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11<sup>TH</sup> PARLIAMENT – 2<sup>ND</sup> SESSION

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PUBLIC ACCOUNTS COMMITTEE (PAC)

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REPORT ON THE HIRE OF AN AIRCRAFT FOR THE DEPUTY  
PRESIDENT FOR AN OFFICIAL TOUR OF FOUR AFRICAN  
NATIONS IN MAY, 2013

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Clerks Chambers,  
National Assembly,  
**NAIROBI**

April, 2014

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# PART I

## PREFACE

**Mr. Speaker Sir,**

The Public Accounts Committee (PAC) is a Select Committee of the August House deriving its mandate from Standing Order 205 (2), which provides that:

*“The Public Accounts Committee shall be responsible for the examination of the accounts showing the appropriations 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 current Committee membership was constituted in May, 2013 in the 2<sup>nd</sup> session of the 11<sup>th</sup> Parliament and comprises the following:

1. Hon. Ababu Namwamba, EGH, MP - Chair
2. Hon. Cecily Mbarire, MGH, MP - Vice Chair
3. Hon. Joel Onyancha, MGH, MP
4. Hon. Joseph Manje, MP
5. Hon. Jude Njomo, MP
6. Hon. Kareke Mbiuki, MP
7. Hon. Gonzi Rai, MP
8. Hon. Julius Melly, MP
9. Hon. Jackson K. Rop, MP
10. Hon. James Bett, MP
11. Hon. Fathia Mahbub, MP
12. Hon. Mathias Robi, MP
13. Hon. Stephen Manoti, MP
14. Hon. Sakwa Bunyasi, MP

15. Hon. Arthur Odera, MP
16. Hon. Edick Omondi Anyanga, MP
17. Hon. Samuel Arama, MP
18. Hon. Junet Sheikh Nuh, MP
19. Hon. John Mbadi, MP
20. Hon. Kyengo Katatha Maweu, MP
21. Hon. Silvance Onyango Osele, MP
22. Hon. Manson Nyamweya, MP
23. Hon. Alice Nyanchoka Chae, MP
24. Hon. Mwadime Andrew, MP
25. Hon. Ahmed Ibrahim Abass, MP
26. Hon. Jessica Mbalu, MP
27. Hon. Charles Geni Mong'are, MP

**Mr. Speaker Sir,**

On 21<sup>st</sup> May, 2013, Hon. David Ochieng, Member for Ugenya sought a statement from the Leader of the Majority Party on several issues arising from the hire of a jet for the Deputy President's tour of four (4) African states namely, Gabon, Ghana, Congo Brazzaville and Nigeria. The issues of concern raised were as follows:-

1. The purpose of the tour;
2. Benefits of the tour to the country;
3. How many government officials accompanied the Deputy President, their identities and positions;
4. The criteria used by the Office of the Deputy President in determining Members of the National Assembly who accompanied him namely, Hon. Yusuf Chanzu and Hon Alice Ng'ang'a;
5. Whether the Speaker sanctioned the travel of the two members of the National Assembly;
6. The procurement process for the hire of the aircraft;

7. Government policy on air travel for the Deputy President; and
8. The cost of the tour (for both the Deputy President and his entourage).

The Majority Party Leader issued the statement in the House on 22<sup>nd</sup> May, 2013. From the ensuing debate, the Hon. Speaker directed that the matter be referred to the Public Accounts Committee (PAC) for in-depth investigation and subsequent report back to the House.

**Mr. Speaker Sir,**

In the execution of its mandate, the Public Accounts Committee works closely with the Office of the Auditor General. The two are indeed indispensable, with investigations of the Committee primarily based on either statutory or special reports of the Auditor General. Accordingly, therefore, when the House referred this matter to the Committee, the first port of call was, naturally, the Office of the Auditor General.

The Committee made the request for a special audit vide a letter dated 24<sup>th</sup> May, 2013. This is acknowledged by the Auditor General in paragraph 1.1.1 of the *special audit report which is annexed hereto as appendix 2*. The Auditor General completed the special audit on 25<sup>th</sup> September, 2013. It was subsequently tabled in the House by the Leader of the Majority Party on 3<sup>rd</sup> October, 2013.

**Mr. Speaker Sir,**

The Committee had initially requested the Office of the Auditor General to prepare the special audit report in three weeks. But the Office took a lot longer (4 months) to produce the report, thus considerably delaying the Committee's investigations which could not proceed in a vacuum. The Committee does acknowledge that the inordinate delay on the part of the Office of the Auditor General is attributed to the unacceptably chronic underfunding and understaffing in this important constitutional office. The situation is particularly dire given the increased workload for the Office of the Auditor General. Besides challenges inherent in an expanding economy, this office is now also confronted by the monumental task of auditing expenditure in 48 governments - the national one the 47 devolved governments.

**Mr. Speaker Sir,**

It is imperative to urgently increase budgetary allocation to the Auditor General's Office. The effectiveness and efficiency of this Office is crucial to the performance of the Public Accounts Committee and its sister Committee of Public Investments. Indeed this is critical to Parliament's public expenditure watchdog mandate. Underfunding for the office stifles parliamentary oversight over use of public funds, which is a primary function of Parliament. The Committee accordingly recommends that this Honourable House should deliberately prioritise sufficient funding for the Office of the Auditor General to enable it discharge its mandate effectively.

**Mr. Speaker Sir,**

The Committee held a total of thirteen (13) sittings in the investigation of this matter. *Minutes of all sittings are annexed hereto as appendix 1.* Ten witnesses appeared and testified before the Committee, namely:

1. Mrs. Bernice Gachegu, Registrar General, Office of the Attorney General and Department of Justice;
2. Mr. Abdul Mwaserrah, Secretary of Administration, Office of the Deputy President;
3. Mr. Evans Nyachio, Senior Assistant Director of Procurement, Ministry of Industrialization and Enterprise Development (formerly of the Office of the Deputy President in the same capacity);
4. Mr. Simon Okoth, Supply Chain Management Officer, National Treasury (formerly of the Office of the Deputy President in the same capacity);
5. Mr. Richard Lemoshira, Assistant Director, Office of Political Affairs and International Trade, Ministry of Foreign Affairs and International Trade;
6. Mr. Eric Korir, Senior Assistant Director, Supply Chain Management, Ministry of Interior and Co-ordination of National Government;
7. Ms. Marriane Kitany, Chief of Staff, Office of the Deputy President;
8. Dr. Mohamed Isahakia, former Permanent Secretary, former Office of the Prime Minister;
9. Mr. Paul Kamau, Senior Finance Officer, Office of the Deputy President;
10. Mr. Ahmed Kassam, Director and majority shareholder, EADC Ltd.

While taking evidence, the Committee was guided by procedures of the National Assembly derived from the Constitution of the Republic of Kenya, Acts of Parliament, and Parliamentary Standing Orders, conventions, customs, usages and practices, as well as rulings of the Speaker. Each of the

ten witnesses, with the exception of Mr. Ahmed Kassam and Mr. Eric Korir, tendered written submissions to the Committee. All testimonies were taken on oath, and proceedings recorded verbatim on Hansard.

This report includes an executive summary; excerpts of evidence received; issues for determination accompanied by observations, findings and conclusions; the culpability statement; and recommendations. Minutes of all sittings on the inquiry and evidential appendices are also annexed.

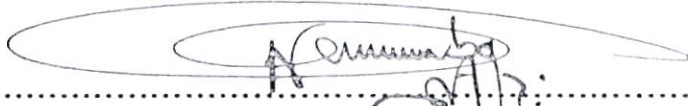
**Mr. Speaker Sir,**

The Committee registers sincere gratitude to yourself, for the support the House under your leadership accorded it during the investigation and preparation of this report. The Committee also records its appreciation for the services rendered by officers from the Office of the Clerk of the National Assembly, the Office of the Auditor General and the National Treasury. Their devotion to duty greatly aided the work of the Committee and the ultimate production of this report.

I also wish to express my deepest gratitude to the Honourable Members of the Committee, who dedicated their time, energies, intellect and incredible effort towards the great national duty of investigating this matter and ultimately the production of this report. The whole exercise from start to finish was undertaken in admirable spirit of bipartisanship and commitment to the highest possible ideals of probity<sup>1</sup>. Thank you.

**Mr. Speaker,**

On behalf of the Public Accounts Committee, it is my duty and privilege to lay on the Table of the House this report, pursuant to SO 199(6) of the National Assembly Standing Orders. I do urge the August House to adopt this report.

  
.....  
**Hon. Ababu Namwamba, EGH, MP**  
Chair, Public Accounts Committee (PAC)

Dated the 3<sup>rd</sup> day of April 2014

<sup>1</sup> Committee members individually signed this report to signify their endorsement of the findings and recommendations. Hon James Bett and Hon Kareke Mbiuki recorded their reservation on Recommendation No. 1. Hon Mathias Robi had been absent from the Committee for a while and missed the inquiry. Hon Gonzi Rai was not available to sign.

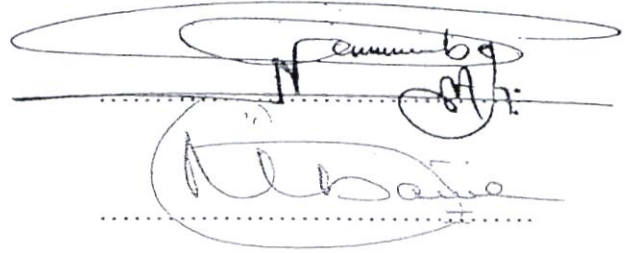
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- Appendix 2: Special audit report of the Auditor General on the hire of aircraft for the Deputy President's tour in May, 2013
- Appendix 3: Written evidence by Mrs. Bernice Gachegu, Registrar General, State Law Office and Department of Justice
- Appendix 4: Memo dated 14<sup>th</sup> May, 2013 from Chief of Staff, Office of the Deputy President to the Secretary Administration, same Office
- Appendix 5: Minutes of the Special Ministerial Tender Committee Meeting No ODP/MTC/P1/2012-2013 held on 15<sup>th</sup> May, 2013
- Appendix 6: Quotations by ABM Aviation, e-Africa Development Corporation (pty) Ltd and Lady Lori Kenya Ltd for the supply of an aircraft for the Deputy President's tour
- Appendix 7: Certificate of incorporation of EADC Ltd
- Appendix 8: Summary of expenditure analysis for air travel by the former Prime Minister and former Vice President
- Appendix 9: G-Pay System transaction sheet for payment of Kshs 18,564,000.00 to EADC Ltd for aircraft hire by the Deputy President's Office
- Appendix 10: Memo dated 19<sup>th</sup> May, 2013 from Mr. Evans Nyachio on behalf of the Permanent Secretary to all Heads of Departments, Office of the Deputy President
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- Appendix 18: Written evidence by Mr. Paul Kamau, Senior Finance Officer, Office of the Deputy President
- Appendix 19: Copy of a blank Government Local Service Order (LSO)
- Appendix 20: Written evidence by the Kenya Revenue Authority (KRA)
- Appendix 21: Publication by the Daily Nation newspaper of 23<sup>rd</sup> May, 2013 on the aircraft hire by the Office of the Deputy President
- Appendix 22: Letter Ref No. NA/PAC/CORR/2013/28 dated 30<sup>th</sup> July, 2013 from the Clerk of National Assembly to the Chief Executive Officer, Nation Media Group Ltd
- Appendix 23: Written evidence by the Permanent Secretary, Ministry of Foreign Affairs and International Trade on the decisions, declarations and resolutions of the 21<sup>st</sup> Ordinary Session of the Assembly of the African Union held from 26<sup>th</sup> to 27<sup>th</sup> May, 2013 in Addis Ababa, Ethiopia



We, Honourable Members of the Public Accounts Committee (PAC), do hereby affix our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

1. Hon. Ababu Namwamba, EGH, MP

Handwritten signature of Ababu Namwamba, consisting of a stylized 'N' and 'A' with a flourish, written in black ink on a dotted line.

2. Hon. Cecily Mbarire, MGH, MP

3. Hon. Gonzi Rai, MGH, MP

4. Hon. Joel Onyancha, MGH, MP

5. Hon. Jackson K. Rop, MP

6. Hon. Sakwa Bunyasi, MP

7. Hon. John Mbadi, MP

8. Hon. Kyengo Katatha Maweu, MP

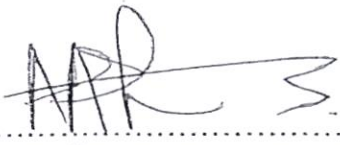
9. Hon. Charles Geni Mong'are, MP

10. Hon. Manson Nyamweya, MP

11. Hon. Alice Nyanchoka Chae, MP

12. Hon. Mwadime Andrew, MP

13. Hon. Ahmed Ibrahim Abass, MP



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14. Hon. James Bett, MP

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15. Hon. Fathia Mahbub, MP



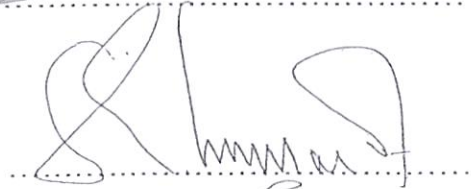
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16. Hon. Arthur Odera, MP



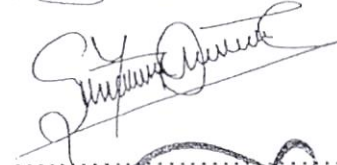
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17. Hon. Stephen Manoti, MP



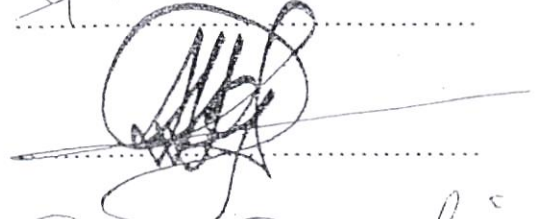
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18. Hon. Silvance O. Osele, MP



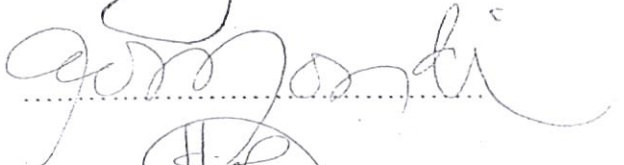
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19. Hon. Jude Njomo, MP



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20. Hon. Edick Omondi Anyanga, MP



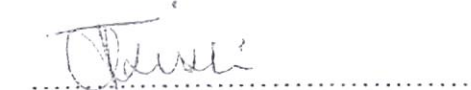
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21. Hon. Julius Melly, MP



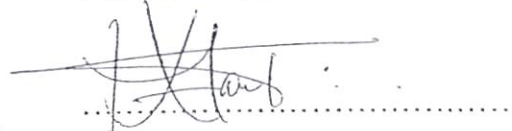
.....

22. Hon. Jessica Mbalu, MP



.....

23. Hon. Joseph Manje, MP



.....

24. Hon. Kareke Mbiuki, MP

.....

25. Hon. Mathias Robi, MP

.....

26. Hon. Samuel Arama, MP

.....

27. Hon. Junet Sheikh Nuh, MP

.....

The image shows three handwritten signatures in black ink. The first signature is for Mathias Robi, the second for Samuel Arama, and the third for Junet Sheikh Nuh. Each signature is written on a set of three horizontal dotted lines. The signatures are stylized and cursive.

## PART II

### THE EXECUTIVE SUMMARY

- 1.1 This report is comprised of six parts. PART I is the Preface, PART II the Executive Summary and PART III the witness evidence and testimonies. PART III covers issues for determination, PART IV the Findings and Culpability, while PART VI is the Committee's Recommendations.
- 1.2 The House referred this matter to the Committee for investigation following a statement issued on the floor by the Leader the Majority Party, Hon. Adan Duale on 22<sup>nd</sup> May, 2013 in response to a request from Hon. David Ouma, Member for Ugenya regarding a tour by the Deputy President to Congo Brazzaville, Ghana, Nigeria and Gabon in a hired aircraft. The matter had also attracted considerable media interest and general public attention.
- 1.3 The Deputy President made the trip between 16<sup>th</sup> and 19<sup>th</sup> May, 2013. The delegation numbered fourteen in total, including the Deputy President himself.
- 1.4 Ten witnesses testified before the Committee. From their evidence and sworn testimonies, the Committee made the following conclusions, *inter alia*:-
- (i) The Deputy President undertook the tour on behalf of the President, in his official capacity as the President's principal assistant, in accordance with Article 147 of the Constitution;
  - (ii) The President instructed the Deputy President to undertake the tour verbally, contrary to Article 135 of the Constitution, which requires the President to convey all decisions in respect of the performance of any of his functions of State in writing;
  - (iii) The purpose of the trip to the said four nations was ostensibly for the Deputy President to seek their backing for Kenya's agenda at an African Union Summit of Heads of State that was scheduled for 26<sup>th</sup> and 27<sup>th</sup> May, 2013 in Addis Ababa, Ethiopia.

- (iv) It is difficult to conclusively determine the ultimate beneficial value of the tour to the Kenyan tax payer, since there is no evidence indicating how exactly the four countries visited actually lobbied for Kenya's cause at the Addis Ababa Summit;
- (v) The accompanying delegation was thirteen (13) person-strong and consisted of eight (8) members of staff from the Deputy President's office led by the Chief of Staff, one (1) officer from Foreign Affairs, two (2) Members of the National Assembly and two (2) Senators. The criteria and rationale for selecting this travelling party is unclear and their specific value to the trip not manifest. None of the members of this delegation appears to be a specialist, expert or leader in any of the thematic areas that the Deputy President was ostensibly lobbying regional support for. There is accordingly no apparent logic in how the delegation was picked;
- (vi) The Committee holds the view and strongly advises that selection of delegations for State assignments should be influenced and determined by relevance and definitive value to the purpose of the assignment. This will forestall any possibility of wasting taxpayers' money on joyriders and busybodies;
- (vii) The trip was arranged in great hurry, occasioning gross breaches of procedures and regulations. It is clear that government policy on travel by senior officials is archaic and not tailored to these kinds of emergency-style trips;
- (viii) The Committee nonetheless strongly holds the view that pressure of time and haste must never be used as an excuse for breaching government financial and procurement regulations. Procurement and Financial laws, rules, regulations and practices sufficiently provide for legitimate means of acting in such circumstances;
- (ix) The President was apparently scheduled to undertake this trip himself, but subsequently delegated the responsibility to the Deputy President quite late in the day, which seems to be the reason for the hurried nature of the preparations for the trip. But if this indeed was the case, the big question is, why didn't the Deputy President simply slot into the arrangements that had

already been made for the President? Why initiate hurried plans as if government had not been aware of the trip at all?

- (x) The total cost of the tour is recorded as being Kshs 21,167,579.20, consisting of Kshs 18,564,000.00 for hire of the aircraft and Kshs 2,603,579.20 for accommodation. If this indeed is the real cost, it would be comparable to the cost of previous trips in comparable circumstances by Government VIPs of similar rank. The stated sum is however not inclusive of the per diem paid by Parliament to the four Members who were part of the delegation;
- (xi) Government procurement regulations, procedures and practices were breached in the process of hiring the aircraft. There was no Inspection and Acceptance Committee established for the procurement, and so the aircraft was not inspected as required. This was reckless and exposed the Deputy President and the rest of the delegation to potential risk; the supplier, EADC Ltd, quoted to supply a Global Express 6000 aircraft but instead delivered a Challenger 850. This variation was irregular and illegal. At the time of initiating the procurement, the Office of the Deputy President was not exchequered for this expenditure. This occasioned desperate efforts to shift funds from other vote heads and to seek extra exchequer from treasury. It is a breach of government financial regulations to initiate procurement in the absence of exchequer; No contract was signed between the Office of the Deputy President and the supplier, EADC Ltd, for the aircraft hire; An incomplete Local Service Order (LSO) was irregularly used to initiate payment to the supplier; and four (4) LSO and one LPO leaves mysteriously disappeared in suspicious circumstances, raising real fears of intended fraud;
- (xii) There appears to have been a deliberate attempt to exploit the haste with which the trip was arranged and use it as a cover to defraud government and the taxpayer. The highly suspicious disappearance of the LSOs and LPO, coupled with the failure by the Office of the Deputy President to institute any investigations into this grave matter, and the subsequent hurried transfer of the two officers directly involved in the procurement of the aircraft

hire, all point to attempted fraud and a deliberate subsequent effort aimed at a cover-up;

(xiii) There seems to have been an attempt to unduly influence the Officer of the Deputy President into entering a long-term contract with EADC Ltd and/or VISTAJet for supply of aircraft services for some indeterminate length of time. It appears these attempts were abandoned when this matter attracted media spotlight and public attention;

(xiv) There is no evidence to indicate that the Deputy President was directly involved in either the organization of the tour or the procurement process for the hire of the aircraft.

1.5 The Committee notes with grave concern the apparent widespread financial and procurement malpractices in government, fanned by what bears all hallmarks of a culture of impunity that routinely condones breaches of procurement procedures and financial regulations. The Cabinet Secretary, Treasury, is advised to take urgent remedial measures and submit a comprehensive report to the National Assembly within six months from the date hereof.

1.6 The Committee finds Ms. Marianne Kitany, Chief of Staff in the Office of the Deputy President culpable for dereliction of duty, negligence and inertia. She failed/refused to institute investigations into the case of the missing LSOs and LPO and/or to take any steps to hold accountable those suspected of the criminal acts. Instead, she had them hurriedly transferred to other ministries in the midst of the audit into this matter. The Committee also finds Mr. Abdul Mwaserrah, Secretary of Administration, Mr. Evans Nyachio, Senior Assistant Director of Supply Chain Management, Mr. Simon Okoth, Supply Chain Management Officer, and Mr. Paul Kamau, Senior Finance Officer, as well as EADC Ltd, culpable on varying grounds for breaches of procurement regulations and related malpractices.

1.7 The Committee recommends that the Ethics and Anti-Corruption (EACC) Commission should investigate Ms. Marianne Kitany, Mr. Abdul Mwaserrah, Mr. Evans Nyachio, Mr. Simon Okoth, Mr. Paul Kamau and EADC Ltd for breach of government financial, procurement and

taxation regulations and procedures with a view to having them possibly prosecuted.

- 1.8 The Committee also strongly recommends that the President as the ultimate custodian of the Constitution should at all times respect all its provisions, including the requirement for written instructions in respect of all decisions on his official functions as required by Article 135 of the Constitution.
- 1.9 The Committee encourages the practice of Whistle Blowing, and recommends strong deliberate government measures to motivate, encourage and support the practice.
- 1.20 The Committee particularly commends the Daily Nation Newspaper and the media in general for bravely and gallantly blowing the whistle on the missing LSOs and LPO, among others issues, which exposed this grave matter. This public spirited endeavor is highly encouraged. The Committee also urges whistle blowers to be forthcoming in sharing information with investigative institutions such as Parliament and the Ethics and Anti-Corruption Commission (EACC) to assist in getting to the root of matters under investigation, in the best public interest.



## PART III

### WITNESS EVIDENCE AND TESTIMONIES

#### **3.1. EVIDENCE AND TESTIMONY OF MRS. BERNICE GACHEGU, REGISTRAR GENERAL, OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE**

1. The Committee sought to know details of the Companies involved in the procurement process of the aircraft hired for the Deputy President. Three (3) Companies were involved, namely:

- Lady Lori (Kenya) Ltd,
- Aircraft Business Management Ltd, and
- EADC Ltd.

Mrs. Bernice Gachegu, the Registrar General, appeared before the Committee on 6<sup>th</sup> August, 2013 and submitted as follows:-

##### **(a) Lady Lori (Kenya) Limited**

2. The Company was incorporated on 10<sup>th</sup> May, 1999 under registration number C85506. It last filed annual returns in 2008 and as per the returns, its Directors were:-

- James Stanley De Nooyer, American with 2500 shares.
- Lori Cox De Nooyer, American with 2500 shares.
- Thomas Anson Silvester, Kenyan with nil shares.
- Ian Mbuthia Mimano, Kenyan with nil shares.

3. The Company's registered office was situated on:-

Plot L.R. No. 1870/1/138  
Peponi Road, Westlands  
P.O Box 14843-00800  
**NAIROBI**

##### **(b) Aircraft Business Management Limited**

4. The Company was registered on 11<sup>th</sup> September, 2009 under registration number C144597 and had not filed returns by 6<sup>th</sup> August, 2013. The Directors at the time of incorporation were:-

- Nicholas Omondi Oture, Kenyan with 600 shares
- Alice Adhiambo Oture, Kenyan with 400 shares

5. The Company's registered office situated on:-

Plot L.R. No. 209/4279, City Hall Way

P.O Box 3954-00506

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**(c) EADC Ltd**

6. The Company was registered on 21<sup>st</sup> November, 2011 under registration number CPR/2011/61416 and its Directors were:-

- Ahmed Kassam, British with 499 shares; and
- Punit Dipakkumar Vadgama, Kenyan with one share.

7. The company's registered office was:-

L.R. No. 209/5410 Wabera Street

2<sup>nd</sup> Floor, Prudential Assurance Building

P.O Box 40286-00100

**NAIROBI**

8. The Committee noted that Aircraft Business Management had its name on letterheads abbreviated as ABM Limited and used the abbreviated name in the tendering process. The Committee also noted the multiplicity of references to the second company, EADC Ltd, which had variously been referred to as "East African Development Corporation Ltd" by the Registrar, "EADC Ltd" in the Companies' register and "E-ADC Ltd" in the tender documents.

9. Mrs. Gachegu's written evidence is annexed hereto as appendix 3. In her oral testimony, including her response to other issues raised by the Committee, she further submitted as follows:-

- (a) Section 19 of the Companies Act does not prohibit registration of company names in abbreviated form;
- (b) Banks ordinarily insist on dealing with companies in accordance with the identity appearing in the certificate of incorporation;

- (c) It was normal for one to be a Director in a company without holding any shares;
- (d) The Registrar General is empowered by the company law to penalize and initiate prosecution against offenders like those who fail to file returns, but has been unable to do so because of the manual system in the registry which has made it difficult to easily track offenders. The registry is being automated to address this anomaly;
- (e) She would be writing to the three companies involved in this matter to have them file their returns;
- (f) The nature of business transacted by a given company is determined by its Memorandum and Articles of Association. It is common practice for companies to file Memorandum and Articles providing for multiple businesses for survival.

**3.2. EVIDENCE AND TESTIMONY OF MR. ABDUL MWASSERAH, SECRETARY ADMINISTRATION, DEPUTY PRESIDENT'S OFFICE**

Mr. Mwasserah, appeared before the Committee on 6<sup>th</sup> August, 2013 and again on 6<sup>th</sup> November, 2013 and submitted as follows:-

- 10. The visit by the Deputy President to four African nations in May, 2013 was a state assignment. The four countries to be visited were Congo Brazzaville, Gabon, Nigeria and Algeria, and the visit was undertaken from 16<sup>th</sup> to 19<sup>th</sup> May, 2013.
- 11. Initially, His Excellency the President was to undertake the trip himself but due to other engagements, he was unable to travel and instructed his deputy to represent him, pursuant to Article 147(1), (2) of the Constitution. The said article provides as follows:-

147 (1) *"The Deputy President shall be the principal assistant of the President and shall deputize for the President in the execution of the President's functions"*

(2) *"The Deputy President shall perform the functions conferred by this Constitution and any other function of the President as the President may assign"*

- 12. The President's instruction in this respect cannot be classified as an "Executive Order", which customarily is written communication

on government organization and practice. Since assuming office in the year 2013, the President had issued only two such orders. The first on the number of ministries under the new Constitution and the second one defining the functions of those ministries. The President's instruction to his deputy was under delegated authority. Mr. Mwasserah could however not confirm if the instructions by the President to the Deputy President to undertake the tour on his behalf were verbal or written.

