region with emphasis on the Somalia refugee crisis.

6.4.2 The Kenyan delegation appealed for international support to the AU AMISOM peace keeping forces in Somalia through funding, equipment and additional peace keepers. The delegation noted that the assistance will ensure an expanded AMISOM presence in Somalia so as to secure the area. The delegation further appealed for international support for the establishment of a judicial mechanism to prosecute perpetrators of piracy, Militia, drugs and human trafficking crimes in Somalia. The delegation noted that a comprehensive judicial mechanism will bring an end to the lawlessness and civil war in Somalia.

6.4.3 The Kenyan delegation informed the officials of the Ministry of Foreign Affairs of the Netherlands that there is growing resentment by the local population with regard to environmental degradation, competition for resources with the refugees and perceived better facilities that refugees enjoy. To address this situation and resentment by the local community the international community should undertake infrastructural development in the northern Kenya and in particular areas that accommodate the refugees.

4.5 Meeting with Local Staff

The delegation held a meeting with the local staff at the Embassy. The Embassy has employed 9 local staff, three of whom are Kenyans. The staff raised the following challenges

- 3) Concerned the funds allocated for the repair of the residential house occupied by the immigration attaché were never utilized
- Embassies falling in disrepair.
- 2) The property division of the Ministry of Foreign Affairs should undertake a survey of all government properties abroad with a view to rehabilitating them to avoid the Chanceries and repair the two houses.
- 1) The Ministry of Foreign Affairs should urgently rehabilitate and

4.8 Committee Recommendations

- (i) The Chancery is in good condition
- (ii) Whereas the House occupied by the Immigration Attaché is in a state of disrepair, the Funds allocated for repair and maintenance of houses was never utilized as proposed but were returned to the Ministry on grounds that they were insufficient.
- (iii) Visa fee is collected in cash at the Embassy. This has led to loss of funds and surcharge on the part of the local staff who collect the visa fees.

The delegation observed that:-

4.7 Committee Observations

- Rights and obligations of the Diaspora
- dual citizenship
- investment opportunities
- international jobs
- Voting rights and representation

The meeting discussed the following issues:-

The delegation held a meeting with Kenyans living in Netherlands. The meeting was held at the chancery.

4.6 Meeting with Kenyans (Diaspora) In Netherlands

- Salary increment – their salaries have not been reviewed for many years.
- Those who work overtime like drivers are only paid a fixed overtime allowance irrespective of the long working hours.
- The Dutch laws on labour be applied to the terms and conditions of employment for local staff.

- “due to procurement challenges”, the Ministry of Foreign Affairs should allocate adequate resources for the repair and maintenance of properties abroad.
- 4) The Ministry of Foreign Affairs should halt any further disposal of properties for Missions abroad and instead channel the limited resources to refurbishment and renovation of existing properties.
 - 5) Visa regime reciprocity – The Ministry should charge similar or equal charges for visas and discourage issuance of visas at the airport so as to allow proper vetting of people visiting Kenya.
 - 6) The Embassy should review its visa fee collection and adopt a better system of collecting visa fees for example through the bank rather than cash collection at the Embassy.
 - 7) The Mission should follow the labour laws of the country of accreditation when employing local staff.
 - 8) The Ministry should develop a strong Diaspora office at the Mission complete with a database of Kenyans living, working and or studying in the countries of accreditation. This will assist in tapping into the potential of the Kenyan diaspora in the economic development of the country and aid Kenyans during times of need.

MINUTES

MINUTES OF THE 188TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 13TH NOVEMBER, 2012 IN
GOVERNORS LOUNGE, CONTINENTAL RESORT, MOMBASA AT 2.30 P.M

PRESENT

Hon. Adan Keynan, M.P - Chairperson
Hon. Charles Kilonzo, M.P
Hon. Yusuf Hassan, M.P
Hon. George Omari Nyamweya, MBS, M.P
Hon. Kiema Kilonzo, M.P
Hon. Kiema Kilonzo, M.P
Hon. Martin Ogindo, M.P
Hon. Jeremiah Kioni, M.P

ABSENT WITH APOLOGY

Hon. Benedict Fondo Gunda, M.P - Vice Chairperson
Hon. Peter Edick O. Anyanga, M.P
Hon. Wilson Litole, M.P
Hon. Mohamed Hussein Ali, M.P

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. Njenga Njuguna - Director Committee Services (Senate)
Mr. Julius Ariwomoi - Clerk Assistant II
Ms. Leah Wanjiru - Clerk Assistant III
Ms. Maureen Mwendwa - Parliamentary Intern

MIN.NO.719/ 2012

PRELIMINARY

The proceedings commenced with a word of prayer.

CONSIDERATION OF THE REPORT ON INSPECTION
VISIT TO THE KENYA MISSIONS IN VIENNA, GENEVA
AND THE HAGUE AND THE VISIT TO INTERNATIONAL
ORGANISATIONS

The Committee deliberated extensively on the various sections of the report including the executive summary, the background of the matter, the observations and the recommendations. Further, the Committee made the following observations and recommendations:-

(A) GENEVA

Observations

- (i) Personal conduct of the Permanent Representative (PR) - Geneva: The Committee noted that the PR had a serious problem with his ego and lacked interpersonal skills. His staff accused him of not being a team player and humiliates the staff through unsavoury remarks and rarely seeks their advice or input even in areas where their expertise is mandatory.
- (ii) General management of the Mission: The PR was managing the Mission as his personal property; making unilateral decisions on matters concerning financial management. The PR has total disregard of the laid down regulations governing procurement as well as financial management. Further, the PR unilaterally made decisions on the hiring and deployment of local staff without involving the Committee responsible for local staff, as it has been the tradition.
- (iii) Representational role: The PR demonstrated his lack of zeal and commitment for his work as well as negligence of his duty especially when he cancelled some key meetings with International agencies that he had previously called or failed to attend without notice, leading to embarrassment and erosion of Kenya's standing in the eyes of other nations.
- (iv) Relation with staff: The morale of employees of the mission was low due to lack of empathy by the PR and who had placed his personal interests above those of his staff leading to frustrations and stress.
- (v) The Mission's main account lacks an alternate signatory which has led to delay in payment of salaries and pending bills.
- (i) The Mission incurred expenditure in rent of the Ambassador's residence yet it was not being used for 18 months. This resulted in a loss of 25,000 Swiss Francs per month which is equivalent to Kshs. 3.5 million per month. The indecision by

- the Ministry of Foreign Affairs in appointing an Ambassador for the above period led to the loss.
- (ii) The presence of two Ambassadors in one Mission is creating unnecessary and embarrassing conflict and thus affecting the operations and management at the Mission.
 - (iii) The Mission's inability to pay its bills in time as well as pay officers' salaries and the Freight Service Allowance in time has led to accumulation of bills. The Government of Kenya has been reported to the Swiss Embassy which summoned the Permanent Representative to explain the Mission's inability to settle its bills. This is a diplomatic embarrassment to the Republic of Kenya.
 - (iv) The Mission has outstanding debts that affect its credit rating among its suppliers and creditors. This is impacting negatively on Kenya's image, credibility and reputation abroad.
 - (v) The Mission lacks a Diaspora desk to deal with issues affecting the large Diaspora population in Switzerland.
 - (vi) The Mission is employing local staff under Kenyan law yet there are local staff.
 - (vii) The Mission lacks fuel management system. Drivers are required to fuel vehicles and seek refund later. Due to its poor credit rating, the Mission is not able to enter into an agreement with petroleum companies to fuel its vehicles.
 - (viii) There is delay in the remittance of payments in form of statutory obligations made by International Organizations.
 - (ix) The management of the Mission is poor taking into consideration the haphazard manner in which duties are allocated and finances are mismanaged among other issues.

Recommendations

- 1) The Kenya's Ambassador and Permanent Representative to the UN in Geneva Dr. Tom Mboya has failed to represent the country. His behavior is wanting. Consequently, he should be urgently removed as a matter of national interest for misconduct and abuse of power.
- 2) The Government should immediately direct the Efficiency Monitoring Unit to carry out investigations on any financial mismanagement and abuse of office by the Kenya's Ambassador and Permanent Representative to the UN in Geneva and any other officer(s) in the mission.
- 3) The accounting officer, Ministry of Foreign Affairs, should ensure that the Mission's accounts have alternate signatories (in accordance with the Ministry's Fund's Management policy) for the smooth and efficient financial management at the Mission.

- 4) The accounting officer, Ministry of Foreign Affairs be held accountable for the loss incurred by the Mission for renting of Ambassador's residence for 18 months at the rate of 25,000 Swiss Francs per month while there was no Ambassador to occupy the residence for the period January 2009 to July 2010. The Government lost over Kshs. 33,750,000 (1CHF = 75 Kshs.)
- 5) The Ministry of Foreign Affairs should ensure adequate funding to enable the Mission meet its contractual obligations. The Mission should pay all its pending bills.
- 6) While posting Ambassadors the appointing authority should ensure that one Ambassador is appointed for each Mission and that the duties and responsibilities of each Ambassador are defined in Missions where two or Ambassadors are posted.
- 7) The Mission should review the terms and conditions of employment of its local staff. The Mission should employ the local staff under the laws, terms and conditions of the host country.
- 8) The Mission should develop a fuel and fleet management policy. Poor financial management at the Mission has led to the fueling of vehicles by drivers who are not well re-imbursed.
- 9) The Ministry of Foreign Affairs should prioritize the payment of statutory payments to International Organizations as delay in payments of contributions to international organizations affects the country's reputation/image, voting rights and related benefits at the international arena.
- 10) The Ministry of Foreign Affairs should put in place clear remittance policies for all monies paid to the Government of Kenya by International Organizations. The funds should be dully accounted for.
- 11) The Government should undertake an audit of funds remitted by the World Intellectual Property Organization (WIPO), since the remittances started and channeled through the Kenya Mission in Geneva, for the development of trade mark and for capacity building of Kenya Intellectual Property Institute (KIPI).
- 12) The Minister for Foreign Affairs should be held responsible for failure to take action on the report of the Ministry's inspection team and the Permanent Secretary (Accounting Officer should be held accountable for the funds lost).

(B) VIENNA
Observations

The Committee made the following observations:-

- (i) The Mission's objective of marketing Kenya and Kenyan products in Austria has been hampered by inadequate funding and language barrier.

- (ii) The opportunities to market Kenya as a regional economic hub have not been fully tapped because there exists a gap in marketing Kenya in Austria.
- (iii) The official appointment of an Honorary Consul in Austria will hopefully raise the level of marketing of Kenyan products in Austria and increase the level of Foreign Direct Investment.
- (iv) The IAEA is willing to work with Kenya on developing a sustainable energy for Kenya's development.

