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REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) ON THE MATTER OF CURRENCY PRINTING CONTRACTS BETWEEN CENTRAL BANK OF KENYA AND DE LA RUE COMPANY

Clerk's Chambers
National Assembly,
Parliament Buildings
NAIROBI

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REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) ON THE MATTER OF CURRENCY PRINTING CONTRACTS BETWEEN CENTRAL BANK OF KENYA AND DE LA RUE COMPANY

CHAPTER ONE

1. PREFACE

Mr. Speaker Sir,

The Public Accounts Committee is a select Committee of the House deriving its mandate from Standing Order 187(1) which provides that:-

> ***"There shall be a select committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the committee may think fit".***

The Committee's main objective is to ensure that public funds are well utilized and that the public realizes value for money in all government expenditure.

The Committee was constituted during the Third Session of the 10th Parliament in June, 2009 when new Parliamentary Standing Orders came into force and the current Membership comprises the following:-

(i) The Hon. (Dr) Boni Khalwale, M.P. **(Chair)**
(ii) The Hon. (Dr) Julius Kones, M.P. **(Vice Chair)**
(iii) The Hon. Martha Karua, M.P.
(iv) The Hon. Daniel Muoki, M.P.
(v) The Hon. Charles Onyancha, M.P.
(vi) The Hon. Alex M. Mwiru, M.P.
(vii) The Hon. Boaz K. Kaino, M.P.
(viii) The Hon. Francis C. Ganya, M.P.
(ix) The Hon. (Dr) Nuh Nassir Abdi, M.P.
(x) The Hon. David Ngugi, M.P.
(xi) The Hon. Edick Anyanga, M.P.

Mr. Speaker Sir,

On the 2nd of November, 2011, the Ikolomani Member of Parliament, Hon. (Dr) Boni Khalwale asked the Deputy Prime Minister and Minister for Finance the following Question by Private Notice:-

> ***"Can the Minister confirm that De La Rue, a British Company, has been awarded a ten year monopoly for printing Kenyan currency notes without being subjected to competitive international tendering ?. "***

In his response, the Deputy Prime Minister and Minister for Finance, Hon. Uhuru Kenyatta told the House that no new contract had been issued to De La Rue or any other Company for printing of banknotes for the Government of Kenya, neither had a tender been issued for the same notwithstanding the fact that the currency printing contract that was there before between Central Bank of Kenya and De La Rue Company had expired. Negotiations were however ongoing for the acquisition of a stake in De La Rue, Ruaraka, Nairobi plant by the Government of Kenya following approval by the Cabinet.

Arising from his response Members raised various concerns. First it was the Member of Parliament for Gwassi Hon. John Mbadi who questioned why the Government was investing in De La Rue, Ruaraka, Nairobi plant without having carried out a feasibility study to establish its viability and profitability. The Member of Parliament for Eldama Ravine, Hon. Moses K. Lessonet was concerned how the Government was meeting its currency supply needs when it did not have any contract for currency printing in place as at the time of the Question. Gem Member of Parliament Hon. Jakoyo Midiwo was concerned that the De La Rue plant at Ruaraka, Nairobi did not have the capacity to print new generation banknotes for the Government of Kenya owing to its old and outdated machines and had been subcontracting jobs received. Consequently, it was therefore not prudent for the Government to partner with the Company. During debate, Hon. David Mwiraria and Hon. Amos Kimunya, former Ministers for Finance were mentioned in connection with cancellation of currency printing contracts between Central Bank of Kenya and De La Rue. Prof. Njuguna Ndung'u the incumbent Governor of Central Bank of Kenya was also mentioned.

Mr. Speaker Sir,

Against this backdrop, the Deputy Prime Minister and Minister for Finance, then Hon. Uhuru M. Kenyatta, requested that the matter be referred to the Public Accounts Committee for further investigations and reporting to the House and you so directed.

The subject for Committee's investigation according to the Member's concerns was mainly the currency printing contracts between the Central Bank of Kenya on behalf of the Government of Kenya and De La Rue Company from which several other issues arose.

In pursuance of its mandate, the Committee works closely with the Auditor General (AG) whose audit reports either statutory of special form the basis of its investigations. It is only through the audit findings of the Auditor General that the Committee can be able to effectively investigate matters. When you referred this matter to the Committee, the Auditor General had not carried out any audit on the Central Bank of Kenya. Pursuant to Section 56 of the Central Bank of Kenya Act, the Auditor General could only audit the Bank at the discretion of the Minister for Finance. The Committee had taken issue with this provision of the Act even before this matter was referred to it as it contravened the tenets of transparency and accountability and may have been intended to commit financial impropriety in the event the Minister for Finance declined to authorize the Auditor General to audit the Bank. In addition, it was inconsistent with the spirit of the constitution which provides for unconditional auditing of all government entities by the Auditor General.

One of the issues the Committee therefore had to deal with when it seized of the matter was to have the Minister for Finance exercise his discretion in favour of the Auditor General and he so did. Consequently, the Auditor General carried out a special audit on the contracts awarded by Central Bank of Kenya to De La Rue Company and his audit findings are annexed to this report as appendix 2. While exercising his discretion in favour of the Auditor General, the then Acting Minister for Finance, Hon. Robinson Githae concurred with the Committee on its concerns on the auditing of the Central Bank of Kenya (CBK) by the Auditor General.

While investigating this matter, the Committee held a total of eleven (11) sittings examining witnesses. The witnesses who appeared before the Committee and testified were Hon. Robinson N. Githae, then Acting Minister for Finance, Hon. Amos Kimunya, former Minister for Finance serving as Minister for Transport, Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance, Prof. Njuguna Ndung'u, Governor of Central Bank of Kenya, Mrs. Jacinta Mwatela former Deputy and Acting Governor of Central Bank of Kenya, Mr John Macharia Gikonyo, former Secretary to the Board of Directors of Central Bank of Kenya and officials from De La Rue Company.

With respect to evidence from De la Rue Company, the Committee toured the Plant at Ruaraka, Nairobi on 28th April, 2012 where a team led by Mr. David Hepple, Financial Controller testified. The Committee also made several observations while at the plant. Another De La Rue team led by Mr. Robert Hutchison, the Group's Director of Communications based in the United Kingdom appeared before the Committee on 3rd May, 2012 and testified.

The Committee had earmarked Dr. Andrew Mulei, former Governor of Central Bank of Kenya to testify before it. Owing to unavoidable circumstances, Dr Mulei was unable to personally appear but nevertheless sent his written evidence through the Office of the Clerk of National Assembly. After careful consideration, the Committee dispensed with his appearance and admitted his written submissions as part of evidence received.

While taking evidence, the Committee was guided by the existing procedures and modalities of operations of the National Assembly derived from the constitution of the Republic of Kenya, Acts of Parliament, Parliamentary Standing Orders, conventions, practices and rulings and directives of the Chair. All evidence was taken on oath. Other than the oral evidence, all witness who appeared also tabled before the Committee their written submissions as well as documentary evidence in support of their arguments except the former Finance Minister for Finance, Hon. Amos Kimunya. Other than a Ministerial Statement he referred to on the matter which was already in possession of the Committee in form of a hansard report, Hon. Kimunya made reference to his i-pad throughout the session while responding to issues.

This report contains all minutes of the Committee's sittings on this matter, an executive summary, the excerpts of the evidence received from all witnesses, issues for determination, observations and conclusions and finally recommendations. The report also contains written submissions received from witnesses as well as other documentary evidence received in support of their submissions which are all annexed in accordance with the list of appendices appearing hereto.

Mr. Speaker Sir,

The Committee wishes to express its sincere gratitude to you for the support the House under your leadership accorded it during the time of investigation and compilation of this report. The Committee also wishes to record its appreciation for the services rendered by officers from the Office of the Clerk of the National Assembly, Auditor General's Office and Treasury. Indeed, their commitment and devotion to duty made the work of the Committee and production of this report successful.

I also wish to express my sincere gratitude to Committee Members for the commitment and dedication to a cause without which, the production of this report would not have been possible.

Mr. Speaker Sir,

On behalf of the Committee, it is my duty and privilege to lay on the Table of the House this report, pursuant to provisions of Standing Order 181(3) of the Parliamentary Standing Orders.

I urge this August House to adopt the report with the recommendations therein.

Hon (Dr) Boni Khalwale, M.P.

Signed ....
(Chair)

Date ....

We Members of the Public Accounts Committee (PAC) do hereby affix our signatures to this report to affirm the correctness of the contents and support thereof-

(i) The Hon. (Dr) Boni Khalwale, M.P ....

(ii) The Hon. (Dr) Julius Kones, M.P ....

(iii) The Hon. Martha Karua, M.P ....

(iv) The Hon. (Dr) Nuri Nassir Abdi, M.P ....

(v) The Hon. Daniel Muoki, M.P ....

(vi) The Hon. Charles Onyancha, M.P ....

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(xi) The Hon. Edick Anyanga, M.P ....

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) ON THE MATTER OF CURRENCY PRINTING CONTRACTS BETWEEN CENTRAL BANK OF KENYA AND DE LA RUE COMPANY

CHAPTER 2

1. EXECUTIVE SUMMARY

This report comprises three chapters. Chapter 1 comprises the preface, chapter 2 the executive summary, chapter 3 on evidence received, chapter 4 on issues identified for determination and chapter 5 on recommendations.

The matter under investigation by the Committee is on currency printing contracts between Central Bank of Kenya and De La Rue Company from which a joint venture agreement for acquisition of 40% stake in the Company's Ruaraka, Nairobi plant by the Government of Kenya was conceived. Eight witnesses testified before the Committee.

Since independence, the Government of Kenya had been procuring its banknotes from De La Rue Company which had changed names from time to time. Initially the Company printed the banknotes at its United Kingdom plant until 1994 when it set up a plant at Ruaraka, Nairobi. In December, 2002 following the expiry of a 10 year contract between Central Bank of Kenya and the Company, the Bank entered into another 10 year currency printing contract with the Company without any competitive tendering process. This contract was cancelled in 2003 by the Bank on orders from the then Minister for Finance, Hon David Mwiraria, who called for a competitive procurement process. The Committee was satisfied with Hon. Mwiraria's action.

Through a competitive procurement process, a tender for printing, 1.71 billion pieces of banknotes was awarded to De La Rue Company at a cost of USD.51,195,840.00 or Kshs.3,754,031,319.00 and a contract to that effect was signed on 4th May, 2006. This contract was for printing new generation banknotes, smaller in size and with advanced security features. The contract was however in November, 2007 cancelled by the Bank on a directive from Hon. Amos Kimunya, then Minister for Finance on grounds that the Government intended to enter into a joint venture with De La Rue Company.

Since 2003, Central Bank of Kenya had been procuring banknotes from De La Rue on interim orders without subjecting them to a competitive procurement process, contrary to Government procurement regulations and procedures. Since October, 2006 when the contract for printing 1.71 billion pieces of banknotes was awarded, Central Bank of Kenya had procured from De La Rue Company four (4) interim orders of current generation banknotes totaling 1,487,050,000.00 at a cost 5,584,940,934.72. The cancelled contract of 1.71 billion pieces of banknotes with advanced security features would have cost the taxpayer Kshs.3,754,031,319.00. The Committee is therefore satisfied that the taxpayer lost Kshs.1,830,909,616.00 being the price difference between the interim orders and the cancelled contract, and faults the cancellation of the contract for printing 1.71 billion pieces of banknotes. The Committee is also satisfied that De La Rue Company was overcharging Central Bank of Kenya on the interim orders since when subjected to a competitive procurement process, it charged less hence the price difference.

The Committee finds the former Minister for Finance Hon. Amos Kimunya and the incumbent Governor of Central Bank of Kenya Prof. Njuguna Ndungu responsible for the loss of Kshs.1,830,909,616.00 on account of cancellation of the contract for printing 1.71 billion pieces of banknotes and they should be held accountable. Hon. Kimunya directed Central Bank to cancel a cheap contract even when his ministry was not party to the contract and all the reasons he gave for the cancellation of the contract were found by the Committee to have been invalid. Prof. Ndung'u on the other hand did not make any effort to resist the directive from Hon Kimunya to cancel the contract. In so doing, he failed to protect the Bank's independence and taxpayers' interest. This was even notwithstanding the fact that since the Procurement and Disposal Act of 2005 came into force, Treasury had no business directing Central Bank of Kenya on procurement issues. In this regard, the Committee finds that the two acted contrary to provisions of Chapter 6 of the Constitution of Kenya, the Public Officer Ethics Act and the Public Procurement and Disposal Act and in that respect and for this reason, they are not fit to hold public office. The Ethics and Anti-Corruption Commission should investigate them with a view to taking appropriate legal action against them and recovering lost funds.

On the joint venture agreement between the Government of Kenya and De La Rue, the Government is to acquire 40% stake in De La Rue, Ruaraka plant at a cost of 5 million Sterling Pounds. The Committee finds that Treasury, which was responsible for the joint venture negotiations did not carry out proper or sufficient due diligence before agreeing on the stake acquisition and this was exposing the taxpayers to a loss it knew or ought to have known. The machines and technology used at the Ruaraka plant are analogue when modern technology is digital. The joint venture commits Central Bank of Kenya to a ten year currency supply contract with De La Rue which is in contravention of the Government procurement regulations and procedures as the Bank will be deprived the benefits of a fair price through a competitive procurement process. The joint venture is yet to be executed and the Committee will only give it the nod if the cited issues and others in the main report are addressed.

No Member of the Committee held a dissenting view on any of the observations, findings and recommendations in this report.

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) ON THE MATTER OF CURRENCY PRINTING CONTRACTS BETWEEN CENTRAL BANK OF KENYA AND DE LA RUE COMPANY

CHAPTER 3

3.0. EVIDENCE RECEIVED FROM WITNESSES

3.1. EVIDENCE BY HON. ROBINSON N. GITHAE, ACTING MINISTER FOR FINANCE

The Hon. Robinson Njeru Githae, then Acting Minister for Finance appeared before the Committee on 19th March, 2012 and submitted that:-

1. De La Rue Currency and Security Print Kenya Ltd was established in Kenya in 1992 as a wholly owned subsidiary of the De La Rue International Ltd in United Kingdom (UK). Its core mandate is to operate currency and security print business at its factory in Ruaraka, Nairobi. The Company's initial investment was Kshs.1.54 billion but this has grown over the years to Kshs.3 billion to date.

2. During the period between 1966-1985 Kenya bank notes were printed by Bradbury & Wilkinson, UK which was later acquired by Thomas De La Rue and Co Ltd in 1986. Since then, De La Rue International, UK (renamed after Thomas De La Rue & Co Ltd) has provided currency printing services to the Central Bank of Kenya.

3. In 1991, a ten (10) year agreement which became effective in 1993 was signed between Central Bank of Kenya and De La Rue International, UK under which De La Rue was to supply Central Bank of Kenya (CBK) 1.71 billion bank notes each year. The bank notes were to be produced at the new factory to be built at Ruaraka, Nairobi, Kenya. A Copy of the 1991 ten year contract is annexed hereto as appendix 3.

4. In 1992, De La Rue International UK set up a subsidiary company called De La Rue Currency Printing & Security Print Ltd to operate the currency printing business at Ruaraka, Nairobi. The investment by De La Rue in a Kenyan subsidiary was only justified on the basis that it would print currency for Central Bank of Kenya.

5. In December, 2002 following the expiry of the initial ten (10) year contract, Central Bank of Kenya without competitive tendering process entered into a new ten (10) year contract with De La Rue Currency & Security Print Ltd for currency printing. The contract was in March, 2003 cancelled by the National Rainbow Coalition (NARC) Government to allow for a competitive tendering process. The company was however granted temporary extensions to provide currency printing services to Central Bank of Kenya following delays in finalization for an open tender process. A Copy of the December, 2002 ten year contract is annexed hereto as appendix 4.

6. When Central Bank of Kenya tendered for currency printing services in 2006, De La Rue

won a three-year contract under an open tender to print 1.71 billion pieces of banknotes for the Bank at a cost of US$ 51.2 million. The new currency was to be issued at the beginning of June/July 2007. The Government, however, considered it not prudent to issue new generation currency in an election year and directed Central Bank of Kenya to delay the commencement of the contract until January, 2008.

7. Since currency printing accounted for over 90% of the operations of the Ruaraka factory, the company was no longer financially viable and sustainable under the new contract. Consequently, under the new contract, De La Rue International UK was contemplating closing down the Kenyan factory as there was no guaranteed business to sustain the factory's operations. The consequences of closure would be as follows:-

   (i) The location of the currency printing factory in Kenya has had a beneficial effect on the economy in terms of employment generation for many Kenyans, tax revenue and foreign exchange earnings. The closure of the factory would mean losing direct benefits associated with it.
   (ii) At the time of the contemplated closure, the plant employed 301 specially trained Kenyans and the closure would have caused them loss of jobs when there was already a large army of unemployed Kenyans;
   (iii) The country would lose tax revenues and foreign exchange that the plant generates; The closure of the Ruaraka plant would send wrong signals to potential investors, who most likely would interpret it to mean serious erosion of investor confidence in Kenya.

8. Consistent with making Nairobi the regional financial services hub under Vision 2030, there was need to safeguard the De La Rue Investment in the country as most neighbouring countries print their currencies at the plant. There was also need to safeguard the ownership of the Kenyan currency features by securing a strategic long term relationship with the firm located in the country. This would provide incentives for the firm to invest in new technology and materials to boost the quality of the Kenyan currency features to counteract forgery and adulteration.