13. The purpose of the visit to the four African nations was to seek their backing for Kenya's agenda at an African Union Summit of Heads of State scheduled for 23<sup>rd</sup> to 27<sup>th</sup> May, 2013 in Addis Ababa Ethiopia. Kenya reportedly wanted the following issues addressed by the African Union:-
  - (a) Enhancement of mandate of the African Mission on Somalia (AMISOM);
  - (b) Closure of refugee camps in Kenya and repatriation of refugees;
  - (c) Establishment of a Rapid Deployment Force to firmly deal with Al-Qaeda, Al-Shabaab and other terrorist gangs;
  - (d) To enhance the capacity of AMISOM and local units to stop the inflow of contraband goods mainly sugar and electronics finding their way into Kenya through the Somalian sea port of Kismayu;
  - (e) Enhancement of AMISOM capacity to stem the entry of Al-Qaeda operatives into Kenya;
  - (f) Establishment of mechanisms of enhancing intra-Africa trade and also work on the development of instruments that promote regional investments and business;
  - (g) Enhancement of communication between East and West Africa through regional infrastructural projects and other networks such as rail and road to facilitate movement of goods and services so as to promote trade.
  
14. The delegation was fourteen in number and comprised the Deputy President, his Chief of Staff and Personal Assistant, four Members of Parliament, a Protocol Officer from the Ministry of Foreign Affairs and International Trade, three Security Officers, two Communication Officers, and an Accountant from the Deputy President's Office.

15. The process of hiring the aircraft commenced on 14<sup>th</sup> May, 2013 when Mr. Mwasserah received a memo from the Chief of Staff to initiate the process. According to the memo, the visit was to be undertaken from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. See appendix 4.

16. On the basis of instructions in the memo, the Supply Chain Management Directorate was satisfied that the procurement was urgent and requested the Ministerial Tender Committee to approve restricted tendering in accordance with Section 29(3) of the Public Procurement and Disposal Act of 2005. The Section provides that:-

*29(3) A procuring entity may use restricted tendering or direct procurement as an alternative procurement procedure only if before using that procedure, the procuring entity:-*

*(a) obtains the written approval of the tender committee; and  
(b) records in writing the reasons for using the alternative procurement procedure*

17. Subsequently, the Procurement Department invited three (3) bids from prequalified firms on provision of air transport services. The three prequalified firms were:-

- (a) Lady Lori Kenya Ltd;
- (b) Aircraft Business Management (ABM) Ltd; and
- (c) E-ADC - African Development Corporation (partner of Vistajet East Africa).

18. On 15<sup>th</sup> May, 2013, a Ministerial Tender Committee sat and approved the use of restricted tendering. Minutes of the Tender Committee approving the procurement method are annexed hereto as appendix 5. While arriving at the decision, the Tender Committee observed that:-

- (a) The request was urgent and it was important that alternative procurement method through which the Office would beat the timeline be used;
- (b) The cost of the trip was likely to exceed the threshold set for use of quotations;
- (c) This procurement was complex because of factors like security, safety and convenience of the Deputy President and his entourage.

19. The three prequalified suppliers: E-ADC - African Development Corporation Ltd, ABM (Aircraft Business Management), and Lady Lori (Kenya) Ltd, submitted their bids. E-ADC bid at USD 221,000.00 (Kshs 18,564,000.00), ABM aviation USD 338,380.00 (Kshs 28,440,720.00) and Lady Lori USD 234,866.00 (Kshs 19,728,744.00). The tender was awarded to E-ADC Ltd, which had presented the lowest evaluated bid. The quotations by the three Companies are annexed hereto as appendix 6.
20. E-ADC-African Development Corporation was incorporated in Kenya under the Companies Act, Cap 486 Laws of Kenya, on 21<sup>st</sup> November, 2011 as EADC Limited and its Directors were; Mr. Ahmed Kassam and Mr. Punit Dipakkumar Vadgama. The company's certificate of registration is annexed hereto as appendix 7. EADC Ltd partnered with Vistajet Ltd for purposes of supplying the aircraft and bid for the tender as e-Africa Development Corporation (pty) Ltd.
21. The Office of the Deputy President was satisfied with the type of aircraft provided by the supplier. The most significant specification the Office considered was the ability of the aircraft to carry fourteen (14) passengers which was the size of the delegation.
22. The former Prime Minister and Vice President also made trips abroad while in office. Some of the trips were made using hired aircraft while others were by scheduled flights. The Prime Minister, for instance, made four trips to Switzerland, Turkey, United Kingdom and Malaysia/Korea using scheduled flights at a cost of Kshs 62,196,460.30. The Vice President had made thirty seven trips using hired and scheduled flights between January 2008 and February 2012 at a cost of Kshs 267,754,132.85. Attached is an expenditure summary of the trips marked as appendix 8.
23. After the services had been provided to the satisfaction of the Office of the Deputy President, a copy of the Local Service Order (LSO), invoice, Ministerial Tender Committee minutes and memo authorizing the procurement process were forwarded to the Accounts Department where a payment voucher was prepared and processed. The payment voucher was prepared against LSO No. 0855010 for Kshs.18,564,000.00, which was raised on 16<sup>th</sup> May, 2013. The voucher was invoiced and validated through IFMIS on 26<sup>th</sup> June, 2013. It was then exported to G-Pay System which is

used to send funds to the Central Bank of Kenya for transmission to service providers. The transmission to Central Bank of Kenya was done on 2<sup>nd</sup> July, 2013, the exchequer having been received on 1<sup>st</sup> July, 2013. Attached are copies of the IFMIS extract and G-Pay transmission schedule marked as appendix 9.

24. There was no long-term aircraft lease agreement signed between the Office of the Deputy President and E-ADC Ltd or any other Company as had been reported in the media.
25. Mr. Mwasserah said he had cooperated with the Auditor General in the course of the audit exercise and availed all documents for audit as requested. However, he could not avail all LSOs for the audit as some were missing. He was not aware that certain LSOs were missing until the Auditor General raised the red flag while conducting the audit. The LSOs in question were Nos. 0855002, 0855003, 0855005, 08550011 and LPO No. 1694975, and were missing together with all their copies. The LSOs and LPO could not be traced internally. A memo dated 19<sup>th</sup> May, 2013 a copy of which is attached hereto as appendix 10 had been written culminating in an advertisement in the Daily Nation and Standard newspapers of 29<sup>th</sup> July, 2013 altering and forewarning the public against transacting with them. The missing LSOs could in the circumstances not be used for any lawful transaction and had not been captured in IFMIS. Mr. Mwasserah was emphatic that none of the four missing LSOs had been traced and an internal inquiry was ongoing to recover them.
26. The Committee noted that a copy of memo attached hereto as appendix 10 is dated 19<sup>th</sup> May, 2013 instead of 19<sup>th</sup> June, 2013. The explanation offered was that the dating error had been committed by the secretary who typed it. She had allegedly made reference to a letter from the Auditor General which was inadvertently dated 19<sup>th</sup> May, 2013 instead of 19<sup>th</sup> June, 2013. The Auditor General commenced the audit exercise in June, 2013.
27. A copy of the LSO No. 0855010 that was used to pay E-ADC Ltd Kshs.18,564,020.00 produced before the Committee was not duly signed as some signatories had not appended their signatures to it. It was explained that the Auditor General had photocopied the original when the payment process had just been initiated and as it went through various stages, the authorized signatories had

subsequently signed it. A copy of the LSO is attached hereto as appendix 11.

28. There is no government policy on the hire of aircraft for government officials. As a result, general regulations and procedures on procurement of goods, works and services, as set out in Section 73(2) of the Public Procurement and Disposal Act apply. Mr. Mwaserrah's written evidence is annexed hereto as appendix 12.

**3.3. EVIDENCE AND TESTIMONY OF MR. EVANS NYACHIO, SENIOR ASSISTANT DIRECTOR OF PROCUREMENT, MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT**

Mr. Evans Nyachio appeared before the Committee on 5<sup>th</sup> and 30<sup>th</sup> November, 2013 and testified as follows:-

29. He had served the government for 30 years in different ministries and was at the time of the transaction in question a Senior Assistant Director of Procurement in the Office of the Deputy President and thus headed the supplies and procurement docket. He had since been transferred to the Ministry of Industrialization and Enterprise Development.
30. On 14<sup>th</sup> May, 2013 he received verbal instructions from the Chief of Staff, Office of the Deputy President to commence the process of hire of an aircraft for the Deputy President who was to make an official visit of four African nations from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. Before he could receive a memo to the effect, an urgent meeting was held to discuss financial and logistical challenges of hiring the aircraft on such short notice.
31. It was "normal" practice to work on verbal instructions then later formalize them as was the case here. In view of the short notice to hire the aircraft, this was going to be a challenging assignment. On the same day (14<sup>th</sup> May, 2013), a technical team was formed to advise on technical aspects of the procurement. The team comprised:-
- (a) The Secretary of Administration Office of the Deputy President;
  - (b) The Chief Finance Officer, Office of the Deputy President;
  - (c) The Chief Accountant, Office of the Deputy President;



- (d) A Protocol Officer, Ministry of Foreign Affairs and International Trade.
32. On 15<sup>th</sup> May, 2013, he got the Deputy President's travel itinerary and instructed Mr. Simon Okoth, a Procurement Officer in the Deputy President's Office responsible for procuring air tickets and logistics, to advise on logistics and ticketing. Mr. Okoth advised that an aircraft be hired due to the logistical difficulties that would be encountered for a scheduled commercial flight. Furthermore, there were no direct scheduled flights between Kenya and Congo Brazzaville.
33. Based on Mr. Okoth's advice, bids were invited on the same day from the three prequalified firms, EADC Ltd, Aircraft Business Management (ABM) Ltd and Lady Lori (Kenya) Ltd. The bids were evaluated and the tender awarded on the same day to EADC Ltd which had submitted the lowest evaluated bid. EADC quoted USD 221,000.00 (Kshs 18,564,000.00), ABM quoted USD 338,000.00 (Kshs 28,440,000.00) while Lady Lori quoted USD 234,866.00 (Kshs 19,728,744.00). EADC Ltd had an aircraft available and ready for inspection at Wilson Airport in Nairobi. This was an assurance given by EADC Ltd at the time of bidding and this factor in addition to being the lowest bidder contributed significantly to the Company being awarded the tender.
34. The Deputy President travelled on 16<sup>th</sup> May, 2013 in the morning. The memo from the Chief of Staff instructing him to hire the aircraft finally reached him on 16<sup>th</sup> May, 2013, the day the Deputy President departed for West Africa.
35. He had in his long service with government encountered a similar situation of being required to procure goods and services on short notice. A case in point was when he worked for the Ministry of Health and there was a cholera outbreak in the country. The procurement of drugs to arrest the situation was done within a short time.
36. After award of the tender to EADC Ltd, minutes of the Tender Committee were immediately prepared and an LSO prepared by Mr. Simon Okoth. The LSO was however not released immediately since funds were not available. The LSO was dated 16<sup>th</sup> May, 2013.

Mr. Nyachio clarified that he does not approve LSOs though he signs them.

37. EADC was paid Kshs 18,564,000.00 on 2<sup>nd</sup> July, 2013 vide LSO No. 0855010. See appendix 12. The LSO lacked some signatures yet it effected payment through IFMIS and was later validated after all mandatory signatories signed it, subsequently. Mr. Nyachio would later explain to the Committee that the LSO was signed by all signatories before going through IFMIS.
38. The aircraft was hired when the Office of the Deputy President was not exchequered but was using an old vote from the former Office of the Prime Minister. The Office allegedly got authority from Treasury to spend in advance while awaiting for supplementary allocation that would cover expenditure on this trip. Mr. Nyachio could not produce any evidence of formal communication from Treasury authorizing the expenditure.
39. He was aware that some LSOs and an LPO were missing from the respective accountable documents. These were: LSOs Nos. 0855002, 0855003, 0855005, 0855011 and LPO No. 1694975. He learnt of the missing LSOs through the Auditor General in the course of the audit. An internal memo dated 19<sup>th</sup> May, 2013 attached hereto as appendix 11 was issued in respect of the loss but none of the LSOs and LPO could be traced. An announcement was subsequently put in the local daily newspapers alerting and forewarning the public from transacting with them. None of the LSOs or LPO had since been traced. There was no relationship between the missing LSOs and LPO and the partnership agreement between Vistajet Company and EADC Ltd.
40. He signed the internal memo dated 19<sup>th</sup> May, 2013 on the loss of LSOs and LPOs. The memo was erroneously dated 19<sup>th</sup> May instead of 19<sup>th</sup> June, 2013 as the loss of the LSOs was reported by the Auditor General in June when he was conducting the audit. He claimed the erroneous dating was occasioned by his secretary who typed the memo and whom he had instructed to insert correct dates.
41. There was variance in names and logo of the supplier. Whereas in the tender documents and letterheads the supplier used E-ADC Ltd with a logo. the name appearing in the certificate of incorporation

was EADC Ltd. Refer to quotation documents annexed hereto as appendix 6. The Office of the Deputy President made direct payment to EADC Ltd through IFMIS on 26<sup>th</sup> June, 2013.

42. There was variance between the aircraft quoted and the one that was actually delivered. This was occasioned by the urgency with which the aircraft was required. He further indicated that the Office of the Deputy President did not have internal technical capacity in consequence of which it was not possible to distinguish between the aircraft that was quoted and the one that was delivered.
43. Though there were several committees supposed to be established in procurement processes, including Inspection and Acceptance, no such Committee was established in the procurement of this service. As a result, no certificate of inspection and acceptance was issued.
44. Though he never produced any written evidence on the cost benefit analysis of the trip, he claimed before the Committee that the government got value for money from the hire of the aircraft. Mr. Nyachio's written evidence is annexed hereto as appendix 13.

#### **3.4. EVIDENCE AND TESTIMONY OF MR. SIMON OKOTH, SUPPLY CHAIN MANAGEMENT OFFICER, NATIONAL TREASURY**

Mr. Simon Okoth appeared before the Committee on 5<sup>th</sup> October, 2013 and testified as follows:-

45. He was a Supplies Chain Management Officer in the Office of the Deputy President at the time of the transaction under investigation. He had however in August, 2013 been transferred to the National Treasury in the same capacity. By virtue of his position, he was directly involved in the procurement process for the hire of the aircraft and was responsible for the generation of the Local Service Order (LSO).
46. He was verbally briefed on the aircraft hire on 14<sup>th</sup> May, 2013 by Mr. Evans Nyachio, then Senior Assistant Director of Procurement, Office of the Deputy President. In the briefing, he was informed that the Deputy President was to travel to Congo Brazzaville, Gabon, Ghana and Nigeria on 16<sup>th</sup> of May, 2013 and that a

suitable aircraft was be hired urgently to transport him and fifteen (15) Officers accompanying him.

47. The procurement process commenced on 15<sup>th</sup> May, 2013. A meeting of the Ministerial Tender Committee was held on the same day and explored several travel options, including travel by scheduled commercial flights. The committee settled on hire of an aircraft as the best option having taken into consideration cost and convenience. In arriving at this decision, commercial scheduled flight quotations from Triple Tours and Uniglobe travel agencies were considered.
48. After taking several factors into consideration, the Ministerial Tender Committee settled on restricted tendering as the suitable method of procurement. The three prequalified suppliers namely, EADC Ltd, Aircraft Business Management (ABM) Ltd and Lady Lori (Kenya) Ltd were invited to quote based on specifications and itinerary provided to them. This was during morning hours of 15<sup>th</sup> May, 2013.
49. The Ministerial Tender Committee reconvened in the afternoon of the same day, evaluated the quotations and awarded the tender to EADC Ltd, the lowest evaluated bidder. At this point, the physical aircraft being offered was not available and the award of the tender was based on photographs provided by the suppliers.
50. After the tender award, minutes of the Ministerial Tender Committee were immediately prepared and an LSO generated by Mr. Okoth. He does not sign LSOs and upon generation of this one, he forwarded it to Mr. Evans Nyachio, Senior Assistant Director of Procurement, and subsequently to Mr. Abdul Mwasserah, Secretary of Administration, for approval. The two were among the authorized signatories for LSOs and LPOs in the Office of the Deputy President.
51. Mr. Okoth learnt of the missing LSOs and LPO from the Auditor General during the audit exercise in June, 2013. An initial inquiry was made within various departments in the Office of the Deputy President that dealt with LSOs and LPOs but there was no positive response. An announcement was made to forewarn the public and exonerate the Office of the Deputy President from any liability arising from the use of the LSOs. This was normal practice when

such documents went missing and could not be traced. There was no relationship between the missing LSOs and LPO and the invoicing of EADC Ltd and Vistajet Company, and by extension the partnership agreement between EADC and Vistajet. It was the first time he was witnessing a case of disappearance of LSOs and LPOs since he was employed in the public service.

52. The Office of the Deputy President learnt of the missing LSOs and LPO after the Auditor General commenced the audit exercise in June, 2013. The internal memo dated 19<sup>th</sup> May, 2013 signed by Mr. Nyachio about the missing four LSOs and one LPO appeared to have been backdated. Upon further interrogation by the Committee, Mr. Okoth became uncertain about details on the missing LSOs and LPO.
53. Initially, the missing LSOs, including their originals and duplicates, were referenced Nos. 0855002, 0855003, 0855005 and 0855011. However, it was later established that LSO Nos. 0855002 and 0855011 had in fact been traced and even subsequently used for other transactions. Mr. Okoth could not, however, immediately provide copies of the said LSOs; neither could he tell the exact transaction for which they were used. He however said he thought one of them might have been used to pay Uniglobe Ltd, a travel agency dealing with the Office of the Deputy President. He undertook to provide copies of the two used LSOs. By the time of concluding this report, Mr. Okoth had not honoured this pledge.
54. He said internal investigations for the recovery of the missing LSOs were ongoing, led by Mr. Abdul Mwaserrah, the Administration Secretary. Others involved were Mr. Evans Nyachio, Head of Supply Chain Management and the Accounts Department. He had however not been interrogated over the missing LSOs yet he was the custodian of the accounting documents. As custodian of accountable documents, he kept them in a cabinet under lock and key and only released them when required.
55. The Office of the Deputy President has in place an Internal Procurement Monitoring and Control Mechanism that tracks the movement of LSOs and LPOs. This system was not working at the time of hire of the aircraft, only becoming functional immediately after the Auditor General had come in to conduct the audit.

56. EADC had different logos and the name used in the tender documents for the Procurement of the aircraft varied from that in the certificate of incorporation. Whereas the Company used E-ADC Ltd in tender documents, its name appearing in the certificate of incorporation was EADC Ltd. Payment was made to EADC Ltd. Mr. Okoth's written evidence is annexed hereto as appendix 14.

**3.5. EVIDENCE BY RICHARD LEMOSHIRA, ASSISTANT DIRECTOR, IN THE OFFICE OF POLITICAL AFFAIRS AND INTERNATIONAL DIPLOMACY, MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE**

Mr. Richard Lemoshira appeared before the Committee on 6<sup>th</sup> November, 2013 and testified as follows:-

57. His position as an Assistant Director, Office of Political Affairs and International Diplomacy, Ministry of Foreign Affairs & International Trade, did not authorize him to discuss the ministry's policy on international travel. That would be the responsibility of the Principal Secretary and Head of Protocol.

58. He was nominated by the Ministry of Foreign Affairs to accompany the Deputy President on the official tour of the Republic of Congo Brazzaville, Gabon, Nigeria and Ghana from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. His role during the tour was limited to providing protocol services, though he was an Assistant Director in the Office of Political Affairs and International Diplomacy. His responsibilities during the tour related to:

- (a) Securing visas;
- (b) Securing appointments in the countries to be visited;
- (c) Coordination of official meetings with host governments;
- (d) Coordination and delivery of official messages to the host governments;
- (e) Coordination of the official programme.

59. The request by Office of the Deputy President to the Ministry of Foreign Affairs for provision of protocol services was made on 14<sup>th</sup> May, 2013. He was verbally appointed by the Political and Diplomatic Secretary to accompany the Deputy President on the tour. He could not tell whether there was written communication between the Office of the Deputy President and Ministry of Foreign Affairs with respect to his assignment.

60. The main purpose of the tour was for Kenya to develop strategic partnership with West Africa in order to get support for its agenda in terms of security over Somalia at an African Union summit of Heads of State scheduled towards end of May, 2013 in Addis Ababa, Ethiopia. The four countries, Ghana, Nigeria, Gabon and Congo Brazzaville were influential in West and Central Africa. Other than the Somalia agenda, the Deputy President also discussed economic affairs with the Heads of State of Ghana and Nigeria.
61. Though the tour centered largely on security issues, there was no security expert in the delegation. It was not his responsibility to determine who constituted the delegation. He was also not familiar with the standard operating procedures in the Office of the Deputy President.
62. He was not aware that the President was to undertake the tour but instead delegated to the Deputy President at the last minute. He further had no information if the Presidential team had made prior arrangements for the President's tour. He made new arrangements for the tour of the Deputy President. The Deputy President made this tour in his capacity as the Deputy President and a special envoy of the President. During the tour, he delivered four Presidential messages to the host Presidents.
63. Though this assignment came at a very short notice, it was not extraordinary to him having encountered similar situations before and acted successfully. From operational targets, he was to arrange for four meetings which he successfully did. However during the whole tour, he only attended one meeting in Nigeria between His Excellency the Deputy President and His Excellency Goodluck Jonathan, President of the Republic of Nigeria. This was because he would be sacrificed in meetings where there was inadequate sitting space for the delegation.
64. Overall, from his perspective, the tour was successful. Mr. Lemoshira's written evidence is annexed hereto as appendix 15.

### **3.6. EVIDENCE BY ERIC KORIR, SENIOR ASSISTANT DIRECTOR OF SUPPLY CHAIN MANAGEMENT, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT**

Mr. Eric Korir had previously served as Senior Assistant Director of Procurement in the former Office of the Vice President and had been involved in hire of aircraft for the Vice President who would at times travel on very short notice. The Committee called him to give evidence to enable it draw comparisons on air travel between Offices of the former Vice President and the Deputy President which was essential for purposes of this report. Mr. Korir appeared before the Committee on 6<sup>th</sup> November, 2013 and submitted as follows:-

65. He had received a letter from the Auditor General on 26<sup>th</sup> June, 2013 requesting him to provide information on travel by the former Vice President. The Auditor General needed this information to do a comparative study with the Deputy President's air travel so that he could report on value for money in his audit report. He did not formally respond to the letter because he was busy preparing final accounts for closure of the financial year.
66. His failure to respond to the Auditor General's letter culminated in the Auditor General's team visiting and orally interviewing him. During the interview, he furnished the Auditor General with a list of trips made by the former Vice President. He thought that the oral interrogation by the Auditor General was sufficient for all purposes.

The procurement process for hire of aircraft involved:-

- (i) Requisition is made and approved by the Accounting Officer;
  - (ii) Quotations are invited;
  - (iii) Ministerial Tender Committee (MTC) is constituted;
  - (iv) Quotations are evaluated and tender awarded by MTC;
  - (v) Minutes are produced and sent to the Accounting Officer;
  - (vi) Contract is signed;
  - (vii) Supplier to provide goods and services pending issuance of LSO;
  - (viii) LSO issued.
67. The major challenge, however, in the procurement is when the notice is short in consequence of which procurement entities have



breached regulations and procedures. From his experience, he had always operated within the law on many occasions when notices to procure were short. Adherence to procurement regulations and procedures in procurement processes was not negotiable. All instructions he had received while procuring had been in writing.

68. Incomplete LSOs cannot be used to generate payment. Inspection and acceptance certificates must also be attached to the LSOs. Payment for goods and services should always be after delivery, unless under exceptional circumstances. It is common practice in aircraft hire for advance payment to be made at least 24 hours before provision of services.
69. He had served in the Office of the former Vice President for three (3) years during which he had presided over the hire of aircraft eight (8) times and issues of safety were very crucial in aircraft hiring. The aircraft must be inspected and its airworthiness certified before hire. A certificate of Inspection and Acceptance would be issued to this effect and it was a requirement that the certificate be attached to the LSO for the purposes of payment. Towards this end, it was important the government deals with reputable companies.

### **3.7. EVIDENCE AND TESTIMONY OF MS. MARIANNE KITANY, CHIEF OF STAFF, OFFICE OF THE DEPUTY PRESIDENT**

Ms. Marianne Kitany appeared before the Committee on the 7<sup>th</sup> day of November, 2013 and testified as follows:-

70. As part of Kenya Government's commitment to strengthen relations with African states, develop a continental response to asymmetrical security challenges particularly terrorism, and increase Kenya's export presence within the African continent, the need to make Africa safe and repatriation of refugees back to Somalia, the President instructed his Deputy by phone to make a state visit to four African nations namely, Congo Brazzaville, Gabon, Nigeria and Ghana from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. At that time, the President was attending the World Economic Forum in South Africa.
71. Upon the Deputy President receiving instructions from the President, he verbally instructed her to make necessary arrangements for the tour. Given the short notice, she immediately

constituted an organizing committee which held sittings on 14<sup>th</sup> and 15<sup>th</sup> May, 2013 and organized the trip.

72. The current policy on travel for government dignitaries on official functions is archaic and not suited to current circumstances. The Government has commenced the process of developing a new comprehensive policy on travel. The process started before the audit exercise and seeks to develop a broad approach for travel across the entire government, including State Corporations and Independent Commissions.
73. Decisions as to who from the Deputy President's Office forms the Deputy President's entourage on such tours is determined by herself, whereas the decision as to who was to accompany the Deputy President from Parliament (the National Assembly and the Senate) was left to the Speakers of the two Houses. Letters were written to the two Speakers through their respective Clerks and names were provided. Parliament paid the per-diems of the Members in the entourage, while the other costs were met by the Office of the Deputy President and the host countries.
74. The Deputy President's Office followed the requisite government procurement regulations and procedures in dealing with the case of missing LSOs and LPO when it was discovered in June, 2013. The Office circulated an internal memo to Heads of Departments and later advertised the loss in local daily newspapers seeking to trace them and forewarning the public from transacting with them. Though none of the LSOs and LPO had been traced, none had been used for any illegal transaction. Internal investigations on the loss of the LSOs and LPO were ongoing and she would ensure speedy conclusion of the investigations.
75. The Public Procurement and Disposal Act of 2005 envisages instances when there is need for urgent procurement of goods and services, and that the ideal procurement method under such circumstances would be restricted tendering. This method allows for procurement whose value does not exceed Kshs 20,000,000.00 and the cost of hire of the aircraft for the Deputy President did not exceed this limit. The suppliers involved had been prequalified by the former Office of Prime Minister as required by the procurement law.