Recommendations

- 1) The Kenya Investment Authority should work closely with the Mission in marketing Kenya as an investment destination of choice in Austria.
- 2) The Kenya Investment and Export Promotional Council should work closely with the Honorary Consul through the embassy to capitalize on the opportunity.
- 3) The Ministry of Foreign Affairs to liaise with the Ministry of Labour and pursue labour / employment agreement with the Government of Austria. These agreements will secure employment for Kenyans and ensure fair treatment of Kenya workers in Austria.
- 4) The Kenyan Government should work closely with the IAEA on the best energy alternative for Kenya.

(C) HAGUE

Observations

The delegation observed that:-

- (i) The Chancery is in good condition
- (ii) Counselor's residence - The third floor of the house requires reconstruction due to disrepair.
- (iii) Immigration Attachés residence - the property is in a poor state of maintenance with leaking roof and rusty pipes. Whereas the House occupied by the Immigration Attaché is in a state of disrepair, the Funds allocated for repair and maintenance of houses was never utilized as proposed but were returned to the Ministry on grounds that they were insufficient.
- (i) Visa fee is collected in cash at the Embassy. This has led to lose of funds and surcharge on the part of the local staff who collect the visa fees.

Recommendations

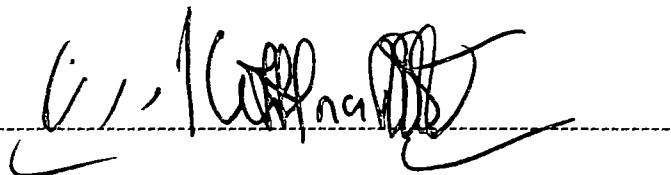
- 1) The Ministry of Foreign Affairs should urgently rehabilitate and repair the two houses, i.e. the Counselor's residence and the Immigration Attachés residence.
- 2) The property division of the Ministry of Foreign Affairs should undertake a survey of all government properties abroad with a view to rehabilitating them to avoid the Chanceries and Embassies falling in disrepair.
- 3) The Ministry of Foreign Affairs should halt any further disposal of properties for Missions abroad and instead channel the limited resources to refurbishment and renovation of existing properties.
- 4) Visa regime reciprocity – The Ministry ~~should charge similar or equal charges for visas and discourage issuance of visas at the airport so as to allow proper vetting of people visiting Kenya.~~
- 5) The Embassy should review its visa fee collection and adopt a better system of collecting visa fees for example through the bank rather than cash collection at the Embassy.
- 6) The Mission should follow the labour laws of the country of accreditation when employing local staff.
- 7) The Ministry should develop a strong Diaspora office at the Missions complete with a database of Kenyans living, working and or studying in the countries of accreditation. This will assist in tapping into the potential of the Kenyan diaspora in the economic development of the country and aid Kenyans during times of need.

MIN.NO. 721/2012

ADJOURNMENT

There being no other business the Chairperson adjourned the sitting at 4.40 p.m.

SIGNED



(CHAIRPERSON)

DATE

15th November, 2012

MINUTES OF THE 192ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS HELD ON THURSDAY, 15TH NOVEMBER, 2012
IN GOVERNORS LOUNGE, CONTINENTAL RESORT, MOMBASA AT 2.30 P.M
PRESENT

PRESENT

Hon. Adan Keynan, M.P - Chairperson
Hon. Charles Kilonzo, M.P
Hon. Yusuf Hassan, M.P
Hon. George Omari Nyamweya, MBS, M.P
Hon. Kiema Kilonzo, M.P
Hon. Kiema Kilonzo, M.P
Hon. Martin Ogindo, M.P
Hon. Jeremiah Kioni, M.P

ABSENT WITH APOLOGY

Hon. Benedict Fondo Gunda, M.P - Vice Chairperson
Hon. Peter Edick O. Anyanga, M.P
Hon. Wilson Litole, M.P
Hon. Mohamed Hussein Ali, M.P

IN ATTENDANCE: NATIONAL ASSEMBLY

Mr. Njenga Njuguna - Director Committee Services (Senate)
Mr. Julius Ariwomoi - Clerk Assistant II
Ms. Leah Wanjiru - Clerk Assistant III
Ms. Maureen Mwendwa - Parliamentary Intern

MIN.NO.728/ 2012 PRELIMINARY

The proceedings commenced with a word of prayer.

MIN.NO.729/ 2012 CONFIRMATION OF MINUTES

Minutes of the 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 159th, 160th, 162nd, 164th, 165th, 166th, 184th, 187th, 188th, 189th and 190th sittings were confirmed as true record of the proceedings as follows:

Proposed by: Hon. Martin Ogindo, M.P

Seconded by: Hon. George Omari Nyamweya, MBS, M.P

MIN.NO.732/ 2012 ADOPTION OF REPORTS

The following reports were unanimously adopted as follows

1. Report on Diplomatic Service Appointments;

Proposed by: Hon. George Omari Nyamweya, MBS, M.P and

Seconded by: Hon. Jeremiah Kioni, M.P

2. Report of the inspection of Kenya Missions in Vienna, Geneva and the Hague and visit to United Nation Agencies in August, 2011;

Proposed by: Hon. Yusuf Hassan, M.P and

Seconded by: Hon. Martin Ogindo, M.P

3. Report on Modernization Programme of the Kenya Defence Forces (KDF);

Proposed by: Hon. George Omari Nyamweya, MBS, M.P and

Seconded by: Hon. Jeremiah Kioni, M.P

4. Report of the investigation into the authenticity of documents on allegations against United Kingdom relating to International Criminal Court (ICC), laid in the House on 8th March, 2012

Proposed by: Hon. Martin Ogindo, M.P and

Seconded by: Hon. George Omari Nyamweya, MBS, M.P

MIN.NO. 733/201 ANY OTHER BUSINESS

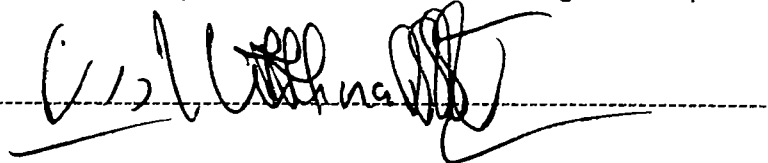
The Chair noted that the mandate of the 10th Parliament was almost coming to the end. He therefore took the opportunity to thank the Members of the Committee as well as the Secretariat for having given him full support during his tenure as Chairperson of the Committee and having steered the Committee to an exemplary level. He further wished

the Members well as they embarked on the rigorous campaign period. A proposal to organise a dinner for the Committee was made.

MIN.NO. 734/2012 ADJOURNMENT

There being no other business the Chairperson adjourned the sitting at 4.10 p.m.

SIGNED

A handwritten signature in black ink, appearing to be 'C. J. ...', written over a horizontal dashed line.

(CHAIRPERSON)

DATE

15/11/2012

ANNEXTURES

ANNEX 1

**Documents relating to the mission's financial crisis, inability to pay rent for staff and resorting
to renting serviced apartments**

ANNEX 1

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FAX 022 731 29 05

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WEBSITE: www.missions.itu.int/~kenya

www.kenyamission.ch



PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

KMUNG/FIN/1A/XVIII/(033)

REF. NO

23rd September 2010

Mr. Thuita Mwangi, CBS
Ministry of Foreign Affairs
P.O. Box 30551-00100
NAIROBI

Dear *Balosi,*

RE: PAYMENT OF DEBTS BY THE KENYA MISSION IN GENEVA

Reference is made to your letter No. MFA/FIN/2/8-VOL III dated 10th September 2010 on the above subject matter.

Here below please find a list of debts received from the Permanent Mission of Switzerland to the United Nations, Geneva, drawing our attention to number of complaints by various creditors regarding pending bills amounting to **Chf. 172,083.50**.

Most of these claims relate to debts owed by the Mission, Home Based Officers and a former local staff member.


| Payee | Services Rendered | Personal/ Mission | Amount (Chf.) | Remarks |
|-------------------------------|--|----------------------|------------------|--|
| Concetta Calcagno | Rent arrears & cost of repairs for house formerly occupied by Ministry of Labour Attaché | Official | 64,118.45 | The mission is in contact with the Ministry of Labour on settlement of this bill. However, no budgetary provision for this expenditure. |
| Mme. Zenaida Sexton | Court award by Tribunal des Prud'hommes du Canton de Geneve on 30.09.1994 | Official | 63,904.80 | Ms. Zenaida was awarded Chf. 63,904.80 with an annual interest of 5% from 09.07.1992 for wrongly dismissal as a house keeper at the Ambassador/PR Residence. The Ministry needs to make a provision of Chf. 120,000.00 for settlement of this court award. |
| Agence Immobiliere Ed. Lacour | Rent arrears - House formerly occupied by Ministry of Trade Attaché | Official | 40,083.65 | The Mission is in contact with Ministry of Trade on settlement of this bill. However, the Ministry has no budgetary provision for settlement of this bill, therefore the same should be included in the revised estimate for 2010/2011 |

| | | | | |
|-------------------------|---|----------|-------------------|---|
| Infoscore Inkasso AG | Telephone expenses: 1)No.: 0763449064 | Personal | 316.80 | 1) The Mission has written to Amb. Jean Kimani to Settle the bill vide letter Ref no. 1982008369. 2) Ms. Jane Wanjiru was a former employee of Ms. Jean Kimani, based on Swiss Mission's records, therefore she should facilitate settlement of the same. |
| | 2)No.: 0786290459 | Personal | 1,821.65 | |
| Infoscore Inkasso AG | Telephone expenses: Mr. Ogutu Lawrence Eric 0787847050 | Personal | 1,138.15 | Awaiting copy of invoice for settlement. Money to settle this bill is available. |
| Regie Grange & Cie | Apartment parking fee for the apartment of the former Admin. Attache Mr. Geoffrey Wainaina. | Official | 700.00 | Awaiting a copy of the invoice for settlement from the estate agent – Regie Grange & Cie. Funds are available to settle this bill. |
| TOTAL | | | 172,083.50 | |

Yours

Sincerely,


Pa


Dr. Tom Mboya Okeyo
Ambassador/Permanent Representative

CC

Mrs. Beatrice Kituyi, CBS
Permanent Secretary
Ministry of Labour
NAIROBI

Eng. Abdulrazak Aden Ali, CBS
Permanent Secretary
Ministry of Trade
NAIROBI


Amb. Jean W. Kimani
Ministry of Foreign Affairs
NAIROBI

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www.kenyamission.ch



PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

REF: **KMUNNG/FIN/1A/XVIII/0178**

3rd August, 2011



The Ag. Permanent Secretary
Ministry of Foreign Affairs
NAIROBI

Dear Sir,

RE: DEEP FINANCIAL CRISIS IN THE MISSION

Further to our letter Ref No. KMUNNG/FIN/1A/XVIII/ 0173 dated 27th July 2011 on the Status of Finances in the Mission; we wish to provide further explanations on the exchange loss incurred by the Mission;

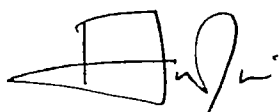
The approved budget for the Mission for the financial year 2011/2012 is Kshs. 311,385,539.00 which translates to Kshs. 77,846,384.75 per quarter. Going by this figure, and using the Ministry's official exchange rate of 1CHF=Kshs.84.50 as of March 2011 which was used to prepare the budget, the Mission expected a total of CHF 921,258.99. However, at the time of disbursement of the first quarter allocation, the Swiss Franc had appreciated to 1CHF=Kshs.111.60 and as a result the amount received was CHF 681,943.99, reflecting a loss of Kshs.18,482,933.20. It should be noted that the amount transmitted was Kshs.76,107,201.00 instead of the expected Kshs. 77,846,384.75 reflecting an underfunding of Kshs.1,739,183.75.