9. Many countries consider security printing so strategic that they have established fully Government owned currency and security printing presses and mints. United States of America, Australia, India and Sudan are very good examples. Many others have joint ventures with printing firms to secure sustainable currency printing services. Examples where De La Rue International has joint ventures with other countries in banknote production include:-

Shareholding			
Company/Country	**De La Rue (DLR)**	**Government**	**Other**
DLR Lanka, Sri Lanka	60%	40%	-

Valora, Portugal	25%	75%	-
Nigerian Security Printing and Minting PLC	2.9%	77%	20.1%
Orell Fussli, Switzerland	75%	25% (central bank)	-

10. Against the above background, the cabinet at its sitting of 29th May, 2007, approved a joint venture between itself De La Rue Currency and Security Printing (K) Limited, with De La Rue International (UK) retaining 75% ownership and Government of Kenya acquiring 25% shareholding in the existing company based in Kenya. This proposed Investment was subsequently discussed by the Departmental Committee on Finance, Trade and Planning of Parliament; and the Cabinet Committee on Finance, Trade and Planning chaired by the Rt. Hon Prime Minister. Both Committees approved and supported the Joint Venture and held the view that the Government of Kenya ought to have had more shareholding. Consequently, following further negotiations with De La Rue, an agreement was reached for the Government of Kenya to acquire 40% stake.

11. Negotiations for the joint venture were completed and cabinet approval granted on 13th September, 2011. A Copy of the draft joint venture agreement is annexed hereto as appendix 5. The key terms of the joint venture investment were as follows:-

    (i) The Government of Kenya to own 40% stake and De La Rue 60% in a new company to be formed and into which De La Rue would vest all the operating assets of the De La Rue (Kenya) Ltd plus Sterling Pounds.2 million in equity to fund the initial working capital of the new company;
    (ii) The Government of Kenya to pay Sterling Pounds.5 million for the acquisition of the 40% stake and to have 2 directors in the new company while De La Rue would have 3.
    (iii) The Chairmanship of the new company to be vested in the Government of Kenya while the management in De La Rue Company.
    (iv) The Government of Kenya to grant a new Export Processing Operator's license to the new company under the Export Processing Zones Act, provided that the new company qualifies for the license under the Laws of Kenya.
    (v) Central Bank of Kenya shall have entered into a 10 year banknote printing agreement with the new company to come into force only upon completion of the share sale and purchase agreement. Central Bank of Kenya was negotiating this contract separately with De La Rue.

12. The envisaged currency supply contract under the joint venture was between Central Bank of Kenya and De La Rue International Ltd and was not against the procurement law. The ministry expects that Central Bank would negotiate the currency printing agreement with the new joint venture company under section 74 of the Public Procurement and Disposal Act. In the agreement, the Bank would be expected to ensure that the agreement provides for benchmarking with international prices, with a provision for regular review of prices to ensure they are in tandem with international prices.

13. The De La Rue Investment shareholding acquisition by the Government of Kenya was being spearheaded by Treasury which would acquire and hold the shareholding on behalf of the Government of Kenya, pursuant to the Permanent Secretary/Treasury incorporation Act, Cap 101 of the Laws of Kenya. The current negotiated position was:-

(i) All operating assets of De La Rue Currency Print and Security Ltd would be hived down to a new company called De La Rue EPZ Kenya Ltd under a business transfer agreement between De La Rue Currency and Print Security Ltd and De La Rue EPZ Kenya Ltd. This will be done in accordance with the Transfer of Business Act, Cap 500, Laws of Kenya. All the staff of De La Rue Currency Print and Security Ltd would be transferred to the new company.

(ii) Treasury would purchase 40% shares in De La Rue EPZ Kenya Ltd under a Share Sale and Purchase Agreement between Thomas De La Rue AG and Permanent Secretary Treasury and De La Rue EPZ Kenya Ltd.

(iii) Completion of the Business Transfer Agreement was one of the conditions precedent to the purchase of shares by Treasury which means that the hiving down must be completed before Treasury pays for the 40% acquisition.

14. Land Reference No. 78784 comprises the land on which De La Rue Plant is situated in Ruaraka, Nairobi. The land was leased to the company by Central Bank of Kenya through a lease signed between the Bank and Thomas De La Rue Kenya Ltd which was De La Rue's subsidiary company operating in Kenya at that time. On 30th September, 1997 as part of wider reorganization, Thomas De La Rue Kenya Ltd was renamed De La Rue Security and Currency Print Ltd. Since this was simply a renaming of the company, there was no legal requirement to assign the lease and consequently, it still carries the earlier name of the company. A copy of the Lease agreement between De La Rue and Central Bank of Kenya is annexed hereto as appendix 6. Hon. Robinson Githae's written evidence is also annexed hereto as appendix 7.

3.2. EVIDENCE BY MR. JOSEPH KINYUA, PERMANENT SECRETARY, MINISTRY OF FINANCE AND MEMBER, BOARD OF DIRECTORS, CENTRAL BANK OF KENYA

Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance and Member of the Board of Directors of Central Bank of Kenya appeared before the Committee on 3rd and 12th April, 2012 and submitted that:-

15. Treasury does not direct or order the Central Bank of Kenya in its dealings with the Bank. However, under the Banking and Central Bank of Kenya Act, It was very clear that Central Bank of Kenya was still in the context of the law under the direction of the Minister for Finance in terms of the conduct of monetary policy and not operational matters. While dealing with the Bank, Treasury only advises or recommends to the Bank and it is upon the Bank to make the final decision based on the recommendation or advice. While advising the Central Bank to go for a ten instead of six year contract with De La Rue Company, Treasury acted on the basis of advice from its technical department which was then the Directorate of Procurement. At that time, the Directorate was entirely based in

Treasury as the Government had not established a procurement authority. A ten year contract would save the Bank the intricacies connected with the procurement of a new service provider every now and then. At the time of cancellation of the 2002 contract signed in the year 2003, he was not at Treasury.

16. Treasury was a member of the Board of Central Bank of Kenya through its Permanent Secretary and is therefore involved the Board's decision making. In the event, the Permanent Secretary is unable to attend a board meeting, he may designate a representative. At one time, Mrs. Esther Koimet attended a Central Bank of Kenya Board meeting on behalf of Mr. Kinyua, the Permanent Secretary. Her attendance was mainly to brief the Board on the status of the joint venture negotiations between Treasury and De La Rue and not to persuade the Board to yield to a joint venture agreement between the Government of Kenya and De La Rue International Ltd that was to ensue from the negotiations.

17. In late 2002, the Permanent Secretary, Treasury, wrote to the Governor, Central Bank of Kenya giving the Bank authority to directly negotiate for a new term contract for ten instead of six years currency printing with De La Rue. This letter was marked secret and was in response to a request by the Central Bank to be allowed to procure directly from De la Rue currency printing services. In the said letter, Treasury only advised or recommended to the Bank to consider a long term contract of ten years instead of six and the final decision on procurement lay squarely with Central Bank. A contract was subsequently entered into between Central Bank and De La Rue but was in March, 2003 cancelled on the advice of Hon. David Mwiraria, then Minister for Finance mainly because it was single sourced contrary to Government procurement regulations and procedures.

18. On 29th May, 2007, the cabinet approved a joint venture arrangement between the Government and De La Rue with the government acquiring 25% stake in the company. That was the initial approval by the Cabinet. The Cabinet also directed the Minister for Finance and the Attorney-General to take necessary action to effect that decision of moving forward with the joint venture. This policy was made for the strategic reason of the Government of Kenya being in control of the printing of its currency. Other economic considerations included; the need to retain the current currency and security printing investment in the country, to enhance Kenya's position as a financial hub and also to secure related jobs. Given that the Government was investing in an existing facility and not a greenfield Investment, it was not necessary to undertake a feasibility study as there was sufficient operational information to make determination of the parameters necessary to inform the investment. However, an asset valuation of De La Rue plant at Ruaraka, Nairobi was done which would suffice. Later Treasury intended to do a feasibility study comprising of a consortium of experts.

19. During negotiations, De La Rue was at first willing to let the Government of Kenya acquire 25% stake in it but later enhanced it to 40% after further negotiations. The Government wanted to acquire more than 40% but De La Rue declined to let go anything more than 40%. De La Rue also undertook to inject USD.5 million towards the upgrading and

refurbishment of machines once the joint venture came into force. He could not however confirm or deny whether De La Rue machines at Ruaraka were obsolete.

20. Treasury had done a professional job to the best of its ability in implementing the Cabinet directive relating to the joint venture. The job was done with diligence and a sense of responsibility to the taxpayers and Treasury was convinced that this was a good investment for the country. The issue of pricing of the currency printing services was of a separate contract although that contract was a condition precedent to this investment. Pricing is an issue that could adequately be addressed within the currency supply contract between Central Bank of Kenya and De La Rue based on international benchmarks.

21. Because of the delay in getting the Central Bank of Kenya to sign a long term currency printing contract, it was becoming a challenge for the Bank to be in a position to regularly service the requirement of new banknotes to replace the unusable ones. At one time, Treasury was of the view that it was time the Government thought of setting up a money printing company and that Parliament amends the law to allow Central Bank of Kenya establish its own currency plant so that the Government of Kenya would be able to have full control of currency printing. This was in keeping with the practice globally. Other than former colonies, most of the developed countries in the world have their own companies printing currency on behalf of the Government either through the Ministry of Finance or Central Banks. In the case of the United States of America, it is the Treasury in charge of currency printing. On the basis of this reasoning, Treasury advised the Government to enter into a joint venture with De La Rue Company since 100% ownership would have its own challenges.

22. In 2006, Central Bank of Kenya through international bidding awarded De La Rue a contract for printing 1.71 billion pieces of banknotes. A French company Francois Charles Oberthur Fiduciarie tried to put pressure on him to have De La Rue's award of the tender be nullified in its favour. He advised the company on action to take if aggrieved as provided by government procurement regulations and procedures.

23. The Board of Central Bank of Kenya attended a meeting a State House to brief the Head of State on the award of the tender to De La Rue. During the meeting, pressure came from a state house official whose name he could not recall to have the French Company awarded the tender instead of De La Rue. It took the Head of State's intervention to put the matter to rest when he advised that whoever won the tender deserved to be left to do the job. The contract was however subsequently cancelled on orders of Hon. Amos Kimunya, then Minister for Finance to give way for a joint venture between De La Rue and Government as had been approved by the cabinet. A copy of the contract document for printing 1.71 billion pieces of banknotes between Central Bank of Kenya and De La Rue Company together with its appendices is annexed hereto as appendix 8

24. In the contract awarded by Central Bank of Kenya to De La Rue for printing 1.71 billion pieces of banknotes, the entire banknotes were to be delivered to the Bank in one consignment and this posed various challenges to the Bank. Among the major challenges were security while transporting the banknotes from the Port of Mombasa to the Bank's

strong rooms in Nairobi, Kisumu and Eldoret. Another challenge was inadequate storage space. In the circumstances, therefore, Treasury advised Central Bank of Kenya to cancel the contract.

25. De La Rue was intending to close down the Ruaraka plant if the Government of Kenya had not shown interest to enter into a joint venture over the same and also guarantee it business for a period of ten years. In advising the cabinet to enter into a joint venture with the company, Treasury had looked at countries like Sri Lanka, Portugal, Nigeria, Switzerland and United Kingdom which had joint ventures with De La Rue. Procurement for De La Rue is done by the mother company in the United Kingdom. The Company procures its jobs through its marketing organ then distributes them to its subsidiaries worldwide including the De La Rue Ruaraka, Nairobi. Treasury would endeavor to ensure that the Nairobi plant is allocated business by the mother company. In signing the joint venture with De La Rue, it is expected that Central Bank of Kenya would sign a 10 year currency printing contract with the company.

26. The joint venture agreement was not yet finalized. Only a draft agreement was in place awaiting execution mainly because of a court case challenging it. Mr. Joseph Kinyua's written evidence is annexed hereto as appendix 9.

3.3. EVIDENCE BY HON AMOS KIMUNYA, FORMER MINISTER FOR FINANCE SERVING AS MINISTER FOR TRANSPORT

The Hon. Amos Kimunya, former Minister for Finance serving as Minister for Transport appeared before the Committee on 17th April, 2012 and submitted that:-

27. He was appointed Minister for Finance on 14th February, 2006. Upon assumption of office, he was briefed by the then Governor of Central Bank of Kenya, Dr Andrew Mulei accompanied by his Deputy Mrs. Jacinta Mwatela, the Permanent Secretary, Ministry of Finance and two others on what Central Bank of Kenya had been doing and the relationship between Treasury and the Bank. They also mentioned to him a process Central Bank of Kenya had engaged in of changing currency designs and even showed him the new designs. He however told them to brief him substantively on the matter later.

28. In April, 2006, the Central Bank of Kenya's Governor, Dr. Andrew Mulei was charged in court in connection with Charterhouse Bank malpractices and could not continue holding the Office while his court case was ongoing. Mrs. Jacinta Mwatela was appointed Acting Governor and in May, 2006, she briefed him about a contract for printing 1.71 billion pieces of new generation banknotes having been signed between Central Bank of Kenya and De La Rue Company and that the Bank had already made a 50% or USD.25 million down payment. The banknotes were to be delivered the following year. She also briefed him on other procurement events preceding the award of the tender. The Secretary of Central Bank of Kenya's Board of Directors, Mr. James Macharia Gikonyo also attended the briefing.

29. Soon after the briefing, he received a phone call from a senior De La Rue International official in the United Kingdom. He told him that the Company wanted to discuss with him in person its intention to close down the Ruaraka, Nairobi, Kenya plant, and since it was a public company in the United Kingdom, it was required by law to disclose any intended closure of its subsidiaries in its accounts for that financial year. Though De La Rue was willing to come to Nairobi to discuss the issue with the Minister, he opted to meet them in London where he was transiting to Nigeria for a meeting of Ministers for Finance convened by the British Prime Minister, Gordon Brown and the President of the Republic of Nigeria. During the London meeting, De La Rue thanked him for the award of a contract for printing 1.71 billion pieces of banknotes by Central Bank of Kenya and confirmed having received down payment for that purpose. They however told him that they were to close down their Ruaraka, Nairobi plant since the contract was premised on the company printing the banknotes cheaply at its Malta plant and delivering them to the Bank in one consignment in the year 2007.

30. Upon return to Kenya he sought clarification from Central Bank of Kenya on the contract for currency printing in Malta. The Bank told him it was satisfied with the arrangement. Upon further consultations, he was satisfied that the Bank officials who negotiated the contract did not have a clear understanding of monetary issues and that the contract was a disaster and ought to have been discontinued on the following grounds:-

(i) The concept of new currency had not been comprehensively dissected and addressed by the Central Bank of Kenya. For instance, the fate of the old currency was not determined and it was not clear whether the old currency would be demonetized or if the new currency would be debased;

(ii) Printing the banknotes in Malta would have posed a serious storage challenge. The new banknotes would have been printed, shipped and delivered to Central Bank in one consignment. The Bank did not have adequate strong rooms and vaults for storage. The Times Tower which was initially earmarked for the Bank's occupation and which had strong rooms and vaults for storage of such banknotes had been allocated to the Kenya Revenue Authority. Transportation of the banknotes from Mombasa to Nairobi also posed serious security challenges;

(iii) The cost implication of the new currency to commercial banks and to Kenyans in general had not been considered especially as it relates to changes necessary to ensure conformity with the technological requirements of the new currency. There was also need for public education and sensitization which had not been factored in the agreement.

(iv) Central Bank of Kenya's requirement for bank notes after the three-year agreement for the new currency, which would expire in the year 2009, had not been addressed.

(v) Under the terms of the agreement, all the security features in the banknotes were the property of the printer and not Central Bank of Kenya's. Since the contract had not seen the need to purchase corporate security features of this new generation currency notes by Central Bank, it meant that every time the supplier is challenged on the basis of cost or price competitiveness, a new currency design would emerge. In effect, the Government would have to be changing the currency every three years because the contract was to run for three years and then there would be a new competitive bid;

(vi) About 300 Kenyans would have lost their jobs in the event De La Rue decided to shut down its business in Kenya. This was not good for the Government which was supposed to create jobs for its citizens and was also going to send wrong signals to investors.

(vii) The banknotes were to be supplied in 2007 which was an election year and there were political risks associated with this.

31. At one time, the execution of the contract stalled for three months owing to issues relating to signatures. Normally, the Permanent Secretary, Treasury and Governor, Central Bank of Kenya would sign the banknotes. However, the substantive Central Bank of Kenya Governor Dr. Andrew Mulei had stepped aside pending the hearing of a court case in which he had been charged. As the Finance Minister, he was opposed to the Deputy and Acting Governor, Mrs. Jacinta Mwatela signing the banknotes on behalf of the substantive Governor pending the outcome of his court case. He could not therefore give De La Rue the go ahead to continue with the printing process and did not find it necessary to seek a legal opinion on the issue, which was however later resolved when a new substantive Governor, was appointed.