76. While arriving at restricted tendering as the procurement method, the Ministerial Tender Committee considered cost, reliability, safety, reputation, aircraft specifications, dates of travel, destinations and other relevant factors. There was no cheaper option of travel than hiring an aircraft after considering all these factors.
77. The LSO used to generate payment to the supplier as presented to the Committee did not bear all mandatory signatures. The LSO was photocopied by the Auditor at the commencement of the audit exercise and by the time payment was made, all mandatory signatories had signed it.
78. There was no intention to defraud the government in this procurement. The taxpayer did not lose a single cent in the procurement as it can be inferred from the Auditor General's report. The issues raised by the Auditor General relate to procurement procedures. Marianne Kitany's written evidence is annexed hereto as appendix 16.

**3.8. EVIDENCE OF DR. MOHAMED ISAHAKIA, FORMER PERMANENT SECRETARY, FORMER OFFICE OF THE PRIME MINISTER**

Dr. Mohamed Isahakia appeared before the Committee on 6<sup>th</sup> November, 2013 and testified that:-

79. Functions of the former Office of the Prime Minister had been transferred to the Office of the Deputy President after the 2013 general elections. At the time of the hire of the aircraft, he was the Accounting Officer, Office of the Deputy President in a transitional capacity. His responsibilities involved sourcing for exchequers and signing vouchers among others. He remained in Office until June, 2013 when a substantive Accounting Officer was appointed.
80. He heard of the Deputy President's tour of four African nations on 14<sup>th</sup> May, 2013 from the Chief of Staff, Marianne Kitany. Though the Chief of Staff later wrote to the Administrative Secretary instructing him to make arrangements for the tour, she did not copy the letter to him.

81. He was a lame duck Accounting Officer and was not involved in the organization of the tour at all. Dr. Isahakia's written evidence is annexed hereto as appendix 17.

**3.9. EVIDENCE OF MR. PAUL KAMAU, SENIOR FINANCE OFFICER, OFFICE OF THE DEPUTY PRESIDENT**

Mr. Paul Kamau was at the time of testifying the Senior Finance Officer, Office of the Deputy President. He appeared before the Committee on 13<sup>th</sup> November, 2013 and submitted as follows:-

82. He had served as a Senior Finance Officer in the former Office of the Prime Minister since October, 2010 and was retained to serve in the Office of the Deputy President in the same capacity. His responsibilities as Senior Finance Officer involved sourcing funds from Treasury, budget implementation and ensuring the sourced funds were well utilized.
83. The Office of the Deputy President inherited funds from the former Office of the Prime Minister. Whereas an expenditure of Kshs 18,564,000.00 on the hire of the aircraft for the Deputy President was charged to the foreign travel vote, the vote had a balance of Kshs 2,142,251.20 only. This was in contravention of government financial regulations and procedures.
84. He wrote to Treasury on 17<sup>th</sup> May, 2013 requesting for more funds to meet the Office of the Deputy President's expenditure. He was under immense pressure to facilitate funding for the trip. At one stage, he had to physically walk to Treasury severally to follow up on the request for more funds. He signed the LSO when there were no sufficient funds believing that Treasury would later provide additional funds to meet the expenditure.
85. He was liaising with a Mr. Origa, a Budget Officer at Treasury, who gave him confidence that the funds requested for would be disbursed. He admitted that the letter dated 17<sup>th</sup> May, 2013 could not have guaranteed the Office of the Deputy President any funds disbursement since it had been written after the procurement had commenced. Mr. Kamau admitted that this was in contravention of government procurement regulations and procedures. His dealing with Mr. Origa was personal and informal.

86. Treasury eventually disbursed funds to the Office of the Deputy President in June, 2013 – a month after the trip had been made. The supplier of the aircraft, EADC Ltd was paid on 3<sup>rd</sup> July, 2013. He had signed the LSO on 15<sup>th</sup> May, 2013, a day before the Deputy President departed the country.
87. He was not in a position to tell whether the aircraft used by the Deputy President was the same as the one specified in the tender documents. He was not aware of any long-term lease of aircraft agreement between the Office of the Deputy President and EADC Ltd or any other Company. He only read about this in newspapers. Mr. Paul Kamau's written evidence is annexed hereto as appendix 18.

### **3.10. EVIDENCE OF AHMED KASSAM, DIRECTOR, EADC LTD**

Mr. Ahmed Kassam is of British nationality, but based in South Africa. He is a Director in EADC Ltd with majority shareholding of 499 shares. He appeared before the Committee accompanied by Mr. Punit Dipakkumar Vadagama of Kenyan nationality, the only other shareholder in the Company with one (1) share, together with a Company Attorney. He submitted as follows:-

88. He was also a Director in e-ADC Ltd registered in South Africa in the year 2006. EADC Ltd had not filed returns and conducted an Annual General Meeting (AGM) by May, 2013 when it was awarded the tender to supply the aircraft for the Deputy President's tour. This was because the due date for the first AGM was still a few months away. The Company was registered in Kenya on 21<sup>st</sup> November, 2011 and had not transacted any business in the country until May, 2013. This aircraft hire was its first business in Kenya since incorporation. According to Company Law, a Company is supposed to file returns one year after commencement of operations. The Company had since filed returns and paid all taxes due to the Kenya Revenue Authority.
89. He admitted the variances in company names in tender documents and certificate of incorporation. In tender documents and Company letterheads the name appearing was EADC Ltd or e-Africa Development Corporation (pty) Ltd with a trademark. See quotation documents attached as appendix 6, LSO attached as appendix 12 and certificate of incorporation attached as appendix 7. He stated

that it was lawful to use trademarks and symbols in marketing and that the variance was legal, though his trademark and symbols were not registered.

90. Though EADC Ltd was awarded the tender to supply the aircraft, the Company does not own aircraft but had a contractual partnership with Vistajet Company from which it outsourced the aircraft. Vistajet Company was based in Switzerland and was one of the world's most reputable companies in hire and leasing of aircraft for Very Important Persons (VIPs). The Company currently has a fleet of 142 aircraft, most of which are less than four (4) years old.
91. On 15<sup>th</sup> May, 2013, EADC Ltd signed an agreement with Vistajet Ltd for the supply of the aircraft. In view of the long standing relationship EADC had established with Vistajet, Vistajet released the aircraft without any down payment. In the aircraft leasing and hiring business, suppliers would in most cases demand for down payment before release of aircraft. There was no comprehensive agreement signed between EADC Ltd and the Office of the Deputy President but an LSO was issued by the Office of the Deputy President and sufficed as an agreement.
92. The type of aircraft quoted by EADC Ltd for supply was Global Express 6000 but the aircraft actually supplied was Challenger 850. This was normal practice in the hire or lease of aircraft and in its bid, the Company had indicated that in the event it was unable to provide the specified aircraft, it would provide a different make with similar features. The variation in aircraft was occasioned by the short notice at which the aircraft was required. The only distinctive feature between the two aircraft was that the Global Express 6000 was long range while Challenger 850 was short range. The Office of the Deputy President was satisfied with the aircraft's condition and specifications. The variation of the aircraft did not have any impact on pricing.
93. EADC was directly paid Kshs 18,564,000.00 by the Office of the Deputy President for the hire of the aircraft on 2<sup>nd</sup> July, 2013. The Daily Nation newspaper report that Vistajet Ltd had invoiced the Office of the Deputy President for the supply and was paid directly was false. Further report by the newspaper that there was a long

term lease agreement for aircraft hire between the Office of the Deputy President and EADC Ltd/Vista Jet Ltd was equally untrue.

#### PART IV

### ISSUES FOR DETERMINATION

94. From the evidence and the testimonies submitted, the Committee identified the following issues for determination.
- (i) Whether instructions for the performance of official duties, including from the President, should be in writing?
  - (ii) Was the trip urgent?
  - (iii) Whether the composition of the delegation was in the best public interest?
  - (iv) Were government procurement regulations and procedures adhered to in the hire of the aircraft?
  - (v) Did taxpayers get value for money in the hire of the aircraft?
  - (vi) What was the role of the Deputy President in the organization of the tour and procurement process for the aircraft hire?
  - (vii) Were the companies involved in the tender process for the hire of the aircraft compliant with statutory obligations?
  - (viii) Was the loss of the LSOs and LPO deliberate or fraudulent?
  - (ix) Was there attempted cover-up of malpractices?
  - (x) Was payment for the aircraft hire regular?
  - (xi) Was there a formal lease agreement for the aircraft hire between the Office of the Deputy President and Vistajet Company
  - (xii) Was the trip beneficial to the Kenyan tax payer?
  - (xiii) What is the government policy on travel by officials on duty?
95. The issues are analyzed as follows:-
- (i) Whether instructions for the performance of official duties including from the President should be in writing?**
96. Marianne Kitany, Chief of Staff, Office of the Deputy President told the Committee that she received verbal instructions from the

Deputy President to make necessary arrangements for the tour. She further told the Committee that the Deputy President had received instructions from the President by telephone. At that time, the President was attending a World Urban Forum in South Africa.

97. No evidence was adduced before the Committee as to whether the instructions from the President to the Deputy President were later put in writing.

Article 135 of the Constitution of Kenya provides that:-

*“a decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.”*

98. The Committee observed that under the Public Procurement and Disposal Act of 2005 and its enabling regulations, there was no provision for procurement based on verbal instructions. Whereas the President, instructed the Deputy President on phone, the instructions ought to have been later put in writing by the relevant Office in the Presidency but this did not happen. In view of the Procurement and Disposal Act and its enabling regulations, read together with Article 135 of the Constitution, the Committee was satisfied that there was breach of the law in the manner in which instructions that initiated the process for the aircraft hire were conveyed.

**(ii) Was the trip urgent?**

99. Evidence on record indicates that the President was initially scheduled to make the tour but instructed his Deputy to represent him after it became apparent that he would not make it in time from South Africa where he was attending a global forum. Evidence on record further indicates that the instructions by the President to his Deputy were on phone and that the agenda for the tour was to lobby the four countries to support Kenya's position at an African Union Summit of Heads of State scheduled for end of May, 2013 in Addis Ababa, Ethiopia.
100. In view of the foregoing, the Committee noted that the instructions came on short notice and with the African Union Heads of State Summit less than two weeks away, it was important that the trip be undertaken urgently. The Committee further observed that the



new government had been in power for less than one month and was apparently eager to establish a relationship with key African governments ahead of the summit.

**(iii) Whether the composition of the delegation was in the best public interest?**

101. Evidence on record confirms that the delegation was fourteen (14) in number and comprised the Deputy President, Chief of Staff in the Office of the Deputy President, two Members of Parliament, two Senators, a Protocol Officer from the Ministry of Foreign Affairs and International Trade, three Security Officers, a Personal Assistant to the Deputy President, two Communications Officers and an Accountant from the Deputy President's Office.
102. Further evidence on record indicates that the Chief of Staff was responsible for appointing officers that accompanied the Deputy President from the Deputy President's Office. The Officer from the Ministry of Foreign Affairs and International Trade was appointed by the Ministry itself on request from the Office of the Deputy President, while the Members of Parliament were picked through the leadership of the two Houses (the National Assembly and the Senate) on request from the Office of the Deputy President.
103. The names of those accompanying the Deputy President as reported by the Auditor General in his special audit report attached hereto as appendix 2 were:-
- |        |                            |   |  |
|--------|----------------------------|---|--|
| (i)    | Hon. Alice W. Nga'ng'a, MP | - | Thika Town Constituency                        |
| (ii)   | Hon. Yusuf Chanzu, MP      | - | Vihiga Constituency                            |
| (iii)  | Hon. Naisula Lesuda        | - | Nominated Senator                              |
| (iv)   | Hon. James Mungai          | - | Senator, Nakuru County                         |
| (v)    | Ms. Marianne Kitany        | - | Chief of Staff, Office of the Deputy President |
| (vi)   | Mr. Winston Adeli          | - | Information Officer                            |
| (vii)  | Mr. Daniel Onyancha        | - | Information Officer                            |
| (viii) | Mr. Nelson Adeya           | - | Accountant, Office of the Deputy President     |
| (ix)   | Mr. Richard Lemoshira      | - | Protocol Services, Ministry of Foreign Affairs |
| (x)    | Mr. Kibet Taigut           | - | Personal Assistant                             |
| (xi)   | Mr. Elijah Kiplimo         | - | Security Officer                               |
| (xii)  | Mr. Kisio Nicholas         | - | Security Officer                               |

(xiii) Mr. Kemboi John Cheruiyot - Security Officer

104. The Committee observed that while the tour centred on security, trade and economic affairs issues, there was no clear link between the delegation and the objectives of the tour and that the composition of the delegation was therefore not in the best public interest.

**(iv) Were government procurement regulations and procedures adhered to in the hire of the aircraft**

Though the Committee understood the rationale for the restricted tendering as the method for procuring hire of the aircraft in view of the urgency with which the aircraft was required, a number of serious irregularities and anomalies in the procurement process were nonetheless noted, as follows:-

105. LSO No. 0855010 which initiated payment of Kshs 18,564,000.00 to the supplier had not been signed by all mandatory signatories. It had one signature of the Vote Head while the rest were missing. The Committee observed that for an LSO to generate payment, it must bear all mandatory signatures. Witnesses argued that the LSO was photocopied by the Auditor General at the initial stages of procurement and that by the time of effecting payment, it had been duly signed. Though Mr. Evans Nyachio later produced a fully signed copy of the LSO, the Committee doubted its credibility and could not admit it in evidence. It relied on the one photocopied by the Auditor General at the time of the audit. In any case, all concerned witnesses did confirm that the LSO was incomplete at the point when payment was initiated. The Committee was satisfied that an incomplete LSO was used to initiate and effect payment to the Supplier contrary to Section 68(2) (e) of the Public Finance Management Act, 2012 which states as follows:-

*68(2) in the performance of a function vested under subsection (1), an accounting officer shall-*

*(e) ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance.*

106. In his evidence, Mr. Ahmed Kassam, Director EADC Ltd, confirmed that there was no comprehensive agreement signed for the hire of the aircraft and that the LSO issued sufficed as an agreement. In view of the fact that even the LSO relied on was in itself irregular, it could not in the circumstances hold as a valid agreement for the purpose of the hire of the aircraft. Since there was no separate comprehensive agreement signed with respect to the hire, then there was no agreement in totality signed between the parties and this was in contravention of Section 68 (1) (2) and (3) of the Public Procurement and Disposal Act of 2005 which provides as follows:-

*68(1) The person submitting the successful tender and the procurement entity shall enter into a written contract based on the tender documents, the successful tender, any clarifications under section 62 and any corrections under section 63.*

*(2) The written contract shall be entered into within the period specified in the notification under section 67(1) but not until at least fourteen days have elapsed following the giving of that notification.*

*(3) No contract is formed between the person submitting the successful tender and the procurement entity until the written contract is entered into.*

107. The type of aircraft quoted for supply by EADC Ltd was Global Express 2000 but the one the Company supplied and was used by the Deputy President was Challenger 850. Mr. Ahmed Kassam, Director EADC Ltd told the Committee that this was normal practice in hire of aircraft; that if the supplier is unable to provide a specified aircraft, he could provide a different one with almost similar specifications. He submitted that there was an agreement with the Office of the Deputy President to this effect but could not produce it, neither could any witness from the Office Deputy President produce it. The Committee observed that even if there was such an agreement, it was inconsistent with the public procurement regulations and procedures and thus null and void. Condition No. 2 at the back of a government LSO attached as appendix 19 provides as follows:-

*“All services are to be carried out strictly in accordance with specifications given. No departure is allowed without our prior agreement and in writing”*

108. Mr. Ahmed Kassam, Director, EADC Ltd submitted before the Committee that the Global Express 6000 type of aircraft was long range while Challenger 850 was short range. He further submitted that the variation of the aircraft did not have any impact on pricing. The Committee was however not persuaded by Mr. Kassam's assertion, and drew the conclusion that in view of the fact that Global Express 6000 type of aircraft was long range, it must have been superior to Challenger 850 which was short range and that the price should have been revised downwards.
109. Mr. Evans Nyachio, who was Head of procurement in the Office of the Deputy President told the Committee that in view of the urgency with which the aircraft was required and the fact that the Office of the Deputy President did not have technical experts on aircraft to advise, it was not possible to distinguish between the aircraft that was quoted and the one that was supplied. The aircraft that was supplied however befitted the status of the Deputy President. This is clearly stated in his written evidence. See appendix 13.
110. Mr. Nyachio further told the Committee that though several Committees should have been established for such procurement, including the Inspection and Acceptance Committee, there was no such Committee in place and that no Certificate of Inspection and Acceptance was issued with respect to the aircraft that was hired for the Deputy President.
111. Mr. Simon Okoth told the Committee that quotations for the tender award were invited and received on 15<sup>th</sup> May, 2013. The bids were evaluated the same day and the tender awarded to EADC Ltd on the same day. He took part in the whole process and submitted that the Tender Committee evaluated the bids based on photographs presented by the suppliers. In this regard, the Committee was satisfied that there was no physical verification or inspection of the aircraft.
112. Mr. Abdul Mwaserrah told the Committee that the Office of the Deputy President was satisfied with the type of aircraft provided by

the supplier. The most significant specification the office considered while hiring the aircraft was the ability of the aircraft to carry fourteen (14) passengers which was the size of the Deputy President's delegation. The Committee observed that the safety and comfort of the delegation ought to have taken precedence over any other factors and held the view that he was insensitive to the safety and comfort of the delegation.

113. Regulation 17(1)(3) and (4) of the Public Procurement and Disposal Act of 2005 provides that:-

*17(1) A procuring entity shall establish an inspection and acceptance committee*

*(2) The inspection and acceptance committee shall immediately after delivery of the goods, works or services:-*

- (a) inspect and where necessary test the goods received;*
- (b) inspect and review the goods, works and services in order to ensure compliance with the terms and specifications of the contract;*
- (c) accept or reject, on behalf of the procuring entity, the delivered goods and services*

*(4) The inspection and acceptance committee shall –*

- (a) ensure that the correct quantity of goods has been received;*
- (b) ensure that the goods, works or services meet the technical standards defined in the contract;*
- (c) ensure that goods, works or services have been delivered or completed on time, or that any delay has been noted;*
- (d) ensure that all required manuals or documentation have been received;*
- (e) issue interim or completion certificates or goods received note, as, appropriate and in accordance with the contract.*

114. Written evidence from the Kenya Revenue Authority (KRA), which is annexed hereto as appendix 20, clearly indicates that EADC Ltd which won the tender for supply of the aircraft was not tax compliant and had not been issued with a tax compliance

certificate. Government procurement regulations and procedures provide for tax compliance as a factor in awarding tenders. It was therefore questionable as to how the company was prequalified without production of a tax compliance certificate. Even if the company's due date for filing first tax returns was not yet, it would still have applied and be issued with a tax compliance certificate for the purpose of the tender process.

115. Mr. Paul Kamau, Senior Finance Officer, Office of the Deputy President admitted that the Office of the Deputy President did not have sufficient funds at the time of hiring the aircraft. He further admitted that he breached government procurement regulations and procedures by signing LSO No 0855010 for the payment of Kshs 18,564,000.00 which in essence meant committing the Office of the Deputy President to that expenditure when the office was not sufficiently exchequered. It is clear from Mr. Kamau's evidence that the Office received funds in June, 2013, after the trip had been made and paid the supplier in July, 2013.

116. Section 26(3) and (6) of the Public Procurement and Disposal Act of 2005 provides as follows:-

*26(3) All procurement shall be:-*

- (a) within the procurement budget of the procuring entity and shall be planned by the procuring entity concerned through an annual public procurement plan;*
- (b) undertaken by a procurement entity as per the threshold matrix as set out in the regulations;*
- (c) handled by different offices in respect of procurement initiation, processing and receipt of goods, works and services;*

*(6) A procuring entity shall not commence any procurement procedure until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract.*

117. From the foregoing, the Committee was persuaded that the Office of the Deputy President did not carry out due diligence while hiring the aircraft and that government procurement regulations and procedures were breached. The Committee was further concerned with the variation of the aircraft delivered, and the fact that the

Office of the Deputy President did not have experts to advise on aircraft neither did it think of outsourcing them thereby making it difficult to distinguish between the aircraft that was quoted and the one that was actually delivered.

118. The Committee was also alarmed by Mr. Mwasserah's evidence that the most significant specification considered was the carrying capacity of the aircraft. Lack of technical experts and failure to pay attention to safety aspects amounted to compromising the comfort and safety of the Deputy President and his entourage. This was reckless and certainly not in the country's best interest.

**(v) Did taxpayers get value for money in the hire of the aircraft?**

119. A rudimentary comparative analysis by the Auditor-General of previous travel by holders of equivalent offices indicates that this particular transaction falls within range of the competitive. The Deputy President's tour cost a total of Kshs 21,167,579.00 inclusive of cost of aircraft hire and accommodation<sup>1</sup>. The former Prime Minister made 4 international trips on scheduled commercial flights in the year 2012 at a cumulative cost of Kshs 62,196,460.30, averaging Kshs 15,549,115.00 per trip. The former Vice President made 20 trips on scheduled commercial flights in the year 2011 at a total cost of Kshs 122,395,469.15, an average of Kshs 6,119,773.50 per trip; and 2 trips in 2012 at a cumulative cost of Kshs 57,812,261.00, averaging 28,906,130.50 per trip. The former Vice President further made 4 trips to various African countries by hired aircraft between the year 2010 and 2013 at an average cost of 11,816,884.98.

120. There is a close co-relation between the amount spent by the Deputy President and the former VP's trip on an official tour to Gabon at different times both in hired aircraft. The unit cost (cost per person, per country, per day) for the DP's trip was Kshs 125,997.00 while the one for the former VP was Kshs 123,457.00 as detailed in the table below. Though the former VP's trip was undertaken in March, 2011 and the one for the DP in May 2013,

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<sup>1</sup> This cost does not however include the per diem paid to the 4 Members of Parliament who accompanied the Deputy President. The Committee holds the view that this should be considered as part of the total cost to the taxpayer.

the cost is close enough to suggest that the services were acquired at economical price by the respective offices. It is however difficult to get an accurate comparison because of a multiplicity of variables.

Comparative Analysis Table

Countries	Total Cost	Number of Countries	Number of Persons	Number of Days	Rate Per Person	Rate per person per Country	Rate per Person per Day per Country (Unit Cost)
DEPUTY PRESIDENT (Hired Aircraft)							
Congo Brazzaville	21,167,579.20	4	14	3	1,511,969.94	377,992.49	125,997.50
Gabon							
Nigeria							
Algeria							
FORMER PRIME MINISTER (Commercial Flight)							
SWITZERLAND	10,575,545.40	1	10	3	1,057,554.54	1,057,554.54	352,518
TURKEY	5,872,410.00	1	11	2	533,840.00	533,840.00	266,928
UK	26,936,920.00	1	15	7	1,795,794.67	1,795,794.67	256,542
MALAYSIA & KOREA	18,811,584.90	1	20	6	940,579.25	940,579.25	156,763
FORMER VICE PRESIDENT (Hired Aircraft)							
Kisumu, Dar- es Salaam, Eldoret	2,830,996.00	1	8	1	353,874.50	353,874.50	353,874.50
Dar- es Salam	1,562,223.78	1	8	1	195,277.97	195,277.97	195,277.97
Equatorial Guinea	5,925,955.20	2	8	3	740,744.40	370,372.20	123,457
Gabon							



(Libreville)							
South Sudan	1,497,710.00	1	8	1	187,213.75	187,213.75	187,213.75

**Note**

These trips could not be conclusively compared with utmost objectivity due to the following reasons

- (a) The trips were made to different countries;
- (b) The Deputy President travelled in 2013 while the other VIPs travelled in 2011 and 2012;
- (c) The Former Prime Minister and Vice-President used scheduled commercial flights while the Deputy President used a hired aircraft.

121. The issue of value for money on the mentioned trips would be a subjective judgment due to the following factors:-

- (a) The purposes of these trips were different, some of which have not been realized and need time to be realized. For instance, section 6.5 of the special audit report gives the purposes of the DPs trip as short term, medium term and long term.
- (b) The value for money element can be determined objectively only when the intended purpose is measured against results and also where there are other similar players that can be compared with.

122. It was the view of the Auditor General that the service was awarded to the lowest evaluated bidder. However, given the fact that there were no direct flights to connect all the four countries, it was not possible to compare the cost of hiring a jet and the commercial flights to give a fair comment on the economy of procuring the services.

**(vi) What was the role of the Deputy President in the organization of the tour and procurement process for the aircraft hire?**

123. The Committee observed that the Office of the Deputy President, like any other institution or organization, has in place directorates and or departments mandated to carry out specific functions. While discharging their functions, the directorates and or departments are supposed to function independently from each other. The Procurement Department headed by Mr. Evans Nyachio, Senior Assistant Director of Procurement, was responsible for the hire of the aircraft. From the evidence tendered, the department made decisions independently.
124. Mr. Richard Lemoshira, Assistant Director in the Office of Political Affairs, Ministry of Foreign Affairs and International Trade was responsible for the provision of protocol services during the tour. In his evidence, he never cited interference or influence in the discharge of his duties.
125. Ms. Marianne Kitany, Chief of Staff, Office of the Deputy President, told the Committee that she was responsible for appointing staff from the Office of the Deputy President to accompany him. In her evidence she never cited interference. She further told the Committee the politicians accompanying the Deputy President were from the Senate and the National Assembly and were nominated by the leadership of both Houses on request by the Office of the Deputy President.
126. From the foregoing, it is clear that the Deputy President did not play any role in the organization of the tour, neither was he involved in the procurement process for the aircraft hire. Any involvement, especially in the aircraft hire would have amounted to interference thereby rendering the procurement process null and void.

**(vii) Were the companies involved in the tender process for the aircraft hire compliant with statutory obligations?**

127. Mr. Eric Korir, a Senior Assistant Director of Supply Chain Management in the Ministry of Interior and Co-ordination of National Government, told the Committee that he had previously

served in the former Office of the Vice-President by virtue of which he had on numerous occasions been involved in the hire of aircraft for the former Vice-President for official tours. He told the Committee that the reputation of a company was critical in the award of tenders for supply of aircraft for hire.