We appreciate the review of the exchange rate 1CHF=Kshs.114.00 with effect from 1st August, 2011. However the new rate only reflects the deteriorating financial position of the Mission given that the budget still reflects the March 2011 exchange rate of 1CHF=Kshs.84.50. With the new rate, the remaining quarters' remittances are likely to go down by Kshs.81,531,421.00. The actual figure is likely to be much higher given that the actual exchange rate as of 2nd of August was 1CHF=Kshs.117.00 which translates to a loss of Kshs.83,676,984.30 for the three quarters. This will bring the total loss for the entire financial year to Kshs.102,159,917.90 if the rate remains at 1CHF=Kshs.117.00 until the end of financial year. This figure excludes the financial loss of Kshs.28,597,731.20 incurred in the last financial year 2010/2011.

The losses incurred so far of Kshs.18,482,933.60 for this quarter and Kshs.28,597,731.20 for the last financial year all totalling to Kshs.47,080,664.80 have affected negatively the ability of the Mission to meet its financial obligations. As result of this, the Mission carried forward rent arrears for for Chancery for the month June 2011, FSA for May and June, Local Staff Salaries for June, all totalling to CHF.269,822.78 (Kshs.30,112,222.25) which were all settled on receipt of first quarter allocation. In addition, a total of CHF 209,404.68 which translates to Kshs.24,500,347.55 is still pending.

The remaining balance of CHF.412,121.21 could only settle rents for the residence , Chancery and home based staff for the month of July and August, FSA and Local Staff Salaries for the month of July and medical insurance. This meant that the Mission could not get accommodation for the two new officers and two other officers who have been given notice to vacate their present accommodation by end of August, 2011.

The purpose of this letter therefore is to request the Ministry to provide funding of CHF.860,899.35 (Kshs.100,725,223.95) to settle rents for the month of September for residence, Chancery and home based staff, FSA and Local Staff Salaries for August and September 2011, school fees, shipping costs and pending bills.



T. M. KALUMA
FOR:AMBASSADOR/PERMANENT REPRESENTATIVE

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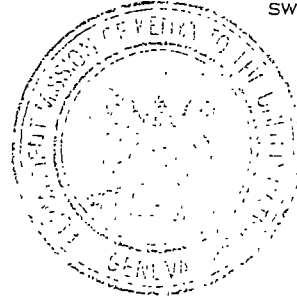
PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

REF No. KMUNG/FIN/1A/XVIII/0173

27th July, 2011

The Ag. Permanent Secretary
Ministry of Foreign Affairs
NAIROBI



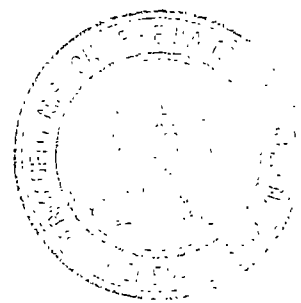
Dear *Dear Balozig*

THE STATUS OF FINANCES IN THE MISSION

I would like to take this opportunity to draw your attention to the status of finances in this Mission. I am convinced if urgent measures are not taken to address the problems, it is likely the Mission may not be able to honour financial obligations and other subsequent expenses in the current 1st Quarter of Financial Year 2011/2012.

The problems which are related are the following:-

1. The budget prepared in March, 2011, was based on the official exchange rate whereby the 1 Swiss Franc was valued at Kenya Shillings 84.50 (1 CHF = Kshs 84.50). At the time, the market rate was 1 CHF = Kshs 96.00. However, when the disbursement for the 1st Quarter of the current financial year was received on 21st July, 2011, it amounted to CHF 681,943,99 at the market exchange rate of 1 CHF = Kshs 111.60 due to the appreciation of the Swiss Franc against the Shilling.
2. The exchange loss for this Quarter is Kshs 18,482,933.60. In Financial Year 2010/2011, the total exchange loss incurred from remittances for the 4 Quarters was Kshs. 28,597,731.21.
3. The funds received for 1st Quarter were used to settle contractual obligations that include rents, Foreign Service Allowances, Local Staff Salaries and Medical Insurance.
4. The Foreign Service Allowances covers May, June and July, 2011. The months of August and September are not covered. Similarly, the September rents for the Residence, Chancery and houses of Home Based Staff will be outstanding. School fees for the First Term which commences in September, 2011 will also be outstanding.
5. The Mission has not been able to secure accommodation for the two officers (Mr. Timothy Kaluma and Mr. Tom Anyim) who arrived in Geneva in mid-May. They are residing in serviced apartments. It is difficult to find accommodation for them because the Mission has acquired a reputation of being unable to meet its obligations of paying rents on time in conformity with the provisions of the Lease Agreements. The Estate Agents have circulated the Mission's name to members of their association and as a result, many of them no longer wish to engage the Mission.



6. The objective of settling rents two to three months in advance as is the practice at present is part of the effort to salvage the Mission's image and our reputation. Should the Mission secure accommodation for the two officers, CHF 20,000.00 will be required to facilitate payment of three (3) months deposit and one months rent for each of the Officers, in accordance with the practice. This is based on the assumption the rent will be in range of CHF 5,000.00 to 6,000.00. Incidentally, the Administrative Attaché Mr. Daniel Muange has been notified to vacate his house because of failure to pay on time. The Lessor is paying a Bank Loan which is subject to penalties for late payment. Therefore, the Mission has to find three houses. Mr. Muange and his family therefore will have to move to a serviced apartment whose costs are based on daily rates. This is an unforeseen expense that has no budgetary provision.
7. Mr. Kaluma and Mr. Anyim will require new furniture, houses here are not furnished with exception of a cooker and dish washer. It will be recalled that three Officers posted to the Mission during the last Financial Year are living in houses that are barely furnished.
8. Considering the current complement Officers in the Mission and taking into account the fact that Mr. Kihwaga plans to arrive in Geneva in a few days time, he will have to be accommodated in a Serviced Apartment, before he moves to a two bedroomed apartment occupied by Mr. Kanana. However, he will require new furniture because Mr. Kanana furnished the entire house at his expense. There is no single item that belongs to the Government.
9. We require logistic services to facilitate shipment of the Officers who have been recalled, however, we have an outstanding debt. The logistics companies - Interdean and Henri Harsch Transport have stated they can provide quotations, however, they will not pack and ship anything prior to Settlement of their total debts of CHF 58,000.40. This is an outstanding payment in respect of the shipment of the personal effects and motor vehicles of Amb. P.R.O. Owade and High Commissioner Makena Muchiri. They have informed us that the Mission is blacklisted and that the other two logistic companies have been formerly notified.

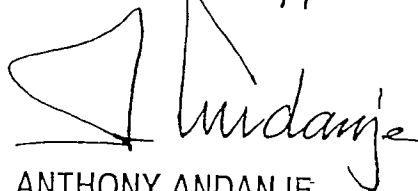
I attache, for ease of reference, the following documents:-

- Breakdown of payments made following receipt of the 1st Quarter disbursements.
- Pending bills from Financial Year 2010/2011 (CHF 209,404.68). X112
- Financial requirement for the entire 1st Quarter (CHF 512,189.37).
- Total Financial Requirement (CHF 721,594.05).

In view of the foregoing and taking into consideration the three meetings held this year with Officials of the Swiss Mission regarding our inability to honour our financial obligations, I believe the Ministry has to seriously consider the issues raised because this Mission is extremely costly to maintain given the constant budgetary shortfall. Going forward, I can see the financial situation deteriorating.

It is envisaged the Franc will continue to strengthen against all major currencies. On my arrival in Geneva on 14th August, 2010, one Swiss Franc was Kshs 82.00. Today Wednesday 27th July, 2011, the Swiss Franc is Kshs 111.60. This is a 36% appreciation. According to foreign exchange strategists at Societe Generale SA in London and I quote, "The (Swiss) Franc will remain a strong currency for a very long time because the credit crisis in Europe isn't going away anytime soon. We are in a global crisis of growth and in that environment balance sheets are clean and appealing. That's the case with Switzerland". Considering that the exchange loss for this Quarter is Kshs 18,482,933.60, the Mission is likely to incur a total of exchange loss of approximately Kshs 80 million by 31st June, 2012.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Andanje', written over a horizontal line. The signature is stylized and cursive.

ANTHONY ANDANJE

AMBASSADOR/DEPUTY PERMANENT REPRESENTATIVE

Encls

ANNEX 2

Documents relating to the irregular blocking of the posting of a trade officer as a WTO Intern

by the Permanent Representative, Dr. Tom Mboya

ANNEX 2

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PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

5th April, 2011

KMUNG/WTO/GEN.2011

REF. NO.

Amb. P.S. Wamoto, EBS
Permanent Secretary
Ministry of Foreign Affairs
P.O. Box 30551-00100
Nairobi

Dear *Balozi*,

RE: PLACEMENT OF ONE INTERN FOR WTO COORDINATORSHIP

The World Trade Organization (WTO) has granted one intern position at the Kenya Mission Geneva office to provide support to coordination. The administrative costs related to this placement is the responsibility of the Mission. The WTO will only provide to the intern a monthly lumpsum of CHF5,000 and cater for travel expenses and health insurance.

Considering the serious financial position of the Mission, the Mission having been taken to Court for non-payment of debts owed by Ministry of Trade, the inadequate budget for the two Trade Attachés currently in the Mission, I considered it prudent to delay acceptance of this offer until the revised estimates 2010/2011.

It is regrettable that Amb. Andanje decided without consultation to enter into contract with the WTO on behalf of the Mission and facilitated the nomination of Mr. Rabson Wanjala Kisuya in collaboration with some officials of the Trade Ministry without due regard to my office or to the Permanent Secretary, Ministry of Foreign Affairs.

In order to strengthen the coordinatorship of the African Group to the World Trade Organisation, we have identified 10 experts from the African Missions in Geneva and assigned one to each of the Doha Round Negotiating tracks as the African

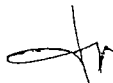
Group Focal Point. The experts report to the Committee of African Ambassadors which I chair.