32. De La Rue Company was planning to close down the Ruaraka, Nairobi plant unless it was guaranteed long term business by the Government of Kenya. He and the Ministry of Finance's Permanent Secretary, Mr. Joseph Kinyua accompanied by one Mr. Kenny Hussey of De La Rue Company toured the plant and interviewed staff who did not have a clue on the looming closure of the plant. It was him and Mr. Kinyua who came up with the proposal of the Government of Kenya entering into a joint venture with De La Rue over the Ruaraka plant to save it from imminent closure and immediately thereafter generated a cabinet memo for approval.

33. Prior to visiting the De La Rue, Ruaraka plant, he had held a meeting with the President of the Republic of Kenya and among other subjects explained to him the political risks associated with the printing new banknotes in a calendar year especially when there was already talk in the country that illegal money was being injected into the Nairobi Stock Exchange as part of the 2007 general elections campaign strategy. The President concurred with him and the first thing he did was to tell Central Bank of Kenya to defer the introduction of new generation banknotes until January, 2008. During a visit to the Ruaraka plant in 2006, De La Rue confirmed its willingness to change in currency delivery dates without cost implications to Central Bank of Kenya. A copy of a letter to that effect dated 25th August, 2006 from Hon. Amos Kimunya, then Minister for Finance to Mrs. Jacinta Mwatela, Acting Governor, Central Bank of Kenya (CBK) is annexed hereto as appendix 10.

34. During the year 2006, he together with the Acting Governor, Mrs. Jacinta Mwatela met De La Rue International Ltd officials in Singapore on the sidelines of the Annual General Meeting (AGM) of the World Banks and negotiated and agreed on a 25% payment in form

of credit on interest on the down payment made on the contract for supply of 1.71 billion banknotes on the interim or stop gap orders to be procured. This was to happen in the event the contract was cancelled.

35. The joint venture proposal between the Ministry of Finance and De La Rue Company was approved by the cabinet on 24th September, 2007 and on 1st November, 2007 he advised Central Bank of Kenya to cancel the contract with De La Rue for the printing 1.71 billion pieces of banknotes and issue stop gap orders until the joint venture was operationalized. The Bank obliged. As a responsible minister, he would not have allowed De La Rue Company to close its plant in Nairobi and print Kenyan currency in Malta. The joint venture was not being worked on merely in terms of profitability or otherwise. It was meant to ensure that the Government had a sustainable and secure delivery of currency printing in the long term. The services would be extended to the Eastern Africa Community (EAC) states.

36. De La Rue understood very clearly that if the Government of Kenya was going to enter into a joint venture with them, it would not have made sense to have a parallel arrangement where its currency would be printed in Malta. It was also not necessary for the Company to seek legal recourse for damages following the cancellation of the existing contract of 1.71 billion pieces of banknotes. Treasury was not a signatory to the contract cancelled and was not involved in the actual cancellation. Central Bank of Kenya was.

37. The Government did not incur loss due to cancellation of the contract and subsequent award of interim orders to De La Rue Company. In fact it saved in the long run. The contract for printing 1.71 billion pieces of currency outside the country would have cost taxpayers Kshs.4.2 billion for a period of three years. Upon expiry of the contract, Central Bank of Kenya would be required to enter into another contract, thereby spending a similar amount or more. Overall, the Government would have spent not less than Kshs.8 billion in six years as a result of the cancelled contract, but had only spent Sh4.8 billion in five years to print a similar number of currency pieces by way of interim orders. It would have therefore been irresponsible for Central Bank of Kenya to enter into a contract to print currency every three years, changing designs every time a new contract was procured.

38. De La Rue has joint ventures with the Governments of Sri Lanka, Portugal, Nigeria, Switzerland and the United Kingdom. The Government of Kenya was capable of owning its currency printing plant but such a move would have its own negative implications. The Government was even capable of printing its own ballot papers at the Government Printer but had opted to print them in the United Kingdom owing to possible negative consequences. The intended joint venture with De La Rue was therefore a best practice to be followed. It was however important that the Treasury gets cabinet approval for the joint venture before undertaking technical evaluation and feasibility study on the project. Initially, De La Rue was willing to transfer only 25% stake to the Government but enhanced the figure to 40% after further negotiations, though the Government wanted more.

39. While acting as the Governor of Central Bank of Kenya, Mrs. Jacinta Mwatela lobbied to be appointed substantive Governor and even approached President Mwai Kibaki who was

not opposed to her appointment. He received a phone call to that effect from Mr. Hislop Ipu, then State House Comptroller but declined to take any action since the substantive Governor Dr. Andrew Mulei was still on contract but not in office because he was facing prosecution. His removal before knowing the outcome of the court case would have raised serious legal issues. He denied claims that Mrs. Mwatela was shoved out of office, as she was opposed to the manner in which Treasury was handling the procurement of printing of new banknotes especially with De La Rue Company.

A copy of the hansard report on Hon Amos Kimunya's ministerial statement issued in the House on 26th June, 2008 on the De la Rue matter is annexed hereto as appendix 11.

3.4. EVIDENCE BY PROF. NJUGUNA NDUNG'U, GOVERNOR, CENTRAL BANK OF KENYA

Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya appeared before the Committee on 28th and 29th April, 2012 and also on 16th May, 2012 and submitted that:-

40. Until 1966, printing of currency for the country was handled by The East Africa Currency Board. Between 1966 and 1986 Kenyan banknotes were printed on order by Bradbury & Wilkinson U.K. This company was subsequently acquired by Thomas De La Rue & Company Limited, U.K, who took over and continued the printing role of Kenyan banknotes. In October 1992, Thomas De La Rue & Company Limited having changed its name to De La Rue International Ltd and also having established a plant at Ruaraka, Kenya, signed a ten (10) year contract with the Central Bank of Kenya. The contract was to expire on 31st December, 2002.

41. On 5th December, 2002 Central Bank of Kenya entered into a contract for currency printing with De La Rue International for ten (10) years to expire on the 1st day of January, 2013. This contract was however terminated in the year 2003 on the orders of the then Minister for Finance, Hon. David Mwiraria, who by a letter to the Bank dated 14th March, 2003 cited the following reasons for the cancellation.

    (i) The contract was single-sourced instead of being open for competitive bidding;
    (ii) The contract period was extended for ten years instead of a lesser period;
    (iii) The contract became effective on 1st January, 2003 when the National Rainbow Coalition (NARC) Government was in power and should therefore have been consulted.

A copy of Hon. David Mwiraria's letter Ref No. Conf 36/02 dated 14th March, 2003 directing Central Bank of Kenya (CBK) to cancel the contract is annexed hereto as appendix 12.

42. Following the cancellation of the contract, the Bank initiated an International Open Tendering process in which De La Rue International participated. To ensure sustained supply of banknotes when the tender process was in progress, the Bank entered into a 21 months' contract with De La Rue Company to produce existing generation design banknotes with effect from 1st April, 2003. Total deliveries amounted to 820 million pieces of different

denominations.

43. Through a lengthy procurement process, the Bank issued a tender for new generation currency on 6 January, 2005. This was done in order to avail equal opportunity to all tenderers to quote for design, manufacture, printing and supply of 1.71 billion pieces of banknotes. This also gave the Bank an opportunity to review the design specifications of currency in tandem with international best standards and also taking into consideration enhanced security features.

44. Five firms were invited to participate in the tender. The firms were:-

(a) Giesecke & Devrient – Germany
(b) De La Rue Currency - United Kingdom
(c) Orell Fussli – Switzerland
(d) Francois Charles Oberthur Fiduciaire – France
(e) Job Enschede Banknotes – Holland

The firm Job Enschede however withdrew from the process citing new commitments. Proposals were opened first in the presence of the bidders' representatives and the results were summarized below:-

(a)	M/S Giesecke & Devrient GMBH	-	USD.148,635,557.10
(b)	M/S De La Rue Currency	-	USD.139,535,341
(c)	M/S Orell Fussli Security Printing Ltd	-	USD.104,161,532
(d)	M/S Francois-Charles Oberthur	-	USD.98,527,836

45. However, the entire tender was cancelled on 6th June, 2005 due to various anomalies and a fresh start of the project was required. The cancellation and the expected lengthy retendering process necessitated an interim order for additional banknotes to forestall imminent stock out gaps. Consequently, the Bank placed an order for an additional 300 million pieces of existing (current) generation banknotes from De La Rue Currency and Security Print Limited at a price of ST£.8,703,280.00. A copy of the interim order agreement between Central Bank of Kenya and De La Rue is annexed hereto as appendix 13.

46. An international retendering of the new generation banknotes was done in the year 2005 and the following firms were invited for retendering

(i)	De La Rue International	-	United Kingdom
(ii)	Giesecke & Devrient GMBH	-	Germany
(iii)	Francois Charles Oberthur Fiduciaire	-	France
(iv)	Orell Fussli Security Printing Limited	-	Switzerland
(v)	Joh Enschede	-	Holland
(vi)	Canadian Banknote Company	-	Canada

47. The tenders were initially expected to be opened on 18th July, 2005 but rescheduled to 29th

August, 2005 to allow prospective tenderers sufficient time to prepare their proposals. Orell Fussli however withdrew from the process citing earlier intention of partnering with another firm which was not allowed. Of the six firms invited, only three responded namely; De La Rue International, Giesecke & Devrient GMBH, Francois Charles Oberthur Fiduciaire. The bid from Francois Charles Oberthur Fiduciaire was not evaluated because it did not meet the mandatory tender requirements. All the tenders quoted prices for printing the banknotes in Europe.

48. After evaluation of the tender documents, De La Rue International Ltd was eventually declared the winner of the re-tender on technical specifications as well as price. A contract was executed between Central Bank of Kenya and De La Rue International on 4th May, 2006 for printing 1.71 billion pieces of new generation Kenya banknotes at a total cost of USD$ 51,195,840. The only other firm to get to the final stage of the tender was Giesecke & Devrient GMBH which quoted US$.76,331,500 which was higher than De La Rue's.

49. Among the conditions to be fulfilled under the contract was for Central Bank of Kenya to make a down payment of 50% of the contract price amounting to US$ 25,597,920.00. The commencement date for the tender was set for 22nd May, 2006 subject to the Bank submitting to De La Rue International approved designs of the banknotes by that date.

50. Pursuant to the contract, the Central Bank of Kenya made the 50% down payment on 18th May, 2006 but did not submit approved banknotes designs, together with approved signatories, as guidance was being awaited from the Ministry of Finance. Subsequently, approval for the designs was received from Treasury, but approval for signatories continued to be awaited from Treasury as there was no substantive holder of the office of the Governor at the time.

51. In a letter dated 25th August, 2006, the Minister for Finance, then Hon. Amos Kimunya advised the Bank that the launch date of the new generation banknotes should be deferred until after the year 2007 General Elections and advised the Bank to:-

(i) Liaise with De La Rue International Limited for adjustment of delivery schedule for new generation banknotes to January 2008 as the new launch date should be after the general elections in 2007;

ii) Initiate necessary procurement process for supply of additional current generation currency to ensure adequate stock is available up to January 2008.

52. On 17th October, 2006, the Bank assessed its currency requirements and placed an order for 164.05 million pieces of current banknotes in 50,100 and 200 shillings denominations with De La Rue Currency and Security Print Limited to abridge another stock-out gap at a cost of ST£.4,316,655.00 after a 2% discount of 88,085.00. This was to be paid from the 50% deposit held by De La Rue International for the production of new generation banknotes. A copy of the contract document for the interim order of 164.05 million pieces of banknotes is annexed hereto as appendix 14.

53. On 16th April, 2007, the approved designs of the new generation banknotes were forwarded to De La Rue International for production. However, by a letter dated 24th

September, 2007, the Minister for Finance advised the Bank that:

a) The cabinet had approved a joint venture proposal between the Government of Kenya and De La Rue International;
b) The Bank was expected to provide technical support on the joint venture negotiations taking into account the lessons learnt from the last competitive bid undertaken by the Central Bank of Kenya including pricing.

54. On 1st November, 2007 the then Minister for Finance, Hon. Amos Kimunya notified the Bank that the 1.71 billion pieces of new generation banknotes printing contract between Central Bank of Kenya and De La Rue Company stood cancelled and advised the Bank to liaise with De La Rue International to print current generation banknotes under the terms of the previous interim orders. Arising from the Minister's directive as contained in the letters dated 24th September, 2007 and 1st November, 2007 aforesaid, the Bank had to deal with the following issues:-

(i) Inevitable gap in stock-out beginning April, 2008 to cover a period of two years in the absence of any procurement arrangements while the joint venture negotiations were proceeding.
(ii) Cancellation of the contract and consequences of doing so in both financial terms and commercial terms.

A copy of Hon. Amos Kimunya's letter Ref No. CONF 36/02 dated 1st November, 2007 directing Central Bank of Kenya to cancel the contract is annexed hereto as appendix 15.

55. To meet demand for currency, the Central Bank placed an order for 390 million pieces of banknotes to cover the currency needs for a period of two years at a cost of ST£.10,521,569.00 after a 3.5% or ST£.409,931.00 discount. From the Bank's projections, the 390 million pieces of banknotes in addition to stocks held as at September 2007 were expected to last up to 1st October, 2009. It was then hoped that the joint venture negotiations would have been finalized. A copy of the interim order agreement between Central Bank of Kenya and De La Rue for printing of the 390 million pieces of banknotes is annexed hereto as appendix 16.

56. The Bank paid De La Rue International Limited a sum of USD. 25,597,920.00 being 50% down payment for the printing and supply of 1,71 billion pieces of banknotes. This amount was paid on 18th May, 2006. As a result of deferment and eventual cancellation of the new generation contract, the Bank utilized the down payment to meet the cost of the interim orders placed with De La Rue as illustrated below:-

		ST £
1	Down payment made on 18th May, 2006 (USD. 25,597,920.00) $ equivalent	12,687,926.30

2	Payment for 164.05 milli8on pieces of banknotes less Interest Credit – 18th May, 2006 to 5th September 2006 of ST£ 124,790.10	(4,191,042.30)
3	Interest Credit accrued – 1st October, 2006 to 31st October, 2007	8,496,884.00 344,077.00
4	Total cost for the 390 million pieces of banknotes after the 2.75% discount	8,840,961.00 (10,521,569.00)
5	Total Cost	**14,712,611.30**
6	Balance financed by direct payments to De La Rue	(1,680,608.00)

57. From the analysis, the down payment was fully utilized by the two stop gap orders and also the interest on credit provided. While the joint venture negotiations were ongoing, the Bank once again placed an order for additional currency of 450 million pieces of banknotes on 17th June, 2009 at a cost of ST£.13,138,360.00 to meet the country's currency needs until September, 2010. A copy of the interim order agreement between Central Bank of Kenya (CBK) and De La Rue for printing the 450 million pieces of banknotes is annexed hereto as appendix 17.

58. In July 2010, the Bank entered into another stop gap agreement with De La Rue Currency and Security Print for 483 million pieces of banknotes at a cost of ST£.14,358,650.00. This order was meant to cushion the country's currency needs up to December, 2011, pending the completion of the joint venture agreement between the Government of Kenya and De La Rue. Since 1991 when De La Rue Currency and Security Print Ltd was contracted by the Central Bank of Kenya (CBK) for currency printing, all printed orders are subjected to audit after completion of expected deliveries. The audits are aimed at ensuring that all orders have been fully completed and reconciliation of paper stocks done.

59. While cancelling the contract for procurement of 1.71 billion pieces of banknotes from De La Rue on a directive from Hon. Amos Kimunya then Minister for Finance, he yielded to the directive since this was a policy issue and he believed the directive had come from the cabinet.

60. Section 231 (4) of the new constitution, provides that *"Notes and Coins issued by the Central Bank of Kenya may bear images that depict or symbolize Kenya or an aspect of Kenya but shall not bear the portrait of any individual."* The Bank has already taken measures to comply with this constitutional provision. An advertisement inviting the public to give proposals was published in the local dailies on 9th and 13th March, 2012. It is expected that new designs will be selected from the proposals submitted by the public and

approved for production.

61. Upon approval of the designs for the new Kenyan currency, the Central Bank of Kenya shall procure the new generation currency in accordance with the public procurement laws. In the meantime, the Bank had no choice but to continue procuring currencies on stop gap orders. The Bank's function is to regulate the country's banking industry and not to enter into economic ventures. It is Treasury through the Investment Secretary which is responsible for the joint venture deal with De La Rue Ltd.

62. Central Bank of Kenya Board members and staff are properly educated with a clear understanding of fiscal issues. The contract signed between the Bank and De La Rue International Ltd on 5th May, 2006 was therefore proper and in fact cheaper than the interim orders. He tabled before the Committee a comparative price analysis between the stop gap orders from the year 2003 to 2011 and the cancelled contract for printing 1.71 billion pieces of banknotes. The analysis document is annexed hereto as appendix 18.

63. Central Bank of Kenya was strongly opposed to Treasury and De La Rue's joint venture agreement under which the Bank would be tied by Treasury to signing a 10 year banknote printing contract with De La Rue International Ltd. This would contravene Government procurement regulations and procedures as the Bank would not be guaranteed a fair market price during the ten years. Secondly, the Bank was not part and parcel of the negotiations for the joint venture since the Central Bank of Kenya Act prohibits it from taking part in investments. In the circumstances therefore, he would not sign a contract tying the Bank to a ten year currency printing contract with De La Rue Company.