128. Three companies, namely, Aircraft Business Management Ltd, Lady Lori (Kenya) Ltd and EADC Ltd were prequalified by the Office of the former Prime Minister for supply of air transport services. Evidence by Mrs. Bernice Gachegu, Registrar-General, indicated that Lady Lori (Kenya) Ltd last filed annual returns in the year 2008 while Aircraft Business Management had not filed returns since incorporation in the year 2007. EADC Ltd had also not filed returns since incorporation in the year 2011. EADC Ltd however told the Committee that it was incorporated in Kenya in 2011 and had since the year 2012 when it commenced business, filed annual returns and also remitted taxes to Kenya Revenue Authority (KRA). Mr. Ahmed Kassam, Company Director undertook to avail documentary evidence to this effect but failed to do so.
129. As regards statutory obligations to Kenya Revenue Authority (KRA), written evidence by the Authority annexed hereto as appendix 20 indicates that Lady Lori (Kenya) Ltd was compliant and had been issued with a valid tax compliance certificate No. 19/032325/2013 on 18<sup>th</sup> June, 2013. Aircraft Business Management (ABM) had consistently filed annual self-assessment returns since the year 2008, but had been declaring nil income. The Company had been filing monthly returns but had not been making payments to KRA. The company had not filed Pay as You Earn (PAYE) since it did not have employees. Its Director, Nicholas Oturo Owino, had filed nil self assessment returns up to the year 2011, which included the wife, Alice Atieno Oturo's returns. Mrs. Oturo's account had no further information since she declares her returns under the husbands Personal Identification Number (PIN). According to KRA, ABM operates as a middle level entity, getting aircraft hire orders and outsourcing the services. Though the Company was issued with a valid tax compliance certificate No. KRA 19/010207/2013 on 21<sup>st</sup> March, 2013, it had been profiled for audit together with its Directors.
130. EADC Ltd was registered for Income Tax on 23<sup>rd</sup> March, 2012 and was expected to file its first return for the year of income 2013 by

30<sup>th</sup> June, 2014. The company was registered for VAT on 8<sup>th</sup> August, 2013. The first return was supposed to be filed from September, 2013 but had not been filed. The company had not filed any PAYE returns so far. Company Director Ahmed Haji Kassam had not filed his Income Tax self-assessment returns for the years 1997, 2000 and from the year 2002 to date. The second Company Director, Mr. Punit Vadgama, had only filed his Income Tax self-assessment returns for the years 2005 to 2008, from which Kshs.1,229.00 tax was outstanding. According to KRA records, the Company had never been issued with a tax compliance certificate and had been profiled for a compliance check.

131. From the evidence received, it is clear that Aircraft Business Management and EADC Ltd are not fully compliant with statutory obligations as required by the Kenya Revenue Authority and the Registrar of Companies. Though Lady Lori (Kenya) Ltd is compliant with KRA requirements, it has not complied with the Registrar of Companies' requirements.

**(viii) Was the loss of the LSOs and LPO deliberate or fraudulent?**

132. Evidence from all witnesses from the Office of the Deputy President confirmed that they were drawn to the attention of the missing LSOs and an LPO by the Auditor General in June, 2013 while conducting the audit. After it was discovered that the LSOs and LPO were missing, an internal memo dated 19<sup>th</sup> May, 2013 was issued seeking to recover the documents, without success. An advertisement was put in the local daily newspapers on 29<sup>th</sup> July, 2013 seeking to recover the LSOs and LPO and to forewarn the public from transacting with them.
133. Mr. Simon Okoth, Supplies Chain Management Officer in the Office of the Deputy President told the Committee that he was the custodian of LSOs and LPOs. The Office of the Deputy President had an accounting and monitoring system through which movement of LSOs and LPOs would be tracked. At the time of the transaction in question, this system was down and only became functional when the Auditor General had come in for audit. Mr. Okoth further told the Committee that as the custodian of accountable documents, he locked them in a cabinet and only released them when necessary.

134. Based on Mr. Okoth's evidence, the Committee was not persuaded by the fact that accountable documents could go missing without knowledge of officers responsible in the Office of the Deputy President, until the Auditor General had to come in and raise the red flag. The Committee was also convinced that the failure of the accounting and monitoring system, especially at a time when the office was to carry out a major procurement, was highly suspect.
135. The memo dated 19<sup>th</sup> May is signed by Mr. Evans Nyachio for the Permanent Secretary. The loss of LSOs and LPO was discovered in June, 2013. The author of the memo told the Committee that the "wrong" date was allegedly erroneously entered on the memo by his secretary who made reference to correspondence from the Auditor-General, mistakenly sly dated 19<sup>th</sup> May, instead of 19<sup>th</sup> June, 2013. The Committee found it incredulous that Mr. Nyachio drafts correspondence and leaves it to his secretary to insert dates for him. In any event, it was expected that Mr. Nyachio, a senior experienced officer, would proof-read any correspondence typed by his secretary before signing and dispatching it. Mr. Nyachio was hard-pressed to explain the occurrence and later admitted that it was his secretary who wrote the memo on his behalf.
136. The Committee was not persuaded by Mr. Nyachio's testimony, and concluded that the memo was backdated to hoodwink it that action had been taken swiftly to trace the missing LSOs, when in fact that was not the case. Indeed the Committee took issue with the Office for inaction. By this time, the Committee expected that external investigators should have been brought in if internal investigations had not yielded any fruit.
137. Whereas Ms. Marianne Kitany, Mr. Abdul Mwaserrah and Mr. Evans Nyachio told the Committee that internal investigation into the loss of the LSOs and LPO were ongoing, Mr. Simon Okoth, who was the custodian of the LSOs, confirmed that he had not been interrogated at all. In normal circumstances, Mr. Okoth would have been the first or among the first to be questioned if indeed investigations were on. It was the further evidence of Ms. Kitany, Mr. Mwaserrah and Mr. Nyachio that none of the missing LSOs, Nos. 0855002, 0855003, 0855005 and 0855011 and LPO No. 1694975 had been traced. But Mr. Okoth, the custodian of the LSOs and LPOs, told the Committee that of the four reported missing, LSO Nos. 0855002 and 0855001 were not missing as they

had been used to pay a supplier. This depicts a disturbing scenario where the right hand is oblivious of what is in the left hand, right in the same office.

138. The Committee observed that the missing LSOs were for the period May, 2013, just before the Deputy President travelled as their serial numbers were close to the one that was eventually used to pay the supplier, EADC Ltd. The missing LSOs were Nos. 0855002, 0855003, 0855005 and 0855011, the LSO that was used to effect payment was No. 0855010. EADC Ltd had apparently entered into a three-year Programme Partnership Agreement with Vistajet Company of Austria on 16<sup>th</sup> May, 2013, a day after it had been awarded the tender. The quarterly payment under the agreement was USD 730,000.00, with USD 300,000.00 to be paid on 16<sup>th</sup> May, 2013 and the balance of USD 430,000.00 before 25<sup>th</sup> May, 2013. The serial number of the missing LSOs and the invoice that appeared in the Daily Nation newspaper of 23<sup>rd</sup> May, 2014 shows that the transaction was carried out around the same time. The Committee was therefore able to establish a link between the first installment of USD 300,000.00 and the invoice of the same amount appearing in the Nation newspaper of 23<sup>rd</sup> May, 2013 and the one that was used to effect payment.

139. From the foregoing and the fact that Mr. Simon Okoth had not at all been questioned since the LSOs and LPO went missing, the Committee was convinced that no internal investigation was ever instituted, and that the loss was stage-managed with the intention of committing fraud. Efforts were then made, subsequently, to cover-up this conspiracy and attempted fraud.

**(ix) Was there attempted cover-up of malpractices?**

140. The Committee noted with considerable concern that even after the Office of the Deputy President had confirmed that key documents in the procurement chain had gone missing, no effort whatsoever was made to investigate the matter. The Committee further observed that Mr. Evans Nyachio and Mr. Simon Okoth, who were at the helm of the Procurement Department in the Office of the Deputy President, had subsequently been hurriedly transferred to other ministries not long after a special audit commenced into the procurement process for the aircraft hire. Though attempts were made to characterize these transfers as normal and in accordance with public service regulations and procedures, the Committee had

reasons to believe that this was linked to the aircraft hire saga, which had put the Office of the Deputy President on the spot. The specific targeting of the two officers most directly involved in the procurement, the timing and the haste with which the transfers were effected left a telling scent of impropriety that lends credence to suspicion of complicity, conspiracy and cover-up.

**(x) Was payment for the aircraft hire regular?**

141. The firm that supplied the aircraft was EADC Ltd, as appears in the company's certificate of incorporation annexed hereto as appendix 7. However, in the tender documents and company letterheads, the firm used the names E-ADC Ltd or e-Africa Development Corporation (pty) Ltd with a trade mark. Refer to quotation documents attached as appendix 6 and LSO attached as appendix 11.
142. Mr. Ahmed Kassam, a Director in the company, told the Committee that it was lawful to use names designed with trade marks for the purposes of marketing, but payment would only be made to the name appearing in the certificate of incorporation. This testimony was corroborated by the Registrar of Companies.
143. The G-Pay system advice annexed hereto as appendix 9 clearly indicates that payment was made to EADC Limited, the bonafide supplier of the aircraft. The Committee however expressed concern that multiplicity of names could be used to defraud the government.

**(xi) Was there a formal lease agreement for hire of the aircraft between the Office of the Deputy President and Vistajet Company?**

144. The Daily Nation newspaper in its edition of 23<sup>rd</sup> May, 2013 reported extensively on this matter. On page 6 of its report attached hereto as appendix 21, the paper claimed that the Office of the Deputy President had entered into an agreement with a Swiss firm, Vistajet, for the lease of an executive jet and that the office would pay USD 300,000.00 (Kshs 25,140,000.00) as first instalment. The newspaper also published a Vistajet invoice dated 15<sup>th</sup> May, 2013 for the USD 300,000.00 addressed to the Office of the Deputy President.

145. Evidence by witnesses from the Office of the Deputy President and the Supplier of the aircraft, EADC Ltd indicated that there was no lease agreement for hire of the aircraft. It was a one-off transaction at a cost of USD 221,000.00 (Kshs 18,564,000.00) payable at once. Payment of the amount was made in July, 2013. The Committee further heard from the witnesses that Vistajet was an associate or partner of EADC Ltd for the purposes of supply of air transport services. In the circumstances, Vistajet could not deal directly with the Office of the Deputy President.
146. In view of the foregoing, the Committee, vide its letter Ref. NA/PAC/CORR/2013/28 dated 30<sup>th</sup> July, 2013 attached hereto as appendix 21 invited the Nation Media Group Ltd to assist in this investigation by sharing information in its possession, but it never appeared before the Committee nor acknowledged receipt of the invitation letter. Whereas the Committee commended the Daily Nation for whistle blowing, it faulted it for not being forthcoming on its allegations to help the Committee get to the root of the matter, in the best public interest.
147. Based on the evidence and testimonies tendered to the Committee, it appears there was no lease agreement executed between the Office of the Deputy President and Vistajet Ltd. Evidence on record indicates that this was a one-off hire transaction for which the Office of the Deputy President paid the sum of USD 221,000.00 (Kshs 18,564,000.00).
148. However, the highly unusual loss of LSOs and LPO, considered together with the alleged mysterious direct contact between Vistajet and the Office of the Deputy President, leaves lingering suspicion that there might have been an attempt to irregularly and illegally commit government to a long-term engagement, and even create opportunity for corruption through kick-backs.

**(xii) Was the trip beneficial to the Kenyan Tax-Payer?**

149. Evidence on record indicates that the primary purpose of the trip was for the Deputy President to seek the backing of four African states, namely Congo Brazzaville, Ghana, Nigeria and Gabon in supporting Kenya's agenda at an African Union Summit of Heads of State held on 26<sup>th</sup> and 27<sup>th</sup> May, 2013 in Addis Ababa, Ethiopia. The agenda was ostensibly in respect of the economic and security challenges Kenya was facing because of the situation in Somalia; and enhancing intra-Africa trade. Kenya government regarded the



four nations as influential and capable of helping to lobby in favour of Kenya's stated agenda at the Summit.

150. The Committee did not access evidence showing how exactly the four countries lobbied by the Deputy President assisted Kenya's cause in Addis Ababa. Subsequent written evidence from the Ministry of Foreign Affairs and International Trade annexed hereto as appendix 22 appears to suggest that the tour may have borne some benefits as the summit apparently made resolutions in favour of Kenya's agenda that the Deputy President had ostensibly been pursuing on the tour.
151. In the absence of evidence clearly indicating how the four countries dealt with Kenya's agenda at the Addis Ababa AU Summit and further how exactly this tied with the Deputy President's tour, the Committee found it difficult to conclusively determine whether indeed the trip accrued any beneficial value to taxpayers.

**(xiii) What is the government policy on travel by officials on duty?**

152. Mr. Abdul Mwaserrah told the Committee that the government did not have in place a policy on travel by senior government officials while on duty, and that the government procurement regulations and procedures would apply when procuring transport. Ms. Marianne Kitany testified before the Committee that the government had in place a transport policy for senior government officials, but the policy was archaic and undergoing review.
153. From their evidence, it is clear that the government should enact a comprehensive travel policy to address the issue of travel by all cadres of officials.

## PART V

### CULPABILITY

154. On the basis of the evidence received, testimonies submitted and the issues carefully considered and determined, the Committee drew the following conclusions:-

#### **(I) HIS EXCELLENCY PRESIDENT UHURU KENYATTA**

155. Evidence before the Committee indicates that the trip in question was initially meant to have been undertaken by the President. Unable to travel due to other commitments, the President instructed his Deputy to travel on his behalf. Article 147 of the Constitution provides, *inter alia*, as follows:

*147(1): The Deputy President shall be the principal assistant of the President and shall deputise for the President in the execution of the President's functions.*

*(2): The Deputy President shall perform the functions conferred by this Constitution and any other functions of the President as the President may assign.*

156. The Committee finds that the President properly assigned a function to the Deputy President as his principal assistant in accordance with the Constitution.

157. Article 135 of the Constitution provides that "A *decision of the President in the performance of any function of the President under this constitution shall be in writing and shall bear the seal and signature of the President*".

158. It is the considered opinion of the Committee that the import of this constitutional provision is that all decisions and instructions of the President related to the performance of any of his state functions must be in writing. This, in the Committee's considered view, is even more imperative where those decisions and instructions occasion expenditure of public funds. The Committee believes that in designing Article 135, framers of the Constitution must have been motivated by, among other factors, the significance

of avoiding ambiguity and possible misapplication of the President's delegated authority.

159. The Committee finds that the Deputy President was undertaking a presidential function delegated to him by the Head of State, and, therefore, further that the instructions to perform that function should have been in writing as required by Article 135 of the Constitution. The Committee found no evidence that the President's instructions to his deputy had been put in writing.
160. The Committee considers this a breach of the Constitution in both letter and spirit, and strongly warns against this kind of informal conveyance of official Presidential instructions. The Committee advises the President that Article 135 of the Constitution, as is the case with the rest of the Constitution, must be strictly obeyed.

**(II) HIS EXCELLENCY DEPUTY PRESIDENT WILLIAM RUTO**

161. The Deputy President undertook the tour in his official capacity as the President's principal assistant. The transaction involving the hire of the aircraft was therefore occasioned by his performance of this official duty.
162. The Deputy President was accompanied by a delegation thirteen (13) persons consisting of eight (8) members of his staff led by the Chief of Staff, one (1) officer from Foreign Affairs, two (2) Members of the National Assembly and two (2) Senators. The criteria and rationale for selecting this travelling party is unclear and their specific value to the trip not manifest. None of the members of this delegation appears to be a specialist, expert or leader in any of the thematic areas that the Deputy President was ostensibly lobbying regional support for. There is accordingly no apparent logic in how the delegation was picked.
163. The Committee holds the view and strongly advises that selection of delegations for State assignments should be influenced and determined by relevance and definitive value to the purpose of the assignment. This will forestall any possibility of wasting taxpayers' money on joyriders and busybodies.

164. The Committee, nonetheless, found no evidence to indicate that the Deputy President was directly involved in the procurement process for the hire of the jet that he used on this trip.

**(III) MS. MARIANNE KITANY**

165. As Chief of Staff in the Office of the Deputy President, she was responsible for supervision of the full complement of officers in that office. The buck, accordingly, stops with her in respect of the performance of the members of staff under her watch.

166. The Committee holds Ms. Kitany liable on account of the following:-

- (a) She misled the Committee on the actual status of the missing Local Purchase Orders (LSO). While she repeatedly insisted before the Committee that four (4) LSOs were missing and none had been traced, one of her subordinates, Mr. Simon Okoth, who was the custodian of the LSOs, tendered credible evidence proving that in fact two of the allegedly "lost" had actually been traced and had even been used for other subsequent transactions.
- (b) She misled the Committee further by asserting that internal investigations had been instituted into the alleged loss of the four missing LSOs, when in fact no such investigations were ever initiated, either by herself or any of her officers. The Committee found that not a single member of staff, including those bearing direct responsibility for the custody and safety of the missing documents had been interrogated close to six (6) months after the LSOs were reported missing.
- (c) The Committee found her inertia and failure to act a case of dereliction of duty. She did not institute or recommend to the Public Service Commission (PSC) any disciplinary action against officers who obviously mishandled the procurement process in the aircraft hire. Instead, she had the two officers most directly involved hurriedly transferred to other ministries.
- (d) The Committee further considers Ms. Kitany an accomplice in apparent cover-up of what is clearly a case of an attempted procurement scam. Her failure to commence or recommend any investigations into circumstances surrounding the loss of the

LSOs close to six months after the LSOs went missing is suspect. The Committee also found it highly suspicious that Mr. Simon Okoth and Mr. Evans Nyachio were hurriedly transferred from the Office of the Deputy President in the midst of this storm. There is good reason to believe that this was part of the wider cover-up scheme.

- (e) Ms. Kitany also quite inexplicably delayed in formally conveying instructions for the commencement of the procurement process. Whereas the process commenced on 14<sup>th</sup> May, 2013, the memo to that effect was received by the head of procurement on 16<sup>th</sup> May, 2013, a day after the Deputy President had travelled, with Ms. Kitany as part of the travelling delegation.
- (f) Ms. Kitany bears responsibility for the failure of the procurement internal control mechanism in the Office of the Deputy President at the time the process of the hire of the aircraft was ongoing.

#### **(IV) DR. MOHAMED ISAHAKIA**

167. He was an Accounting Officer in the Office of the Deputy President, in a transitory capacity. He was not involved in the procurement process for the hire of the aircraft and the Committee does not find him liable for any wrongdoing.

#### **(V) MR. ABDUL MWASERRAH**

168. He was in charge of administration in the Office of the Deputy President. The procurement docket was under his jurisdiction. The Committee finds Mr. Abdul Mwaserrah culpable on account of the following:-

#### **Breach of government financial regulations and procedures**

- (a) He approved and signed the Local Service Order (LSO) for the hire of the aircraft when the Office of the Deputy President did not have adequate funds to meet that transaction. In so doing, he breached section 26 (3) and (6) of the Public Procurement and Disposal Act of 2005 which provides as follows:-

*26(3) All procurement shall be:-*

- (a) *within the procurement budget of the procuring entity and shall be planned by the procuring entity concerned through an annual public procurement plan;*
- (b) *undertaken by a procurement entity as per the threshold matrix as set out in the regulations;*
- (c) *handled by different offices in respect of procurement initiation, processing and receipt of goods, works and services;*

*(6) A procuring entity shall not commence any procurement procedure until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract.*

### **Tender specifications vis-a-vis safety of the delegation**

Mr. Mwaserrah told the Committee that the most significant specification the Office of the Deputy President was looking at while procuring hire of the jet was the aircraft's carrying capacity of fourteen (14) passengers, which was the size of the delegation. In the Committee's opinion, safety of the delegation ought to have taken precedence over carrying capacity. The Committee holds the view that his negligence could have compromised the safety of the delegation, contrary to public interest.

### **Missing LSOs**

- a) He was not aware that four (4) LSOs were missing from the Office of the Deputy President until the Auditor General raised the red flag while conducting the audit;
- b) Even after it was established and confirmed by the custodian of the LSOs in the Office of the Deputy President that out of the reportedly missing four (4) LSOs, two were not missing but had in fact been used for other transactions, Mr. Mwaserrah appeared before the Committee twice and maintained that none of the four (4) missing LSOs had been recovered;
- c) He misled the Committee by testifying that investigations had been lodged into the case of the missing LSOs. But this was not in fact the case. Even Mr. Simon Okoth, the Supplies Chain

Management Officer who was the custodian of the LSOs had not been interrogated at all, months after the disappearance of the LSOs under his watch. The Committee observed that if at all investigations were ongoing, Mr. Simon Okoth should have been the first witness to be questioned.

**Failure of internal procurement control mechanisms (manual registers)**

- a) Mr. Mwaserrah shares in the responsibility for what was clear to the Committee as a deliberate effort to compromise and take advantage of the internal procurement control mechanism in the Office of the Deputy President, at the time of procurement for the hire of the aircraft. It is this internal control mechanism that tracks the movement of LSOs and LPOs. The fact that this mechanism did not function during this particular transaction and only became operational when the Auditor General came in for the audit raises definite suspicion.

**(VI) MR. EVANS NYACHIO**

169. He was a Senior Assistant Director of Supply Chain Management in the Office of the Deputy President and accordingly, headed the procurement docket in the Office at the time of appearance before the Committee. He had since been transferred to the Ministry of Industrialization and Enterprise Development in the same capacity. The Committee finds Mr. Evans Nyachio culpable on account of the following:-

**Breach of government financial regulations and procedures**

Mr. Nyachio signed the LSO for the hire of the aircraft while well aware that as at that moment the Office of the Deputy President did not have adequate funds for the activity. In so doing, he breached section 26(3) and (6) of the Public Procurement and Disposal Act.

**Breach of government procurement regulations and procedures**

- (a) Mr. Nyachio failed to ensure the establishment of an Inspection and Acceptance Committee for the purpose of this procurement. As a result, no Inspection and Acceptance certificate was issued

as required by the procurement law. This exposed the delegation to potential risk.

- (b) He allowed EADC Ltd to supply an aircraft different from what it had specified. Condition No. 2 at the back of a standard LSO (attached hereto as appendix 24) provides that:-

*“All services are to be carried out strictly in accordance with specifications given. No departure is allowed without our prior agreement and in writing.”*

In as much as the supplier had indicated in the tender documents that it would supply a fairly similar aircraft in the event the one quoted was not available, no evidence was presented to the Committee of any agreement in this respect, as required.

- (c) He should bear responsibility for the award of the tender to EADC Ltd even when the firm did not produce a tax compliance certificate contrary to government procurement practices.

- (d) In view of the fact that an incomplete LSO was used to initiate payment to the supplier, the LSO could in the circumstances not be held as a valid agreement for purposes of hire of the aircraft. Indeed there was no comprehensive agreement signed between EADC Ltd and the Office of the Deputy President in that regard. The Committee was satisfied that there was no valid and binding contract between the two parties, and this contravened section 68(1)(2) and (3) of the Public Procurement and Disposal Act, 2005.

### **Missing LSOs**

- a) He was not aware that some LSOs and an LPO were missing from the Office of the Deputy President until the Auditor General established the loss while conducting the audit.
- b) Even after it was established and confirmed by Mr. Simon Okoth, the custodian of the LSOs, that out of the reportedly missing four (4) LSOs, two were not missing but had in fact been used for other transactions, Mr. Nyachio appeared before the Committee twice and maintained that none of the four (4)



missing LSOs had been traced. He went to the extent of advertising the loss of the four (4) LSOs and an LPO in the press;

- c) He misled the Committee by testifying that investigations into the case of the missing LSOs were ongoing. This came against the backdrop of credible evidence that this was indeed not the case.

#### **Failure of the internal control mechanism (manual register)**

The failure of the internal control mechanism (manual register) during the procurement process for the hire of the aircraft appears to have been a conspiracy by personnel in the Office of the Deputy President to defraud government, and he could have been part of the conspiracy. The failure of the mechanism made it impossible to trace the movement of LSOs and LPOs leading to their easy disappearance.

#### **(VII) MR. SIMON OKOTH**

170. He was a Supply Chain Management Officer in the Office of the Deputy President, by virtue of which position he was the custodian of LSOs and LPOs during the time of the transaction in question. He had since been transferred to the National Treasury in the same capacity. The Committee finds Mr. Simon Okoth culpable on account of the following:-

#### **Missing LSOs**

- (a) It is suspect that some LSOs and an LPO went missing yet he could not notice until the Auditor General raised the red flag while conducting the audit, months later. He is the principal suspect in the loss of the LSOs and LPO.
- (b) The Committee is further satisfied that he was an accomplice of Mr. Abdul Mwaserrah, Evans Nyachio and probably others in a possible conspiracy that may have compromised the procurement internal control mechanism during the hire of the aircraft, with ill motive.

**(VIII) MR. PAUL KAMAU**

171. He was a Senior Finance Officer in the Office of the Deputy President and headed the finance docket. The Committee holds him culpable for breach of government financial regulations and procedures. He admitted to having committed the Office of the Deputy President to incur expenditure on the hire of the aircraft when there were no sufficient funds for that budget line. In so doing, he breached section 26 (3) and (6) of the Public Procurement and Disposal Act of 2005.

**(IX) MR. AHMED KASSAM**

172. A South Africa-based British national, Mr. Kassam is the majority shareholder and a Director in EADC Ltd. He was involved in the tendering for the supply of the aircraft on behalf of EADC and the Committee finds that:-

- (a) His initial reluctance to appear before the Committee (though he eventually did present himself) was suspect;
- (b) He misled the Tender Committee by asserting that the aircraft he had quoted was available and ready for inspection at the Wilson Airport, Nairobi when this was not the case;
- (c) His prequalification as a supplier and subsequent award of the tender without production of a tax compliance certificate was a breach of the procurement law and procedures;
- (d) Evidence from the Kenya Revenue Authority (KRA) indicates that EADC Ltd had never paid taxes and had been profiled for audit in respect of tax compliance;
- (e) He supplied the Office of the Deputy President with an aircraft different from what he had quoted, in breach of the procurement law on variation.

It is noteworthy that the Committee observed that there seems to have been an attempt to unduly influence the Office of the Deputy President into entering a long-term contract with EADC Ltd and/or VISTAJet for supply of aircraft services. It appears these attempts were abandoned when this matter attracted public attention. This

## PART VI

### **RECOMMENDATIONS**

176. The Committee recommends as follows:-

#### **Breach of government financial and procurement regulations and procedures**

- (i) The Ethics and Anti-Corruption Commission (EACC) should investigate:-
  - (a) Ms. Marianne Kitany, for dereliction of duty, inertia and possible conspiracy to defraud government and/or cover-up of the same. The investigation should include inquiry into her inexplicable failure and/or refusal to commence investigations into the loss of LSOs and LPO; failure of the Office of the Deputy President's internal procurement control mechanism at the time of the transaction in question leading to the disappearance of the LSOs and LPO; and the suspicious hurried transfer of Mr. Evans Nyachio and Mr. Simon Okoth from the Office of the Deputy President in the midst of the audit.
  - (b) Mr. Abdul Mwasserah for breach of government financial regulations and procedures; breach of government procurement regulations and procedures; loss of LSOs and LPO; and failure of the Office of the Deputy President's internal control mechanism at the time of the transaction in question leading to the disappearance of LSOs and LPO.
  - (c) Mr. Evans Nyachio for breach of government financial regulations and procedures; breach of government procurement regulations and procedures; loss of LSOs and LPO; and failure of the Office of the Deputy President's internal control mechanism during the transaction in question leading to the disappearance of LSOs and LPO.
  - (d) Mr. Simon Okoth for breach of government procurement regulations and procedures; and loss of LSOs and LPO.