I have managed with the support of the African Union Ambassador to the United Nations to mobilize financial resources from the United Nations Economic Commission for Africa (UNECA), the African Union and the WTO for strengthening WTO African Group coordination activities.

I kindly request you to use your good office to ensure the Trade Ministry provides in the revised estimates adequate funds to support the two Trade Attachés in place, to pay for the pending bill related to Villa previously occupied by Mr. Rabson Wanjala Kisuya which may have escalated to close to Swiss Francs 100,000 due to legal costs and provide additional resources to strengthen WTO coordination activities.

In the Meantime, I recommend that the Ministry in collaboration with Permanent Secretary, Ministry of Trade identifies a suitable young Third Secretary who is a Lawyer with good writing skills for posting to Kenya Mission to UN Geneva as intern to WTO. The FSA payable to the Third Secretary would be less CHF5,000 the contribution from WTO.

Yours sincerely



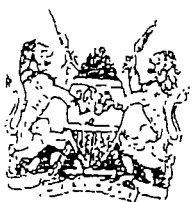
Amb. Dr. Tom Mboya Okeyo
Ambassador/Permanent Representative

Copy: Eng. Abdulrazaq Adan Ali, CBS
Permanent Secretary
Ministry of Trade
Nairobi

19/05/2011 12:52



Ministry of Foreign Affairs
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MINISTRY OF FOREIGN AFFAIRS
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NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

MFA. INT.8/16A

19th May 2011

Dr. Tom Mboya Okeyo
Ambassador/Permanent Representative
Permanent Mission of Kenya to the United Nations
GENEVA, SWITZERLAND

Dear *Balogi*

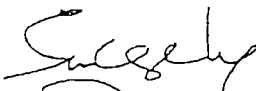

**RE: FACILITATION OF MR. RABSON WANJALA TO TAKE UP
INTERNSHIP POSITION IN THE WTO SECRETARIAT UNDER THE
REGIONAL COORDINATOR INTERNSHIP PROGRAMME.**

Reference is made to a letter from the Permanent Secretary, Ministry of Trade Ref. No. MOT/DET/8/120 dated 9th May 2011 addressed to this office and copied to you, regarding the subject matter above. Further reference is made to letter Ref. No. MOT/DET/3/8 dated 8th March 2011 addressed to you by the same office and copied to this office on the same subject matter.

Further to the above, this office is very concerned that Mr. Wanjala has not taken up his internship and is eager to understand why the officer has not reported to the WTO even after being advised to facilitate him to take up his internship in March through this office letter Ref. No. MFA. INT 8/81 dated 23rd March 2011.

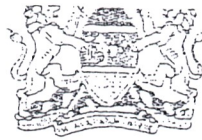
We have taken notice of the contents of the said letters and more particularly the attendant effects on the overall image of the country and relations with the WTO secretariat. It is important for you to comprehensively respond to the issues raised by the Permanent Secretary, Ministry of Trade.

The office requires you to move without any further delay and facilitate Mr. Wanjala to take up the internship as per the requirements of the WTO.

Yours 


Amb. P. S. Wamoto, EBS
Ag. PERMANENT SECRETARY

ANNEX 2



REPUBLIC OF KENYA
MINISTRY OF TRADE

Fax No.: +254-(0)-20-310983
Telephone: +254-(0)20-315001/2-4
Email: ps@trade.go.ke
www.trade.go.ke

TELEPOSTA TOWERS
KENYATTA AVENUE
P.O. Box 30430-00100
GPO, NAIROBI-KENYA

When replying please quote:

Ref: MOT/DET/8/120

Date: 09th May 2011

The Permanent Secretary
Ministry of Foreign Affairs
P.O. Box 30551-00100
NAIROBI

RE: REGIONAL COORDINATOR INTERNSHIP

We would like to draw to your attention the contents of the letter from our Mission in Geneva, Ref. No. KMUNG/WTO/GEN.2011 (3) dated 5th April 2011 addressed to you and subsequently copied to this Ministry on the above subject matter. You may also wish to further refer to our earlier letter Ref. No. MOT/DET/8/20 dated 8th March 2011 and addressed to our Permanent Representative in Geneva and copied to you as well as your communication to us Ref. MFA.INT 8/81 dated 24th March 2011 on the same.

Accordingly, we want to express our deep concern regarding the Mission's persistent misrepresentation of facts and reluctance to facilitate Mr. Rabson Wanjala who was objectively picked by the WTO Selection Committee to take up the above internship programme. As per the request from the Mission, this Ministry selected and submitted the names of three senior officials handling WTO issues in line with the criteria set by the WTO Selection Committee. Consequently Mr. Rabson Wanjala was finally picked by the WTO Selection Committee and was offered regional coordinator internship from 1st March 2011 for a period of six months. The officer did not travel to take up his internship because he was later informed by the WTO Secretariat that the Permanent Representative had communicated to put the internship on hold.

.....*Facilitating Trade and Investment*.....

As you may probably be aware the WTO runs two internship programmes for the benefit of developing and least developed countries. There is the regular internship programme which normally runs for a period of one year and is geared towards enhancing capacity of Government officers handling WTO issues at the capitals for them to get practically acquainted with the activities and the process of negotiations at the WTO. We are glad to inform you that, so far, five Government officers have been trained and benefited under the regular internship programme. This success was as a result of the previous support and cooperation the Ministry had received from our Mission in Geneva.

Then there is the regional coordinator internship which is awarded to those developing and least developed countries chairing/coordinating regional groups at the WTO. This programme is as a result of explicit recognition by the WTO that countries at the lower level of development have inadequate capacity to effectively follow the negotiations and at the same time coordinate their regional groups. It is therefore with this understanding that Kenya was awarded this capacity programme for the first time since we are the current chair of the African Group at the WTO.

Against this background, the Ministry is surprised that instead of the Mission facilitating the officer to join the Geneva team which is currently overwhelmed with the negotiations and effectively deliver on its new responsibility, it has instead resorted to raising unrelated issues some of which are regrettably untrue. An allegation related to inadequate budget for Commercial Section is an example of such issues. We have thoroughly examined the budget details of the trade office in Geneva and wish to confirm to you that there is sufficient funding to support the activities of the office up to the end of the current financial year. Occasional delay in remittance of funds should not be misrepresented to mean inadequate funding. Besides, we wish to inform you that just like the regular internship programme, the regional coordinator internship is also fully funded by the WTO. As in the case of past internship, the Government will not be required to incur any expenditure and hence the issue of the Mission incurring administrative costs does not arise.

On the issue of the Mission's debts with respect to a house occupied by Mr. Rabson Wanjala while he was a Commercial Attaché in Geneva, we wish to point out that we wrote to our Mission (our letter Ref No. MOT/DET/3/8) on 8th March 2011 and copied to the Ministry of Foreign Affairs requesting for certain information to enable us arrange for the payment of this debt. So far the Mission has not responded to this letter and therefore the Ministry has been unable to take action on the basis arbitrary figures sent to us by the Mission. We also wish to clarify that this issue has no relationship with the concerns we have raised on the issue of Regional Coordinator internship programme.

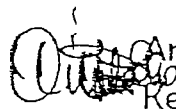
In view of the above, it would be appreciated if your Ministry could urgently take further necessary action so that aforesaid officer can take up the internship as soon as possible to assist the two officers in Geneva who are struggling to cope with the increased workload. We also remain concerned that the continued blockage of this internship offer by the Mission is embarrassing the country and would ultimately impact negatively on Kenya's future technical assistance and capacity building requests to the WTO.

We have enclosed some of the correspondences related to the above for your information.

Simon Chacha Nyangi
FOR: PERMANENT SECRETARY

Encls.

Copy to:

 Ambassador/Permanent Representative
Kenya Mission to the United Nations
Geneva
SWITZERLAND



REPUBLIC OF KENYA
MINISTRY OF TRADE

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www.trade.go.ke

TELPOSTA TOWERS
KENYATTA AVENUE
P.O. Box 30430-00100
GPO, NAIROBI-KENYA

when replying please quote:

REF: MOT/DET/8/120

DATE: 16th February 2011

H.E. Ambassador/Permanent Representative
Permanent Mission of the Republic of Kenya
to the United Nations
GENEVA, SWITZERLAND

Att. Elijah Manyara

RE: INTERNSHIP POSITION TO ASSIST KENYA'S
CO-ORDINATORSHIP OF THE AFRICAN GROUP AT THE
WORLD TRADE ORGANIZATION (WTO) DURING THE
YEAR 2011

We refer to our letter Ref. No. MOT/DET/8/120 of 28th January 2011 on the subject matter.

We have since been informed that WTO wants nominees who are not older than 45 years. We therefore forward new nominees for WTO consideration as follows:

1. Mr. Khwatenge Soita
2. Mr. Rabson K. Wanjala
3. Mr. Michael Moses Otieno

Please note that their Curriculum Vitae have already been sent to you by e-mail.

SIMON CHACHA NYANGI
FOR: PERMANENT SECRETARY

URGENT: REGIONAL COORDINATOR INTERNSHIP

Lang, Heather (Heather.Lang@wto.org)

Mon 2/28/11 10:03 AM

'Rabson Wanjala' (wrabson@hotmail.com)

Dear Mr. Kisuya,

Further to a communication received from Ambassador Tom Mboya Okeyo, I am writing to advise that our offer to you for an internship is on hold.

I will contact you as soon as I have further news regarding this offer.

Apologies for any inconvenience.

Regards

Heather

From: Rabson Wanjala [mailto:wrabson@hotmail.com]

Sent: 28 February 2011 06:41

To: Lang, Heather

Subject: REGIONAL COORDINATOR INTERNSHIP

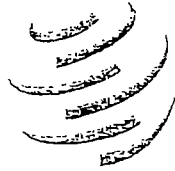
Dear Heather,

I have delayed a bit in terms of finalizing the process of coming because I had some work to complete in the office before I am released. I will be applying my visa today and will appreciate if you can send me flight itinerary. The Swiss Embassy require that application for visa should be accompanied a copy flight itinerary. I prefer to leave on 6th March morning so that I arrive Sunday evening and begin internship on 7th Monday, March 2011.

I will appreciate for your quick response.

Regards

Rabson W. Kisuya



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACION MUNDIAL DEL COMERCIO

Direct line (+41 22) 739 51 96
Direct fax (+41 22) 739 57 72
Email heather.lang@wto.org

H.E. Mr. Anthony Andanje
Ambassador
Deputy Permanent Representative
Permanent Mission of the Republic of Kenya
Avenue de la Paix 1-3, First floor
1202 Geneva

Reference Regional Coordinator Internship
Africa Group Coordinator

Dear Ambassador,

We are pleased to inform you that it has been decided to accept Mr. Rabson Wanjala Kiisuya as an Intern in the Permanent Mission of the Republic of Kenya under the Regional Coordinator Internship Programme in Geneva from 1 March to 31 August 2011.