64. It was not possible to withdraw old banknotes from the market at once and immediately replace them with new generation banknotes. This would create a very serious financial crisis and it is only Zambia and South Sudan which had done it on very compelling reasons. There were no compelling reasons for Kenya to act in that manner. What would happen and what had always happened in the past was that both the two sets of banknotes would be in circulation concurrently and the old ones would be retired naturally once received by Commercial Banks. The fact that the fate of the old banknotes upon introduction of new ones had not been determined could not therefore have been a valid reason for cancellation of the contract for printing 1.71 billion pieces of banknotes between Central Bank of Kenya and De La Rue International Ltd.

65. There was no major operational issue with commercial banks regarding the introduction of new generation banknotes into the market. All they needed to do was to undertake an adaptation process mainly involving change of trays in the Automated Teller Machines (ATMs) to make them compatible with the new generation banknotes. This was a simple process with negligible financial implications and could not therefore have warranted the cancellation of the contract for printing of 1.71 billion pieces of banknotes.

66. There was however an issue regarding storage of the 1.71 billion pieces of banknotes to be printed. The banknotes were to be delivered in one consignment of containers and would occupy 5 more times the space available at the Central Bank's storage facilities at

Nairobi headquarters, Mombasa, Kisumu and Eldoret and also the Times Tower Building in Nairobi which the Bank would have leased from the Kenya Revenue Authority.

Prof. Njuguna Ndungu;s written evidence is annexed hereto as appendix 19.

3.5. EVIDENCE BY MRS. JACINTA MWATELA, FORMER DEPUTY AND ACTING GOVERNOR OF CENTRAL BANK OF KENYA

Mrs. Jacinta Mwatela, former Deputy and Acting Governor of Central Bank of Kenya and also Chair of the Bank's Tender Board appeared before the Committee on 12th April, 2012 and submitted that:-

67. She was reluctant to appear before the Committee as she had first appeared before the Departmental Committee on Finance, Planning and Trade on 27th September, 2008 alongside the then Governor of Central Bank of Kenya Dr. Andrew Mulei and gave evidence on this matter but nothing came out of the investigations.

68. In 2002, a ten year currency printing contract was entered into between the Central Bank of Kenya and De La Rue Company. The contract was signed during the Kenya African National Union (KANU) party regime. However, when the National Rainbow Coalition (NARC) came to power in 2003, Hon. David Mwiraria then Minister for Finance instructed Central Bank of Kenya to cancel it since it had been single sourced contrary to Government procurement regulations and procedures. He instructed the Bank to float an international tender for currency printing.

69. The Government of Kenya had been dealing with De La Rue Company alone since independence for its currency needs. Since it was the first time Central Bank was floating international tender for currency printing, it required a lot of due care and diligence. Towards this end, the Bank invited Central Banks of England, Uganda, Tanzania, Zambia among others to provide professional advice in developing the tender document. The Bank developed a tender document which was first floated in the year 2004 but the process was nullified owing to technical issues. De La Rue which had participated in the process had been the Government's printer since time immemorial and had an undue advantage over other bidders. It was therefore important that a level playing field be created for all participants.

70. In the year 2005, a new tender was floated and Giesecke & Devrient Company of Germany, De La Rue International Ltd of the United Kingdom (UK), Orell Fussli Company of Switzerland, Francois Charles Oberthur Fiduciaire Company of France, Job Enschede Banknotes Company of Holland and Canadian Bank Notes Company of Canada tendered. De La Rue International Ltd won the tender. Francois Charles Oberthur Fiduciaire Company of France failed to meet eight mandatory conditions of the tender and the Tender Board did not proceed to open the company's tender documents. Apparently she was pressurized by the Central Bank of Kenya Governor then Dr. Andrew Mulei and Finance Minister then Hon. David Mwiraria to readmit the French Company but declined.

71. Following the successful tender and award of currency printing contract to De La Rue Company, Central Bank's Advocates jointly with their De La Rue counterparts worked closely and finalized the contract document which was acceptable to both parties. To get through this stage, herself, Dr. Andrew Mulei then Governor of Central Bank, the Minister for Finance, Hon. David Mwiraria and his Permanent Secretary, Mr. Joseph Kinyua visited State House and briefed the Head of State who gave the green light for the award of the tender to the winning company that is De La Rue Company. The Head of Public Service and Secretary to the Cabinet, Ambassador Francis Muthaura and Stanley Mirage, Advisor to the President also attended the meeting. During the meeting, Mr. Murage tried to exert pressure on Central Bank to readmit the French Company but he was overruled by the President.

72. A contract for printing, 1.71 billion pieces of banknotes was subsequently signed between De La Rue International Ltd and Central Bank of Kenya on 4th May, 2006 with its effective date being 22nd May, 2006. Each party had obligations to meet to ensure effective implementation of the contract. Central Bank of Kenya made a 50% deposit payment of USD.25,597,920 on 18th May, 2006 in compliance with the terms of the contract. The Bank was also to forward to De La Rue the banknotes' designs duly signed and dated. She signed the designs in her capacity as the Acting Governor of Central Bank of Kenya. The Permanent Secretary, Ministry of Finance who was another signatory to the currency had his signature already with De La Rue Company.

73. De La Rue Currency and Security Print Ltd situated at Ruaraka, Nairobi, Kenya did not bid for the tender for printing 1.71 billion pieces of new generation banknotes for Central Bank of Kenya since it did not have the requisite capacity. It was the mother company, De La Rue International Ltd in the United Kingdom which bid and won the tender with a view to printing the banknotes at its Malta plant.

74. Upon receipt of the designs, De La Rue declined to proceed with the process on account of signatures unless supported by a confirmation from the Minister for Finance. She sought clarification from the Minister, then Hon. Amos Kimunya who verbally advised that the Acting Governor could not sign the currency designs since it did not_look good. By her letter dated 17th May, 2006 she sought the minister's guidance on the Bank's importance of fulfilling its obligations to allow other partiers to the contract also meet theirs as required by the contract agreement. The minister never replied to her letter.

75. On 19th May, 2006, she met the Minister for Finance, then Hon. Amos Kimunya in his office and he promised to reply to her letter dated 17th May, 2006 through the Ministry's Permanent Secretary. At the meeting, the minister indicated orally that he had no issue with her signature and that of Treasury, Permanent Secretary appearing on the currency designs. However, the minister never formally communicated to the Bank by 22nd May, 2006 which was the deadline for the beginning of the currency printing process and she proceeded to confirm her signature and that of Treasury Permanent Secretary to De La Rue for the currency printing. She at the same time called the Treasury Permanent Secretary requesting for a formal confirmation.

76. The Permanent Secretary, Treasury in his letter ref Conf.36/02 dated 22nd May, 2006 confirmed the go ahead for the signatures but with a condition that actual production would have to await the confirmation of signatures. This effectively stagnated the process as De La Rue could not work with designs with unconfirmed signatures. In her letter dated 24th May, 2006, she wrote to the minister advising on the implications of the consequences of this condition. The minister never responded.

77. Following a discussion with Hon. Amos Kimunya, then Minister for Finance in his office, she in a letter dated 14th June, 2006 forwarded to the minister a legal opinion from the Central Bank of Kenya's Legal Department making a case for the Bank's Acting Governor in the absence of the substantive Governor and a member of the CBK board to sign the currency designs. The minister never responded to the letter. She wrote another letter to the minister dated 20th June, 2006 drawing his attention to concerns expressed by De La Rue over the 3 weeks' delay in the currency printing process and its implications. The minister never responded.

78. By her letter dated 19th July, 2012 to the Minister for Finance, Hon Amos Kimunya, she explained in detail the consequences of the delay in the commencement of the currency printing process. She pointed out in the letter that as a result of the delay:-

(i) The Bank risked termination of the contract and also faced reputational risks in terms of public interest and governance issues;
(ii) Guarantees by De La Rue Company could expire before full deliveries and this would expose the Bank to risk; especially considering that the Bank had already made a USD.25,597,920.00 down payment to De La Rue;
(iii) The risk to supply gaps arising from currency shortages was real as the earlier supply gaps had already expired in June, 2006;

79. The gist of the letter was that it was prudent to implement the contract late rather than allowing it to fail. The minister did not respond to the letter. By another letter dated 21st September, 2006, to the minister, she raised concern over potential and exposure risks of currency stock fall out in the second half of the year 2007. On 22nd August, 2006, the minister (Hon Kimunya) called for a meeting where he informed her that the President had rejected the launch of new currency in an election year and also for the fact that the issue of signatures was still pending. By his letter dated 25th August, 2006, the minister wrote to the Bank advising it to proceed as follows:-

(i) Liaise with De La Rue on adjustment of the delivery schedule so that the new generation currency launch should be planned for the year 2008;
(ii) Commencement dates of the currency printing as per contract be changed without any cost implication to the Bank. This came out of the minister's visit to De La Rue Company, Ruaraka, Nairobi plant where he had held a discussion with Mr. James Hussey of De La Rue;

80. Central Bank of Kenya obliged to the minister's advice. She was however of the view that the Bank needed more time to stock pile the new currencies in various places. Since

delivery could only start in December, 2007, she proposed to the minister April, 2008 as the best launch time of the new currency. She further told the minister that whatever was being agreed on was subject to the implementation of the contract by the Bank supplying the signatures on the designs by 28th February, 2007. Failure to do so would still adversely impact on the delivery programme. At that time, the Tender Committee was a Board Committee and some Board members had since August, 2006 retired and had not been replaced. This impacted negatively on the Committee's performance because of lack of quorum. The replacement of the retired board members by the minister was not forthcoming.

81. On 11th January, 2007, she had the opportunity of meeting the President of the Republic in her capacity as the Acting Governor of Central Bank and raised three issues with him involving the Bank amongst them that of De La Rue. The President however denied having ever told Hon. Kimunya to tell the Bank not to launch new generation banknotes in an election year. In his wording, the President said *"hapana sikusema"*

82. By his letter dated 11th September, 2006 to the Bank, the Minister for Finance, Hon. Amos Kimunya indicated that he had visited De La Rue, Ruaraka, Nairobi plant in July of the same year and noted that there was a threat of divesture by De La Rue Company and that the Company and the Government were hatching a joint venture strategy. He requested Central Bank of Kenya to appoint an officer to work with Treasury's Financial Investment Secretary, Mrs. Esther Koimet but after careful consideration the Bank declined being a party to the Joint Venture as the Central Bank of Kenya Act prohibits the Bank from engaging in investment ventures.

83. Arising from the deferment of the contract on new generation currency, the Currency Department identified a supply gap of 164.05 million pieces in 50, 100 and 200 notes to cover the gap up to April, 2008. This was going at a cost higher than what was provided in the new contract. It exceeded the cost by over Kshs.218 million and was paid from the deposit of USD.25,597,920.00 held by De La Rue reducing it to about USD.17 million. The Bank's Board met and endorsed the need to cover the gap and the Tender Committee approved the procurement after the Bank sought and received clearance from Treasury to proceed in that manner.

84. In March, 2007, Prof Njuguna Ndung'u was appointed Governor of Central Bank of Kenya and was required to activate the contract which had been deferred so that the process of implementation of the contract could start. However, Prof Ndung'u was unwilling to sign the currency designs and it took a lot of convincing from her to sign while pointing an accusing finger at her and other Bank staff over the publicity the procurement had attracted in the media. He particularly stated that the figures quoted in the media were similar to the ones she had quoted in her memo to him. In the Governor's view therefore, the Bank's staff needed to look at issues more objectively and work as a team even when things were wrong.

85. After the Governor had signed the designs, they were forwarded to De La Rue effectively reactivating the contract. There was a 33 days delay which could impact on deliveries.

De La Rue however accommodated the delay without any consequences. In April, 2007, the currency printing by De La Rue Company was put on hold at the behest of the Governor to give way for Joint Venture negotiations between the Company and the Government of Kenya. The Governor's actions raised concern as to how De La Rue would meet delivery deadlines in the face of this delay and the creation of another supply gap.

86. On 2nd May, 2007, the Governor convened a meeting attended by herself, the Bank Secretary and Director of Currency, among others. The meeting discussed the joint venture. At the meeting she raised issues to do with the signed contract of 1.71 billion pieces of banknotes and the joint venture and was vilified. She was not invited for meetings on the subject until November, 2007 when she was asked to chair a special Tender Committee to procure services for printing of 390 million pieces of banknotes as a stop gap order to cover for two years. A Committee meeting scheduled for 12th November, 2007 aborted after it became apparent that the Minister for Finance (Hon. Amos Kimunya) had cancelled the contract for procuring 1.71 billion pieces of banknotes through a letter to the Governor dated 1st November, 2007. A Board meeting was held to discuss the situation where she was first accused by the Governor of discussing the issue at hand with the press. She however raised the following matters of concern regarding the situation:-

(i) Cancellation of the contract by the minister when he was not party to the contract was illegal. Only the tender Committee had such powers as provided for by Section 32 (2) of the Public Procurement and Disposal Regulations;
(ii) The 390 million pieces of banknotes did not qualify as an interim order which under the Procurement Act was defined as 10% or less of the initial order. The 390 million contract was being treated the same as the interim order of 164.05 million which was not right;
(iii) Section 74(2) and (3) of the Public Procurement and Disposal Act allows for direct procurement where:-

   (a) There is only one person who can supply the goods and services;
   (b) There is no reasonable or substitute for the goods;
   (c) There is urgent need of the goods and services;
   (d) Because of the urgency, other available procurement methods are impracticable;
   (e) Circumstances giving rise to the urgency were not foreseeable and were not as a result of dilatory conduct on the part of the procuring entity.

87. It was the view of the Tender Committee that the Bank deliberately failed to implement the contract, there was no emergency as the supply gap was foreseen, other suppliers could also supply the currency, there was dilatory conduct by the Governor when he delayed the implementation of the contract and to cap it all, the contract was frustrated by the Governor and Treasury.

88. In another Board meeting held on 30th July, 2008, the Board was advised of another stop gap order of 450 million pieces of banknotes. There was an attempt to convince the Board that De La Rue Company came to Kenya to specifically meet the needs of Central Bank of Kenya and that the Bank allocated land to the Company to ensure it functioned well. This was false as De La Rue was set up in Kenya as an Export Processing Zone (EPZ) and the land upon which the factory stands is leased from Central Bank of Kenya.

89. The Department of Currency attempted to give a firm proposal on long term procurement policy that complies with the law by proposing the need for the Bank to request for fresh currency designs and later to tender for manufacture and printing of currency. This was deferred to allow for the Department to come up with a clear position on its stock levels for future requirement. On 15th August, 2008, another Special Board meeting was convened to follow up on this issue of currency. The interim stop gap order of 450 million pieces of banknotes took centre stage at the meeting. She was strongly opposed to the procurement which was in breach of the law. The meeting resolved that the Bank seeks the Minister's direction over the procurement and also the Oversight Board overseeing procurement. She did not know the minister and the Oversight Board's response on the matter.

90. She was employed by Central Bank of Kenya on 1st December, 1977. Her appointment as Deputy and Acting Governor of Central Bank of Kenya was in accordance with the Central Bank of Kenya Act. It was on contractual basis for a term of 4 years and there was no provision for transfer to another institution as long as one's contract was still running. Her transfer therefore from the Bank to a Permanent Secretary in a ministry while her contract term had not expired was intended to get rid of her owing to divergent positions she had taken on issues she felt were not right at the Bank and was not therefore justified. She declined to take up the transfer.

Mrs. Jacinta Mwatela's written evidence is annexed hereto as appendix 20.

3.6. EVIDENCE BY MR. JOHN MACHARIA GIKONYO, FORMER SECRETARY, CENTRAL BANK OF KENYA BOARD OF DIRECTORS

Mr. John Macharia Gikonyo a former Chief Legal Officer and Secretary to the Board of Directors, Central Bank of Kenya appeared before the Committee on 22nd May, 2012 and submitted that:-

91. He joined Central Bank of Kenya on 1st November, 1993 as a Chief Legal Officer and retired from the service of the Bank on 1st April, 2008. At the time of retirement, he was the Director, Governors' Office and his duties inter alia included heading the Legal Division of the Bank.

92. Following the conclusion of a successful international tendering process in the year 2006, the Bank awarded the Tender for the design, manufacture and supply of 1.71 billion new generation banknotes for three (3) years to De La Rue International at a cost

of USD.51,195,840.00. The Legal Division of the Bank together with the Currency and Branch Administration Department in conjunction with De La Rue lawyers embarked on preparation of the contract documents. The final contract document acceptable to both the Bank and De La Rue International Ltd was signed on 4th May, 2006.

The contract had several schedules annexed relating to:-

i. The banknote technical specifications which were prepared by the Bank with the assistance of an expert from Canada and representatives from Central Banks of Uganda and Tanzania.
ii. Delivery schedule specifying how deliveries of banknotes would be made by De La Rue International. The delivery schedule was mutually agreed upon by the Bank and De La Rue International and was conditional on the strict understanding that the Bank would approve the designs, signatures and dates for the banknotes by 22nd May, 2006.
iii. Breakdown of volumes of banknotes per contract year.
iv. The format of the Performance Bond representing 10% of the total contract sum.
v. The format of the Bankers' Guarantee from a bank acceptable to the Central Bank of Kenya in respect of the down payment to De La Rue International amounting to 50% of the total contract amount.

93. Under the contract, the Bank was required to pay De La Rue International Ltd 50% of the total value of the contract upon execution of the contract. Payment of the balance would be pegged against deliveries and made within thirty (30) days from the date of receipt of the respective invoices by the Bank, which invoices were to be submitted to the Bank at the time of delivery of each consignment of the banknotes.