- (e) Mr. Paul Kamau for breach of government procurement regulations and procedures.
  - (f) Mr. Ahmed Kassam, Director of the EADC Ltd for possible conspiracy to violate government procurement regulations and procedures to tilt the advantage to EADC Ltd in the award of the tender to supply the aircraft.
- (ii) The Principal Secretary responsible for the Office of the Deputy President must take necessary steps to ensure that government procurement regulations and procedures are always strictly adhered to while procuring goods and services in that Office. Towards this end, he must present to the National Assembly an action taken report on or before 30<sup>th</sup> June, 2014

**Adherence to government financial regulations and procedures**

- (iii) The Committee notes with grave concern the apparent widespread financial and procurement malpractices within government, fanned by a culture of impunity that appears to routinely condone breach of procurement procedures and financial regulations. The Cabinet Secretary, Treasury, is advised to take urgent remedial measures and submit a comprehensive report to the National Assembly within six months from the date hereof.
- (iv) The Principal Secretary responsible for the Office of the Deputy President should take necessary steps to ensure that government financial regulations and procedures are at all times strictly adhered to while incurring expenditure at the Office. Towards this end, he must present to the National Assembly an action taken report not later than 30<sup>th</sup> June, 2014;

**Government policy on travel for officials**

- (v) The Committee observed that civil servants are often forced to work within virtually impossible timelines in respect of travel schedules for government VIPs. The Committee nonetheless

strongly holds the view that pressure of time and haste must never be used as an excuse for breaching government financial and procurement regulations. Procurement and Financial laws, rules, regulations and practices sufficiently provide for legitimate means of acting in such circumstances.

- (vi) The Principal Secretary, Treasury, in consultation with relevant ministries, must as a matter of urgency take appropriate action to ensure that the Government has in place a comprehensive policy on travel for its Officers, which policy must be consistent with public interest.
- (vii) That policy should extend to selection of delegations for State assignments, to ensure that this is influenced and determined by relevance and definitive value to the purpose of the assignment to forestall wastage of taxpayers' money on joyriders and busybodies.

#### **Compliance with statutory obligations**

- (viii) The Kenya Revenue Authority (KRA) should immediately audit Aircraft Business Management Ltd and EADC Ltd with a view to ascertaining their tax compliance and holding them accountable in the event they are not.
- (ix) Lady Lori (Kenya) Ltd, Aircraft Business Management Ltd and EADC Ltd must take appropriate action to ensure that they comply with all statutory obligations as required by the Registrar of Companies not later than 30<sup>th</sup> June, 2014 failure of which they should be blacklisted from doing business with the government.
- (x) The State Law Office and the Department of Justice should take necessary steps to ensure improvement of management framework at the Company Registry.

#### **Conveyance of official instructions and directives**

- (xi) The President is the custodian of utmost fidelity to the Constitution of the Republic. He bears a high responsibility for obeying the letter and spirit of the Constitution. He must

at all times adhere to Article 135 of the Constitution by ensuring that all his decisions and instructions in respect of his official functions are in writing.

- (xii) The Principal Secretary responsible for the Office of the President and the Office of the Deputy President should take appropriate steps to ensure that all instructions and directives for implementation within their offices, especially those with financial implication, are always formal for ease of accountability.

#### **Budgetary allocation to the Office of the Auditor General**

- (xiii) Both the National Assembly and the Executive should take necessary steps to ensure that the Office of the Auditor General is always allocated adequate funds to enable it function effectively and efficiently.

#### **Whistle Blowing**

- (xiv) The Committee encourages the practice of Whistle Blowing, and recommends strong deliberate government measures to motivate, encourage and support the practice. The Committee particularly commends the Daily Nation Newspaper and the media in general for bravely and gallantly blowing the whistle on the missing LSOs and LPO, among others issues, which exposed this grave matter. This public spirited endeavor is highly encouraged. The Committee also urges whistle blowers to be forthcoming in sharing information with investigative institutions such as Parliament and the Ethics and Anti-Corruption Commission (EACC) to assist in getting to the root of matters under investigation, in the best public interest.

=====END=====

**MINUTES OF THE NINETY THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 3<sup>RD</sup> APRIL, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P.	-	Chair
Hon. Cecily Mbarire, M.G.H., M.P.	-	Vice Chair
Hon. Joel Onyancha, M.G.H., M.P.		
Hon. Jessica Mbalu, M.P.		
Hon. Joseph Manje, M.P.		
Hon. Fathia Mahbub, M.P.		
Hon. Kareke Mbiuki, M.P.		
Hon. Stephen Manoti, M.P.		
Hon. James Bett, M.P.		
Hon. Junet Sheikh Nuh, M.P.		
Hon. John Mbadi, M.P.		
Hon. Jackson K. Rop, M.P.		
Hon. Samuel Arama, M.P.		
Hon. Kyengo Katatha Maweu, M.P.		
Hon. Mwadime Andrew, M.P.		
Hon. Jude Njomo, M.P.		
Hon. Manson Nyamweya, M.P.		
Hon. Sakwa Bunyasi, M.P.		
Hon. Alice Nyanchoka Chae, M.P.		
Hon. Mathias Robi, M.P.		
Hon. Julius Melly, M.P.		

**ABSENT:-**

Hon. Arthur Odera, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba	-	Senior Clerk Assistant
Johnston Kioko	-	Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

Dennis Kariuki - Director of Audit  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No 302/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the sittings of the Committee on the matter of the hire of an aircraft for the Deputy President for a tour of four African nations namely; Congo Brazzaville, Gabon, Nigeria in May, 2013 were confirmed and signed by the Chair

MIN No. 303/2014:- CONSIDERATION AND ADOPTION OF REPORT

The Committee considered and adopted its report on the matter of hire on aircraft for the Deputy President for a tour of four African nations namely; Congo Brazzaville, Gabon, Nigeria and Ghana in May 2013 with the following recommendations:-

**1. Breach of government financial and procurement regulations and procedures**

- (i) The Ethics and Anti-Corruption Commission (EACC) should investigate:-
  - (a) Ms. Marianne Kitany, for dereliction of duty, inertia and possible conspiracy to defraud government and/or cover-up of the same. The investigation should include inquiry into her inexplicable failure and/or refusal to commence investigations into the loss of LSOs and LPO; failure of the Office of the Deputy President's internal procurement control mechanism at the time of the transaction in question leading to the disappearance of the LSOs and LPO; and the suspicious hurried transfer of Mr. Evans Nyachio and Mr. Simon Okoth from the Office of the Deputy President in the midst of the audit.
  - (b) Mr. Abdul Mwasserah for breach of government financial regulations and procedures; breach of government procurement regulations and procedures; loss of LSOs and LPO; and failure of the Office of the Deputy President's internal control mechanism at the time of the transaction in question leading to the disappearance of LSOs and LPO.
  - (c) Mr. Evans Nyachio for breach of government financial regulations and procedures; breach of government procurement regulations and procedures; loss of LSOs and LPO; and failure of the Office of the Deputy President's internal control mechanism during the transaction in question leading to the disappearance of LSOs and LPO.



- (d) Mr. Simon Okoth for breach of government procurement regulations and procedures; and loss of LSOs and LPO.
  - (e) Mr. Paul Kamau for breach of government procurement regulations and procedures.
  - (f) Mr. Ahmed Kassam, Director of the EADC Ltd for possible conspiracy to violate government procurement regulations and procedures to tilt the advantage to EADC Ltd in the award of the tender to supply the aircraft.
- (ii) The Principal Secretary responsible for the Office of the Deputy President must take necessary steps to ensure that government procurement regulations and procedures are always strictly adhered to while procuring goods and services in that Office. Towards this end, he must present to the National Assembly an action taken report on or before 30<sup>th</sup> June, 2014

## **2. Adherence to government financial regulations and procedures**

- (i) The Committee notes with grave concern the apparent widespread financial and procurement malpractices within government, fanned by a culture of impunity that appears to routinely condone breaches of procurement procedures and financial regulations. The Cabinet Secretary, Treasury, is advised to take urgent remedial measures and submit a comprehensive report to the National Assembly within six months from the date hereof.
- (ii) The Principal Secretary responsible for the Office of the Deputy President should take necessary steps to ensure that government financial regulations and procedures are at all times strictly adhered to while incurring expenditure at the Office. Towards this end, he must present to the National Assembly an action taken report not later than 30<sup>th</sup> June, 2014;
- (iii) The Principal Secretary responsible for the Office of the Deputy President should take disciplinary action against Mr. Paul Kamau for breach of government financial regulations and procedures. In this regard, he must present to the National Assembly an action taken report not later than 30<sup>th</sup> June, 2014

## **3. Government policy on travel for officials**

- (iv) The Committee observed that civil servants are often forced to work within virtually impossible timelines in respect of travel schedules for government VIPs. The Committee nonetheless strongly holds the view that pressure of time and haste must never be used as an excuse for breaching government financial and procurement regulations. Procurement and Financial laws,

rules, regulations and practices sufficiently provide for legitimate means of acting in such circumstances.

- (v) The Principal Secretary, Treasury, in consultation with relevant ministries, must as a matter of urgency take appropriate action to ensure that the Government has in place a comprehensive policy on travel for its Officers, which policy must be consistent with public interest.
- (vi) That policy should extend to selection of delegations for State assignments, to ensure that this is influenced and determined by relevance and definitive value to the purpose of the assignment to forestall wastage of taxpayers' money on joy riders and busybodies.

#### 4. Compliance with statutory obligations

- (vii) The Kenya Revenue Authority (KRA) should immediately audit Aircraft Business Management Ltd and EADC Ltd with a view to ascertaining their tax compliance and holding them accountable in the event they are not.
- (viii) Lady Lori (Kenya) Ltd, Aircraft Business Management Ltd and EADC Ltd must take appropriate action to ensure that they comply with all statutory obligations as required by the Registrar of Companies not later than 30<sup>th</sup> June, 2014 failure of which they should be blacklisted from doing business with the government.
- (ix) The State Law Office and the Department of Justice should take necessary steps to ensure improvement of management framework at the Company Registry.

#### 5. Conveyance of instructions and directives

- (x) The President is the custodian of utmost fidelity to the Constitution of the Republic. He bears a high responsibility for obeying the letter and spirit of the Constitution. He must at all times adhere to Article 135 of the Constitution by ensuring that all his decisions and instructions in respect of his official functions are in writing.
- (xi) The Principal Secretary responsible for the Office of the President and the Office of the Deputy President should take appropriate steps to ensure that all instructions and directives for implementation within their offices, especially those with financial implication, are always formal for ease of accountability.

**6. Budgetary allocation to the Office of the Auditor General**

- (xii) Both the National Assembly and the Executive should take necessary steps to ensure that the Office of the Auditor General is always allocated adequate funds to enable it function effectively and efficiently.

**7. Whistle blowing**

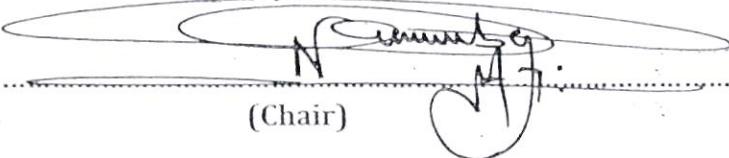
- (xiii) The Committee encourages the practice of Whistle Blowing, and recommends strong deliberate government measures to motivate, encourage and support the practice. The Committee particularly commends the Daily Nation Newspaper and the media in general for bravely and gallantly blowing the whistle on the missing LSOs and LPO, among others issues, which exposed this grave matter. This public spirited endeavor is highly encouraged. The Committee also urges whistle blowers to be forthcoming in sharing information with investigative institutions such as Parliament and the Ethics and Anti-Corruption Commission (EACC) to assist in getting to the root of matters under investigation, in the best public interest.

Hon. James Bett and Hon. Kareke Mbiuki dissented to the report because of Recommendation 1(i) requiring investigations by the Ethics and Anti-Corruption Commission (EACC) and declined to sign it to signify their endorsement of findings and recommendations. The Members were of the view that the recommendation was harsh.

**MIN No. 304/2013:- ADJOURNMENT**

There being no other business to transact, the sitting ended at five minutes past eleven in the morning.

SIGNED.....

  
(Chair)

DATE.....

3rd April 2014

**MINUTES OF THE SEVENTY FIRST OF THE PUBLIC ACCOUNTS COMMITTEE (PAC)  
HELD ON WEDNESDAY, 4<sup>TH</sup> DECEMBER, 2013 AT 12.30 P.M. IN COMMITTEE ROOM 9,  
MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Joseph Manje, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Julius Melly, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. John Mbadi, M.P.  
Hon. Samuel Arama, M.P.

**ABSENT:-**

Hon. Silvanse Onyango Osele, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. Cecily Mbarire, M.G.H., M.P.  
Hon. Arthur Odera, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. James Bett, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Jessica Mbalu, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Dennis T. Kariuki - Director of Audit  
Francis Gichure - Assistant Manager

MIN No. 239/2013:-                    CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 240/2013:-                    EVIDENCE: MR. AHMED KASSAM, DIRECTOR, EADC LTD

In the matter of the hire of an aircraft for the Deputy President for an official tour of four African nations in May, 2013

Mr. Ahmed Kassam, Director, EADC Ltd, the company that supplied the aircraft used by the Deputy President during the tour submitted as follows:

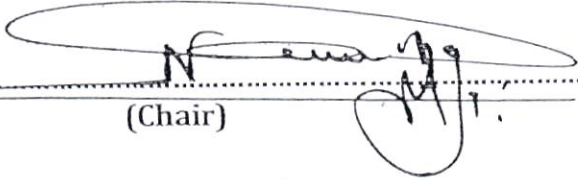
- (i) e-ADC Ltd was registered in South Africa in the year 2006 as Electronic African Development Corporation. The Company was also registered in Kenya in November, 2011 as EADC Ltd. The Kenyan Company had not filed returns and held an Annual General Meeting (AGM) by May, 2013 when it was awarded the tender to supply an aircraft for the Deputy President's tour. This was because the due date for the first AGM was still a few months away. The Company was registered in Kenya on 21<sup>st</sup> November, 2011 and did not do business in Kenya until May, 2013. According to the law, a Company is supposed to file returns one year after commencement of business. The Company had since filed returns and paid taxes fully;
- (ii) It was true that there were variances in names in tender documents and certificate of incorporation of EADC Ltd. Though EADC Ltd was awarded the tender to supply the aircraft, the Company does not own aircraft but had a contractual partnership with Vista Jet Company from which it outsourced aircraft.
- (iii) On 15<sup>th</sup> May, EADC Ltd signed an agreement with Vista Jet Ltd for the supply of the aircraft. In view of the long standing relationship EADC had established with Vista Jet, Vista Jet released the aircraft without down payment. In aircraft leasing and hiring business, suppliers would always demand for down payment before release of their aircraft.
- (iv) The type of aircraft quoted by EADC Ltd for hire was Global Express 6000 but the one the Company supplied was Challenger 850. The Company had indicated that in the event it was unable to provide the specified aircraft, it would provide a different model with similar features. The variation in aircraft was occasioned by the short notice at which the aircraft was required. The only distinctive feature between the two aircraft was that Global Express 6000 was long range while Challenger 850 was short range. The Office of the Deputy President was satisfied with the aircraft's condition and specifications. The variation of the aircraft did not have impact on pricing.

- (v) EADC was directly paid Kshs.18,564,000.00 by the Office of the Deputy President for the hire of the aircraft on 2<sup>nd</sup> July, 2013. It was false as reported by the Daily Nation newspaper that Vistajet Ltd invoiced the Office of the Deputy President for the hire of the aircraft and was paid directly. It was further false as reported by the newspaper that there was a long term lease agreement for aircraft supply between the Office of the Deputy President and EADC Ltd/Vistajet Ltd.

MIN No. 241/2013:-      ADJOURNMENT

There being no other business to transact, the sitting ended at five minutes past two in the afternoon.

SIGNED.....

  
(Chair)

DATE.....

3<sup>rd</sup> April 2014

**MINUTES OF THE SIXTY SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 13<sup>TH</sup> NOVEMBER, 2013 AT 12.15 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Sakwa Bunyasi, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.

**ABSENT:-**

Hon. James Bett, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. John Mbadi, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Julius Melly, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit

Francis Gichure - Assistant Manager  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 222/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 223/2013:- EVIDENCE: MR. EVANS NYACHIO, SENIOR ASSISTANT DIRECTOR, SUPPLY CHAIN MANAGEMENT, MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Evans Nyachio, appeared before the Committee for the second time. His reappearance was necessitated by the fact that witnesses who had appeared after him had raised issues which it was important he responds to by virtue of his position to enable the Committee draw conclusions from a well informed position. In his evidence, he stated that:-

- (i) The trip was procured when the Deputy President's Office was awaiting for allocation of funds from Treasury but the Office was nevertheless using funds from the former Prime Minister's Office vote. The Office of the Deputy President got authority from Treasury to spend in advance while awaiting for supplementary allocation. He could not produce formal communication from Treasury authorizing the expenditure.
- (ii) After it was established that the LSOs and LPO were missing, the Secretary Administration, Office of the Deputy President, Mr. Abdul Mwaserrah commenced an internal inquiry which was yet to bear any fruit.
- (iii) Himself and Mr. Abdul Mwaserrah were signatories to LSOs and LPOs in the Office of the Deputy President. In the case of the LPO for the hire of the aircraft, the LSO was signed when there were no funds which was wrong. He signed the LSO after being made to believe by the Chief Finance Officer that there were funds available.
- (iv) He signed the internal memo dated 19<sup>th</sup> May, 2013 on the loss of LSOs and LPOs. The memo was erroneously dated 19<sup>th</sup> May instead of 19<sup>th</sup> June, 2013 as the loss of the LSOs was reported by the Auditor General in June when he was conducting the audit. The erroneous dating was occasioned by the Secretary who

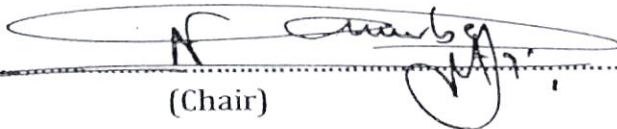


typed the memo and whom he had instructed to insert correct dates. He signed the memo believing it was correctly dated.

- (v) There was no relationship between the missing LSOs/LPO and the partnership agreement between Vistajet Company and EADC.
- (vi) There was variance between the aircraft quoted and the one that was actually delivered. This was occasioned by the urgency with which the aircraft was required and the fact that the Office of the Deputy President did not have technical expertise on aircrafts in consequence of which it was not possible to identify the difference between the aircraft that was quoted and the one that was delivered.
- (vii) Though there were several committees supposed to be established in procurement processes including Inspection and Acceptance, there was no such Committee in place for this procurement. No certificate of inspection and acceptance was in the circumstances issued in the process of hire of the aircraft.

MIN No. 224/2013:-          ADJOURNMENT

There being no other business to transact, the sitting ended at twenty three minutes past five in the evening.

SIGNED.....  
(Chair)

DATE..... 3rd April 2014.....

**MINUTES OF THE SIXTY FIFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 13<sup>TH</sup> NOVEMBER, 2013 AT 11.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Sakwa Bunyasi, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.

**ABSENT:-**

Hon. James Bett, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. John Mbadi, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Julius Melly, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit

Francis Gichure - Assistant Manager  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 219/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 220/2013:- EVIDENCE: MR. PAUL KAMAU, SENIOR FINANCE OFFICER, OFFICE OF THE DEPUTY PRESIDENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Paul Kamau, Senior Finance Officer, Office of the Deputy President appeared before the Committee and testified as follows:-

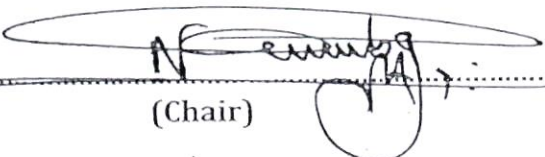
- (i) He had served as a Senior Finance Officer in the former Office of Prime Minister since October, 2010 and was retained to serve in the Office of the Deputy President in the same position. His responsibilities involved sourcing for funds from Treasury, budget implementation and ensuring the sourced funds were well utilized.
- (ii) The Office of the Deputy President inherited funds from the former Office of the Prime Minister. Whereas an expenditure of Kshs.18,564,000.00 on the hire of an aircraft for the Deputy President was charged to the foreign travel vote, the vote had only Kshs.2,142,251.20. This was contrary to government financial regulations and procedures.
- (iii) He wrote to Treasury on 17<sup>th</sup> May, 2013 requesting for more funds to meet the Office of the Deputy President's expenditure. He was under pressure to facilitate funding of the trip. At one stage, he had to physically walk to Treasury to follow up on the request for additional funds. Notwithstanding the fact that he signed the LSO when there were no sufficient funds, he believed that Treasury would provide funds to meet the expenditure.
- (iv) He was liaising with Mr. Origa, a Budget Officer at Treasury who gave him confidence that the funds would be disbursed. He admitted that the letter dated 17<sup>th</sup> May, 2013 would not guarantee the Office of the Deputy President funds disbursement since, it was written after the procurement had commenced and this contravened government procurement regulations and procedures. His dealing with Mr. Origa was at personal level.

- (v) Treasury eventually disbursed funds to the Office of the Deputy President in June, 2013. The supplier of the aircraft EADC Ltd was paid on 3<sup>rd</sup> July, 2013. He had signed the LSO on 15<sup>th</sup> May, 2013, a day before the Deputy President departed the country.

MIN No. 221/2013:-      ADJOURNMENT

There being no other business to transact, the sitting ended at twenty three minutes past five in the evening.

SIGNED.....

  
(Chair)

DATE.....

3<sup>rd</sup> April 2014

**MINUTES OF THE SIXTY THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 7<sup>TH</sup> NOVEMBER, 2013 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. John Mbadi, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. James Bett, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvance Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Julius Melly, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Junet Sheikh Nuh, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Dennis Kariuki - Director of Audit

Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 212/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 213/2013:- EVIDENCE: MR AHMED KASSAM, DIRECTOR, EADC LTD

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Ahmed Kassam, was a Director at EADC Ltd, the company which supplied the aircraft that transported the Deputy President for the tour. Mr. Kassam was a resident of South Africa and did not appear before the Committee in person. Mr. Hiram Kago, his Advocate appeared on his behalf.

Pursuant to Parliamentary practices and procedures, an Advocate could not represent his client before a Committee of the House. As a result, the Committee could not give Mr. Kago audience and told him to instruct his client to appear in person on 13<sup>th</sup> November, 2013 at ten in the morning.

MIN No. 214/2013:- ADJOURNMENT

There being no other business to transact, the sitting ended at five minutes past one in the afternoon.

SIGNED.....

(Chair)

DATE.....

**MINUTES OF THE SIXTY SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 7<sup>TH</sup> NOVEMBER, 2013 AT 10.30 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. John Mbadi, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. James Bett, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Julius Melly, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Junet Sheikh Nuh, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Dennis Kariuki - Director of Audit

Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 209/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 210/2013:- EVIDENCE: MS. MARIANNE KITANY CHIEF OF STAFF, OFFICE OF THE DEPUTY PRESIDENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Ms. Marianne Kitany, Chief of Staff, Office of the Deputy President appeared before the Committee and testified as follows:-

- (i) As part of Government's commitment in strengthening relations with African states, developing a continental response to asymmetrical security challenges particularly terrorism and increasing Kenya's export presence within African continent, the need to make Africa safe and repatriation of refugees back to Somalia, His Excellency the President instructed the Deputy President to make a state visit on his behalf to four African nations namely Congo Brazzaville, Gabon, Nigeria and Ghana from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. At that time, His Excellency the President was attending the World Economic Forum in South Africa and instructed the Deputy President on phone.
- (ii) Upon the Deputy President receiving instructions from the President, he verbally instructed her to make necessary arrangements for the tour. Given the short notice, she immediately constituted an Organizing Committee which held sittings on 14<sup>th</sup> and 15<sup>th</sup> May, 2013 and organized the trip despite the short notice.
- (iii) The current policy on travel for government dignitaries on official functions was archaic and not suited to current circumstances. The Government had commenced the process of developing a new policy. The process started before the audit exercise and seeks to develop a comprehensive approach to travel across the entire government including state corporations and independent Commissions.
- (iv) Decisions as to who from the Deputy President's Office forms the Deputy President's entourage on such tours is determined by herself whereas the decision as to who was to accompany the Deputy President from the two House (National Assembly and Senate) was left to the Speakers of the two institutions.

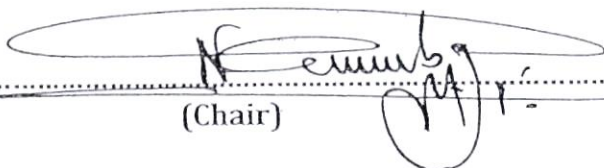


Letters were written to the two House through their respective Clerks and names provided. Parliament paid the per-diems of the Members forming the entourage while the other costs were met by the Office of the Deputy President and the host countries.

- (v) The Ministerial Tender Committee settled on open tendering as suitable method of hire of and aircraft for the Deputy President. While arriving at open tendering as the procurement method, the Committee considered cost, reliability, safety, reputation, aircraft specifications dates of travel, destinations and other relevant factors. There was no cheaper option of travel than hiring an aircraft after considering these factors.
- (vi) The LSO used to generate payment to the supplier as presented to the Committee did not bear all signatures of mandatory signatories. The LSOs was photocopied at the commencement of the process and by the time payment was made, all mandatory signatories had signed it.

MIN No. 211/2013:-      ADJOURNMENT

There being no other business to transact, the sitting ended at ten minutes to noon.

SIGNED.....  
  
(Chair)

DATE.....  
3rd April 2014

**MINUTES OF THE SIXTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC)  
HELD ON WEDNESDAY, 6<sup>TH</sup> NOVEMBER, 2013 AT 4.30 P.M. IN COMMITTEE ROOM 9,  
MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Julius Melly, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. James Bett, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. John Mbadi, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit

Francis Gichure - Assistant Manager  
Henry Manenge - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 203/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 204/2013:- EVIDENCE: DR. MOHAMED ISAHAKIA, FORMER PERMANENT SECRETARY, OFFICE OF THE PRIME MINISTER

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Dr. Mohamed Isahakia former Permanent Secretary, Office of the Prime Minister appeared before the Committee and submitted as follows:-

- (i) Functions of the former Office of Prime Minister had been transferred to the Office of the Deputy President after the 4<sup>th</sup> March, 2013 general elections. At the time of the hire of the aircraft, he was the Accounting Officer, Office of the Deputy President in a transitional capacity. His responsibilities involved sourcing for exchequers and signing vouchers among others. He remained in Office till June, 2013 when a substantive Accounting Officer was appointed.
- (ii) He heard of the Deputy President's tour of four African nations on 14<sup>th</sup> May, 2013 from the Chief of Staff, Marianne Kitany. In view of the transitory role he was playing, he was a lame duck Accounting Officer and was not involved at all in the process of hire of the aircraft.

MIN No. 205/2013:- ADJOURNMENT

There being no other business to transact, the sitting ended at twenty three minutes past five in the evening.

SIGNED.....  
(Chair)

DATE.....

**MINUTES OF THE FIFTY NINETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 6<sup>TH</sup> NOVEMBER, 2013 AT 3.30 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Julius Melly, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. James Bett, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. John Mbadi, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit

Francis Gichure - Assistant Manager  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 200/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings and matters arising was deferred to the next sitting.