Please find enclosed the Letter of Offer, Conditions Governing the WTO Mission Internship and the Medical Certificate and Examination Form to be forwarded to the intern. The Conditions Governing the WTO Mission Internship should be signed by yourself and the intern, in order to regularize the administrative procedures.

Please accept the assurances of our highest consideration.

Yours sincerely,

Heather Lang
Human Resources Associate
Human Resources Division

Enc.



29

REPUBLIC OF KENYA
MINISTRY OF TRADE

Fax No. +254-(0)-20-310983
Telephone: +254-(0)20-315001/2-4
Email: ps@trade.go.ke
www.trade.go.ke

TELPOSTA TOWERS
KENYATTA AVENUE
P O Box 30430-00100
GPO, NAIROBI-KENYA

when replying please quote:

MOT/ DET/3/8

8th March, 2011

Dr. Tom Mboya Okeyo
Ambassador/Permanent Representative
Permanent Mission of the
1-3 Avenue De La Paix
1202 GENEVA
SWITZERLAND

Dear

**RE: LAW SUIT ON THE PAYMENT OF DEBTS BY THE KENYA
MISSION IN GENEVA**

We refer to your letter Ref: KMUNG/ADMIN/10/205 dated 18th February, 2011.

You may recall that in response to your earlier communication Ref: KMUNG/FIN/1A/XVIII(038) on this matter we sought from the Mission the details and the history of how this debt arose. To date we have never gotten any response from the Mission.

You may note from your records that the officer Mr. Rabson Wanjala who occupied the house in dispute left Geneva in November 2008 and yet the agent of the landlord is demanding rent up to end of May 2009. Our expectation was that the Mission should have terminated the lease agreement immediately the officer received his posting order in September 2008 recalling him back to the Ministry Headquarters.

We therefore urgently need the following to enable us seek funds from the Treasury to clear this debt:

- i) Information on why the Mission did not terminate the lease agreement immediately the officer was recalled to the Ministry Headquarters
- ii) Details and the history of how this debt arose;
- iii) A copy of the lease agreement;
- iv) A copy of the letter from the Mission to the agent of the landlord terminating the lease agreement.
- v) A copy of the statement from the agent of the landlord detailing the amount of works that was undertaken on the renovation after the officer vacated the house.
- vi) A copy of the report by Mission's Housing Committee on the inventory at the time the officer was vacating the house.

You may also note that 14,400 Swiss Francs was paid as deposit at the time the Mission entered into the lease agreement with the landlord. It would therefore be important for the Mission to clarify to us the current status of this amount in relation the total amount in dispute.

As per your communication Ref: KMUNG/FIN/1A/XVIII(038) dated 27th September 2010, it is stated that the total amount demanded by the Landlord for rent and renovation was 40,083.65 Swiss Francs while the latest communication from the Mission Ref: KMUNG/ADMIN/10/205 dated 18th February 2011 put the total amount as 64,118.45 Swiss Francs. Kindly provide us with information us about this discrepancy.

Your urgent response is therefore required to enable us secure funds and settle this issue without further delay.

Yours

Simon ChachaNyangi
For: PERMANENT SECRETARY

Copy to: Ag. Permanent Secretary
Ministry of Foreign Affairs
NAIROBI

TELEPHONE 022 906 40 50/73

FAX 022 731 29 05

E-MAIL mission.kenya@ties.itu.int

WEBSITE www.missions.itu.int/~kenya
www.kenyamission.ch



PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

REF. NO. KMUNG/WTO/TRG/VII/133

22nd February, 2011

The Permanent Secretary
Ministry of Trade
NAIROBI

RE: REGIONAL COORDINATOR INTERNSHIP- AFRICA GROUP COORDINATOR

Further to our letter of 18th February 2011 notifying you of Mr. Wanjala's selection by the WTO for the coordination internship, enclosed herein are the formal letters and contract documents for your perusal and record. A similar copy has been sent to him directly.

We look forward to a timely release of the officer to commence the internship from 1st March 2011.

A handwritten signature in black ink, appearing to read 'Dan Owoko'.

DAN OWOKO
For: AMBASSADOR/PERMANENT REPRESENTATIVE

Encl

Cc Secretary, External Trade
Ministry of Trade
NAIROBI



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

Direct line (+41 22) 739 51 96
Direct fax (+41 22) 739 57 72
Email heather.lang@wto.org

Mr Rabson Wanjala Kisuya
P O Box 43137-00100
Nairobi
Kenya

Reference. SSA 2011/52 Internship 2011
Regional Coordinator Internship
Africa Group Coordinator

18 FEB. 2011

Dear Mr. Kisuya,

I refer to a recommendation made to the Institute for Training and Technical Cooperation Division concerning an internship in the Permanent Mission of the Republic of Kenya in Geneva. The Permanent Mission of the Republic of Kenya and the WTO Secretariat are pleased to be able to offer you this internship from 1 March to 31 August 2011 which will be subject to the terms specified in the enclosed "Conditions Governing the WTO Mission Internship"

An economy class round-trip ticket (excursion fare) will be paid for by the WTO Secretariat. Please advise Ms Lang at your earliest convenience of your point of departure. You should then contact the WTO travel agent, Carlson Wagonlit Travel in Geneva, telephone +41 22 739 5860 (fax +41 22 739 5862) (e-mail: wto@carlsonwagonlit.ch) in order to make your travel arrangements. Please note that you will be responsible for obtaining an entry visa (including transit if necessary) to and from the WTO, as well as for the duration of your residence in Switzerland, if applicable. You must ensure that your passport is valid for at least six months after the end of your stay.

On your arrival in Geneva, with the help of your Mission, you will need to request the issuance of a "carte de légitimation" from the Swiss Mission.

If this offer is acceptable to you, please return the Conditions, duly signed, and marked to the attention of Ms Heather Lang, Human Resources Associate, Human Resources Division at your earliest convenience.

You will receive a monthly lump sum of CHF5,000 which will be deposited into your bank account at the end of each month. In order to facilitate these payments, I would ask you to open an account with the bank in the Centre William Rappard when you arrive and provide a copy of the details to Ms Lang.

You are responsible for your own accommodation arrangements. The following websites will provide you with information regarding reasonably priced hotels and foyers in Geneva:

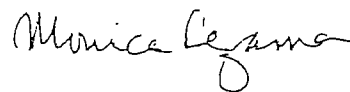
www.geneve-tourisme.ch
www.unige.ch/cite-uni/logements
www.cityhostel.ch
www.geneva-international.org
<http://ch.easyroommate.com>
<http://www.cagi.ch>
www.mandint.org

You will be also given a briefing on the functioning of the WTO Secretariat. We remain at your disposal for any further assistance you may require.

Finally at the end of your internship, you and your supervisor will be asked to complete an evaluation of the programme and return them to the Human Resources Division

We look forward to welcoming you to the WTO

Yours sincerely,



pd Mira Bacelj
Director
Human Resources Division

Enc



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

Centre William Rappard
Rue de Lausanne 154
Case postale
CH - 1211 Genève 21

Telephone (+41 22) 739 51 11
Ligne directe (+41 22) 739 51 96
Telefax (+41 22) 739 57 72
Internet <http://www.wto.org>

Reference. SSA 2011/52

Mr. Rabson Wanjala Kisuya

CONDITIONS GOVERNING THE WTO MISSION INTERNSHIP

- 1 The WTO Secretariat maintains a limited internship programme in WTO Permanent Missions in Geneva for post-graduate university students wishing to gain practical experience and a deeper knowledge of the multilateral trading system.
- 2 The exact duration of each WTO Mission internship is to be agreed upon by the host Mission, the WTO Mission intern and the WTO Secretariat. The present WTO Mission internship will begin on 1 March 2011 and finish on 31 August 2011. No extension beyond the agreed period of the internship shall normally be granted. There shall be no expectation of employment at the end of the internship, but WTO Mission interns may apply for external vacancy notices issued by the WTO.
3. The rights and obligations of the WTO Secretariat, the host Mission and the WTO Mission interns shall be as follows

The WTO Secretariat

- 4 The WTO Secretariat shall pay the WTO Mission intern a monthly lump sum of CHF 5,000 per month which will be deposited into your bank account at the end of each month, and a return economy ticket from the Mission intern's place of residence to Geneva. All other costs connected with the internship shall be borne by the WTO Mission intern. Accommodation shall be the exclusive responsibility of the WTO Mission intern.
- 5 The WTO Secretariat shall provide the WTO Mission intern and the host Mission in Geneva assistance throughout the duration of the WTO Mission internship. The WTO Secretariat shall also assist the host Mission, if need be, in obtaining the necessary visa and "carte de légitimation" deemed necessary for the stay of the WTO Mission intern in Switzerland.
6. The WTO Secretariat shall not be responsible for any costs other than those mentioned in this contract. In particular, the WTO Secretariat shall not be responsible for any costs arising from non-service-incurred accident or illness during the WTO Mission internship.
- 7 The WTO Secretariat shall provide the WTO Mission intern with insurance against the risk of service-incurred accident or illness arising from the duly authorized presence of the WTO Mission intern on the premises of the WTO.

The host Mission

8. The host Mission shall be obliged to obtain from the Swiss authorities the relevant visas and carte de légitimation for each WTO Mission intern it has accepted to host.
9. The host Mission shall be responsible for the WTO Mission intern and shall provide him or her with daily supervision of his/her work. In this context it shall establish in advance the duties of each WTO Mission intern, which shall include some or all of the following:
 - *assistance in collection, analysis, interpretation and organization of material of interest to the Mission in its activities relating to the WTO*
 - *assistance in the preparation of meetings of WTO bodies, including attendance and follow-up of such meetings,*
 - *assistance in preparation of reports for the capital, documents and communications of economic and/or legal nature related to WTO.*

A more detailed programme of work for each WTO Mission intern shall be prepared by the Permanent Representative of the Mission in Geneva, after the selection of the candidate has been made.

10. Provided the WTO Mission intern is on duty on the last day of the WTO Mission internship, the host Mission may authorize annual leave in accordance with the practice of the Mission.
11. The host Mission shall assess the performance of the WTO Mission intern at mid-term and at the end of the assignment. The assessment shall be shared with the WTO Secretariat.