94. The Bank after receipt of the Performance Bond and the Bank Guarantee from De la Rue International made the 50% deposit payment of USD.25,597,920 on the 18th May, 2006 in compliance with the terms of the contract. The Bank was also required to forward to De La Rue International the approved designs as well as confirm the signatures that would appear on the banknotes. Whereas the Bank was able to forward to De La Rue International the approved designs of the banknotes within the stipulated deadline of 22nd May, 2006 in the contract, the issue of confirmation of the signatures remained outstanding which meant that the Bank was in breach of one of the key milestones in the contract. According to discussions with the then Acting Governor Mrs. Jacinta Mwatela, approval of the signatures was awaited from the Treasury.

95. As time continued to run against the Bank, sometime in June 2006 the Legal Department was requested by the Acting Governor to advise on whether legally the Acting Governor could sign banknotes in the absence of the substantive Governor. A legal opinion was duly prepared confirming that the Acting Governor having been appointed by His Excellency, the President of the Republic of Kenya in accordance with the provisions of the Central Bank of Kenya Act, to act as the Governor of the Central bank of Kenya could legally sign the banknotes. Sections 11(6) and 13(3) of the Central Bank of Kenya Act are pertinent in this regard.

Section 11(6) of the Central Bank of Kenya (Act provides that:-

> ***"Where the Governor, the Deputy Governor or a Director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that member of the Board to act with the full powers of the member until such time as the president determines that his incapacity has ceased"***

Section 13(3) of the Act provides that:-

> ***"The Deputy Governors shall act for the Governor and shall exercise all the powers and shall perform all of the functions conferred on the Governor under this Act whenever the Governor is temporarily absent, and shall perform such other functions as the Governor may from time to time assign to him"***

96. The issue of confirmation of signatures remained outstanding and from discussions in the Bank's management meetings, it was reported that De La Rue was awaiting for signature confirmation from the Minister for Finance which confirmation was not forthcoming. The Currency and Branch Administration Department also continued to impress upon the Bank that a currency shortage would arise as De La Rue International would no longer be able to supply the new generation banknotes within the stipulated time in the contract.

97. Sometimes in August 2006, the then Minister for Finance Hon. Amos Kimunya wrote to the then Acting Governor of Central Bank of Kenya Mrs. Jacinta Mwatela raising concern on a critical issue on the launch and delivery time of the new generation banknotes. According to Hon. Kimunya, this was not to have been before the 2007 General Elections. Consequently, he instructed the Bank to ensure that the delivery schedule was adjusted from March, 2007 to a later date which would also allow time to sort out the issue of signatures. The letter further instructed the Bank to initiate the necessary procurement process for extra currency required to ensure adequacy of stocks up to January 2008.

98. In view of the rescheduled launch date of the new generation banknotes as advised by the Minister for Finance and having regard to the currency consumption requirements as advised by the Currency and Branch Administration Department, it became necessary to place an interim order for the existing Kenya currency banknotes so as to avoid a currency shortage. Consequently, the Bank with the approval of the Tender Committee and subsequently by the Treasury vide a letter dated 9th November, 2006 entered into a Variation Agreement with De La Rue International Limited in January, 2007 whereby a sum of £4,191,042.30 was utilized out of the down payment of USD.25, 597, 920.00 made to De La Rue International Limited towards the payment of an interim order for the supply of 164.05 million pieces of the existing generation banknotes.

99. A new Governor Prof. Njuguna Ndung'u was appointed in early March, 2007 and following the appointment he, on 19th April, 2007 approved all designs and signatures for the new generation banknotes and forwarded the same to De La Rue for further action. However, during the same month, Prof. Njuguna Ndung'u advised De La Rue Company to slow down on the implementation of the contract for a period of two (2) months to allow for negotiations between the Government of Kenya and De La Rue International Limited on a proposed joint venture relating to De La Rue's Ruaraka, Nairobi plant.

100. On 03/10/2007, the Bank received a letter dated 28th September, 2007 from Mrs. Esther, Koimet, the Investment Secretary which was marked to him by the Governor to advise on a draft currency printing joint venture agreement between Treasury and De La Rue Currency and Security Print Ltd together with a draft currency production agreement between De La Rue and Central Bank of Kenya. He advised the Bank against the proposed joint venture and the draft currency production agreement on the following grounds:-

i. The joint venture agreement was between the Government of Kenya and De La Rue International Limited. The Bank was not going to be a party to the joint venture agreement once concluded. As a third party, the Bank could not be legally bound by a contract it was not a party to. Moreover, it was not prudent for the Bank as a purchaser of goods and services from De La Rue to be directly involved in the joint venture;

ii. The Bank was prohibited by Section 52 of the Central Bank of Kenya Act from engaging in any commercial undertakings. The proposed joint venture between the Government and De La Rue International Limited was clearly a commercial undertaking and by the force of law, the Bank was barred from engaging in any such undertakings;

iii. The proposed integration of a long term Currency Production Agreement in the joint venture negotiations was blatant breach of the requirements of the Public Procurement and Disposal Act, 2005. The Bank, being a public entity would be procuring goods in contravention of the law because it could not be guaranteed of best pricing;

iv. By binding itself to a long term currency supply contract with one supplier, the Bank would be captive of De La Rue in the production and supply of banknotes and would therefore be deprived off the advantages of international competitive pricing;

v. In the absence of agreed technical banknote specifications and prices, it was not possible for the Bank to review the draft Currency Production Agreement forwarded to Treasury by De La Rue International Limited;

vi. The Agreement for the design, manufacture and supply of new generation currency banknotes between De La Rue International Limited and the Bank dated 4th May, 2006 was still in full force and binding on all parties. Rescission of the agreement by the Bank would render the Bank liable to be sued for damages by De La Rue International Limited since the said company had not failed to meet its obligations under the agreement ; and

vii. There was a price difference of USD.25 million between De La Rue International Limited and the next tender during the international tendering process concluded in December 2005. Accordingly, whereas rescission of the agreement would be in the interest of De La Rue International Limited as that would present an opportunity for them to bid higher in any fresh tenders, the rescission of the agreement would be detrimental to the Bank as it would not have taken full advantage of the low prices offered by De La Rue International Limited as a result of competitive tendering process.

101. The Governor however dismissed his advice citing lack of positive thinking in it. He maintained that Treasury and Central Bank of Kenya should discuss the long term currency contract with De La Rue to see if it is too restrictive and to agree on the way forward. Central Bank of Kenya should not argue against its existence at all. Attached to the effect is a print copy of e-mail correspondence exchanged between Mr. John Macharia Gikonyo and the Governor, Central Bank of Kenya, Prof Njuguna Ndung'u marked as appendix 21. Also attached is a copy of a legal opinion from the Bank's Legal Department to the Governor marked as appendix 22.

102. In late October, 2007, Hon Amos Kimunya wrote to the Bank advising *interalia* that:-

a. The Cabinet had by a decision made on 29th May, 2007 approved a joint venture in the De La Rue Currency and Security Print (K) Limited between De La Rue International UK and the Government of Kenya.
b. One of the critical issues to be considered in consummating the transaction was a long term supply contract between the Bank and De La Rue Currency and Security Print (K) Limited.
c. The Bank should initiate work on the nature of the said contract taking into account some of the ideas, including pricing and lessons learnt from the last competitive bid undertaken by the Bank.

103. By a further letter dated 1st November, 2007 from the Minister for Finance, Hon. Amos Kimunya, he advised the Bank that the contract for 1.71 billion pieces of new generation currency banknotes stood cancelled and the Bank was required to liaise with De La Rue Currency and Security Print Limited to print current generation banknotes to cater for the stock-out and also allow time for negotiations on the proposed joint venture.

104. As issues relating to award, variation and cancellation of contracts fell within the scope of the Tender Committee of the Bank, the Committee under the chairperson of Mrs. Jacinta Mwatela also the Deputy Governor held three (3) meetings in November, 2007 to address the effects of the aforesaid letter and chat the way forward. The Committee having regard to the legal implications arising from the cancellation of the contract for the new generation banknotes and imminent currency supply gap that would arise, resolved that in view of the magnitude of the issues at hand, a Board Meeting be convened to urgently address the following critical issues:

i. The inevitable gap in stock-out beginning April, 2008 which was identified as 390 million pieces of banknotes to cover a period of two years;

ii. The cancellation of the Agreement for the design, manufacture and supply of new generation Kenyan currency; and
iii. The policy guidance to address the issue of currency procurement in the future.

105. In view of the gravity of the issues at hand, the entire Tender Committee participated in preparation of a Board Paper so as to ensure that all the pertinent information was captured in the Paper. The Board meeting was held on 23rd November, 2007 and noted that the Bank urgently required to procure 390 million pieces of banknotes in order to avoid a national crisis when the stocks held ran out in April 2008 as forecasted. The Board authorized the Management to procure 390 million pieces of the current generation banknotes from De La Rue Currency and Security Print Limited. The Board also authorized the Management to terminate the contract entered into on 4th May, 2006 between the Bank and De La Rue International Limited.

106. Upon forwarding the draft minutes of the Board meeting to Prof. Njuguna Ndung'u, the Governor for approval, he made several amendments and remarked that he (Mr. Gikonyo) was putting his own personal biases in the minutes. After effecting the amendments made by the Governor, the Governor again made further amendments before finally approving them. Thereafter, he received a letter from the Governor (Prof. Njuguna Ndung'u) demoting him from the position of Secretary to the Board albeit the fact that he had only three (3) months left to retire.

107. The copyrights of the banknote designs of the 1.71 billion pieces of banknotes that were to be printed for Central Bank of Kenya by De La Rue International Ltd belonged to Central Bank. According to clause 4 of the contract document annexed hereto as appendix 8, the art works designs, films and engraved dies, plates and other origination materials namely the working tools would be the property of Central Bank of Kenya though they would be in the safe custody of the company and used only by the company under the Bank's express authority. All such designs, artworks, films engraved dies, plates and other origination materials shall either:-

(i) Be returned to the Bank within 14 days if so required by the Bank;
(ii) Shall be destroyed by the company if so requested in writing by the Bank after completion of this agreement.

108. According to the same clause, the company also undertook to ensure the banknotes supplied to the Bank would not infringe on any patent, trademark, registered design copyright or any other right in the nature of intellectual property right or of any third party.

Mr. John Macharia Gikonyo's written evidence is annexed hereto as appendix 23.

3.7. <u>EVIDENCE BY DE LA RUE COMPANY MANAGEMENT</u>

The Committee toured De La Rue, Ruaraka, Nairobi plant on 28th April, 2012 and took evidence from a team led by David Hepple, Director and Financial Controller. Another team led by Robert Hutchison, Group Director of Communications based in the United Kingdom appeared before the Committee on 3rd May, 2012 and gave evidence. The Committee heard from De La Rue that:-

109. De La Rue International Ltd is located in the United Kingdom and became a public company in 1921 and got listed on the London Stock Exchange in 1947. Members of the London Stock Exchange are regulated by the UK Listing Authority which requires them to follow strict disclosure requirements and maintain the highest standards of corporate governance.

110. The company is the world's largest banknote security printer and has several subsidiaries worldwide some which include:-

    (i) De La Rue BV located in Holland;
    (ii) Thomas De La Rue AG located in Switzerland;
    (iii) De La Rue Currency and Security Print Ltd located in Nairobi, Kenya.

111. De La Rue Currency and Security Print's 99% shareholding is owned by De La Rue International Ltd located in the United Kingdom. The remaining 1% shareholding is held for the company in trust by a Kenyan Advocate acting for the Company as required by the Companies Act of the Laws of Kenya. The company had enjoyed a very successful time being an investor in Kenya and wished to remain in Kenya and develop its business further in partnership with the Government of Kenya.

112. The Company is involved in the design and production of 150 national currencies and a wide range of other security documents including passports, driving licences, authentication labels and cash stamps. The Company also manufactures sophisticated high speed and cash sorting equipment and offers a range of specialist services and software solutions including government identity schemes, product authentication systems and cash management processing solutions.

113. De La Rue's decision to invest in Kenya was as a result of an invitation and an undertaking from the Central Bank of Kenya in 1991 to print all its banknotes with the company. Initial investment in Kenya was a factory located at Ruaraka, Nairobi, built and commissioned in February, 1994. The land on which the factory currently stands is owned by the Central Bank of Kenya (CBK) on a thirty (30) year lease from the Bank expiring in the year 2023;

114. The first banknote printing contract between the company and Central Bank was signed on 18th October, 1991. Under the contract, the banknotes were to be printed in any other De La Rue plant until the Kenyan plant was operational. The agreement was for a term of 10 years which lapsed in January, 2003. On 5th December, 2002, a new 10 year currency printing contract was signed between Central Bank and De La Rue but cancelled in March, 2003 and replaced with a two year contract. In November, 2004, an international tender was floated and De La Rue submitted the lowest bid based on Kenya production. The tender was subsequently cancelled on 15th May, 2005.

115. A new tender for production of 1.71 billion pieces of new generation banknotes was advertised in June, 2005 and subsequently awarded to De La Rue in late 2005 at a cost

of USD.51,195,840.00 based on printing the banknotes in Malta. A contract to the effect was signed on 4th May, 2006. The tender did not take into account security, strategic and cost advantages to Kenya of the local production of banknotes. This put the local production at a disadvantage against companies which based their bids on printing overseas and thus did not have to include local storage and logistics costs currently covered in De La Rue's banknote price. Consequently, the winning tender submitted by De La Rue was based on production at its larger factory in Malta to put the Company's bid price on equal basis with others. Under the contract, all the banknotes would be printed in Malta and delivered at different times in bits. Shipment of the banknotes from Malta to Mombasa and transport to Nairobi were not of significant costs. The key aspect of cost was where the banknotes would be stored once they arrived Kenya. 1.71 billion pieces of banknotes would occupy close to 85, 40 feet containers. The contract price quoted in the tender document included delivery of the banknotes at the Nairobi Container Terminal by the Supplier. Storage once delivery was made in Nairobi lay squarely on the Central Bank of Kenya (CBK). De La Rue did not however believe that the Bank had adequate storage facilities for the 1.71 billion pieces of banknotes since the Bank had for the last 18 year relied on the company's space for storage of lesser deliveries. The company did not have adequate space locally to store for the Bank its banknotes printed in Malta.

116. Central Bank of Kenya subsequently cancelled the contract on 14th December, 2007 and engaged De La Rue to print for it old generation banknotes on interim orders since they were still required for use. The down payment already made to De La Rue was utilized on the printing of interim orders. De La Rue was not happy with the cancellation of the contract but had to yield to it on condition that the Government of Kenya guarantees it future currency supply business.

117. The cost of printing banknotes is based on factors like specifications, security features and the length of production run. The new generation banknotes' printing contract was based on different specifications from the existing ones. It was of smaller sized banknotes compared to the existing ones and was based on a larger volume i.e. 1.71 billion pieces of banknotes which was five times the average size of the interim orders issued between 2001-2010. These two factors were therefore going to have a major impact on the cost of production of the 1.71 billion pieces of banknotes.

118. The price of printing the current Kenyan banknotes averages approximately two thirds of the average prices paid by other central banks in the region. The current average price for printing Kenyan banknotes is around Kshs.3,721.00 per one thousand banknotes while in the United States of America, it was an equivalent of Kshs.7,837.00 per one thousand notes and Switzerland, Kshs.27,000.00 per one thousand notes. They could not disclose clear benchmarks of actual prices for other Central Banks due to client/customer confidentiality.

119. De La Rue operations in Kenya contributed to around Kshs.1 billion per year to the economy and for a period of five years from the year 2007 when the contract for production of the new generation banknotes was cancelled to the year 2011, the

company would have pumped back Kshs.5 billion into the Kenyan economy.

120. Upon cancellation of the contract in 2007, the Ministry of Finance approached De La Rue Company for acquisition of a stake and award of a long term contract in terms of a joint venture. A joint venture agreement was subsequently negotiated, approved by the Attorney General and cabinet and was awaiting execution by parties. One of the main reasons why the Government of Kenya thought it prudent to enter into a joint venture with the Company was to ensure that its banknotes are printed locally so as to save loss of jobs on account of shrinking business and also attract more international business.

121. When the Committee toured the De La Rue plant at Ruaraka, Nairobi, the company told the Committee that even if the Government had not shown interest to enter into a joint venture with De La Rue, the Company would not have exited the country and would have instead continued supplying the country currencies on tenders awarded cheaply from its subsidiaries worldwide, particularly Malta and Sri Lanka where production costs were low compared to Kenya. However when De La Rue Officials appeared before the Committee on 3rd May, 2012 they said they would have exited the country if the Government was unwilling to enter into a joint venture with them and guaranteeing them long term business as the plant's financial viability would have been seriously compromised. That is why they demanded for a ten year currency supply contract with Central Bank of Kenya as one of the major conditions for the joint venture.