MIN No. 201/2013:- EVIDENCE: MR ABDUL MWASERRAH, SECRETARY ADMINISTRATION, OFFICE OF THE DEPUTY PRESIDENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

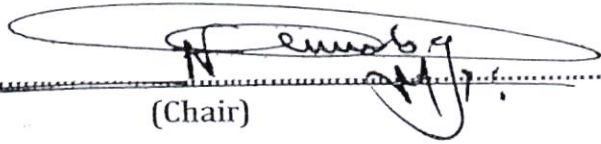
Mr. Abdul Mwaserrah appeared before the Committee for the second time. His appearance was necessitated by the fact that new issues had been raised by witnesses who had appeared after him and it was important for him to respond to the issues so that the Committee is well informed for the purposes of its report. Mr. Mwaserrah submitted that:-

- (i) While hiring the aircraft, the Office of the Deputy President was most concerned with the capacity of the aircraft to carry fourteen (14) passengers which was the size of the Deputy President's delegation.
- (ii) Inquiry into the missing Local Service Orders (LSOs) and Local Purchase Order (LPOs) was ongoing though none of them had been traced. He was leading the investigations.
- (iii) A copy of the LSO before the Committee that was used to pay the supplier was photocopied by the Auditor General before undergoing all payment processes and that's why some signatures were missing on it. By the time payment was made, all required signatories had signed it.
- (iv) There was no agreement signed between the Office of the Deputy President and EADC Ltd for long term lease of the aircraft. The hire of the aircraft for the tour was a one off affair.

MIN No. 202/2013:- ADJOURNMENT

There being no other business to transact, the sitting ended at twenty three minutes past five in the evening.

SIGNED.....

  
.....  
(Chair)

DATE.....

3rd April 2009

**MINUTES OF THE FIFTY EIGHTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 6<sup>TH</sup> NOVEMBER, 2013 AT 12.30 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Charles Geni Mong'are, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Julius Melly, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. John Mbadi, M.P.  
Hon. James Bett, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit  
Francis Gichure - Assistant Manager

Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 197/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 198/2013:- EVIDENCE: MR. ERIC KORIR, SENIOR ASSISTANT DIRECTOR, SUPPLY CHAIN MANAGAMENT, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely; Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Eric Korir previously served as Senior Assistant Director in the former Office of the Vice President and Ministry of Home Affairs and had been involved in procurement for hire of aircraft for the Vice President who would on occasions travel on short notices. The Committee called him to give evidence to enable it draw comparisons on air travel between Offices of the former Vice President and Deputy President which was essential for the purposes of its report. Mr. Korir testified as follows:-

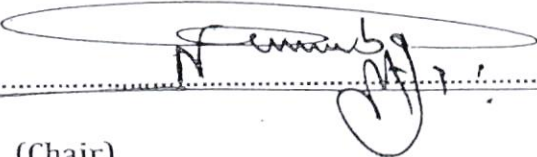
- (i) He had received a letter from the Auditor General on 26<sup>th</sup> June, 2013 to provide information on travel by the former Vice President. The Auditor General needed this information to do a comparative study with the Deputy President's air travel so that he could report on value for money. He did not formally respond to the letter because he was busy preparing final accounts for closure of the financial year.
- (ii) His failure to respond to the Auditor General's letter culminated in the Auditor General's team visiting him and orally interviewing him. During the interview, he furnished the Auditor General with a list of trips made by the former Vice President. He thought that the oral interrogation by the Auditor General was sufficient for all purposes.
- (iii) The major challenge in the procurement process for hire of aircraft is when the notice is too short in consequence of which procurement entities have breached the law. From his experience, he had always operated within the law even on many occasions when notices to procure were too short. Adherence to procurement regulations and procedures was not negotiable. All instructions he had received while procuring for hire of aircraft had been in writing.



- (iv) Incomplete signed Local Service Orders (LSOs) cannot be used to generate payment. Inspection and acceptance certificates must also be attached to LSOs. Payment for goods and services should be in most cases be after delivery unless under exceptional circumstances. It is a common practice in aircraft hire for advance payment to be made at least 24 hours before provision of services.
  
- (v) He had served in the Office of former Vice President for three (3) years during which he had presided over the hire of aircrafts eight (8) times and issues of safety were very crucial in the process. The aircraft must be inspected and its airworthiness certified before travel. A certificate of Inspection and Acceptance would be issued to this effect. Towards this end, it was important the government deals with very reputable companies.

MIN No. 199/2013:-      ADJOURNMENT

There being no other business to transact, the sitting ended at twenty five minutes past four in the afternoon.

SIGNED.....  
(Chair)

DATE.....3rd April 2014.....

**MINUTES OF THE FIFTY SEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 6<sup>TH</sup> NOVEMBER, 2013 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P.	-	Chair
Hon. Cecily Mbarire, M.G.H., M.P.	-	Vice Chair
Hon. Charles Geni Mong'are, M.P.		
Hon. Kareke Mbiuki, M.P.		
Hon. Gonzi Rai, M.G.H., M.P.		
Hon. Julius Melly, M.P.		
Hon. Jackson K. Rop, M.P.		
Hon. James Bett, M.P.		
Hon. Fathia Mahbub, M.P.		
Hon. Sakwa Bunyasi, M.P.		
Hon. Mathias Robi, M.P.		
Hon. Samuel Arama, M.P.		
Hon. Junet Sheikh Nuh, M.P.		
Hon. John Mbadi, M.P.		
Hon. Silvanice Onyango Osele, M.P.		
Hon. Kyengo Katatha Maweu, M.P.		
Hon. Mwadime Andrew, M.P.		

**ABSENT:-**

Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba	-	Senior Clerk Assistant
Hellen Lokwang'	-	Clerk Assistant III

**NATIONAL ASSEMBLY**

George Gazemba	-	Senior Clerk Assistant
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Hellen Lokwang' - Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE (KENAO)

Denis T. Kariuki - Director of Audit  
Francis Gichure - Assistant Manager  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 194/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 195/2013:- EVIDENCE: MR. RICHARD LEMOSHIRA, ASSISTANT DIRECTOR, OFFICE OF POLITICAL AFFAIRS AND INTERNATIONAL DIPLOMACY, MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Richard Lemoshira, Assistant Director, Office of Political Affairs and International Diplomacy, Ministry of Foreign Affairs and International Trade appeared before the Committee and testified as follows:-

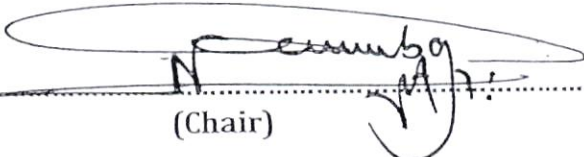
- (i) He was nominated by the Ministry of Foreign Affairs to accompany His Excellency the Deputy President on the tour. His role during the tour was limited to providing protocol services though he was an Assistant Director, Office of Political Affairs and International Diplomacy.
- (ii) The request by Office of the Deputy President to the Ministry of Foreign Affairs for provision of protocol services was made on 14<sup>th</sup> May, 2013. He was verbally instructed by the Political and Diplomatic Affairs Secretary to accompany the Deputy President. He could not tell whether there was written communication between the Office of the Deputy President and Ministry of Foreign Affairs with respect to his assignment.
- (iii) The main purpose of the tour was for Kenya to develop a strategic partnership with the four countries in order to get support for its agenda in terms of security over Somalia and Trade at an African Union summit of Heads of State scheduled for end of May, 2013 in Addis Ababa Ethiopia. The four countries (Ghana, Nigeria, Congo Brazzaville and Gabon) were very influential in West and Central

Africa. Other than the Somalia agenda, the Deputy President also discussed economic affairs with Head of States of Ghana and Nigeria.

- (iv) Though the tour centred largely on security issues, there was no security expert in the delegation. It was not his responsibility to determine who constituted the delegation. He was also not familiar with the standard operating procedures of the Office of the Deputy President.
- (v) Though this assignment came on short notice, it was not extraordinary for him having encountered similar situations before and acted within the law. From operational targets, he was to arrange for four meetings which he successfully did. However during the whole tour, he only attended one meeting in Nigeria between His Excellency the Deputy President and His Excellency the President of the Republic of Nigeria. This was because he would be sacrificed in meetings where there was inadequate sitting space for the delegation.

MIN No. 196/2013:-      ADJOURNMENT

There being no other business to transact, the sitting ended at twenty minutes past noon.

SIGNED.....  
(Chair)

DATE..... 3rd April 2014

**MINUTES OF THE FIFTY SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 5<sup>TH</sup> NOVEMBER, 2013 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Charles Geni Mong'are, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. James Bett, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Fathia Mahbub, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Julius Melly, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. John Mbadi, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit  
Francis Gichure - Assistant Manager

Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 191/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 192/2013:- EVIDENCE: MR. SIMON OKOTH, SUPPLY CHAIN  
MANAGEMENT OFFICER, NATIONAL TREASURY

In the matter of the hire of an aircraft for the Deputy President for a tour of four  
African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Simon Okoth, Supply Chain Management Officer, National Treasury, appeared before the Committee and submitted as follows:-

- (i) He was at the time of the hire of the aircraft, a Supply Chain Management Officer in the Office of the Deputy President;
- (ii) He was verbally briefed on the hire of an aircraft for the Deputy President on 14<sup>th</sup> May, 2014 by Mr. Evans Nyachio then Senior Assistant Director of Procurement, Office of the Deputy President. In the briefing, he was informed that the Deputy President would be travelling to Congo Brazzaville, Gabon, Ghana and Nigeria on 16<sup>th</sup> May, 2013 and that a suitable aircraft was to be hired on an urgent basis to transport him and fifteen (15) Officers to accompany him. By virtue of his position, he was directly involved in procurement process of the hire of the aircraft and was responsible for the generation of Local Service Orders (LSOs).
- (iii) The procurement process commenced on 15<sup>th</sup> May, 2013. The Ministerial Tender Committee sat on the same day and settled on hire of an aircraft as the best option having taken into consideration cost and convenience aspects. The Committee further settled on restricted tendering as the best method of procurement. The three prequalified suppliers namely; EADC Ltd, Aircraft Business Management (ABM) Ltd and Lady Lori (Kenya) Ltd were invited to quote based on specifications and itinerary provided to them. The quotations were evaluated and the tender awarded on the same day to EADC Ltd which had presented the lowest evaluated bid.
- (iv) After the tender award, Minutes of the Ministerial Tender Committee were immediately prepared and a Local Purchase Order (LSO) generated by him. He does not sign LSO's and upon generation of this one, he forwarded it to Mr.

Evans Nyachio, Senior Assistant Director of Procurement and later to Mr. Abdul Mwasserra, Secretary Administration for signing.

- (v) He learnt of the missing LSOs from the Auditors during the audit exercise. An initial inquiry was made within various Departments in the Office of the Deputy President but there was no positive response. An advert was then put in the local daily newspapers to alert and forewarn the public and at the same time exonerate the Office of the Deputy President from the use of the LSOs. This was a very normal practice when such documents went missing and could not be traced.
- (vi) The Auditor General commenced the audit exercise on the hire of the aircraft in June, 2013. This was when the Office of the Deputy President learnt of the missing LSOs and LPO. The internal memo dated 19<sup>th</sup> May, 2013 signed by Mr. Evans Nyachio, Head, Supply Chain Department alerting Heads of Department about the missing four (4) LSOs and one (1) LPO appeared to have been backdated.
- (vii) Initially the missing LSOs including their originals and duplicates were referenced no. 0855002, 0855003, 0855005 and 0855011. However, it was later established that LSO Nos. 0855002 and 0855011 were not missing but had been used for other transactions. He could not however immediately provide copies of the LSOs neither could he tell the exact transaction for which the LSOs were used though he suspected that one of them could have been used to pay Uniglobe Ltd, a travel agency dealing with the Office of the Deputy President.
- (viii) Internal investigations for the recovery of the missing LSOs were ongoing lead by Mr. Abdul Mwaserrah, Administration Secretary. Others involved were Mr. Evans Nyachio, Head of Supply Chain Management and the Accounts Department. He had however not been interrogated over the missing LSOs yet he was their custodian. As a custodian of the LSOs, he keeps them in a cabinet under lock and key and only releases them when necessary.
- (ix) The Office of the Deputy President has an internal accounting and monitoring system through which movement of LSOs and LPOs is tracked. This system was not working at the time of the hire of the aircraft and only became functional when the Auditor General came in to audit.
- (x) EADC had different logos and the name used in the tender documents for the Procurement of the aircraft varied with that in the certificate of incorporation. Whereas the Company used E-ADC Ltd in tender documents, its name appearing in the certificate of incorporation in Kenya was EADC Ltd. Payment was made to EADC Ltd.

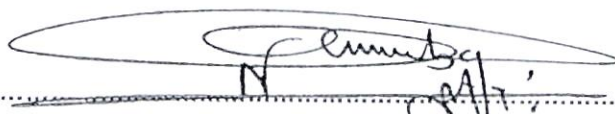
Attendance by the Public Accounts and Investments Committee of the Nairobi County Assembly

The Public Accounts and Investments Committee of the Nairobi County Assembly attended the sitting. The Committee was on a learning mission and was lead by its Chair, Mr. Robert Mbatia.

MIN No. 193/2013:-            ADJOURNMENT

There being no other business to transact, the sitting ended at forty minutes past one in the afternoon.

SIGNED.....

  
(Chair)

DATE.....

3rd April 2014



**MINUTES OF THE FIFTY FIFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE  
(PAC) HELD ON TUESDAY, 5<sup>TH</sup> NOVEMBER, 2013 AT 10.00 A.M. IN COMMITTEE ROOM  
9, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Joseph Manje, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Charles Geni Mong'are, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. James Bett, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. John Mbadi, M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Kyengo Katatha Maweu, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT:-**

Hon. Arthur Odera, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Julius Melly, M.P.  
Hon. Jessica Mbalu, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Gonzi Rai, M.G.H., M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Denis T. Kariuki - Director of Audit

Francis Gichure - Assistant Manager  
Henry Manegene - Senior Supervisor

NATIONAL TREASURY (PARLIAMENTARY LIAISON)

Moses Gicheru - Senior Accountant

MIN No. 188/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 189/2013:- EVIDENCE: MR. EVANS NYACHIO, SENIOR ASSISTANT DIRECTOR SUPPLY CHAIN MANAGEMENT, MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT

In the matter of the hire of an aircraft for the Deputy President for a tour of four African Nations namely: Congo Brazzaville, Gabon, Nigeria and Ghana in May, 2013

Mr. Evans Nyachio, Senior Assistant Director of Procurement Ministry of Industrialization and Enterprise Development appeared before the Committee and testified as follows:-

- (i) He was at the time of the aircraft hire Senior Assistant Director of Procurement in the Office of the Deputy President by virtue of which he was the head of the supplies and procurement docket. His transfer from the Office of the Deputy President to the Ministry of industrialization and Enterprise Development was in line with public service policies.
- (ii) On 14<sup>th</sup> May, 2013 he received verbal instructions from the Chief of Staff, Office of the Deputy President to initiate procurement process for the hire of an aircraft for the Deputy President for an official visit of four African nations from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. On the same day, a technical team was formed to advise on technical aspects of the procurement.
- (iii) On 15<sup>th</sup> May, 2013, bids were invited from three prequalified firms namely EADC Ltd, Aircraft Business Management (ABM) Ltd and Lady Lori (Kenya) Ltd. The bids were evaluated and the tender awarded on the same day to EADC Ltd which had presented the lowest evaluated bid. EADC had quoted USD.221,000.00 (Kshs.18,564,000.00) while ABM quoted USD.338,000.00 (Kshs.28,440,000.00) and Lady Lori USD.234,866.00 (Kshs.19,728,744.00). EADC Ltd had an aircraft ready for inspection at Wilson Airport in Nairobi. This was an assurance given by the supplier at the time of bidding.
- (iv) The aircraft was inspected on 15<sup>th</sup> May, 2013. He was not involved in the inspection exercise. The Deputy President travelled on 16<sup>th</sup> May, 2013 in the morning. The memo from the Chief of Staff instructing him to initiate the

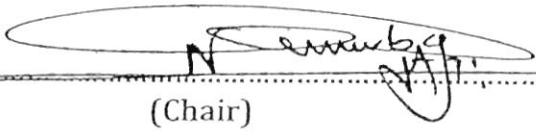
procurement process for hire of the aircraft finally reached him on 16<sup>th</sup> May, 2013, the day the Deputy President departed for West Africa.

- (v) After award of the tender, minutes of the Tender Committee were immediately prepared and an LSO written by Mr. Simon Okoth, Supply Chain Management Officer. The LSO was however not released immediately since funds were not available. The LSO was dated 16<sup>th</sup> May, 2013. He does not approve LSOs though he signs them.
- (vi) EADC was paid Kshs.18,564,000.00 on 2<sup>nd</sup> July, 2013 vide LSO No. 0855010. The LSO lacked some signatures yet it effected payment to the supplier through IFMIS and was later validated after all required signatories signed it. He however later told the Committee that the LSO was signed by all signatories before being processed through IFMIS. He undertook to produce a copy of a duly signed LSO in triplicate for the Committee's reference.
- (vii) The trip was procured when the Deputy President's Office was awaiting for allocation of funds from Treasury but the Office was nevertheless using funds from the former Prime Minister's Office vote. The Office of the Deputy President got authority from Treasury to spend in advance while awaiting for supplementary allocation. He could not however produce formal communication from Treasury authorizing the expenditure.
- (viii) He was aware that some LSOs and an LPO were missing from books of accounts. These were: LSOs Nos. 0855002, 0855003, 0855005, 0855011 and LPO No. 1694975. He learnt of the missing LSOs through the Auditor General while conducting audit. An internal memo dated 19<sup>th</sup> May, 2013 was issued to this effect but none of the missing LSOs and LPO could be traced. An advertisement was subsequently put in the local daily newspapers alerting and forewarning the public from transacting with them. None of the LSOs or LPO had since been traced.
- (ix) There was variance in names and logo of EADC Ltd, the supplier. Whereas in tender documents and letterheads, the supplier used E-ADC Ltd with a logo the name appearing in the certificate of incorporation in Kenya was EADC Ltd. The Office of the Deputy President made direct payment to EADC Ltd.
- (x) There was variance between the aircraft quoted and the one that was actually delivered. This was occasioned by the urgency with which the aircraft was required and the fact that the Office of the Deputy President did not have technical experts on aircrafts to advise in consequence of which it was not possible to identify the difference between the aircraft that was quoted and the one that was delivered.

MIN No. 190/2013:-

ADJOURNMENT

There being no other business to transact, the sitting ended at ten minutes to noon.

SIGNED.....  
(Chair)

DATE..... 3rd April 2014

**MINUTES OF THE SIXTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC)  
HELD ON TUESDAY, 6<sup>TH</sup> AUGUST, 2013 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN  
PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Ababu Namwamba, E.G.H., M.P. - Chair  
Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair  
Hon. Joseph Manje, M.P.  
Hon. Kareke Mbiuki, M.P.  
Hon. James Bett, M.P.  
Hon. Fathia Mahbub, M.P.  
Hon. Sakwa Bunyasi, M.P.  
Hon. Edick Omondi Anyanga, M.P.  
Hon. Samuel Arama, M.P.  
Hon. Junet Sheikh Nuh, M.P.  
Hon. John Mbadi, M.P.  
Hon. Chachu Ganya, M.P.  
Hon. Alice Nyanchoka Chae, M.P.  
Hon. Mwadime Andrew, M.P.  
Hon. Ahmed Ibrahim Abass, M.P.

**ABSENT WITH APOLOGIES:-**

Hon. Joel Onyancha, M.G.H., M.P.

**ABSENT:-**

Hon. Gonzi Raj, M.G.H., M.P.  
Hon. Silvanice Onyango Osele, M.P.  
Hon. Ken Obura, M.P.  
Hon. Mathias Robi, M.P.  
Hon. Julius Melly, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Stephen Manoti, M.P.  
Hon. Arthur Odera, M.P.  
Hon. Manson Nyamweya, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Kyengo Katatha Maweu, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

Mr. George Gazemba - Senior Clerk Assistant  
Ms. Hellen Lokwang' - Clerk Assistant III

**KENYA NATIONAL AUDIT OFFICE (KENAO)**

Dennis Kariuki - Director of Audit  
George Mokua - Senior Manager  
Francis Gachure - Assistant Manager

**MIN No. 61/2013:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

Confirmation of minutes of previous sittings was deferred to the next sitting.

**MIN No. 62/2013: IN THE MATTER OF HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT FOR AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY, 2013 – APPEARANCE BY THE AG. PRINCIPAL ADMINISTRATIVE SECRETARY, OFFICE OF THE DEPUTY PRESIDENT**

The purpose of the meeting was for the Office of the Deputy President to provide information and documents on the procurement process for the hire of the aircraft to enable the Auditor General conclude a special audit report on the matter, for investigation by the Committee. The Auditor General had told the Committee that he was experiencing difficulties getting information and documents from the Office of the Deputy President.

Mr. Abdul Mwaserrah, Secretary Administration accompanied by:-

(i) Shadrack Mwadime - Deputy Secretary, Administration  
(ii) Joel Langat - Principal Accountant  
(iii) Paul Kamau - Senior Finance Officer  
(iv) David S. Wabwile - Chief Supplies Office  
(v) Joseph Mugonyi - Head of media

appeared before the Committee and other than availing documentary evidence submitted as follows:-

- (i) The visit by the Deputy President to the four (4) African nations in May, 2013 was a state function. The President himself was to tour but could not make it and tasked the Deputy President at the last minute to represent him. He could not however tell whether the instructions to delegate were written or verbal;
- (ii) There was no executive order issued by the President for the hire of the aircraft or for the assignment to be undertaken by the Deputy President and the delegation comprised:-
  - The Deputy President;
  - Chief of Staff, Office of the Deputy President;
  - Four Members of Parliament nominated by the Majority Party Leaders of the National Assembly and the Senate;

- One Protocol Officer from the Ministry of Foreign Affairs and International Trade;
- Three Security Officers;
- One Personal Assistant to the Deputy President;
- Two Communications Officers; and
- An Accountant from the Deputy President's Office.

(iii) The purpose of the tour was:-

- To address enormous security and economic challenges Somalia was posing to Kenya;
- Address the issue of over 500,000 refugees who had resided in Kenya for over a decade. Kenya was pursuing this matter at the African Union's summit held in May, 2013 in Addis Ababa, Ethiopia;
- To address issues related to AMISOM forces in Somalia;
- To address trade and communication issues.

(iv) The procurement process for the hire of the aircraft was done on short notice. Instructions were received on 14<sup>th</sup> May, 2013 for the process to be concluded by 15<sup>th</sup> May, 2013. The prequalified service providers were:-

- Lady Lori Kenya Limited;
- Aircraft Business Management Ltd; and
- E-ADC (African Development Co-operation Ltd); a partner of Vista Jet East Africa Ltd.

(v) Quotations from the three companies were evaluated and the tender awarded to E-ADC Ltd. After winning the tender, the company assigned the service to its partner Vistajet East Africa Ltd. EADC was incorporated in Kenya on 21<sup>st</sup> November, 2011 and its Directors were Mr. Punit Vadgama and Ahmed Kassam. He produced copies of the minutes of the Tender Committee awarding the Tender and certificate of incorporation of E-ADC Ltd.

(vi) There was no Government policy on hire of aircraft and provisions of the Public Procurement and Disposal Act of 2005 would apply. However, the guiding principle on travel by the Deputy President was similar to that of the President as advised by the Ministry of Foreign Affairs and International Trade.

(vii) Payment of Kshs.18,564,000.00 for hire of the aircraft was made to the service provider through the Integrated Financial Management and Information System (IFMIS). He produced copies of the IFMIS extract and G-pay transmission schedule to back his assertion.

(viii) He could not access documents pertaining to the hire of aircraft for the former Prime Minister as the documents had been archived. He however produced

some tabulations of costs of travel by the former Prime Minister and former Vice President;

- (ix) He realized some Local Service Orders (LSOs) were missing after the Auditor General drew the attention of the Office to their unavailability. Initially, four (4) LSOs were missing but two had been traced leaving the other two (2) untraceable. He had issued an internal memorandum for the tracing and availing of the two missing LSOs Numbers. 0855003 and 0855005 but there was no positive response. He then placed an advertisement in the Nation and Standard newspapers of 29<sup>th</sup> July, 2013;
- (x) Precautionary measures had been taken against the use of the missing LSOs and they could not be used for any transactions.

### PENDING ISSUES

The following issues remained outstanding at the end of the meeting:-

- (i) The Committee had requested the Ag. Administrative Secretary to do a comparative analysis on hire of aircraft between Offices of the former Prime Minister, former Vice President and the current Deputy President but he did not do so. He only provided a few tabulations of air travel expenses of the former Prime Minister and Vice President. The Committee requested the Auditor General to do the analysis and report on it in the special audit report;
- (ii) E-ADC Ltd as appearing in the tender documents was not registered in Kenya. Records in the companies' register indicated EADC Ltd as the registered company. The Committee observed that the use of two different names interchangeably by the Company could have been for bad intentions and left it to the Auditor General to advise in his special audit report.

The Auditor General was satisfied with the information and documents availed and told the Committee that he would now be able to conclude the special audit report. The Committee appealed to him to ensure the report is finalized and presented to the House within fourteen (14) days from the date of the sitting.

### MIN No. 63/2013: ANY OTHER BUSINESS (A.O.B)

The Committee resolved to reschedule its sittings of 13<sup>th</sup> to 15<sup>th</sup> August, 2013 during recess to enable Members spend some time in their constituencies before resuming sittings on 19<sup>th</sup> August, 2013. The meeting tasked the secretariat to schedule meetings for 19<sup>th</sup> August, 2013 in the morning and afternoon and meetings thereafter to remain as scheduled.

### MIN No. 64/2013:- ADJOURNMENT

There being no other business to transact, the sitting ended at forty seven minutes past one in the afternoon.



SIGNED.....

~~Handwritten signature~~  
Cher

DATE.....

3rd April 2014

# APPENDIX 2

# APPENDIX 2

*Paper laid =  
This 3/10/13 by  
the Hon A. Swale, MP*

# Office of the Auditor General



Special Audit on the Hire of Aircraft for the Deputy President for an  
Official Tour of Four African Nations in May 2013



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## Abbreviations

The following abbreviations have been used in the report

AMISOM	African Mission in Somalia
AU	African Union
CFO	Chief Finance Officer
DP	Deputy President
EADC	East African Development Corporation
H.E.	His Excellency
IGAD	Intergovernmental Authority on Development
ODP	Office of the Deputy President
PAC	Public Accounts Committee
PPOA	Public Procurements Oversight Authority
V.I.P	Very Important Person
V.V.I.P	Very Important Person

List of Annexures

Title	Description	Section in the Report
annexure I	Extract of the Kenyan Constitution	2.1
Annexure 2	Executive Order No. 2/2013	2.1
Annexure 3	Media Reports	2.2 & 3.2.2 (v)
Annexure 4	Letter Ref. No NA/PAC/CORR/2013/08	2.2
Annexure 5	Letter ref. No C.868C/5	2.5.2 & 3.3.1
Annexure 6	Letter ref. No C.868C/7	2.5.2 & 3.3.1
Annexure 7	Report and letter signed by Chief of Staff	3.1.1 & 3.1.4
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Annexure 13	Quotations from 3 firms	3.2.1 & 3.2.2(iii)
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Annexure 15	Ministerial Tender Committee Minutes	3.2.1
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## 1.0 EXECUTIVE SUMMARY

### 1.1 Introduction

1.1.1 This special audit was carried out at the request of the Clerk of the National Assembly vide letter ref NA/PAC/CORR/2013/08 dated 24/05/2013 to the Auditor General to carry out a special audit on hire of a jet used by the Deputy President (DP) to visit four (4) African Countries, namely, Congo Brazzaville, Gabon, Nigeria and Ghana.