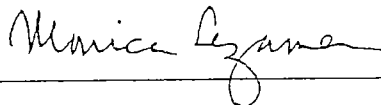
The WTO Mission intern

12. The WTO Mission intern shall conduct himself/herself in a manner compatible with the responsibilities undertaken in accepting these conditions.
13. The WTO Mission intern shall respect all rules and regulations declared applicable to him or her by the host Mission. The WTO Mission intern shall keep confidential any information made known to him/her during the course of his or her WTO Mission internship. The WTO Mission intern shall not publish any reports or papers on the basis of information obtained without prior authorization of the WTO Secretariat and the host Mission.
14. While working for the host Mission the WTO Mission intern shall be considered as a representative of a WTO Member. In this context the WTO Mission intern shall be subject to all obligations imposed on representatives of WTO Members pursuant to the Headquarters Agreement between the WTO and Switzerland.
15. The WTO Mission Intern shall complete the Medical Certificate and his/her Doctor complete the Medical Examination Form (enclosed). Original copies of these documents must be provided on arrival. While in Geneva, the WTO Mission intern shall provide notice in case of illness or other unavoidable circumstances that might prevent him/her from completing the WTO Mission internship.
16. The WTO accepts no responsibility for costs arising from non-service-incurred accident or illness during an internship, and the WTO Mission intern is required to have medical insurance coverage. The WTO Mission intern shall be automatically insured by WTO for that purpose at a cost to the WTO Mission intern of US\$ 36.62 per month.

- 17 At the end of the WTO Mission internship the WTO Mission intern shall complete an evaluation questionnaire on his/her assignment and submit it to the WTO Human Resources Division

Mira Bacelj
Director
Human Resources Division

Date



18 FEB. 2011

Permanent Representative,
Permanent Mission of the
Republic of Kenya

Date

WTO Mission intern

Date



MEDICAL CERTIFICATE

Mr /Mrs /Miss:

Date of Birth: Country

Address :

(To be filled in by Candidate)

1 Have you ever been affected or do you suffer presently from one of the following illnesses or symptoms

| <i>Please check each item</i> | yes | no | <i>Please check each item</i> | yes | no |
|---|-----|----|-------------------------------|-----|----|
| Allergy | | | Persistent cough | | |
| Asthma | | | Joint aches | | |
| High blood pressure/vessel or heart disease | | | Digestive disorders | | |
| Tuberculosis | | | Headaches | | |
| Diabetes | | | Tropical disease | | |
| Kidney stones | | | Nervous disorders | | |
| Stomach or duodenum ulcer | | | Skin disease | | |
| Hernias | | | Insomnia | | |
| Depression | | | Faint | | |
| Cancer | | | Urinary disorders | | |
| Epilepsy | | | Sight disorders | | |
| Malaria | | | | | |

2 Have you ever had any surgery, or been hospitalized or treated for any peculiar disease. If yes, what kind

| <i>Type of illness, wound or surgery</i> | <i>Length of the period of disability</i> |
|--|---|
| | |
| | |
| | |

3. Do you take any medication regularly? If yes, which one?

.....

4 Do you presently suffer from any health problem which could require a follow up of your treatment or care during the length of the course?

.....

5 Does your present state of health allow you to carry on your professional activity on a full-time basis?

.....

6 For ladies, are you pregnant? Date of your last period

I certify that the above statements are true, complete and correct to the best of my knowledge and belief

(Place and date)

(Signature of candidate)

MEDICAL EXAMINATION

(To be completed by the Examining physician)

I have checked the medical history mentioned by the candidate and I have the following comments to make

.....
.....
.....

I have made the necessary examination in order to detect any physical or mental disease which might be a danger either for himself or to others during the length of the internship.

Height: Weight: Blood pressure

Comments
.....
.....
.....

I consider the candidate

FIT

to participate in this internship

UNFIT

(Check the appropriate box)

Date and place

Signature and stamp of the examining physician

.....

.....

TELEPHONE 022 906 40 50/73
FAX 022 731 29 05
E MAIL: mission kenya@ties itu int
WEBSITE www.missions itu int/-kenya
www.kenyamission.ch



PERMANENT MISSION OF
THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

1-3, AVENUE DE LA PAIX
1202 GENEVA
SWITZERLAND

REF NO... KMUNG/WTO/TRG/VII/131

16th February, 2011

Mr. Hakim Ben Hammouda
Director
World Trade Organization
Institute for Training and Technical Co-operation
Centre William Rappard
Rue de Lausanne 154
Case postale CH - 1211 GENEVA 21
FAX: +41 22 731 42 06

Dear

I have the honour to refer to your letter Ref.TEC/100 11-154 notifying me that you can accommodate one intern in your programme:

I would like to take this opportunity to express our sincere appreciation for supporting Kenya's Coordinatorship.

I attach for your perusal the CV of our nominee Mr. Rabson Wanja Kisuya of the Ministry of Trade.

Please accept the assurances of my highest consideration.

A handwritten signature in black ink that reads 'Andanje'.

ANTHONY ANDANJE
AMBASSADOR/DEPUTY PERMANENT REPRESENTATIVE

Encl

* * * Communication Result Report (16. Feb. 2011 16:55) * * *

1) MISSION OF KENYA +41229064078
2)

Date/Time: 16. Feb 2011 16:54

| File No. | Mode | Destination | Pg(s) | Result | Page Not Sent |
|----------|-----------|-------------|-------|--------|---------------|
| 3239 | Memory TX | 0227395784 | P. 6 | OK | |

Reason for error

- E. 1) Hang up or line fail
- E. 2) Busy
- E. 3) No answer
- E. 4) No facsimile connection
- E. 5) Exceeded max. E-mail size

TELEPHONE: 022 904 40 88/73
 FAX: 022 731 23 45
 E-MAIL: mission.kenya@un.ch
 WEBSITE: www.mission2a.int-kenya
 www.kenyadmission.ch



PERMANENT MISSION OF
 THE REPUBLIC OF KENYA
 TO THE UNITED NATIONS

12, AVENUE DE LA FAIX
 1203 GENEVE
 SWITZERLAND

REF: KMUNG/WTO/TRG/11/131

16th February, 2011

Mr. Hasm Ben Hammouda
 Director
 World Trade Organization
 Institute for Training and Technical Co-operation
 Centre William Rappard
 Rue de Lausanne 154
 Case postale CH - 1211 GENEVA 21
 FAX: +41 22 731 42 06

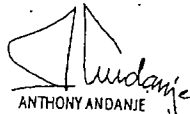
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Please accept the assurances of my highest consideration.


 ANTHONY ANDANJE
 AMBASSADOR/DEPUTY PERMANENT REPRESENTATIVE

End

CURRICULUM VITAE

MR. RABSONWANJALA KISUYA
P.O BOX 43137-00100
NAIROBI, KENYA
Mobile Tel: +254723428219
E-mail: wrabson@hotmail.com

EDUCATION AND PROFESSIONAL QUALIFICATIONS

Egerton University, Kenya
Bachelor of Arts Degree (Economics), 1992

Institute for Training and Technical Cooperation
World Trade Organization (WTO), Geneva, Switzerland
Post Graduate Diploma in Trade Policy, 1999

Institute for Training and Technical Cooperation
World Trade Organization (WTO), Geneva, Switzerland
Training in computer application, 1999

Infotech Computer Training College, Nairobi, Kenya
Computer training, 2010

Attended several training workshop and seminars on international trade and negotiations

WORK EXPERIENCE

MINISTRY OF TRADE, NAIROBI

Chief Trade Development Officer – November 2008 to 2010

- Involved in analyzing and implementing trade policies, strategies and programmes on multilateral trading system.
- Undertaking analysis of the provisions of the Multilateral Trade Agreements administered by the World Trade Organization (WTO).
- Responsible for coordination and articulating Kenya's position in current Doha Round of Multilateral Negotiations on Trade facilitation; Trade in Services; and WTO rules relating to Regional Trade Agreements, Anti-dumping measures, Subsidies and Countervailing measures, and Regional Trade Agreements

- Coordinating the implementation of Kenya's obligation in WTO Multilateral Trade Agreements including the preparation of Kenya's trade policy review process at the WTO.
- Participating in training sessions and providing training materials on WTO negotiations and related issues.
- Servicing the meetings of the National Committee on WTO in terms of preparation of background documents, taking notes and drafting of the reports of the meetings.
- Drafting briefing notes for the Permanent Secretary as well as the Director of External Trade and other senior officers in the Ministry of Trade for specific meetings and consultations with the private sector and other government officials in the area of multilateral trading system.
- Training, coordinating and participation in the EAC Common Market negotiations on Trade in services.

Achievements

- Submitted proposals in areas under negotiations during the current Doha Round of Multilateral Trade Negotiations.
- Prepared background documents for the meetings of the National Committee on WTO and its Sub-Committees.
- Prepared report of the meetings of the National Committee on WTO and its Sub-Committees.
- Part of the team that prepared the Strategic Plan for the Ministry of Trade for the period 2008 to 2012.
- Prepared and submitted Kenya's schedule of commitments on Trade in Services for the EAC Common Market.

PERMANENT MISSION OF KENYA TO THE UNITED NATION, GENEVA, SWITZERLAND

First Secretary (Commercial), December 2001 to November 2008

Worked in the Commercial Section and was responsible for the activities of the multilateral organisations based in Geneva and dealing with international trade and development issues. These organisations included, the World Trade Organisation (WTO), United Nations Conference on Trade and Development (UNCTAD), and The International Trade Centre (ITC).

- Following-up on the implementation, administration and operation of the Multilateral Trade Agreements at the WTO and advising the Kenya Government as appropriate. This also involved coordination with the relevant Government departments in ensuring smooth and effective implementation of the WTO Trade Agreements at the national level.
- Analysing the WTO Agreements with a view to identifying any possible impact on Kenya's domestic policy objectives and advising the Government accordingly. In addition, drawing to the attention of the WTO membership for remedial measures, the specific provisions contained in various trade agreements that might have a negative impact on Kenya's development objectives.
- Participating in the current on-going negotiations with the aim of ensuring increased market access opportunities for Kenya's exports through elimination and reduction of trade barriers by other WTO members. This also involved coordination with the relevant Government Ministries/Departments at the Capital in identifying and articulating Kenya's interests in the Multilateral Trade Negotiations.
- Soliciting and lobbying for Training and Technical Assistance Programmes opportunities for Kenya at the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ITC), the Advisory Centre on Trade Law (ACWL) and the WTO. These training opportunities have strengthened the human as well as the institutional capacity at the national level for effective support on the on-going negotiations.
- Coordinating the representation and participation by Kenya in UNCTAD's intergovernmental discussions and deliberations on current issues on economic development supported by discussions with experts aimed at consensus-building.
- Following-up on research; policy analysis; and data collection undertaken by UNCTAD and shared this information with the relevant stakeholders at the national level. UNCTAD also provides technical assistance and capacity on trade and development issues for the benefit of developing countries.
- Preparing briefs for the Minister of Trade during the WTO and UNCTAD Ministerial meetings

Achievements

- Articulated and defended Kenya's interests in the various areas of the negotiations under the current Doha Round of Multilateral Trade Negotiations.
- Focal point on Trade in Services Negotiations for ACP Group of countries at the WTO in the current Doha Round of Multilateral Trade Negotiations.