122. At inception, the De La Rue, Ruaraka, Nairobi plant produced Central Bank of Kenya banknotes only and had 95 employees with a production capacity of 200,000.00 banknotes per annum. The current workforce is 265 employees out of which 260 are Kenyans and 5 expatriates. The current production volume is 720,000,000.00 per annum with a single banknote line and a packing capacity of 16,000,000.00 notes a week. The Bank also produces cheques, visa and master cards for 42 local banks and vouchers for the local and Republic of Korea markets. The Malta plant had a capacity of 3 billion banknotes per year with three production lines operating 24 hours while the Ruaraka, Nairobi, Kenya plant had a capacity of 600 million banknotes per year operating 12 hours a day with one production line . The Malta plant was De La Rue's largest printing facility and was the best suited to print the 1.71 billion pieces of banknotes for the Government of Kenya. The banknotes were superior in terms of security features and did not require same technology to print as the existing ones.

123. The banknote printing machines at Ruaraka, Nairobi plant were newly installed directly from manufacturers. Printing machines don't have a lifespan provided they are regularly maintained and refurbished. Other than routine maintenance, the machines were refurbished and upgraded in the year, 2009. Apart from one machine with chip and pin ability newly acquired and installed the previous year, the company could not confirm the age of the remaining machines. Materials used in production are imported duty free as the company has an Export Processing Zones Authority (EPZA) license.

124. The company's total investment in Kenya is 18,200,000.00 Sterling Pounds and its contribution to the Kenyan economy is 10,000,000.00 Sterling Pounds. From the onset, it

was envisaged that the Company would at one time enter into a Joint Venture arrangement with the Government of Kenya over currency printing services. In 2011, the Kenyan plant printed currencies for 30 countries which was beneficial to the Government of Kenya even before the joint venture deal was finalized. Apart from Kenya Government business, the rest of the business the factory carried out was internationally procured by the Company through its marketing arm of the mother plant in the United Kingdom, which then allocates work procured to its subsidiaries worldwide.

125. Since then 2003 Central Bank of Kenya had been contracting the company to print for it currencies on short term contracts pending the advertisement and award of a long term contract. The price difference between the short term contracts and the envisaged long term contract was nil. De La Rue's written evidence is annexed hereto as appendix 24.

3.8. EVIDENCE BY DR ANDREW MULEI, FORMER GOVERNOR OF CENTRAL BANK OF KENYA

Owing to unavoidable circumstances, Dr. Andrew Mulei, former Governor, Central Bank of Kenya was unable to appear before the Committee but sent his written evidence through the Office of the Clerk of National Assembly. After careful consideration, the Committee admitted his written submissions as part of evidence received. In his evidence, he stated that:-

126. He was appointed the Governor of Central Bank of Kenya on 4th March, 2003. The appointment saw him back to the Bank which he had earlier served for 8 years from 1980 to 1987, holding successive positions of Counselor to Governor, Secretary to the Bank's Board and Director of Research. This was during the tenure of Governor Philip Ndegwa.

127. As Secretary to the Board, he was aware that Bradbury and Wikinson of the United Kingdom had been printing currencies for the Bank for 20 years from 1966 – 1986. Prior to that, the East African Currency Board was the printer for the common currency for inter-alia Kenya, Uganda and Tanzania. In 1986, Thomas De La Rue acquired Bradbury and Wilkinson and took over the printing of Kenya Government banknotes through an exclusive contract with the Central Bank of Kenya which expired in 1992.

128. In 1993, Central Bank of Kenya signed a contract with De La Rue, which gave the company exclusive rights to manufacture and supply Kenya's banknotes for 10 years that was up to December, 2002. On expiry of this term, the Bank renewed the contract with the company for a further 10 years, which was to run up to 2012. This extension of the contract was signed on 5th December 2002.

129. In 2003, the National Rainbow Coalition (NARC) party assumed power. Hon David Mwiraria became the new Minister for Finance and by his letter dated 14th March, 2003, he directed cancellation of the contract signed on 5th December, 2002, citing the following reasons:-

(i) The contract came into force on 1st January, 2003 when the NARC Government had just assumed power, and should therefore have been consulted;
(ii) The contract was single sourced instead of being subjected to competitive bidding as transparency would require;
(iii) The contract period was for 10 years instead of the normal 5 years for no apparent reason.

130. The letter further directed the Bank to initiate an international open tender for printing of Kenya Government banknotes. The directive was implemented strictly in accordance with the provisions of the Public Procurement Law then in force. In order to ensure that there was adequate supply of banknotes between the cancellation of the contract dated 15th December, 2002 and the supply of the new banknotes, the Government authorized Central Bank to enter into an interim arrangement with De La Rue to secure enough banknotes for a period of 21 months. Within that period, the International competitive tendering process was expected to be completed, and the new banknotes ready for supply. While procuring this interim order, the minister instructed the Bank to negotiate a reduction of the terms and conditions of the cancelled contract especially on pricing. As a result, De La Rue agreed to offer the Bank a discount of 2% off the contract price dated 5th December, 2002. This interim contract with De La Rue was necessitated by the fact that the plates and designs used for printing existing banknotes belonged to them.

131. The directive to initiate an international competitive tendering process gave Central Bank of Kenya a unique opportunity to review with a view to upgrading the quality of the existing banknotes as it had been decades since the banknotes were revised. It also became necessary to gather up to date information on what exactly was involved with respect to banknote printing. In this regard, the Bank invited leading experts and international players to provide information and best practices in tandem with international standards and also make presentations to the Board of Directors and senior managers of Central Bank on all aspects of banknote printing including design, origination, manufacture and supply.

132. Central Bank learnt from the experts that there were six key factors apart from cost, which inform decisions about printing of banknotes. These were:-

(i) Importance of reviewing currency every 8-10 years in order to take advantage of technological advancement in currency printing;
(ii) The choice of material on which banknotes are printed;
(iii) The choice of banknotes denomination mix, and the banknote sizes;
(iv) Ownership of copyright or security features which are necessary for safeguarding against counterfeiters;
(v) Banknote themes;
(vi) Inscriptions;
(vii) Portraits; and
(viii) Ownership of copyrights of engraved dies;

(ix) Plates and other origination materials which should be the sole property of the Bank and not the supplier.

133. On 18th March, 2004, he wrote to the Minister for Finance, providing a detailed brief on procedures that the Bank planned to put in place in drawing up specifications for Kenya's new generation banknotes and floatation of an international competitive tender. On 23rd March, 2004, the Minister replied confirming his agreement with the proposed procedures. On 20th July, 2004, he wrote to the Minister again recommending specifications which the Bank was proposing for inclusion in the new generation banknotes. The specifications recommended comprised: -

(i) Denomination mix of five banknotes, (50, 100, 200, 500 and 1000);
(ii) Reduced size of banknotes to facilitate easy handling;
(iii) Change of banknote colours to make them more distinctive;
(iv) New advanced security features to protect banknotes against counterfeighting;
(v) Improved identification of the banknotes to facilitate easy recognition by both users and modern sorting machines.

134. The Minister communicated approval by the Government of the above recommendations through a letter to him dated 6th January, 2005. Following the approval of the tender document by the Directorate of Procurement at Treasury, the Board of Central Bank of Kenya, the Bank's Tender Committee floated a tender availing equal opportunities to all invited companies to quote for design, manufacture and supply of 1.71 billion pieces of new generation banknotes.

135. After a lengthy procurement process in the year 2005, De La Rue won the tender for a 3 year contract to design, manufacture and supply 1.71 billion pieces of new generation banknotes at a cost of USD.51,195,840.00. The tender was at one stage cancelled and re-tendered due to a breach of tendering procedures by two bidders during the Tender opening process. The average price per banknotes arising from the international competitive tender came to approximately one half of the average price paid to De La Rue for the existing banknotes.

136. Among the conditions to be fulfilled by the Central Bank in the contract for printing 1.71 billion pieces of banknotes by De La Rue was for the Bank to make a down payment of 50% of the contract price amounting to USD. 25,597,920. The banknotes were to be delivered by De La Rue between August, 2006 and December, 2009. The launch of the banknotes had been planned to take place soon after the 2007 General Elections. In preparation for the scheduled delivery of the banknotes, the Bank put in place the necessary arrangements to secure storage facilities at its various branches, conclude agreement with the Kenya Revenue Authority for use of the strong rooms and vaults in Times Tower, conduct public education and awareness campaigns and ensure banknote processing machines are adapted to the new banknotes.

137. Based on the rate of consumption, the existing stocks of the old banknotes plus recoveries were to be exhausted by December, 2007. Any remaining balances were to

circulate side by side with the new generation banknotes. On 23rd March, 2006, he was suspended as Governor. He understood that the contract between the Central Bank and De La Rue for printing of 1.71 billion pieces of banknotes was signed on 4th May 2006, with the commencement date of 22nd May, 2006. He also understood that the submission of the approved banknote designs and signatories to De La Rue was delayed by the Bank for quite some time and that the Cabinet had approved a joint venture between the Government of Kenya and De La Rue for production of banknotes its factory in Ruaraka, Nairobi. According to the joint venture, the Government of Kenya would be acquiring a 25% stake in De La Rue, Ruaraka, Nairobi plant at a cost of Kshs.600 million.

138. De La Rue factory at Ruaraka, Nairobi did not have the technology necessary to produce the new generation banknotes earmarked by the government. To do so, it would require upgrading of the machinery, thus necessitating the injection of new capital. It would not be right for the joint venture to cause Kenyans to lose out on the benefits of competitive pricing of the new generation banknotes at half the cost of existing banknotes, or the superior designs that have been approved by the Government for the new notes and the security features which are capable of countering the ingenuity of Banknote counterfeighting.

139. Multiple sourcing of banknotes has the benefit of enhancing transparency in the procurement process. It is a risk management tool in case of a disaster affecting a country's banknote printer. Multiple sourcing also introduces competition which brings better quality and lower prices while providing continuous quality comparison and benchmarking. There are three aspects of multiple sourcing which can be considered namely, design, origination, paper supply and the actual printing of the Banknotes. Hitherto, Central Bank had traditionally sourced all its denominations with all the three components from De La Rue. Information provided by experts during the presentations made to the Central Bank Board indicated that it was a generalized practice to source for different denominations and components from different suppliers with substantial cost savings. Dr. Andrew Mulei's written evidence is annexed hereto as appendix 25.

CHAPTER 4

4.0. ISSUES FOR DETERMINATION

Arising from the evidence received, the committee identified the following issues as key in enabling it arrive at its recommendations.

(i) Whether Central Bank of Kenya is an independent institution that should function without interference from Treasury or any other institution or person ?.

(ii) Whether De La Rue Company would have closed its Ruaraka, Nairobi plant, if the Government of Kenya had not entered into a joint venture with it and guaranteed it long term business with Central Bank of Kenya ?.

(iii) Did Treasury carry out proper or sufficient due diligence before agreeing on acquisition of 40% stake in De La Rue Currency and Security Print Ltd plant situated at, Ruaraka, Nairobi ?.

(iv) Was the then Minister for Finance, Hon. Amos Kimunya justified in declining to authorize the signing of banknote designs by Mrs. Jacinta Mwatela then Acting Governor, Central Bank of Kenya in the absence of the substantive Governor, Dr Andrew Mulei thereby delaying the implementation of the contract for printing of 1.71 billion pieces of banknotes by De La Rue ?.

(v) Was Treasury justified in advising and or directing Central Bank of Kenya to on two occasions cancel contracts for printing of banknotes with De La Rue Company and subsequently issue stop gap or interim orders;

(vi) Whether the interim orders issued by Central Bank of Kenya to De La Rue were in accordance with Government Procurement Regulations and Procedures;

(vii) Whether the machines used by De La Rue at Ruaraka, Nairobi plant were obsolete and or outdated ?.

(viii) Did the Government get value for money in the interim orders for printing old generation banknotes when compared to the cost of printing 1.71 billion pieces of new generation banknotes under the cancelled contract ?.

(ix) If the Government lost as in (viii) above, who should take responsibility ?.

(x) Should the Government of Kenya enter into a joint venture with De La Rue as envisaged or should it set up its own currency plant ?.

CHAPTER 5

5.0. ANALYSIS OF EVIDENCE, OBSERVATIONS AND CONCLUSIONS

140. On the basis of issues for determination, the Committee analyzed the evidence received and made observations, findings and conclusions as follows:-

(i) Whether Central Bank of Kenya is an independent institution that should function without interference from Treasury or any other institution or person ?.

141. The Committee observed that Central Bank of Kenya is supposed to be an independent institution that should function without interference whatsoever from any person or institution owing to the nature of its functions. However, the old constitution never provided for the independence of the Bank and this exposed the Bank to interference and micromanaging particularly by Treasury.

142. Evidence received clearly indicates that Treasury interfered, directed or ordered Central Bank of Kenya and the Bank had no choice but to oblige with the directives. For example:-

(a) Hon. Amos Kimunya, then Minister for Finance in his letter Ref. CONF 36/02 dated 1st November, 2007 to the Governor, Central Bank of Kenya annexed hereto as appendix 15 directed Central Bank of Kenya to cancel a contract for printing new generation banknotes as it had been overtaken by events. Evidence received and by way if his own admission, the Minister admitted having contributed to its being overtaken by events when he declined to authorize the signing of the banknote designs by the then Acting Governor of Central Bank of Kenya, Mrs. Jacinta Mwatela in the absence of the substantive Governor to enable De La Rue print the banknotes. Furthermore, since the Procurement and Disposal Act was enacted in 2005, Treasury from then onwards had no business directing or instructing Central Bank of Kenya on procurement issues. Prior to the Act, any direct procurement had to be authorized by Treasury. In addition, Treasury was not a party to the contract and had no authority to direct the Bank to cancel a contract it was not party to.

(b) In the same letter dated 1st November, 2007, Hon. Kimunya further directed Central Bank of Kenya to print current generation banknotes under existing arrangements with De La Rue. The existing arrangements here implied direct procurement and this was contrary to government procurement regulations and procedures;

(c) By way of his own admission by letter Ref CONF. 36/02 dated 25th August, 2006 to the Governor, Central Bank of Kenya annexed hereto as appendix 10, Hon. Kimunya confirmed having toured De La Rue, Ruaraka, Nairobi plant and on behalf of Central Bank of Kenya negotiated with De La Rue for the adjustment of delivery dates for the 1.71 billion pieces of banknotes to be procured by the Bank from the Company. The Bank was not involved in the negotiations.

143. The Committee was satisfied that the independence of Central Bank of Kenya would never be guaranteed particularly when considered that the Minister for Finance has a significant role to play in the appointment of the Governor and the Bank's Board of Directors, The Committee was however happy to note that the new constitution took note of the interference with the functioning of the Bank and guarantees the Bank its independence.

Section 231(3) of the new constitution of Kenya clearly states that:-

> ***"the Central Bank of Kenya shall not be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions"***

It is now incumbent on Treasury to initiate necessary legislation to guarantee the Bank its independence in the context of this article of the new constitution.

(ii) Whether De La Rue Company would have closed its Ruaraka, Nairobi plant if the Government of Kenya had not entered into a joint venture with it and guaranteed it long term business with Central Bank of Kenya?.

144. The Committee heard from Hon. Robinson Githae, then Acting Minister for Finance, Hon. Amos Kimunya, former Minister for Finance serving as Minister for Transport and Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance that De La Rue Company would have closed its Ruaraka, Nairobi plant due to high production costs and lack of adequate business to sustain its operations unless the Government of Kenya acquired a stake in it and guaranteed it business. While resolving that the Government enters into a joint venture with De La Rue, the cabinet considered that the closure of the plant:-

(a) Would cost the government the loss of benefits such as rent, tax revenue and foreign exchange earnings;
(b) Would cost the government loss of jobs to 301 Kenyans employed by the company at the Ruaraka plant;
(c) Would scare away potential investors which was not good for the country's economic development.

145. When the Committee toured De La Rue plant at Ruaraka, Nairobi on 28th April, 2012, De La Rue officials told the Committee that the Company did not intend to close down the Ruaraka, Nairobi plant whether the Government of Kenya invested in it or not or whether the Government of Kenya did not guarantee it long term business. However, when they appeared before the Committee on 3rd May, 2012, they submitted that the Company would have closed down the Ruaraka, Nairobi plant if the Government had declined to enter into a joint venture with it and guaranteed it long term business.

146. De La Rue told the Committee that in the current year, the mother company in the United Kingdom had 150 clients worldwide sourced by its marketing arm and allocated to its plants worldwide. In the year 2011, the company printed currencies for 30 countries at the Kenyan plant and in the current year, the plant already had 18 currency printing contracts to be undertaken. The Committee also heard from De La Rue that apart from currency printing, the Ruaraka, Nairobi plant also manufactures visa and master cards and vouchers for both local and international markets.

147. Whereas the Committee agreed with Hon. Robinson N. Githae and Hon. Amos Kimunya that loss of jobs as a result of closure of De La Rue, Ruaraka, Nairobi plant was unacceptable, it observed that the two Ministers exaggerated the number of Kenyans that would have lost their jobs if the plant was shut down. While Hon. Githae stated 301, Hon. Kimunya stated 300 contrary to evidence given by De La Rue itself being the employer that the plant employed 265 staff out of which 260 were Kenyans and 5 expatriates.

148. When challenged to produce documentary evidence on De La Rue's intention to close its Ruaraka, Nairobi plant if the government of Kenya was not going to invest in it, Hon. Kimunya who admitted having initiated the joint venture could not. He only cited conversations between him and De La Rue officials in London and Singapore to the effect. This came as a surprise to the Committee as there are clear guidelines in the government circles for dealing with confidential matters by way of secret correspondence.