1.1.2 The audit was conducted in June/July 2013.

1.1.3 Our terms of reference were as follows:

- Establish how the trip was initiated.
- Establish the procurement process for the Aircraft.
- Establish the previous trips by holders of equivalent position
- Establish whether the invoice appearing in the Daily Nation of 23 May 2013 for USD 300,000 (Kshs. 25,000,000) related to the hire of the jet.
- Establish the actual cost of hiring the jet.
- Identify the irregularities and culpabilities arising from the hire of the jet.
- Submit a report to the Auditor General comprising of forensic audit findings, conclusions and recommendations.

1.1.4 Our audit covered the Deputy President's trip that took place between 16 and 19 May 2013.

1.1.5 We also visited the Ministry of Foreign Affairs, and obtained details on travels of the former Prime Minister and the former Vice President and the objective was to compare the cost of travel for these previous holders of equivalent position to the Deputy President.

1.1.6 We had enough professionals internally to deal with this investigation.

1.1.7 We faced several problems during our audit some of which were unforeseen at the beginning of the exercise. These problems led to delay in the execution and completion of the engagement.

1.1.8 Specifically, we set out some of the problems we faced below:

- It took two weeks to obtain details on prequalified suppliers for aircraft hire services in the Office of the Deputy President, previously occupied by the former Prime Minister.
- The Office of the DP was established by the new constitution and it is the first of its kind in the Kenyan history. There was a comparison challenge with similar previous office holders since there was no exact match in terms of responsibilities.

- 
- Delay by the Office of the Deputy President in availing details of official international trips made by the former Prime Minister and the former Vice President for the period they were in office as requested in our letter ref: C.868C/5 dated 19 June 2013 (erroneously stated as 19 May 2013).
  - We were unable to interview Mr. Ahmed Kassam who is one of the directors in EADC Ltd or any other official of the company that offered the aircraft services. The Company has two directors namely: Mr. Ahmed Kassam and Punit D. Vadgama. We therefore informed the Public Accounts Committee who directed that Mr. Ahmed Kassam be invited to the committee sitting upon tabling of the final report by the Auditor-General.
  - We were informed that the process of hire of the aircraft was initiated upon a Presidential instruction given by H.E. the President to H.E. the Deputy President. No written instruction or any other form of evidence from the office of the President has been availed to us to substantiate this assertion; consequently, we are unable to conclude on this matter.
  - Our request to the Registrar of Companies for details on the ownership and registration of EADC Limited took more than 40 days to be responded to.
  - Local Service Orders (LSOs) numbers 0855003 and 0855005 were missing from the book copy. However, an internal memo dated 19 May 2013 reporting the loss of several LSOs (including the above two) and one LPO was availed to us during the audit. In addition, the loss was advertised in the Daily Nation and The Standard on 29 July 2013 in accordance with the Government Financial Regulations and Procedures.

1.1.9 This summary of our findings, which should be read in conjunction with the full report and challenges set therein, comprises of the following sections:

- 1.1 Introduction
- 1.2 Findings and Conclusions
- 1.3 Responsibility and culpability
- 1.4 Possible Claims
- 1.5 Recommendations

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## 1.2 Findings and Conclusions

### Initiation of trip

- 1.2.1 We were informed by the Chief of Staff that the instruction to undertake the travel from 16 to 19 May 2013 was verbal and it came from the President. The Deputy President was working in accordance with Article 147 (1) and (2) of the Constitution of Kenya. The instruction came on the 14 May 2013.
- 1.2.2 The instruction was verbal and hence contrary to Chapter Nine Section 135 of the Constitution, which provides that, 'A decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.'
- 1.2.3 A committee was constituted immediately after the instructions were received from the Deputy President's Chief of staff on 14 May 2013 and the first meeting was convened on 15 May 2013. It comprised of six officers from the Office of the Deputy President and one from Ministry of Foreign Affairs.
- 1.2.4 The trip was initially planned to cover four (4) African countries namely:-
- Congo - Brazzaville 16 May 2013
  - Gabon 16 May 2013
  - Nigeria 17 May 2013
  - Algeria 18 May 2013
- Algeria was later replaced with Ghana.
- 1.2.5 There were 14 persons in the delegation.
- 1.2.6 The delegation used a hired aircraft from EADC Limited at a cost of USD 221,000.00 (Kshs 18,564,000.00) and incurred an additional Kshs 2,142,251.20 on accommodation, transport and miscellaneous expenses. The amount was in the budget inherited from the former Prime Minister's Office.
- 1.2.7 The purpose of the trip was to address the enormous economic and security challenges Somalia has posed to Kenya and to solicit support and influence the AU position in Kenya's favor.

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### Procurement of the jet

- 1.2.8 Office of the Deputy President used request for quotations method of procurement instead of open tendering method that is preferred for any amount exceeding Kshs 500,000.00 as per the First Schedule of Public Procurement and Disposal Regulation, 2006.
- 1.2.9 The procurement process was noted to have had some weaknesses such as lack of documented specification of the aircraft.
- 1.2.10 Subsequent to the trip, Office of the Deputy President considered other alternative methods of travel, however this had no effect on the trip.

### Previous Trips by holders of equivalent Positions

- 1.2.11 There were no previous holders of the Office of Deputy President. However, the Chief of Staff in the Office of the Deputy President indicates that he should travel on the same terms as the President. Further, the Chief Protocol Officer in the Ministry of Foreign Affairs further suggests that, while travelling as a special envoy, the standard operating procedures in respect of H.E. the President and the Cabinet Secretary for Foreign Affairs shall apply to the Deputy President. However, no policy document has been availed to us to confirm this position.

### Invoice appearing in the Daily Nation of 23<sup>rd</sup> May 2013

- 1.2.12 The invoice appearing in the Daily Nation of 23<sup>rd</sup> May 2013 did not make reference to any Local Service Order (LSO). The invoice was purported to have been issued by Vista Jet Company of Austria, a company that has a working relationship with EADC limited, the company that leased the jet.
- 1.2.13 The invoice was dated 16 May 2013 and was addressed to Mr. Evans Nyachio of the Office of the Deputy President.
- 1.2.14 However, the Office of the Deputy President disowned the invoice and indicated that it had dealt with EADC Limited and not Vista Jet Company and denied existence of a working relationship with Vista Jet Company.
- 1.2.15 There is no record of any payment from Office of the Deputy President to Vista Jet Company in the period under review. However, there is a possibility of a link between the missing LSOs and the invoice that appeared in the Daily Nation of 23 May 2013. The serial numbers of the missing LSOs in relation to the one that was eventually paid shows that the transaction was carried out

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at around the same time. A Program Partnership Agreement between Vista Jet and EADC limited was signed on 16 May 2013. Further, the logo in the invoice compares to the logo in other documents from Vista Jet. These activities were inexplicably around the same dates that there is a probability that the Program Partnership Agreement, the missing LSOs and the invoice appearing in the Daily Nation of 23 May 2013 were related.

#### Other Findings

- 1.2.16 Three companies were invited through telephone calls by Mr. Nyachio the Officer in Charge of Procurement at the Office of the Deputy President and Mr. Simon Okoth, the assistant to Mr. Nyachio, to quote for the aircraft service. Details of these companies and how they responded are in section 6.6.9 of this report.
- 1.2.17 According to the Registrar of companies, all the three companies that quoted for this service had not filed their annual returns with her Office as required by the law, as at 30<sup>th</sup> July 2013.
- 1.2.18 We examined all the book copies of Local Service Orders (LSOs) issued in the month of May 2013. They were all in one book serial number 0855000 to 0855050.
- 1.2.19 Local Service Orders (LSOs) numbers 0855003 and 0855005 were missing from the book copy. However, an internal memo dated 19 May and an advert in the Daily Nation and Standard Newspaper on 29 July 2013 reporting the loss of several LSOs (including the above two) and one LPO was availed to us.
- 1.2.20 The effect of this advert was to cancel the lost documents and make it illegal for anybody to transact with them. ODP would therefore be held responsible if found to have transacted with any of the advertised document.
- 1.2.21 There is however a high possibility that the missing LSOs and this invoice are linked due to the following facts:
- The missing LSOs were for the month of May 2013 just before the trip took place since their serial numbers are close to the one that was eventually paid (LSO number 0855010) for hiring the aircraft.
  - EADC Ltd entered into a three years' Program Partnership Agreement with VistajetLuftahrtunternehmen GMBH of Austria on 16 May 2013 a day after it had been awarded the contract. The quarterly payment for this contract was USD 730,000 where USD 300,000 was to be paid before 16 May 2013 and the balance of USD 430,000 to be paid before 25 May

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2013. There is therefore a possibility of a link between this first installment of USD 300,000 mentioned above and the USD 300,000 that appeared in the said invoice.

1.2.22 There were no documented specifications for the type of aircraft the Office of the Deputy President required for the Deputy President's trip.

1.2.23 There are no policy guidelines on travel for Very Important Persons in Kenya except for the President and the Cabinet Secretary for Foreign Affairs. However, a letter by the Chief of Protocol in the Ministry of Foreign Affairs Ref /MFA/SEC.22/1A dated 13 June 2013 to the Permanent Secretary office of the Deputy President indicates that the President and his Deputy should be accorded similar status.

1.2.24 EADC Limited quoted for Global Express 6000 jet at USD 221,000.00 but the jet provided and used by the Deputy President was a Challenger 850. We did not get any document that explained the effect this variation had on the quoted price.

1.2.25 The Office of the Deputy President committed USD 221,000.00 (Kshs 18,564,000.00) without any formal contract with EADC Limited. However, it was explained to us that the Local Service Order served as the contract due to time limitation. The Presidential instruction was said to have been received on 14 May 2013, the jet was procured on 15 May 2013 and the trip took place from 16 to 19 May 2013. However, there was a major risk in using an LSO as a contract document because it lacked key elements of a contract. For instance, there was no fallback position in case there was a breach from either side. We could also not confirm if the aircraft had insurance cover for all the passengers on board.

1.2.26 In consideration of all the facts presented to us, we concluded the following:

- The visit by the Deputy President was said to be an official visit based on an oral instruction which had been given by the President of Kenya. The procurement of the aircraft was done on a short notice basis resulting in some omissions in the procurement process.
- There is a possibility of a link between the missing LSOs and the invoice that appeared in the Daily Nation of 23 May 2013. The serial numbers of the missing LSOs in relation to the one that was eventually paid shows that the transaction was carried out at around the same time. A Program Partnership Agreement between Vista Jet and EADC limited was signed on 16 May 2013. Further, the logo in the invoice compares to the logo in other documents from Vista Jet. These activities were inexplicably around the same dates that there is a probability that the

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Program Partnership Agreement, the missing LSOs and the invoice appearing in the Daily Nation of 23 May 2013 were related.

- Mr. Kassam of EADC should be interrogated by PAC in order to dispel or shed more light in this regard. Our effort to interview him was unsuccessful.

### 1.3 Responsibilities and culpability

1.3.1 We found out that there were irregularities as detailed above but we did not have enough evidence to link them to any particular individual in the Office of the Deputy President. Most of these irregularities are procurement related issues that could have been caused by the short notice in which the procurement was done putting the procurement department under pressure to beat the two days deadline.

1.3.2 However, individual companies should take responsibility for not filing their annual returns with the registrar of companies as required by the law.

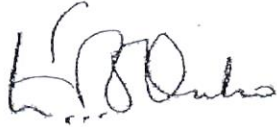
### 1.4 Possible Claims

There is no any claim by the EADC Limited since the amount has been fully paid for by the ODP for the service provided. Similarly, the Office of the Deputy President has no claim against EADC Limited since it provided the service as requested.

### 1.5 Recommendations

- Future Presidential instructions should comply with section 135 of the Constitution.
- Government should develop a clear travel policy of V.I.Ps of all cadres. The Policy should specify the modes of travel, when to hire and when to use commercial flights among other issues. The policy should also cover the use of Presidential Jet.
- The Office of the Auditor General will keep in view any possible payment that would appear to relate to the invoice appearing in the Daily Nation of 23 May 2013.
- The Office of the Deputy President should in future plan well and avoid short notices for such trips to avoid conflict with the law.
- Government agencies should demand compliance with all statutory requirements from the companies that they transact with. This includes evidence of compliance with the Company's Act Cap 486, Tax Compliance among others.

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- Government agencies should always confirm consistencies in the documents from the companies they deal with. When any inconsistency is noted a written explanation from the affected company should be obtained.
  - Mr. Kassam should be subjected to further interrogation by PAC.



Edward R. O. Ouko, CBS  
AUDITOR-GENERAL

NAIROBI

25 September 2013



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## 2.0 Background

- 2.1 The office of the Deputy President (DP) is an office created by the Constitution of Kenya Chapter 9 Part 2. The functions of the DP's Office are found in section 147 of the above chapter.
- 2.2 In accordance with Article 147 (1) of the Kenya Constitution 2010 "*the Deputy President shall be the principal assistant of the President and shall deputize the President in the execution of the President's functions*". Further Article 147(2) "*the Deputy President shall perform the functions conferred by this constitution and any other functions of the President as the President may assign*".
- 2.3 In addition, an Executive order No. 2/2013 on organization of the Government issued on 20 May 2013 by the President of Kenya gave detailed functions of the Office of the Deputy President.
- 2.4 It was reported in both the print and electronic media that the Office of the Deputy President leased an aircraft for use by the Deputy President (DP) at an annual cost of Kshs 100 Million.
- 2.5 The aircraft was to be used by the DP in an official visit to several countries in Africa, and implicitly to be available to him during the year.
- 2.6 The report said that this was an annual contract and there was an invoice supporting a first quarterly claim of \$ 300,000.00.
- 2.7 This report was contested by the Permanent Secretary in the Ministry of Information and Communication who claimed that the cost of the aircraft was a one – off contract and its cost was Kshs 18,564,000.00 (\$ 221,000.00).
- 2.8 The above issue created public outcry and it caught the attention of the Parliamentary Accounts Committee (PAC). As a result, the Clerk of the National Assembly wrote a letter ref NA/PAC/CORR/2013/08 dated 24/05/2013 requesting the Auditor General to carry out a special audit on the above issue to confirm the correct position about the expenditure for Committee's further action.

## 3.0 Terms of reference

From the above referenced letter and the media reports, we developed the following Terms of References.

- Establish how the trip was initiated.
- Establish the procurement process of the aircraft.

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- Establish the previous trips by holders of equivalent position
  - Establish whether the invoice appearing in the Daily Nation of 23 May 2013 related to the hire of the jet.
  - Identify the irregularities and culpable officers arising from the hire of the jet.

#### 4.0 Work Done and Limitations

- 4.1 The objective of this investigation was to establish whether there was any contract to lease the aircraft for the Deputy President as reported in the Daily Nation of 19 May 2013 at an annual cost of Kshs.100 million. To address the above, we had to establish how the trip was initiated, how the procurement was done and how the previous office holders of equivalent positions conducted similar trips. We also had to establish whether the invoice appearing in the Daily Nation of 19 May 2013 was presented for payment and whether any other invoice from Vista Jet had been presented, before or after indicated date.
- 4.2 We looked into the environment surrounding the hire of the jet, and in particular we reviewed the entire process that brought about the hiring of the jet.
- 4.3 We looked at how the process was initiated, how the procurement was done, and whether it was done in compliance with the relevant laws and guidelines.
- 4.4 We established who travelled with the Deputy President and whether they were public officers. We reviewed all the documents relevant to this expenditure without sampling.
- 4.5 Our audit covered the Deputy President's trip that took place between 16 and 19 May 2013 and also compared the cost and other factors with those of previous holders of equivalent positions, which we took to be immediate former Vice President and former Prime Minister.
- 4.6 We carried out our audit at the Deputy President's Office and also made visits to the Ministry of Foreign Affairs and the former Vice President's Office.
- 4.7 In the course of our investigation, we received adequate co - operation and assistance from all the officials of the Office of the Deputy President we interacted with. We therefore managed to satisfactorily cover our Terms of References and achieve our objectives.
- 4.8 However, we experienced a few hurdles at the beginning of the exercise. These hurdles did not affect the quality and the result of our findings. These included:
- It took two weeks to obtain details on prequalified suppliers for aircraft hire services in the Office of the Deputy President, previously occupied by the Prime Minister.

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- The Office of the Deputy President was established by the Constitution of 2010 and it is the first of its kind in the Kenyan history. There was a comparison challenge with similar previous office holders since there was no exact match in terms of responsibilities. Furthermore the Deputy President used a hired aircraft while officers in similar positions had used commercial flights.
  - We requested for documents in our letter ref: C.868C/5 dated 19 June 2013 (erroneously stated as 19 May 2013) but the following were not availed to us.
    - i) Comparative analysis on official international trips made by the former Prime Minister for the period he was in office.
    - ii) Local Service Orders (LSOs) numbers 0855003 and 0855005 missing from the book copy. However, an internal memo dated 19 May 2013 and an advert in the Daily Nation and The Standard newspaper dated 29 July 2013 reporting the loss of several LSOs (including the above two) and one LPO was availed to us.
  - We requested for records from the PS in the Ministry of Interior and Government Co- ordination regarding how the former Vice President Office handled such external travels. The request was contained in our letter reference no. C.868C/7 but no response had been received by the time we finished our audit. However, for the purpose of this report we relied on similar information they availed to the Office of the Deputy President.
  - We were not able to meet the Director of EADC Limited as planned. The meeting was arranged through Mr. E. Nyachio and was to take place on 19 June 2013 but it did not take place.

## 5.0 Approach

### 5.1 Work done and Sources of Information

#### Planning

- 5.1.1 In planning detailed review, we held various planning meetings between 29 May and 3 June 2013. During these meetings we discussed all the activities and tasks to achieve the set objectives. Finally, we developed a detailed work plan and applied it in the execution of this assignment.
- 5.1.2 We had enough professionals internally to deal with this investigation.

#### Detailed Review

- 5.1.3 We started by confirming whether there was a budgetary allocation for the expenditure.
- 5.1.4 We then analyzed and summarized all the documents relating to how the trip was initiated, how the service was procured and how it compared with other equivalent office holders in the past.
- 5.1.5 We traced expenditure to the line items and agreed the amounts to the budgetary allocation.

#### Interviews

- 5.1.6 We interviewed senior government officers to clarify various issues that assisted us to make an informed report.
- 5.1.7 We analyzed, authenticated and corroborated this information before using it as evidence in our report. We had planned to conduct 8 interviews but we conducted 7 on various dates as detailed in below:-

Table 1: List of Interviewees

No.	Name	Position	Date
1	Mr. Evans Nyachio	Senior Assistant Director, Supply Chain Mgt - Office of DP	10 June 2013
2	Mr. Abdul Mwasserah	Secretary Admission –DP office	10 June 2013
3	Mr. Richard Lemoshila	Protocol Officer – Ministry of Foreign Affairs	12 June 2013
4	Mr. Simon Okoth	Supply Chain Mgt Officer – Office of DP	12 June 2013
5	Mr. Eric Korir	Senior Assistant Director of Supply Chain –Home Affairs	17 June 2013
6	Dr. Mohammed Isahakia	PS – Office of DP	19 June 2013
7	Mr. Ahmed Kassam	Director – EADC	19 June 2013 - Not Met
8	M/s. Marianne Kitany	Chief of Staff – Office of DP	24 June 2013

- 5.1.8 Mr. Ahmed Kassam who is one of the directors in EADC Limited did not turn up for a meeting with us on 19 June 2013. We booked for this meeting through Mr. E. Nyachio who had explained to us that Mr. Ahmed Kassam would meet us on this date after he came back from South Africa.
- 5.1.9 We also obtained information and documents from the following areas/ offices:

- Office of the Deputy President
- Media
- Ministry of Foreign Affairs
- Previous audit reports

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## 5.2 Testing Methodology

5.2.1 We reviewed the whole transaction from its initiation, through procurement process, up to the time the LSO was paid for.

## 6.0 Findings and Conclusions

### 6.1 Overview

6.1.1 This Draft Report is organized into an Executive Summary, which briefly highlights the findings from the investigative work carried out (section 1 above). Our findings are set out in the rest of the Report. It is essential that the Report is read in its entirety in order to comprehend fully the approach to, and findings of our work.

### 6.2 Invoice in the Daily Nation

6.2.1 We could not conclude on the above invoice due to lack of information relating to it. However, we noted the following issues that suggested a possible link between the missing LSOs, the Program Partnership Agreement and the above invoice

- The invoice from Vista Jet was dated 15<sup>th</sup> May 2013 and was for USD 300,000 being part of the first quarterly payment for the lease of the jet.
- EADC limited and Vista Jet entered into a Program Partnership Agreement for the leasing of the jet on 16<sup>th</sup> may 2013 where both parties agreed, amongst other things for quarterly payment of USD 730,000 with an amount of USD 300,000 to be received by Vista Jet before the start date which in this case was 16<sup>th</sup> May 2013.
- The two missing LSOs 0855003 and 0855005 were in a series of LSOs that were issued in the period beginning May 2013 to the period where a final invoice of USD 221,000 against LSO 0855010 was paid for. The series of LSOs were 0855000 to 0855050.
- The invoice appearing in the Daily Nation related to a lease of an aircraft, while the documents we reviewed regarding the trip by the Deputy President related to a hired jet. Consequently, our report relates to the hiring of the aircraft by the Office of Deputy President from EADC Limited since we could not conclude on the lease element based on the information available. We have however noted a possible link between the said invoice, the Program Partnership Agreement

and the missing LSOs in section 1.2.26 and 8.1.6 and indicated our recommendation on section 10.4 of this report.

6.2.2 The report is organized in the following sections:

- i) Introduction
- ii) Findings and conclusions.
- iii) Responsibility and culpability
- iv) Possible claims
- v) Recommendation.
- vi) Annexures

### 6.3 Initiation of the trip

6.3.1 According to a report signed by the Chief of Staff Ms. Marianne J. Kitany on unspecified date, H.E. the President instructed H.E. the Deputy President to make a tour of four African Countries as a State Function. The instruction to undertake the travel from 16 to 19 May 2013 from the President was said to be verbal and was in accordance with Article 147 (1) and (2). This report was also confirmed to us in a meeting with the Chief of Staff on 24 May 2013 in her office.

6.3.2 The instructions by the President were not in writing. This contravenes section 135 of the Constitution which states that "A decision by the President under this Constitution shall be in writing and shall bear the seal and signature of the president."

6.3.3 In response to this instruction, an organizing committee was urgently convened on 15 May 2013 comprising of the following officers.

Table 2: Trip Organizing Committee

1	Mr. Abdul Mwasserah	Secretary Administration. – ODP
2	Mr. Rodgers Hadao	Protocol –Ministry of Foreign Affairs
3	Mr. Evan Nyachio	Head of Supply Chain Management - ODP
4	Mr. Paul Kamau	Finance officer – ODP
5	Mr. Nelson Adeya	Accounts – ODP

6	Mr. Simon Okoth	Procurement Unit – ODP
7	Mr. DaudiCheporor	Procurement Unit – ODP

6.3.4 The main agenda being the hiring of the aircraft services for the Deputy President's trip.

#### 6.4 Target Countries and Delegation with the Deputy President

6.4.1 The trip was initially planned to cover four (4) African countries namely:

Table 3: Countries Visited by the Delegation

Congo - Brazzaville	16 May 2013
Gabon	16 May 2013
Nigeria	17 May 2013
Algeria	18 May 2013

6.4.2 According to the Chief of Staff, there was a slight change in the above plan where the entourage visited Ghana instead of Algeria. This was because the Algerian President was said to be unwell at the time they wanted to meet him.

6.4.3 The delegation that accompanied the Deputy President composed of the following Public Officers:

Table 4: List of Delegates Accompanying the Deputy President

1	Hon Alice W. Ng'ang'a	M.P -Thika Town
2	Hon YussufChanzu	M.P - Vihiga Town
3	Hon NaisulaLesuuda	Nominated Senator
4	Hon. James Mungai	Senator - Nakuru County
5	Ms Marianne Kitany	Chief of Staff- ODP
6	Mr. Winston Adeli	Media – Information Officer
7	Mr. Daniel Onyancha	Media - Information Officer
8	Mr. Nelson Adeya	Accountant – ODP

9	Mr. Richard M. Lemoshin	Foreign Affairs
10	Mr. Kibet Taigut	Personal Assistant - Security Officer
11	Mr. Elijah Kiplimo	Security Officer
12	Mr. Kilisio Nicholas	Security Officer
13	Mr. Kemboi John Cheruiyot	Security Officer

## 6.5 What was the purpose of the trip?

6.5.1 According to the earlier mentioned report by the Chief of Staff in the Office of the Deputy President, the following was the purpose of the trip.

- To address the enormous economic and security challenges Somalia has posed to Kenya, it is necessary for Kenya to solicit support and influence the AU position in so far as the management of Somalia is concerned. Specifically the mandate of AMISOM to be enhanced and more resources made available to assist the Somali Government to set up local administrative and governance structures under the IGAD framework in Southern Somalia.
- Currently more than 500,000 refugees have been resident in Kenya for more than a decade. Kenya would be pursuing the matter at the AU summit of 23<sup>rd</sup> to 27<sup>th</sup> May 2013.
- To establish a rapid deployment force to firmly deal with Al-Qaeda, Al-Shabaab and other terrorist networks.
- Enhance the capacity of AMISON and local units to stop the inflow of contraband goods mainly sugar and electronics coming through the Port of Kismayu and causing security instability in Northern Kenya mainly in Garrisa, Wajir and Mandera.
- Effective security checks and enhancement of the capacity of AMISON to stem the entry of Al-Qaeda elements from crossing into Kenya and affecting the economic growth of the country and the implementation of the Jubilee manifesto.
- The President was in South Africa to consult President Zuma and canvass for the regional position in bringing stability to Somalia and the East and Horn of Africa region. The President subsequently dispatched the Deputy President to further pursue the Agenda with other key members of the African Union such as Nigeria and Ghana among others.
- To establish mechanisms of African Union countries enhancing intra-Africa trade and collaboration.
- To work on instruments to promote regional investment and business.



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- To enhance communication between the East and West Africa through regional infrastructural projects and other networks such as rail, road to facilitate movement of goods and services to promote trade.

## 6.6 Procurement of the Jet

- 6.6.1 The Public Procurement and Disposal Act, 2005, together with The Public Procurement and Disposal Regulations, 2006 provides rules and procedures to be followed when procuring goods, services or works for the Government of Kenya.
- 6.6.2 The Office of Deputy President (ODP) is a public office and the procurement practices in this office are therefore directed by the above Act.
- 6.6.3 According to this Act, a procuring Government entity can utilize a range of procurement methods which are: open tendering, restrictive tendering, direct procuring, request for proposals and request for quotations.
- 6.6.4 After the transition from the previous government to the current government, various government departments and offices continued with the budgetary allocation from the previous holders awaiting their new budgetary allocations at the end of the financial year 2012/2013. In this regard, the Office of the Deputy President assumed the budgetary allocation from the office of the former Prime Minister.