- Focal point on Trade Facilitation for African Group of countries at the WTO in the current Doha Round of Multilateral Trade Negotiations.
- Coordinated and participated in the national assessment of needs and priorities in trade facilitation. In addition, participated in the preparation of the report of the national assessment.
- Secured training opportunities for Kenya Government official in the area of trade policy; trade and development; and multilateral trade agreements.
- Coordinated and participated in the EAC trade policy review process at the World Trade Organization.

MINISTRY OF TRADE AND INDUSTRY, NAIROBI

Trade Development Officer, April 1994 to November 2001

- Coordinating the implementation of obligations in the WTO multilateral trade agreements at the national level.
- Sensitizing the business community on the benefits of WTO multilateral trade agreements.
- Participating in formulation and implementation of national trade policies aim at enhancing the role of trade in contributing to economic growth and development.
- Analyzing the impact of the WTO multilateral trade agreements on the Kenya.
- Following -up the activities of the UNCTAD and ITC with a view to ensuring that Kenya participated and benefited their technical cooperation programmes.
- Participating in the development of export strategies for Kenya

Achievements

- Publication on national export strategies
- Provided briefs on the multilateral trade agreements and their likely impact on Kenya
- Coordinated and participated in the implementation of technical assistance programmes offered by the WTO, ITC and the UNCTAD at the national level.
- Prepared briefing notes for senior officers in the Ministry of Trade and Industry for meetings on multilateral trade agreements.

SKILLS

COMPUTER PROFFICIENCY

- Proficient in the following computer application programmes including those under Microsoft Office.

LANGAUGE SKILLS

- Mother -tongue
- English
- Swahili
- Basic knowledge of French

INTERPERSONAL AND LEADERSHIP SKILLS

- Work well with people from different multicultural background.
- Worked as focal point lead negotiator on trade in services negotiations for ACP Group of at the WTO between 2004 and 2008.
- Lead negotiator on Trade facilitation negotiations for the African Group of countries at the WTO between 2005 and 2008.
- Chief negotiator for Kenya on Trade in services during the EAC Common Market Negotiations

BIO DATA

NATIONALITY: Kenyan

DATE OF BIRTH: 10.01.1968

MARITAL STATUS: Married

REFERENCES

Edwini Kwame Kessie

Regional Coordinator for African Countries

Institute for Training and Technical Cooperation

World Trade Organization

Rue de Lausanne 154

CH-1211 Geneva 21

SWITZERLAND

Mr. Bonapa Onguglo

Chief, Office of the Director

Division of International Trade in Goods and services and Commodities

UCTAD

Palais des Nations

CH-1211 Geneva

SWITZERLAND

Dr. Jasper Okelo

Lecturer School of Economics

University of Nairobi

P.O Box 30197 Nairobi

KENYA

ANNEX 3

Ministries' report on conduct and work performance of Amb. Tom Mboya,

Kenya's Permanent Representative to UN - Geneva

'SECRET'

REPORT ON CONDUCT AND
WORK PERFORMANCE-
AMB. TOM MBOYA
KENYA'S PERMANENT
REPRESENTATIVE TO UNITED
NATIONS-GENEVA:

SECRET

1.0 Introduction

Amb. Mboya was appointed Kenya's Permanent Representative (PR) to the United Nations-Geneva on 13th September 2007. Prior to this appointment, he was serving as Medical Attaché JG 'P' in the same mission. An Inspection Team visited the mission between 5th to 9th March 2011 to look into serious allegations made against the Head of Mission on his personal conduct, relations with the staff, his representational role and the general management of the mission's affairs. This report is an extract from the main Report on the findings and recommendations of the Inspection Team that visited four of Kenya's Missions in Europe between 27th and 11th March 2011.

2.0 Specific allegations against Amb. Mboya

2.1 Personal conduct

It has been observed that The PR has a serious problem with his ego and a habit of dropping names of prominent personalities to intimidate both staff and his peers/interlocutors. He does not take instructions from headquarters seriously amidst claims that they are from 'junior staff'. He is accused of failing to take official appointments and his technical work seriously, not being a team player with poor working relations with his staff, peers and stake holders at the station.

2.2 Relations with staff

- (i) The Permanent Representative is not empathetic towards his staff and does not take issues of their welfare seriously. He is accused of not being a team player and humiliates the staff through unsavoury remarks and rarely seeks their advice or input even in areas where their expertise is mandatory.
- (ii) The Cook to the Permanent Representative M/s Jeddah Okanga complained in writing that on the night of 15th September, 2010, the Ambassador physically assaulted her for no apparent reason. The assault case was reported to the Swiss Police on Patrol but due to diplomatic immunity, they did not have authority to enter the Ambassador's residence, no action was therefore taken. She also claims that she was

2.3 Other Incidents

unlawfully confined in the residence and later 'deported' without following the laid down procedure among other incidents of mistreatment. Her engagement and exit from the mission was similarly irregular. The incident was likewise reported in our local press.

2.3 General Management of the Mission

The Permanent Representative has been accused of making unauthorized and unnecessary trips outside Geneva. A case in point was his recent trip to Davos despite being advised that the Rt. Hon. Prime Minister would not be attending the summit.

Other Accusations are:-

- Withdrawal of the alternate signatories to the Mission's bank account leaving him the sole signatory as the holder.
- Refusal to sign the lease to the house occupied by the Administrative Attaché who is now threatened with eviction by the landlord.
- Locking up the official seal so that other officers have no access and therefore none can issue note verbales, an important commercial tool between missions or international organizations.
- Refusal to approve procurement of furniture and other household items for the DPR and other officers.
- He has refused to approve payment of the rent and other contractual obligations.
- Processing of F. S. A. is unnecessarily delayed thereby embarrassing his staff since they are unable to pay their debts on time.

2.4 Representational role

The Permanent Representative has failed to provide leadership on the management of multilateral issues to such an extent that the country is neither being heard nor felt in negotiations, despite the fact that it is now playing a critical coordinating role for the African Group. The African Group has always looked up to Kenya to provide leadership in negotiations and the country is now unable to push its agenda in the WTO, the Human Rights Council and other bodies to which the Mission is accredited. There is talk within the African group that they are contemplating electing another person to take over the chairmanship.

3.0 Findings

3.1 Personal Conduct and Representational Role

- (i) The Permanent Representative started on a wrong footing by failing to present Credentials without valid reasons to the World Trade Organization Director General as scheduled by cancelling a confirmed appointment. This caused embarrassment and lowering of Kenya's standing at the WTO. In addition he deliberately misled his peers and other stake holders in Geneva that an MOU on security partnership in Dadaab refugee camp had been concluded. This is a serious source of concern and embarrassment. The MOU has to date not been signed.
- (ii) Kenya is at the risk of losing its current role as coordinator of the African Group at the WTO due to failure to provide leadership by Kenya under Amb. Mboya. The co-ordination role involves scheduling and chairing consultative meetings at both ambassadorial and expert level, including representing African Ambassadors in the green room meetings chaired by the Director General-WTO. This also involves attending informal multilateral and bilateral meetings to network and gather intelligence on trade negotiation matters. The PR has deliberately failed to attend those consultative meetings, including informal interactions.
- (iii) The Permanent Representative has cancelled some key meetings he had previously called or failed to attend without notice, leading to embarrassment and erosion of Kenya's standing in the eyes of other nations. Our reputation is now at its lowest ebb.
- (iv) The mission failed to rollout a workshop it had organized for the Africa Group and did not give any reason for this cancellation further damaging the image of Kenya in the eyes of the other African Heads of Mission
- (v) The PR cancelled the nomination of an officer from Ministry of Trade to undertake an internship at the WTO and who was identified using the normal procedure during his absence. He however, later explained that the intern was an officer who had previously served at the Mission for seven years, and therefore does not qualify for this appointment. He was unable to explain whether the criteria for qualification was his own or that of the WTO.
- (vi) The Head of Mission explained that he had to lock up the official seal as it was being used to procure duty-free cigarettes outside the laid down

procedure, which would put the Mission on a collision course with the Swiss authorities. The said cigarettes were procured for resale at a profit. The Head of Mission is yet to make a formal report on this occurrence. By focusing on the cigarettes procurement, the PR seriously interfered with work of all the other officers who needed to use the seal for their official work.

- (vii) The PR Refused to meet an emissary (the Deputy Director General) sent by the Director General of the WTO. His explanation was that he does not deal with 'deputies' or junior persons. The Deputy Director General is a lady from Rwanda who has given important intelligence to previous Kenyan Heads of Mission in Geneva on the WTO and its activities.
- (viii) The mission's journal whose main purpose is to inform the outside world on the mission's activities and improve the mission's as well as the country's image has instead had the opposite effect. The mission's journal is solely edited and produced by the PR. He is also the sole contributor; it is not professionally done and sometimes contains sensitive information which should not have been shared with third parties. It has also come to our attention that some reports and achievements presented as factual may actually not have been entirely true.
- (ix) The Permanent Representative is dismissive of advice from his officers and therefore ends up being ineffective in his technical work. At the Senior Staff meetings, he makes disparaging remarks about officers and dismisses their suggestions without giving them a hearing. He is accused of routinely amending recommendations of this committee alone in his office to suit his interests and agenda.

3.2 Relations with staff

- I. The Head of Mission has established his own Performance Appraisal System (PAS) which does not conform to the one developed by the Ministry of State for Public Service standardized for the entire Civil Service. The PR never sets targets with his staff and neither does he involve them in the evaluation of their performance, whose results including those of his colleague, the DPR are circulated openly to all staff, contrary to the laid down procedure.
- II. The Head of Mission is not empathetic and tends to place his personal interests above those of his staff leading to frustrations and stress. A case in point is his decision to use the entire one quarter allocation to procure a new representational vehicle and pay school fees for his children, while rent for officers and their

children's fees remained unpaid. Additionally, their houses lack basic necessities which provided for in the Foreign Service Regulations.

- III. According to established practice, the Committee responsible for Local Staff interviews prospective candidates for employment. However, the Head of Mission unilaterally decides on the hiring and deployment of Local Staff. The PR deployed the Translator/Documentalist as a Chef to his residence, contrary to his job description. The individual is devastated.
- IV. The official cook's employment and termination was un-procedural as it was contrary to the local staff regulations. The employment was never documented and she was being paid without a valid contract. The employee was later assaulted and illegally deported out of the country. The PR was not able to explain the circumstances under which her engagement and subsequent termination was done. The mission's image has been dented by this saga and it may end up being sued for damages as these matter appears to have permeated the Kenyan Diaspora and even local press here in the country.