149. The Committee further received evidence by way of letter marked *"secret"* dated 15th November, 2002 written by a former Central Bank of Kenya Governor, Mr. Nahashon N. Nyagah to Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance indicating that De La Rue was at one time willing to inject British Pounds Sterling. 4 million to expand the Ruaraka, Nairobi plant if Central Bank of Kenya was to re-engage its services. The letter marked *"secret"* dated 15th November, 2002 is annexed hereto as appendix 26.

150. In the light of the foregoing and having toured the Company's Ruaraka plant, where the Committee saw various local and international jobs being done at the plant, all of which were sourced by the company itself, the Committee was satisfied that the plant could still thrive with or without Government of Kenya business. Consequently, the Committee dismissed as an afterthought evidence given by the Company on 3rd April, 2012 that it would have exited the country if the Government had not invested in it, thereby contradicting its earlier position.

(iii) Did Treasury carry out proper or sufficient due diligence before agreeing on acquisition of 40% stake in De La Rue Currency and Security Print Ltd plant situated at, Ruaraka, Nairobi ?.

151. Evidence received from Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya, Hon. Robinson N. Githae, then Acting Minister for Finance and Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance confirmed that the Joint venture agreement had been

negotiated and only awaiting signatures by parties. The Committee received from Treasury an unsigned copy of the draft joint venture agreement finalized in the year 2011. Treasury which was on behalf of the Government of Kenya in charge of negotiations for the joint venture admitted that no cost benefit analysis or feasibility study was done but an assets valuation was done to determine assets that would be hived down to the new company, De La Rue Kenya EPZ to be formed under the joint venture agreement. According to Treasury, an assets valuation report would suffice at that juncture. The Committee was convinced that valuation of assets of De La Rue only could not constitute sufficient or proper due diligence.

152. Though Mr. Joseph Kinyua, the Permanent Secretary, Treasury told the Committee that Treasury intended to do a feasibility study comprising of a consortium of experts, the Committee dismissed his evidence as an afterthought since the joint venture agreement had already been negotiated and only awaiting signing by parties. In the event the results of the feasibility studies were negative after the joint venture had been executed, the Government would in the circumstances be forced to rescind the contract and this could have legal and or financial implications on the taxpayer which was not acceptable.

153. The Committee also heard from De La Rue Company that all the currency printing works are procured by the mother company in the United Kingdom which is highly reputable worldwide in the business. The mother company then allocates jobs to its subsidiaries including the Ruaraka, Nairobi, Kenya plant depending on so many factors. The Committee observed that the sustainability of the Ruaraka plant largely depended on De La Rue Company itself and factors would at times be unfavourable for allocation of lucrative contracts to the Ruaraka, Nairobi plant. This is even evidenced by the fact that the Company preferred to print 1.71 billion pieces of Kenyan banknotes at its Malta plant instead of, Ruaraka, Nairobi. Treasury did not confirm to the Committee, the guarantee as to the volume of jobs that would stream from the De La Rue International Ltd in the United Kingdom (UK) to the Ruaraka, Nairobi plant upon the operationalization of the joint venture agreement. This in essence would mean that the Government's investment in the Ruaraka plant would be in jeopardy.

154. The Committee dismissed Mr. Joseph Kinyua's evidence that the main reason why the Government of Kenya wanted to invest in De La Rue was to ensure that it (Government) controls currency printing business in the country. According to the draft joint venture agreement annexed hereto as appendix 5, the Government of Kenya was to own 40% of the new Company to be incorporated under the joint venture agreement while De La Rue would own 60%. It is therefore evident that De La Rue would still control currency printing business in the country by virtue of its majority shareholding in the new Company to be incorporated and not the Government of Kenya.

155. Though Mr. Joseph Kinyua told the Committee that at one time, Treasury was of the view that Parliament should amend the law to allow Central Bank of Kenya set up its own currency printing plant so that the Government was able to control its own currency printing, the Committee was not convinced by his evidence since he did not produce any documentary evidence to the effect. The Committee observed that Parliament would

have supported the idea if sufficiently convinced by Treasury.

156. Following admission by Hon. Amos Kimunya, former Minister for Finance that Treasury did not do any due diligence i.e. cost benefit analysis and or feasibility study before obtaining cabinet's approval for the joint venture which were crucial in investments particularly of such magnitude, the Committee was satisfied that without such information being availed to the cabinet, the minister had misled the cabinet into approving the joint venture. The Committee further observed that even as at the time of compiling this report, no feasibility study or cost benefit analysis had been done yet the joint venture was only awaiting signatures.

157. On account of the foregoing, the Committee concluded that Treasury did not undertake proper and or sufficient due diligence before agreeing on acquisition of 40% stake in De La Rue Company. This was indeed exposing taxpayers to a risk Treasury knew or ought to have known.

(iv) Was the then Minister for Finance, Hon. Amos Kimunya justified in declining to authorize the signing of banknote designs by Mrs. Jacinta Mwatela then Acting Governor, Central Bank of Kenya in the absence of the substantive Governor, Dr Andrew Mulei thereby delaying the implementation of the contract for printing of 1.71 billion pieces of banknotes by De La Rue ?.

158. The Committee heard evidence from the former Deputy and Acting Governor of Central Bank of Kenya Mrs. Jacinta Mwatela and former Secretary of Central Bank of Kenya Board of Directors, Mr. John Macharia Gikonyo that after the contract for printing of 1.71 billion pieces of banknotes had been signed between Central Bank of Kenya and De La Rue Company on 4th May, 2006, its implementation at one time stalled. This was because De La Rue was awaiting for instructions from the then Minister for Finance, Hon. Amos Kimunya as to whose signatures were to appear. Normally the signatures of the Governor and Permanent Secretary, Ministry of Finance would appear on the banknotes. At that time, the substantive Governor of Central Bank of Kenya Dr. Andrew Mulei had stepped aside in accordance with the law as he was facing prosecution in a court of law and his Deputy, Mrs. Jacinta Mwatela was the Acting Governor. The Bank risked being sued for damages for delaying the implementation of the contract on account of delayed submission of signatures.

Section 13(3) of the Central Bank of Kenya Act Cap 491 states that:-

> ***"The Deputy Governor shall act for the Governor and shall exercise all the powers and shall perform all of the functions conferred on the Governor under this Act whenever the Governor is temporarily absent, and shall perform such other functions as the Governor may from time to time assign to him"***

159. Notwithstanding this provision and the overriding consequences, Hon Amos Kimunya declined to authorize the signing of the designs by Mrs. Jacinta Mwatela the Acting Governor in the absence of Dr. Andrew Mulei, the substantive Governor. He told the Committee that he could not authorize since it did not look good and further that Dr. Mulei still had a valid contract with Central Bank of Kenya. He further told the Committee that he did not need to seek legal advice on this issue. However evidence received from Mr. John Macharia Gikonyo, a former secretary to the Central Bank of Kenya Board of Directors indicated that a legal opinion was forwarded to him but he ignored it.

160. As a result of the foregoing, the Committee drew the following conclusions:-

(a) The former Minister for Finance, Hon. Amos Kimunya had no legal basis for declining to sanction Mrs. Jacinta Mwatela to sign banknote designs in the absence of Dr. Andrew Mulei in the light of a clear provision of the law;
(b) This was another case of infringement on the independence of the Central Bank of Kenya by Treasury. The banknote printing contract was between Central Bank of Kenya and De La Rue Company and De La Rue ought to have obtained instructions on signatures from its client, Central Bank of Kenya and not the Minister for Finance.

(v) Was Treasury justified in advising and or directing Central Bank of Kenya to on two occasions cancel contracts for printing of banknotes with De La Rue Company and subsequently issue stop gap or interim orders ?.

161. The Committee heard from Hon. Robinson Githae, then Acting Minister for Finance, Hon. Amos Kimunya former Minister for Finance, Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance and Mrs. Jacinta Mwatela former Deputy and Acting Governor of Central Bank of Kenya that the first contract was signed on 5th December, 2002 and was terminated by the Bank in 2003 on a directive by the then Minister for Finance Hon. David Mwiraria. He cited single sourcing, illegal extension of the contract term to 10 years instead of a lesser period and further that the National Alliance Rainbow Coalition (NARC) Government had just come into power and had not been consulted. The Committee was satisfied with the reasons advanced by Hon. Mwiraria for the cancellation of the contract.

162. A second tender for printing of 1.71 billion pieces of new generation banknotes was floated on 6th January, 2005 and bids opened but it was cancelled on 6th June, 2005 due to various anomalies. The cancellation was done by the procurement entity itself that is Central Bank of Kenya without any orders or influence from third parties. Considering that anomalies were noted in the tendering process, it was prudent for the Bank to cancel the whole process to safeguard itself against legal consequences arising from a flawed process. The Committee was satisfied with the Bank's action.

163. A third tender was issued again for 1.71 billion pieces of banknotes and won by De La Rue Company which signed a contract to the effect with the Central Bank of Kenya on

4th May, 2006. The then Minister for Finance, Hon. Amos Kimunya termed the contract as disastrous and directed the Bank to cancel it. During his appearance before the Committee, he cited several reasons why the contract was disastrous and ought to have been cancelled and the Committee's observations and conclusions on the cancellation are as follows:-

(a) The Committee heard from Prof. Njuguna Ndung'u, Governor Central Bank of Kenya and Dr. Andrew Mulei, former Governor of the Bank that it was a practice that once new currency is introduced into the market, it operates concurrently with the old one. The old one is naturally retired from circulation once it reaches the hands of commercial banks. It could not have been prudent to withdraw all the old currency in the market at once and immediately replace it with the new one as such an action would occasion a major financial crisis. The Committee was persuaded by Prof. Njuguna Ndung'u and Dr. Andrew Mulei's evidence and dismissed the issue of the undetermined fate of the old currency as claimed by Hon. Amos Kimunya as a basis for cancellation of the contract.

(b) The Committee took great exception to Hon. Kimunya's evidence that Central Bank of Kenya officials did not have a clear understanding of monetary issues meaning that they were incompetent and not up to the task while negoatiating and signing with De La Rue the contract for printing 1.71 billion pieces of banknotes. He termed the contract as disastrous. From the Committee's deliberations and assessment, Hon. Amos Kimunya was not competent to make such a judgment against Central Bank of Kenya (CBK) employees and that his remarks were not made in good faith. The Committee was satisfied that the Bank's staff were competitively recruited, were well versed with monetary issues and could not have signed a disastrous contract as asserted by Hon. Kimunya.

The Committee observed that the Central Bank of Kenya's Board of Directors exercised due diligence in the procurement and award of the contract to De La Rue by bringing on board experts from Central Banks of United Kingdom, Uganda, Tanzania and Zambia to provide professional advice. This was because it was the first time the Bank was undertaking such an exercise. The Bank also involved a team of legal experts in contract negotiations and drafting of the contract document.

The Committee was satisfied that the Board of Directors of Central Bank of Kenya could not have entered into a contract for procurement of 1.71 billion pieces of banknotes to be printed in Malta and shipped to Kenya without addressing the issue of transport and storage contrary to evidence given by Hon. Amos Kimunya and Mr. Joseph Kinyua. It heard evidence which it admitted as credible from the Former Deputy Governor of Central Bank of Kenya Mrs. Jacinta Mwatela and a former Central Bank of Kenya Board of Directors' Secretary Mr. John Macharia Gikonyo who were involved in the contract negotiations that the Bank had adequate storage facilities to keep the banknotes at its Nairobi headquarters, Mombasa, Kisumu and Eldoret Branches and would also make use of the Times Towers Building in Nairobi which was earmarked for Central Bank but assigned to Kenya Revenue Authority after the Bank found it too spacious to occupy.

The Committee observed that there was a delivery schedule on the signed contract which staggered deliveries between March, 2007 and December, 2009 and that all the banknotes manufactured by De La Rue in Malta would not be shipped in one consignment as testified by Hon. Amos Kimunya. The delivery schedule is part and parcel of the contract document annexed to this report as appendix 8. The Committee further observed that since delivery of the banknotes was staggered, it was reasonably expected that when new deliveries are made, earlier deliveries would have already found their way into the market to replace the undesirable ones thereby giving space for storage.

The Committee made a finding that printing of the 1.71 billion pieces of banknotes in Malta would have taken more than a year and it would not have been prudent for De La Rue to pile up ready banknotes for a very long time before shipping them in one consignment. The Committee also established from the contract document that the responsibility of shipping and delivery of the banknotes to Central Bank of Kenya in Nairobi, Kenya lay with De La Rue Company and not Central Bank of Kenya and dismissed evidence to the contrary by Hon. Amos Kimunya and Mr. Joseph Kinyua. The Committee also observed that prior to 1994, all Kenyan banknotes were printed by De La Rue in the United Kingdom and shipped to Kenya and security and storage were never issues of concern.

The Committee noted that whereas, Hon. Amos Kimunya submitted that the delivery of the 1.71 billion pieces of banknotes to Central Bank of Kenya would be in one consignment, in his letter Ref No. CONF 36/02, dated 25th August, 2006 to the Acting Governor, Central Bank of Kenya annexed hereto as appendix 10, he told the Bank to liaise with De La Rue on the adjustment of the delivery schedule with the new generation currency launch planned for January, 2008. In this regard, he admitted that there was a delivery schedule contrary to his earlier submission of one consignment delivery.

(c) The Committee heard from Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya and his team of experts that the cost implication of the new generation banknotes to commercial banks was negligible. All that commercial banks were to do was to carry out an adaptation process which would mainly involve changing certain trays in the Automated Teller Machines (ATM's) to make them compatible with the new banknotes. The Committee was persuaded by the evidence of Prof. Njuguna Ndung'u and his team, being experts on monetary issues and dismissed Hon. Kimunya's evidence to the effect as forming the basis of the cancellation of the contract.

(d) The Committee made a finding that copyrights of the banknote designs were not the property of De La Rue in the contract for printing of 1.71 billion banknotes as claimed by Hon. Amos Kimunya. According to Clause 4 on copyright and control of working tools of the contract document annexed hereto as appendix 8:-.

Clause 4.2 states that:-

> ***''the design, art works, films, engraved dies, plates and other origination materials namely the working tools are the property of the Customer and shall during the term of this agreement be held in the safe custody by the Company and used only by the Company under the Customer's express authority. All such designs, artworks, films, engraved dies, plates and other origination materials shall either be:-***
>
> - ***returned to the Customer within fourteen (14) days if the customer so requests in writing;***
> - ***destroyed by the Company if so requested in writing by the Customer after completion of this Agreement.''***

According to the same clause, the Company was also to ensure that the banknotes to be supplied to the Bank would not infringe on any patent, trademark, registered design, copyright or any other right in the nature of intellectual property right or of any third party.

(e) The Committee observed that Central Bank of Kenya is mandated by law to carry out currency assessment needs, procure currencies and supply them. There is no law stating as to what particular time of the year new banknotes should be supplied and the Bank can therefore supply banknotes at any time of the year whenever deemed necessary, unless Treasury which controlled the Bank wanted to hijack the process for unlawful gain. It will be recalled in the year 1992 when the Executive allegedly commandeered Central Bank to illegally print money for its campaigns, thereby messing up the country's economy. The Committee therefore dismissed Hon. Kimunya's argument that it was not prudent for Central Bank of Kenya to issue new banknotes in an election year owing to political risks involved.

While still at that, the Committee was satisfied that Hon Kimunya's action raised serious issues on the independence of the functioning of Central Bank of Kenya.

(f) The Committee was not persuaded by Hon. Kimunya's evidence that the contract for printing 1.71 billion pieces of banknotes between Central Bank of Kenya and De La Rue was cancelled following a cabinet decision as he did not produce any documentary evidence to the effect. The Committee received from Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance letters from the Permanent Secretary, Office of the President, Secretary to the Cabinet and Head of Civil Service Amb. Francis K. Muthaura Ref OP.CAB.58/4A dated 29th May, 2007 and 13th September, 2011 communicating a cabinet directive to the Attorney General and Treasury to initiate the joint venture process between the Government of Kenya and De La Rue Company and also approving the same. The letters are annexed hereto as appendix 27. The letters never talked of the cancellation of the contract for printing 1.71 billion pieces of banknotes between Central Bank of Kenya and De La Rue and the Committee was convinced that Hon. Amos Kimunya kept the cabinet in the dark over the contract.

(g) In his evidence, Hon. Amos Kimunya stated that, he could not allow De La Rue to close down its, Ruaraka, Nairobi plant and that he is the one who came up with the proposal for the joint venture and had it approved by the cabinet. With a joint venture in place, it meant the collapse of the contract for printing of 1.71 billion pieces of banknotes and the Committee was satisfied that Hon. Amos Kimunya had taken responsibility for the cancellation of the contract.

(h) The Committee noted that Hon Amos Kimunya misled it when he said that since the contract had not factored in the purchase of corporate security features of this new generation currency notes by Central Bank of Kenya, it meant that every time the supplier is challenged on the basis of cost or price competitiveness, a new currency design would emerge. In effect, the Government would have to be changing the currency every three years because the contract was to run for three years and then there is a new competitive bid. The Committee observed that Central Bank of Kenya (CBK) is mandated by the law and does an assessment of banknotes requirements and determines when to procure and issue new ones and not necessarily after every 3 years as asserted by Hon Amos Kimunya.

(i) The Committee observed that the Public Procurement and Disposal Act, was enacted in the year 2005 and Treasury from then onwards had no business directing or instructing Central Bank of Kenya on procurement issues. All actions of the Bank on procurement were to be guided by the Act unlike prior to 2005 when Government institutions had to seek Treasury authority for direct procurement.

(j) The Committee noted that Treasury was not a party to the contract for the supply of 1.71 billion pieces of banknotes by De La Rue to Central Bank of Kenya and therefore had no authority to direct the Bank to cancel the contract. Furthermore, while directing the Bank to cancel the contract, Hon. Amos Kimunya never advised the Bank to negotiate for a lower price in view of the fact that the interim orders pricing was higher than the cancelled contract.

(k) The Committee observed that in his letter Ref CONF.36/02 dated 1st November, 2007 annexed hereto as appendix 14, Hon Kimunya while directing

Central Bank of Kenya to cancel the contract for procurement of 1.71 billion pieces of banknotes with De La Rue also directed the Bank to single source for an interim order from the same company contrary to Government procurement regulations and procedures.

164. On account of the foregoing, the Committee made a finding that the contract for printing 1.71 billion pieces of banknotes between Central Bank of Kenya and De La Rue was properly negotiated and executed by both the parties and Hon. Amos Kimunya did not have any valid reason for directing cancellation of the same.

(vi) Whether the Interim orders issued by Central Bank of Kenya to De La Rue Company were in accordance with Government Procurement Regulations and Procedures ?.

165. All the interim orders issued to De La Rue Company by Central Bank of Kenya from the year 2003 to 2010 were through direct procurement. The Public Procurement and Disposal Act was enacted in the year 2005. Prior to that Treasury had much control over Government entities in procurement whereby it had to authorize all direct procurement by the entities.

Section 74(2) and (3) of the Public Procurement and Disposal Act of 2005 allows for direct procurement where:-

(a) There is only one person who can supply the goods and services;
(b) There is no reasonable or substitute for the goods;
(c) There is urgent need of the goods and services;
(d) Because of the urgency, other available procurement methods are impracticable;
(e) Circumstances giving rise to the urgency were not foreseeable and were not as a result of dilatory conduct on the part of the procuring entity.

166. The Committee was satisfied that the procurement of all the five interim stop gap orders issued to De La Rue by the Central Bank of Kenya from the year 2005 to 2010 did not meet any of the five conditions for direct procurement and that the procurement therefore breached government procurement regulations and procedures. This was well known to Hon. Amos Kimunya and Prof. Njuguna Ndung'u.

(vii) Whether the machines used by De La Rue Company at Ruaraka, Nairobi plant were obsolete and or outdated ?.

167. When put to task to state the age of machines in use at the Ruaraka, Nairobi plant, De La Rue Officials were evasive and or not categorical. They told the Committee that the machines were newly installed directly from their manufacturers and that they were routinely serviced and maintained. Other than the routine servicing and maintenance, the machines were refurbished and upgraded in the year 2009. Apart from one machine with chip and pin ability newly acquired and installed the previous year, De La Rue could not

confirm the age of the rest of the machines which was quite unexpected. They argued that as long as printing machines were regularly serviced and maintained, age was not an issue to impact on their performance. Despite being given ample time to produce documentary evidence relating to age of the machines, they failed to do so.

168. The Permanent Secretary, Treasury, Mr. Joseph Kinyua who had negotiated for the joint venture on behalf of the government could not confirm the age, suitability or efficiency of the machines of De La Rue at Ruaraka plant. He only relied on the valuation report done on De La Rue assets which according to the Committee was totally inadequate to determine the performance of machines at the plant.

169. The Committee observed that printing like any other technology was very dynamic and that it was reasonably expected that new technology and machines had been developed since De La Rue set up its plant at Ruaraka, Nairobi in 1994 and installed the machines currently in use. When the Committee toured the Ruaraka plant on 28th April, 2012, it observed that most of the machines in use were analogue while modern technology had shifted to digital.

170. In its evidence before the Committee on 3rd May, 2012, De La Rue even confirmed that the 1.71 billion pieces of banknotes with advanced security features it had been contracted to print for the Central Bank of Kenya would have been printed more efficiently and cheaply in Malta and not Ruaraka, Nairobi Kenya and that is why the Company preferred printing the banknotes in Malta.

171. Without credible evidence particularly documents indicating when the machines were acquired and their lifespan, the Committee was convinced that the machines in use by De La Rue at Ruaraka, Nairobi plant were inefficient and obsolete.

(viii) Did the Government get value for money in the interim orders for printing old generation banknotes when compared to the cost of printing 1.71 billion pieces of new generation banknotes under the cancelled contract ?.

172. The Committee observed that printing of banknotes for the Central Bank of Kenya had been monopolized by one company in the name of De La Rue, changing names from time to time and that the public had been denied the benefit of getting a fair market price through a competitive procurement process since independence. It was Hon. David Mwiraria when Minister for Finance in 2003 who noted this irregularity and ordered Central Bank of Kenya to cancel a contract awarded to the Company in 2002 while calling for a competitive procurement process.

173. While Hon. Amos Kimunya argued that Central Bank of Kenya saved close to Kshs.3.8 billion in the interim orders when compared to the cancelled contract for 1,71 billion pieces of banknotes, De La Rue argued that the price difference in the interim orders and the cancelled contract was nil. Dr. Andrew Mulei told the Committee that the price of the interim orders was one and a half times more than the cancelled contract. Prof

Njuguna Ndung'u, the Governor of Central Bank of Kenya told the Committee that the cancelled contract was cheaper than the interim orders. His comparative price analysis is annexed hereto as appendix 18.

174. Evidence received from the Governor, Central Bank of Kenya shows that upon cancellation of the contract for printing 1.71 billion pieces of banknotes with De La Rue, 4 interim orders of 164.05 million pieces of banknotes, 390 million, 450 million and 483 million were issued to the same company through direct procurement. The Auditor General's special audit report indicates that these interim orders cost the taxpayer Kshs.5,584,940,935.00. These orders were of current generation banknotes. The cancelled contract for 1.71 billion pieces of banknotes was for new generation banknotes with advanced security features and would have cost the taxpayer Kshs.3,754,031,319.00.

175. On the strength of the special audit report by the Auditor General, the Committee was satisfied that the taxpayer lost Kshs.1,830,909,616.00 being the price difference between the cost of the interim orders and the cancelled contract and that the government did not therefore get value for money in the interim orders.

(ix) If the Government lost as in (viii) above who should take responsibility?.

176. Article 226(1)(5) of the new constitution stipulates that:-

> ***"If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not".***

As per the analysis of evidence, observations and conclusions under Chapter 5 of this report, the Committee was satisfied that the former Minister for Finance, Hon. Amos Kimunya and the incumbent Governor of Central Bank of Kenya, Professor Njuguna Ndung'u were responsible for the loss of Kshs.1,830,909,616.00 because:-

(a) Hon. Kimunya directed Central Bank of Kenya to cancel a cheaper contract with De La Rue even when his Ministry was not party to the contract and all the reasons he gave for the cancellation of the contract were invalid.
(b) Prof. Ndung'u did not make any effort to resist the orders from Hon Kimunya to cancel the contract. In so doing, he failed to protect the Bank and taxpayers' interest.

Consequently, Hon. Kimunya and Prof. Ndung'u should be held accountable for the loss in accordance with Article 226(1)(5) of the constitution.

(x) Should the Government of Kenya enter into a joint venture with De La Rue Currency and Security Print Ltd and Thomas De La Rue AG incorporated in Switzerland as envisaged in the draft joint venture agreement or should it set up its own currency printing plant ?.

177. Evidence received by way of own admission indicates that Hon. Amos Kimunya, then Minister for Finance was the architect of the joint venture deal between the Government of Kenya and De La Rue. He told the Committee that the joint venture was not being worked on merely in terms of profitability or otherwise but to ensure that the Government had a sustainable and secure delivery of currency printing in the long term.

178. The Committee also heard evidence and observed that:-

(i) Many countries consider security printing so strategic that they had established fully government owned currency and security printing presses and mints. United States of America, Australia, India, Sudan were very good examples of such countries. Other countries had opted for joint ventures with printing firms to secure sustainable currency printing services. Examples where De La Rue International had joint ventures with other countries in banknote production included Sri Lanka, Portugal, Nigeria and Switzerland;

(ii) The Government of Kenya was capable of establishing its own currency printing plant but such a move would have its own negative consequences;

(iii) The joint venture agreement between Treasury and De La Rue International Ltd ties Central Bank of Kenya to a 10 year currency printing contract with the company. The Bank was not involved in negotiations of the contract since the Act establishing it prohibits it from engaging in investment ventures. This provision in the contract further contravenes government procurement regulations and procedures as it would deny the Bank the benefits of a fair market price through a competitive procurement process;

(iv) Prof Njuguna Ndung'u, Governor of Central Bank of Kenya told the Committee that he would not sign any contract tying the Bank to a 10 year currency printing with De La Rue arising from the joint venture as this contravenes government procurement regulations and procedures;

(v) Kenya's economy was growing while currency printing was based on economic growth. All the interim orders were made when the country's national budget was less than one trillion Kenya Shillings. The current national budget is over one trillion Kenya Shillings. While bidding for the tender to print 1.71 billion pieces of banknotes, for Central Bank, De La Rue preferred printing the banknotes in Malta and this was a clear indication that the current capacity of the Ruaraka plant cannot keep pace with the country's currency needs in view of the growing economy, unless upgraded and expanded.

179. The Committee held the view that the decision as to whether the Government of Kenya should opt for a joint venture or establish its own currency printing plant lies squarely with the executive and the responsibility of the Committee as part of the legislature is merely oversight over such investments. The Committee's main function in the

circumstances is to ensure that the Government carries out due diligence while investing to safeguard public funds from loss. In the envisaged joint venture, the Committee was satisfied that proper and or sufficient due diligence were not carried out and therefore the contract should not proceed unless the issues pointed out by the Committee in its recommendations are addressed.

CHAPTER 6

RECOMMENDATIONS

The Committee recommends as follows:-

(i) The Ethics and Anti-Corruption Commission should investigate the former Minister for Finance, Hon. Amos Kimunya over his conduct in the loss of Kshs.1,830,909,616.00 with a view to taking appropriate legal action against him and recovering lost funds;

(ii) The Ethics and Anti-Corruption Commission should investigate the incumbent Central Bank of Kenya Governor, Prof Njuguna Ndung'u over his conduct in the loss of Kshs.1,830,909,616.00 with a view to taking appropriate legal action against him and recovering lost funds;

(iii) Hon. Amos Kimunya and Prof. Njuguna Ndung'u having been responsible for the loss of Kshs.1,830,909,616.00 acted contrary to provisions of Chapter 6 of the Constitution of Kenya, the Public Officer Ethics Act and the Public Procurement and Disposal Act and in that respect and for this reason, they are not fit to hold public office;

(iv) The appointment of Prof. Njuguna Ndung'u as Governor of Central Bank of Kenya should be terminated and towards this end, the President should appoint a tribunal pursuant to provisions of Section 14 (2)(f) and 14(3) of the Central Bank of Kenya Act, Cap 491. In the meantime, Prof. Njuguna Ndung'u must step aside from the Office with immediate effect;

(v) The Committee concurs with the cabinet's decision for the Government of Kenya to enter into a joint venture with De La Rue Company with respect to the Ruaraka, Nairobi plant but notes several anomalies relating to the draft joint venture agreement. For this reason, the joint venture should only proceed upon fulfillment of the following conditions:-

    (a) It must not tie Central Bank of Kenya to signing a 10 year currency printing contract with De La Rue Company. This contravenes Government procurement regulations and procedures since the Bank cannot be guaranteed a fair market price for currency printing unless there is a competitive procurement process;

    (b) It must address the issue of capacity of the plant. The machines and technology in use at the Ruaraka, Nairobi plant lack capacity to effectively and efficiently print huge volumes of banknotes with enhanced security features and this is why De La Rue preferred printing 1.71 billion pieces of banknotes for Central Bank of Kenya (CBK) in Malta and not Ruaraka, Nairobi;

(c) It must address the complex structure of De La Rue. There is a web of companies claimed to be subsidiaries of De La Rue International Ltd with the Ruaraka, Nairobi one changing names from time to time. The Committee fears that the multiple change of name by the Ruaraka plant may have been intended by the Company to camouflage itself against liabilities and in future, its creditors could lay claim against the assets of the company to be born out of the joint venture, thereby putting the Government of Kenya investment at risk;

(d) The Government should negotiate and enter into a joint venture with De La Rue International Ltd in the United Kingdom (UK) with respect to the Ruaraka, Nairobi plant and not its subsidiaries;

(e) The Government must do a proper and or sufficient due diligence particularly feasibility study and cost benefit analysis to ascertain the profitability and viability of the Ruaraka plant before investing in it.

(vi) Treasury must take necessary steps and at the same time fast track the bringing in Parliament for enactment legislation guaranteeing Central Bank of Kenya (CBK) independence in the context of Article 231(3) of the new constitution.

(vii) In the light of Article 231(3) of the new constitution, Central Bank of Kenya (CBK) should competitively procure banknotes as and when required without any direction or control by any person or body. The situation can clearly be foreseen and the delay in finalization of the joint venture should not be a reason for direct procurement of banknotes from De La Rue at a price which is not competitive.

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LIST OF APPENDICES

Appendix 1: Minutes of sittings on proceedings.

Appendix 2: Special audit report by the Auditor General on the contracts for printing of banknotes between Central Bank of Kenya (CBK) and De La Rue.

Appendix 3: Currency printing contract dated 8th October, 1991 between Central Bank of Kenya and Thomas De La Rue Company.

Appendix 4: Currency printing contract dated 5th December, 2002 between Central Bank of Kenya and De La Rue Currency and Security Print Ltd.

Appendix 5: Draft joint venture agreement between the Permanent Secretary to the Treasury and De La Rue Currency and Security Print Ltd and Thomas De La Rue AG.

Appendix 6: Lease Agreement on L.R. No. 7878/4, Nairobi dated 15th June 1992 between Central Bank of Kenya and Thomas De La Rue Kenya Ltd.

Appendix 7: Written evidence by Hon. Robinson N. Githae, Acting Minister for Finance.

Appendix 8: Agreement for the design, manufacture, printing and supply of new generation banknotes dated 4th May, 2006 between Central Bank of Kenya and De La Rue International Ltd.

Appendix 9: Written evidence by Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance.

Appendix 10: Letter Ref CONF.36/02 dated 25th August, 2006 from Hon. Amos Kimunya, Minister for Finance to Mrs. Jacinta Mwatela, Acting Governor, Central Bank of Kenya.

Appendix 11: Hansard report on Hon. Amos Kimunya's Ministerial Statement issued in the House on the De La Rue matter on 26th June, 2012.

Appendix 12: Letter Ref CONF 36/02 dated 14th March, 2003 from Hon, David Mwiraria, Minister for Finance to Dr. Andrew K. Mulei, Governor, Central Bank of Kenya.

Appendix 13: Currency production agreement dated 14th July, 2005 between Central Bank of Kenya and De La Rue Currency and Security Print Ltd.

Appendix 14: Banknotes production and supply agreement dated 10th January, 2007 between Central Bank of Kenya and De La Rue Currency and Security Print Ltd.

Appendix 15: Letter Ref CONF 36/02 dated 1st November, 2007 from Hon. Amos Kimunya, Minister for Finance to Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya.

Appendix 16: Banknotes production and supply agreement dated 14th December, 2007 between Central Bank of Kenya and De La Rue Currency and Security Print Ltd.

Appendix 17: Banknotes production and supply agreement dated 17th June, 2009 between Central Bank of Kenya and De La Rue Currency and Security Print Ltd.

Appendix 18: A comparative price analysis by Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya on the pricing between the interim orders procured by Central Bank and the cancelled contract for printing 1.71 billion pieces of banknotes.

Appendix 19: Written submissions by Prof. Njuguna Ndung'u, Governor Central Bank of Kenya.

Appendix 20: Written evidence by Mrs. Jacinta Mwatela, former Deputy and Acting Governor of Central Bank of Kenya.

Appendix 21: Print copy of e-mail correspondence exchanged between Mr. John Macharia Gikonyo, former Secretary to the Board of Central Bank of Kenya and Prof. Njuguna Ndung'u, Governor, Central Bank of Kenya.

Appendix 22: Legal opinion by the Central Bank of Kenya's Legal Department on the proposed purchase of shares in De La Rue Currency and Security Print Ltd by the Government of Kenya.

Appendix 23: Written evidence by Mr. John Macharia Gikonyo, former Secretary to the Board of Directors of Central Bank of Kenya.

Appendix 24: Written evidence by De La Rue Company's management.

Appendix 25: Dr Andrew Mulei, former Central Bank of Kenya Governor's written evidence.

Appendix 26: Letter dated 15th November, 2002 marked "secret" from Central Bank of Kenya Governor, Nahashon N. Nyagah to Treasury Permanent Secretary, Mr. Joseph Kinyua.

Appendix 27: Letters Ref OP.CAB.58/4A dated 29th May, 2007 and 13th September, 2011 from Amb. Francis Muthaura, Permanent Secretary, Office of the President, Secretary to the Cabinet and Head of Civil Service to Hon. Amos Wako, Attorney General and Mr. Joseph Kinyua, Permanent Secretary, Ministry of Finance.