3.3 General management of the Mission.

The Ambassador's lone approach to the management of the Mission and failure to establish committees as required, together with his failure to consult both headquarters and relevant officers in his mission has resulted in the following serious financial and administrative shortcomings that may require him being called upon to explain and in some cases being surcharged for failure to provide leadership in his capacity as the accounting officer of the mission.

a) Accounting, Finance and Administrative Matters.

i) Pending Bills and Outstanding Debts from Previous Financial Years

- o The Mission has accumulated a total of over Kshs.33 million in pending bills which have not been cleared. It has been apparent since July, 2010, that the Mission carried over debts from previous financial years. These debts were not properly documented. In some cases, it is difficult to understand why the debts were incurred.
- o In a number of instances, the Mission has neither honored provisions in the Lease Agreements nor handed back the premises on the date stipulated thereby incurring penalties. This is a source of some of the debts.

ii) **Late Payment of Rents**

- o The Mission's inability to pay rents on time has undermined its rating among Estate Agents in Geneva. They are a closely knit community and operate as a cartel. In keeping with the practice here, landlords consult Estate Agents before leasing their property to prospective tenants. The agents not only set rents but also act as a clearance house. Naturally, they are biased to African Missions. This situation is further exacerbated by the fact that over 6,500 foreign companies, most of which are headquartered in and around Geneva because of a favourable tax environment, are able to pay premium rents and as a result, they get preference.
- o -Due to some inexplicable reason, the PR has arbitrarily set for officers rent cap of Swiss Francs 5,000.00. No one is able to explain how this decision was reached as there is nothing on record. However, what is clear is that the rent cap does not reflect the prevailing rates for residential premises in Geneva since November, 2010, the pressure from Estate Agents and landlords seeking prompt payment of rents in accordance with the provisions in the Lease Agreements has been relentless. In keeping with the practice elsewhere, late payments incur penalties.
- o In February, an Estate Agent acting on behalf of two landlords from whom the Mission rents premises, informed the Mission in writing of his intention to terminate the Lease Agreements of one of the Third Secretaries and the Financial Attaché due to late payment of rent. Another landlord has also taken similar measures with respect to the apartment rented to the other Third Secretary. His lawyers have written to inform that should there continue to be delays in payment of rent they would be left with no alternative but to pursue the matter in court.
- o Since no response has been forth coming from the Mission, they have resorted to putting pressure on individual officers occupying their premises by threatening them with eviction. Some of the younger officers are extremely stressed.
- o Upon posting to this Mission, a majority of officers have had to be accommodated in serviced apartments, where, payment is based on a daily rate which is very exorbitant. A number of officers have stayed in serviced apartments upon arrival in Geneva for periods between two to six months due to the difficulty of finding someone willing to lease their house or apartment to the Mission because of its reputation. They are as follows:

| <u>NAME</u> | | <u>DURATION</u> |
|--|----------------------------|-----------------|
| a) Mr. Nilly Kanana, Hotel Mon Repos | First Secretary | 6 months |
| b) Mr. Dan Owoko, Residence du Berne | First Secretary. (Trade) | 6 months |
| c) Ms. Anne Keah, Hotel Mon Repos | Third Secretary | 4 months |
| d) Mr. Peter Wamoto, Hotel Mon Repos | First Counsellor, (Labour) | 3 months |
| e) Ms. Anastacia Osundwa, Hotel Mon Repos | Third Secretary | 2 months |

Considering that there is no budgetary provision for the payment of accommodation of officers in serviced apartments, the arrangement has proved to be extremely costly.

o **Household furniture:**

Though this is provided for under the Foreign Service Regulations, actual provision has been both inadequate and unfair. In some cases officers have had to purchase their own furniture. Two of the houses were visited to establish the state of the houses as well as furniture provided which was found to be wanting.

iii) **Maintenance of leased houses:**

Although responsibility for maintenance of leased property is normally stipulated in the lease agreement, the mission is not observing these requirements. Inspection of houses when one officer is vacating and another taking occupancy are not being carried out. Hence, responsibility for damages is not normally easily determined.

- iv) There are two cases where officers have caused damages to leased houses, resulting in court cases, with landlords claiming damages. The two cases are in respect of officers who have since left the mission, namely Mr. Omondi and Mr. Wanjala who were the Labour Attaché and Trade Attaché respectively. The Mission informed that this information has been sent to the relevant ministries with copies to MFA. This matter will be followed up with the relevant ministries.

v) Committees

- Needless to state, the various Committees established in the Mission have an important role to play in promoting a culture of integrity and compliance with the relevant rules, policies and procedures. However, their views and recommendations are not respected by the Head of Mission especially when these do not accord with his personal views. The Committee minutes are therefore, amended after they have been written and therefore do not reflect the input of members. The recommendations are usually in conflict with the laid down rules, policies and procedure which has occasioned financial loss to the Government particularly on issues touching on vacation of houses and settlement of outstanding debts.

Crucial committees such as the Finance and Disposal Committee as well as the Acceptance Committee have not been set up. These committees advise the Head of Mission on Financial matters such as prioritization of expenditure and procurement processes and ensure the relevant regulations are followed.

- Though the Procurement Committee exists, there is no formal appointment. Members are only listed in a sheet of paper which has not been signed by the Head of Mission.
- The Mission had no Annual Procurement Plan in place and purchases are done on an ad hoc basis. However their Procurement Committee meets to list the Mission requirements.

b) Procurement Matters

The procurement procedures in the Mission have not been observed. Purchases of household items including those of the DPR approved by the Procurement Committee have never been made because the Head of Mission states they are not "a matter of priority." Some purchases have been carried out without adherence to procurement procedures such as the purchase of one lap top for the Head of Mission at SF.1,500.00. Laptops are available at Media Market from SF.400.00. Any laptop beyond SF.1,500.00 is for individuals dealing in data processing or specialized software:

i) Stock Control

It was noted that the Mission maintains a small store located in the corridor. The S13 (Counter Receipt and Issue Voucher) and S3 cards (Stores Ledger and Stock Control) were not being used. Therefore it was not possible to verify if the items bought were received and taken on charge. The S11 (Counter Requisition and Issue Voucher) is not in use.

ii) Disposal of Stores

There was no record to indicate that the Mission has boarded the items recently. It was noted that the Mission had items that need to be boarded.

iii) Payment of Contractual Obligations

Whenever funds are available, payment of rents and school fees have been given priority. However, the payments in the Mission are made selectively. In December, 2010, the Head of Mission unilaterally paid the school fees of four of his children from the Provident Fund of the Local Staff stating that his affairs took priority over everything else. To-date, the fees of the children of other members of staff are still outstanding. The settlement allowances of three officers who reported to the Mission six months ago have not been paid. They have been informed it is not a matter of priority thereby causing pain and suffering to the concerned officers and their families.

c) Accounting and Transport Matters

i) Bank Accounts

- At present, the Mission has two signatories to the Mission's bank accounts. They are the Ambassador and the Financial Attaché. Despite efforts by the Ministry headquarters to ensure that there are three signatories, the Head of Mission has used all sorts of subterfuge to avoid complying. On one occasion, he had the audacity to convey to the Ministry headquarters the names of A.I.E. holder as bank signatories. Whenever the Head of Mission is away from the duty station, everything comes to a standstill because the Mission cannot effect payments.
- The Head of Mission, conscious of the impending visit of the Inspection Team, on Wednesday, 2nd March, 2011, he formally appointed Ms. Anne Keah, Third Secretary as an alternate bank signatory. Ms. Keah politely declined the appointment. However, the PR explained that the reason why he has been reluctant to appoint the DPR as the alternate signatory was that on several

occasions, he authorized procurement of goods and services without ascertaining availability of funds in the relevant item. An explanation, the team found to be unacceptable as there are mechanisms to control this area which may include disciplinary action against the concerned officer.

iii) Visa Collection:

The Mission has introduced e-banking. Visa applicants are only required to present banking slips and are issued with a receipt. Surrender of the visa collections is timely.

iv) Cash Management

The team observed that the Mission's Bank Account is operated by both the Permanent Representative and the Financial Attaché. The Head of the Chancery is not a signatory. This has caused delays in payment especially when the Permanent Representative is out of station. As the alternate A.I.E. holder, the Head of Chancery should also serve as a bank signatory to facilitate seamless management of the mission.

v) Utilization of funds

The team noted that the Mission has not spent allocated funds on the following items in spite of serious need for furnishing for the Home Based Officers:-

- a) Purchase of office fittings
- b) Purchase of Appliances
- c) Purchase of Household Items

vi) Transport

The Mission has a fleet of six vehicles, three of which are attached to the Permanent Representative. The team noted that work tickets for the vehicles are not maintained as required by the regulations. They are also not forwarded the Headquarters on a monthly basis as required by regulations. Two of the three vehicles have been allocated by the PR to his spouse and son for their personal use contrary to the Foreign Service Regulations. Fueling of the vehicles is also done using public funds.

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4.0 Conclusion and Recommendations

- Amb. Mboya appears not to realize the gravity of his failure to attend to multilateral issues and other technical matters that require his personal attention, and its impact on the Mission and the country at large. As earlier mentioned, the country is at the risk of losing its coordinating role due to his arrogance and lacklustre performance. His high handedness, lack of empathy and casual manner in which he handles HRM, Financial, Procurement as well as Administrative matters has left the Mission disunited and unable to meet its financial and contractual obligations. He does not prioritize expenditure and ends up spending resources on non-priority areas e.g. procurement of a vehicle at the expense of pending contractual obligations.
- The procedure used to employ the official cook, her remuneration and subsequent termination was unprocedural and has caused embarrassment to the Mission and the country. Permanent Representative should be called upon to account for this.
- There is need to ascertain officers responsible for the accrued debts and ensure they are surcharged for loss of public funds.
- Procurement and disposal must be done in accordance with the laid down procedures regulations. The house for the Administrative Attaché should be leased and any outstanding claims such as the medical claims given priority and honored.
- The Missions newsletter should be given a professional touch and an editorial board which includes all professions in the Mission be appointed to oversee its publication, including vetting of the content.
- All contractual obligations should be honoured by the Mission without exception. The Finance and Disposal committee should be given leeway to prioritize expenditure in order to ensure that contractual obligations are honored to avoid harassment of officers by landlords.
- All vehicles allocated to the family of the Permanent Representative should be withdrawn immediately. The Ambassador should be surcharged for misuse of the two vehicles. Each vehicle must have a work ticket while ensuring that monthly motor vehicle returns are made to the Ministry headquarters. Since the mission has six vehicles, any vehicles in excess of the authorized establishment should be disposed to cut on costs and loss of value.

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In light of the foregoing, it appears that the only viable solution to poor leadership at the Mission is for the Government to consider redeployment of the current Head of Mission to a less demanding and sensitive station as a matter of urgency.

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