### Identification of the supplier, evaluation and awarding of the contract

- 6.6.5 We noted that the team mentioned in Table 2 above, invited through telephone calls three firms to quote for the above service. The telephone calls were made by Mr. Nyachio and Mr. S. Okoth, of procurement section in the Office of the Deputy President on 15 May 2013. Details of these firms are in section 6.6.10 of this report.
- 6.6.6 The aircraft was hired from EADC Ltd at a cost of Kshs 18,564,000.00. (US\$221,000)
- 6.6.7 According to the Act cited in 6.5.1 above, the preferred method for any procurement for an amount of Kshs 500,000.00 and above is open tendering.
- 6.6.8 Other methods are also allowed depending on the circumstances, under part IV of the Public Procurement and Disposal Act, 2005 section 2a (3), which states that "A procuring entity may

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use restricted tendering or direct procurement procedure only if, before using that procedure, the procuring entity:"

- a) Obtains the written approval of its tender committee; and
- b) Records in writing the reasons for using the alternative procurement procedure.

6.6.9 Part VI – Alternative Procurement Procedures, Section 73 (2) provides that; "A procuring entity may use restricted tendering if the following conditions are satisfied:

- a) Competition for contract, because of the complex or specialized nature of the goods, works or services is limited to prequalified contractors.
- b) The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services procured, and
- c) There are only a few known suppliers of the goods, works or services as may be prescribed in the regulations.

6.6.10 In this case, the Office used restricted tendering, through request for quotations method to hire the aircraft. It was explained to us that the Office used the method instead of the open tendering because of the short notice given to the procuring officers. Further the office had previously short-listed three pre-qualified suppliers.

6.6.11 This was confirmed to us by the Permanent Secretary in the Office of the Deputy President, who further explained to us that the information about the trip reached him on Tuesday, 14 May 2013. He immediately instructed the Secretary Administration Mr. Abdul Mwasserah to take urgent action. The Secretary Administration wrote an internal memo dated 15 May 2013 to the Ag. Chief Finance Officer (CFO) informing her of the trip that was scheduled to take place from Thursday, 16 May 2013.

6.6.12 Immediately an organizing team mentioned in Table 2 comprising of officers from the Office of the Deputy President convened in order to facilitate the trip.

6.6.13 As mentioned in section 6.6.1, the team invited through telephone calls three firms to quote for the above service. All the firms invited responded as follows:

Table 5: Firms Invited to tender

1	E- ADC – African Development Corporation, Partner of Vista Jet East Africa	Ksh.18,564,000(US \$221,000)
2	ABM Aviation –Aircraft Business Management.	Ksh.28,440,720(US \$338,380)
3	Lady Lori Kenya Limited	Ksh.19,728,744(US \$ 234,866)

6.6.14 The above three firms were in the list of 2012/2013 prequalified suppliers availed to us for audit.

6.6.15 Details of the above companies with the registrar of companies as at 2 August 2013 were as follows:

Table 6: Details of the Companies as per the Registrar of Companies Records

1	EADC Ltd	21 November 2011	CPR/2011/61416
2	Aircraft Business Management ltd	11 September 2007	C144597
3	Lady Lori Kenya Ltd	10 May 1999	C85506

6.6.16 None of the above companies had filed its annual returns with the Registrar of companies as at 2 August 2013.

6.6.17 All of them were prequalified to offer services in the category of helicopter and fixed wing air services.

6.6.18 The team evaluated the quotations based on the suitability, availability, reliability, safety and comfort of the aircraft to be provided and recommended the services to be provided by EADC – African Development Corporation, partner of Vistajet East Africa.

6.6.19 According to the organizing committee, the recommendation was based on the delegation size and challenges of obtaining air transport within the region.

6.6.20 There was a special Ministerial Tender Committee meeting on same day (15 May 2013) that approved the business be awarded to the lowest bidder EADC – African Development Corporation, partner of Vistajet East Africa at a total cost of USD 221,000.00 (Kshs 18,564,000.00).

6.6.21 A Local Service Order number 0855010 was issued on 16 May 2013 to the winning firm and an invoice number 3101 dated 16 May 2013 amounting to USD 221,000.00 was raised against the Office of Deputy President by the firm.

## 6.7 Procurement Anomalies

We noted the following anomalies in procurement that required to be highlighted:

- 6.7.1 EADC Ltd that won the tender on 15 May 2013 entered into a Program Partnership Agreement with VistajetLuftahrtunternehmen GMBH of Austria on 16 May 2013 a day after E- ADC had been awarded the contract. However, we got a letter dated 9 July 2013 from VistaJet to EADC Limited confirming that Vistajet has been working with EADC Limited since 2010.
- 6.7.2 The type of aircraft quoted by EADC Limited was Global Express 6000 but the one used by the Deputy President was Challenger 850. We were unable to confirm what type the Office of the Deputy President had specified because the specification document availed to us was for diplomatic aircraft clearance (V.V.I.P) and did not explain specifications of the aircraft initially expected for the Deputy President's trip.
- 6.7.3 There was no formal contract entered between the EADC Limited and the Office of the Deputy President for this service. It was explained to us that the LSO served as the contract due to time limitation.
- 6.7.4 In the Daily Nation of 23 May 2013, there was an invoice dated 15 May 2013 from VistajetLuftahrtunternehmen GMBH of Austria for USD 300,000.00 addressed to Mr. Evan Nyachio of Office of the Deputy President. He denied knowledge of this invoice, and insisted that there was no direct working relationship between this company and the Office of the Deputy President.
- 6.7.5 Our efforts to meet with one of the directors of Vista Jet Mr. Ahmed Kassam were not successful.
- 6.7.6 As noted earlier, two Local Service Orders (LSOs) numbers 0855003 and 0855005 were missing from the book copy and we were not able to verify whether they related to the leasing of the aircraft.
- 6.7.7 In the absence of these two LSOs copies and the fact that the LSO dispatch register was updated up to 26 April 2013, we could not confirm or dispel with certainty that the invoice in the Daily Nation dated 23 May 2013 was not in response to the leasing/hiring of the aircraft by the ODP.
- 6.7.8 There is however a possibility that the missing LSOs, the Program Partnership Agreement and this invoice are linked due to the following facts:

- The missing LSOs were for the month of May 2013 just before the trip took place since their serial numbers are close to the one that was eventually paid (LSO number 0855010) for hiring the aircraft.
- EADC Ltd entered into a three years' Program Partnership Agreement with VistajetLuftahrtunternehmen GMBH of Austria on 16 May 2013 a day after it had been awarded the contract. The quarterly payment for this contract was USD 730,000 where USD 300,000 was to be paid before 16 May 2013 and the balance of USD 430,000 to be paid before 25 May 2013. There is therefore a possibility of a link between this first installment of USD 300,000 mentioned above and the USD 300,000 that appeared in the said invoice.

6.7.9 However, an internal memo dated 19 May and an advert in the Daily Nation and Standard Newspapers on 29 July 2013 reporting the loss of several LSOs (including the above two) and one LPO was availed to us. The effect of this advert was to cancel the lost documents and make it illegal for anybody to transact with them. The Office of the Deputy President would therefore be held responsible if found to have transacted with any of the advertised document.

6.7.10 The names in various documents for the above companies were not consistent with the names as they appeared in the records of the Registrar of Companies. We noted the following inconsistencies:

Table 7: Inconsistencies of names in various documents

EADC Ltd	e – ADC	E- ADC
Aircraft Business Management Ltd	ABM AVIATION	
Lady Lori Kenya Ltd	Lady Lori Kenya Ltd	

6.7.11 However we confirmed that the payment of Kshs 18, 564,000.00 was made to EADC Ltd as it appeared in the Registrar of Companies Records.

## 6.8 Payment Details and Budgetary Allocation

6.8.1 The trip took place as scheduled but the payment for the above service amounting to USD 221,000.00 (Kshs 18,564,000.00) was paid in IFMIS on 26 June 2013. However, the amount was paid through G- Pay on 2 July 2013. We also noted that an additional expenditure amounting to Kshs 2,142,251.20 being accommodation, transport and miscellaneous expenses had been paid to facilitate this trip as detailed below:

Table 8: Additional Cost Incurred in the Trip to the 4 African Countries

DATE	COUNTRY	TRIP	ACCOMMODATION	TRANSPORT	MISC EXPENSES	AIR TRANSPORT	TOTAL
16th May 2013	Congo Brazzaville	Official Visit	-	-	-	Hired	-
16th May 2013	Gabon	Official Visit	-	-	-	Hired	-
17th May 2013	Abuja, Nigeria	Official Visit	697,030.00	129,000.00	90,220.00	Hired	916,250.00
18- 19th May 2013	Ghana	Official Visit	531,881.20	-	-	Hired	531,881.20
16- 19th May 2013	Subsistence Allowances	Official Visit	-	-	694,120.00	Hired	694,120.00
<b>Total Amount</b>			<b>1,228,911.20</b>	<b>129,000.00</b>	<b>784,340.00</b>		<b>2,142,251.20</b>

6.8.2 We noted that the Office of the Deputy President inherited the remaining budget from the former Prime Minister's Office.

6.8.3 There was enough budgetary allocation to accommodate the above two payments in the revised recurrent expenditure estimates for 2012/2013.

6.8.4 This expenditure was charged to Foreign Travel and Subsistence, and other transportation costs at the headquarters item 148000101 where budgetary allocation had been enhanced with Kshs 18,112,000.00 (from Kshs 5,038,000.00 to Kshs 23,150,000.00).

#### 6.9 Other Alternative Methods of Travel

6.9.1 We noted that the Office of the Deputy President did some inquiries about comparative costs charged by two commercial flights for the same itinerary.

6.9.2 They did these telephone inquiries from Uniglobe Northern Travel Ltd and Tripple Tours and Travels Ltd and got the following feedback:

Table 9: Comparative Analysis from Commercial Flight

		PER PERSON	14 PAX	TOTAL
1)	NAIROBI-BRAZZAVILLE-NAIROBI	357,660.00	14	5,007,240.00
2)	NRB -LIBRAVILLE-NRB	395,630.00	14	5,538,820.00
3)	NRB -ABUJA -NRB	373,230.00	14	5,225,220.00
4)	NRB ALGIERS -NRB	377,785.00	14	5,288,990.00
			TOTAL	21,060,270.00
TRIPPLE TOURS				
		PER PERSON	14 PAX	TOTAL
1)	NAIROBI-BRAZZAVILLE-NAIROBI	316,500.00	14	4,431,000.00
2)	NRB -LIBRAVILLE-NRB	305,250.00	14	4,273,500.00
3)	NRB -ABUJA -NRB	320,910.00	14	4,492,740.00
4)	NRB -ACCRA -NRB	305,000.00	14	4,270,000.00
4)	NRB - ALGIERS -NRB	356,800.00	14	4,995,200.00
			TOTAL	22,462,440.00

6.9.3 From the above feedback, the commercial flights appeared more expensive than what EADC Limited, the company that won the quotation.

6.9.4 However, we noted that these feedbacks were received on 20 May 2013 and the inquiries were made when the trip had already taken place. The Office of the Deputy President was not aware of how much this alternative method would have cost before the trip took place. We did not therefore understand what direct value these inquiries and feedback had on the trip since it had already taken place.

6.10 Previous trips by holders of equivalent position.

6.10.1 Which are the offices similar to the Office of the Deputy President?

6.10.1 The office of the Deputy President was created by the Kenyan Constitution of 2010. There was no similar office that we could use for comparative records.

6.10.2 However, we took the Office of the former Prime Minister and the former Vice President as equivalent offices in terms of status to the current Office of the Deputy President.

6.10.3 We inquired about their past international travel details through our letters ref. C.868C/5 and C.868c/7 dated 19 June 2013 to the Permanent Secretaries in the Office of the Deputy President

and Ministry of Interior and Government Co- ordination respectively. By the time we wrote this report, we had not received enough details to make an objective comparison.

6.10.4 However, according to the information detailed in Table 10 the Prime Minister had made four trips in the 2012 to foreign countries at a cost of Kshs 62,196,460.30 averaging Kshs 15,549,115 per trip.

Table 10: Foreign Trips made by the Former Prime Minister in 2012

Date	Country	Event	Cost (Kshs)	Travel Agency	Airline	Number of Trips
25-28 JAN 2012	SWITZERL AND	World Economic Forum	5,402,351.40	UniglobeNor thline Travel	Kenya Airways	10
30 MAY -1 JUN 2012	TURKEY	Instabul Conference on Somalia	2,618,270.00	UniglobeNor thline Travel	Emirates	11
6 -13 Aug 2012	UK	Olympics	20,494,670.00	UniglobeNor thline Travel	British Airways	15
15-21 Nov 2012	MALAYSIA & KOREA	Official Visit	12,612,084.90	UniglobeNor thline Travel	Korean Air	20
Total			41,127,376.30			

6.10.5 The former Vice President had made 20 trips to various foreign countries in the 2011 at a cost of Kshs 122,395,469.15 averaging Kshs 6,119,773.50 per trip and 2 trips in 2012 at a cost of Kshs 57,812,261.00 averaging 28,906,130.50 per trip as detailed in table 11.

Table 11: Trips Made by the Former Vice President in 2011 and 2012

Year	Date	Location	Cost (Kshs)	Airline
2012	25TH JUNE 2012 AROUND FEB 2012	AMERICA,CHINA,DUBAI,U.K	29,004,824.00	28,037,940.00
2012		TANZANIA,DAR EL SALAMU	729,497.00	729,497.00
TOTAL FOR 2012			29,774,321.00	28,037,940.00
2011	13-16 OCT 2011	LILONGWE MALAWI	2,599,790.00	2,599,790.00
2011	11-18 NOV 2011	LONDON	7,256,470.00	7,256,479.00
2011	8-11 OCT 2011	ENTEBEE UGANDA	1,503,014.00	1,503,014.00
2011	5-6 AUG 2011	TANZANIA	84,305.00	84,305.00
2011	10-11 JUNE 2011	JUBA SUDAN	1,714,315.00	1,714,315.00
2011	18-20 JAN 2011	MALAWI	1,557,455.00	3,282,480.00



2011	6-13 MARCH 2011 23-26 MARCH 2011	UNITED STATES		2,568,260.00	2,568,260.00
2011	2011	EQUATORIAL GUINEA	6,252,794.00	4,063,500.00	10,316,294.00
2011	6-11 MARCH 2011	NEW YORK		8,098,688.15	8,098,688.15
2011	17TH MAY 2011 26 APRIL-4 MAY 2011	JUBA SOUTHERN SUDAN	1,089,030.00	2,897,280.00	3,986,310.00
2011	2011	INDIA	2,522,790.00	11,102,280.00	13,625,070.00
2011	20-23 JAN 2011	ADDIS ABABA ETHIOPIA		3,571,760.00	3,571,760.00
2011	17-23 JUNE 2011 27 MAY-1 JUNA 2011	MALYSIA	6,112,260.00	9,997,620.00	16,109,880.00
2011	2011	NIGERIA	2,834,245.00	6,216,300.00	9,050,545.00
2011	10-14 JAN 2011	SOUTH AFRICA & UGANDA	2,804,460.00	7,906,788.00	10,711,248.00
2011	1-5 JAN 2011	CAIRO, EGYPT	4,898,965.00	15,104,000.00	20,002,965.00
2011	25-27 JAN 2011	DUBAI, TRIPOLI LIBYA		3,232,760.00	3,232,760.00
2011	22-23 MARCH 2011	LIBREVILLE- ADDIS ABABA	1,307,000.00		1,307,000.00
2011	AROUND 15 OCT AROUND JUNE 2011	KILIMANJARO-TANZANIA	426,360.00		426,360.00
2011	2011	DUBAI, BELING, MELABOURNE	1,390,500.00		1,390,500.00
	TOTAL FOR 2011		44,353,753.00	78,041,716.15	122,395,469.15

6.10.6 The above comparative figures cannot be used to make an objective comparison due to the following limitations

- The Former Prime Minister and Vice-President used commercial flights while the Deputy President used hired aircraft
- The trips were made to different countries
- The Deputy President travelled in 2013 while the other VIPs travelled in 2011 and 2012.

#### 6.11 Deputy President and other V.V.I.P'S Travel Policy

6.11.1 According to a letter by the Chief of Protocol Ref /MFA/SEC.22/1A dated 13 June 2013 to the Permanent Secretary office of the Deputy President the Ministry of Foreign Affairs is mandated with making external travel plans for H.E. the President and or H.E the Deputy President and their delegation, the Cabinet Secretary for Foreign Affairs as well as for other V.V.I.P'S travelling as special envoys.

6.11.2 For the case of other Government Ministries they are responsible for making travel plans for the respective Cabinet Secretaries. The Ministry of Foreign Affairs facilitates in obtaining Visas and contacting Kenyan Embassies/High Commissions abroad to extend the required protocol courtesies. There was no express policy relating to the Deputy President's foreign trips.

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## 7.0 Irregularities and culpability

- 7.1 We found out that there were various irregularities in the hiring of aircraft process but there is no evidence to link them to any particular individual in the Office of the Deputy President. Most of these irregularities are procurement related issues probably occasioned by the short notice given to the procurement personnel for the procurement to be done.
- However, individual companies should take responsibilities for not filing their annual returns with the registrar of companies as required by the law.
- 7.1.1 We were informed that the process of hire of the aircraft was initiated upon an instruction given by H.E. the President to H.E. the Deputy President to visit four (4) African countries. No written Presidential Instruction or any other form of evidence from the office of the President has been availed to us to substantiate this assertion; consequently, we are unable to conclude on this matter.
- 7.1.2 We were not able to meet with Mr. Ahmed Kassam, a director with EADC Limited, the company that leased the jet to the Office of the Deputy President. The Company has two directors namely: Mr. Ahmed Kassam and Punit D. Vadgama. The meeting was arranged through Mr. E. Nyachio and was to take place on 19 June 2013. Mr. Kassam was to shed light on the relationship between EADC Limited and Vista Jet. He was also to shed light on the invoice appearing in the Daily Nation, of 19 May 2013 and which was disowned by the Office of the Deputy President. We have however, received a copy of letter from Vista Jet to EADC Ltd stating that they have been working together since 2010.
- 7.1.3 The Public Accounts Committee sitting of 2 August 2013, decided that Mr. Ahmed Kassam would be summoned to appear before it upon conclusion of the report of the Auditor-General.
- 7.1.4 On 19<sup>th</sup> June 2013, we wrote to the Permanent Secretary Ministry of Interior and Government co-ordination (Home Affairs) requesting for information on international trips made by the former Vice President, which could be used to understand the government policy on the movement of VIP's. This has not been made available to us and for the purpose of this report we relied on similar information they availed to the Office of the Deputy President. However, this information was not enough to make an objective comparison.
- 7.1.5 On the same day, 19 June 2013, we wrote to the Registrar of Companies requesting for details on the ownership and registration of EADC Limited, the company that was hired to offer aircraft

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services. This information was availed to us on 2 August 2013, taking over 40 days from the time of request.

7.1.6 In the letter addressed to Permanent Secretary of 19 June 2013, we also requested for a number of copies of Local Service Orders (LSO's) numbers 0855003 and 0855005 that had been removed from the order book, series 0855001 to 0855050, in the period within which the aircraft was hired. Mr. Simon Okoth, the Supply Chain Officer II, who is the custodian of the LSO's was able to provide to us all the copies of the LSO's we needed except the above two. We cannot therefore confirm or dismiss the assertion that the missing LSO's related to the invoice appearing on the Daily Nation of 19 May 2013.

The, Head of Supply Chain Management, Mr. Evan Nyachio, circulated a memo dated 19 May 2013 to all heads of department, informing them of the loss of the LSO's and at least one LPO. In addition, an advert in the Daily Nation and The Standard newspapers dated 29 July 2013 was made to inform the public about the loss. It therefore would be illegal for anyone to use the LSOs in any transaction with the Office of the Deputy President.

However, as long as these two LSO's are not made available to us, we shall not be able to make an informed conclusion on this matter.

7.1.7 In addition;

- No documented specifications for the type of aircraft the Office of the Deputy President required for the Deputy President's trip was availed to us.
- The Office of the Deputy President awarded the business to EADC Limited a day before it entered into a Program Partnership Agreement with VistajetLuftahrtunternehmen GMBH of Austria. However, we got a letter dated 9 July 2013 from Vista Jet to EADC Limited confirming that Vista Jet has been working with EADC Limited since 2010. A program Partnership Agreement Term Sheet provided to us (see annex 18) summarizes the arrangement. However, the Partnership Agreement was not provided to us for review.
- EADC Ltd quoted for Global Express 6000 at USD 221,000.00 but the one used by the DP was Challenger 850. We did not get any document that explained the effect this variation had on the quoted price.

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- The Office of the Deputy President committed USD 221,000.00 (Kshs 18,564,000.00) without any formal contract with EADC Ltd. However, it was explained to us that the LSO served as the contract due to time limitation.

## 8.0 Conclusions

- 8.1.1 The trip was said to have been initiated by instructions from the President of the Republic of Kenya, and took place between 16 and 19 May 2013 and covered 4 African Countries. However, no written or any other form of evidence from the Office of the President was provided to support this assertion.
- 8.1.2 The delegation used a hired aircraft from EADC Limited at a cost of USD 221,000.00 (Kshs 18,564,000.00) and another Kshs 2,142,251.20 for accommodation, transport and miscellaneous expenses. This amount was paid on 2 July 2013 and was in the budget that was inherited from the former Prime Minister's office.
- 8.1.3 The Office of the Deputy President used restricted method of procurement instead of open tendering method that is preferred for any amount exceeding Kshs 500,000.00.
- 8.1.4 The review of the procurement process revealed some weaknesses such as lack of documented specification of the aircraft and lack of formal contract with the supplier.
- 8.1.5 The Office of the Deputy President also considered other alternative methods of travel that could have been used for this trip and, according to the information provided all of them were more expensive. However, this consideration was done after the trip and therefore no effect on the trip that had already taken place.
- 8.1.6 In consideration of all the facts presented to us, we concluded the following:
- The visit by the Deputy President was official which appear to be based on oral instruction from the president of Kenya. The procurement of the aircraft was done on a short notice basis resulting in some omissions in the procurement process.
  - We were unable to vouch the credibility of the Daily Nation coverage of 23 May 2013.
  - There is a possibility of a link between the missing LSOs, the Program Partnership Agreement and the invoice that appeared in the Daily Nation of 23<sup>rd</sup> May 2013. The serial numbers of the missing LSOs in relation to the one that was eventually paid shows that the events were around the same time. A Program Partnership Agreement between Vista Jet and EADC limited was signed on 16<sup>th</sup> May 2013. The logo in the Daily Nation newspaper invoice compared to logo in

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other documents from Vista Jet appeared the same. These activities were inexplicably around the same dates that there is a probability that the Program Partnership Agreement, the missing LSOs and the invoice appearing in the Daily Nation of 23 May 2013 were related.

## 9.0 Possible Claims

9.1 There is no any claim by the EADC Limited since the amount has been fully paid for by the Office of the Deputy President for the service provided. Similarly, the Office of the Deputy President has no claim against EADC Limited since it provided the service as requested.

## 10.0 Recommendations

- 10.1 Presidential instructions should comply with section 135 of the Constitution.
- 10.2 The Government should develop a comprehensive travel policy for government dignitaries and other officers. This policy would ensure reduced costs occasioned by travel agents and brokers commissions. It will also reduce cost implications brought about by adhoc travel modes. The Policy should specify the modes of travel, when to hire and when to use commercial flights among other issues.
- 10.3 We recommend that proper planning be done for such trips in future to avoid actions that conflict with the law.
- 10.4 The Office of the Auditor General will keep in view any possible payment that would appear to relate to the invoice that appeared in the Daily Nation of 23 May 2013, regarding lease of aircraft.
- 10.5 Government agencies should demand compliance with all statutory requirements from the companies that they transact with. This includes evidence of compliance with the Company's Act Cap 486, Tax Compliance among others.
- 10.6 Government agencies should always confirm consistencies in the documents from the companies they deal with. When any inconsistency is noted a written explanation from the affected company should be obtained.
- 10.7 Mr. Kassam of EADC should be interrogated by PAC in order to dispel or shed more light in this regard.

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11.0 ANNEXES

# APPENDIX 3

# APPENDIX 3



646  
NATIONAL  
REGISTRY  
02 AUG 2013  
Signature  
P.O.:



SAC  
D. D. Komulley

5034

**THE STATE LAW OFFICE**  
**DEPARTMENT OF THE REGISTRAR-GENERAL**

Your Ref: NA/PAC/CORR/2013/26

Date 2<sup>ND</sup> AUGUST 2013

Our Ref: C. 85506

The Clerk of National Assembly  
Clerk's Chambers,  
National Assembly,  
Parliament Buildings,  
P.O Box 41842-00100,  
NAIROBI.

② CAZEMB  
pls dea  
PA  
05/8

Dear Sir,

RE: INVESTIGATION OF HIRE OF AN AIRCRAFT FOR USE BY THE DEPUTY  
PRESIDENT ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY,  
2013.

We refer to your letter dated 30<sup>th</sup> July 2013 and wish to respond as hereunder.

LADY LORI (KENYA) LIMITED

Lady Lori (Kenya) Limited was registered on 10<sup>th</sup> May 1999 under registration  
number C85506.

According to the annual return of the company for the year 2008, the directors/  
shareholders of the company are:-

Directors	Nationality	Address	Shares
James Stanley De Nooyer	American	4 Lockhart Loop Lake Georgia N.Y 12845 USA	2,500
Lori Cox De Nooyer	American	4 Lockhart Loop Lake Georgia N.Y 12845 USA	2,500
Thomas Anson Silvester	Kenyan	P.O.Box 1348 Nanyuki	Nil

Ian Mbutia Mimano

Kenyan

P.O.Box 24948-00502  
Nairobi

Nil

Registered Office

Plot LR No 1870/1/138  
Peponi Road, Westlands  
P.O. Box 14843-00800,  
Nairobi

With regard to E- ADC Limited and ABM Limited the two names do not appear in the data base of registered companies/ businesses names.

Yours Faithfully,

  
BERNICE GACHEGU (MRS)  
REGISTRAR GENERAL.





**THE STATE LAW OFFICE**  
**DEPARTMENT OF THE REGISTRAR-GENERAL**

Your Ref: NA/PAC/CORR/2013/26

Date: 5<sup>TH</sup> AUGUST 2013

Our Ref: C. 85506

The Clerk of National Assembly  
Clerk's Chambers,  
National Assembly,  
Parliament Buildings,  
P.O Box 41842-00100,  
**NAIROBI.**

Dear Sir,

RE: INVESTIGATION OF HIRE OF AN AIRCRAFT FOR USE BY THE DEPUTY PRESIDENT ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY, 2013.

We refer to your letter dated 30.07.2013. Further to our letter dated 1.08.2013, we have the following additional details.

**1. AIRCRAFT BUSINESS MANAGEMENT LIMITED**

This company was registered on 11.09.2007 as registration number C144597.

The company has not filed returns since its incorporation. The directors/ shareholders at incorporation are:-

<u>Directors</u>	<u>Nationality</u>	<u>Address</u>	<u>Shares</u>
Nicholas Omondi Otire	Kenyan	P.O.Box 28763-00200 Nairobi	600
Alice Adhiambo Otire	Kenyan	P.O.Box 28763-00200 Nairobi	<u>400</u>
<b>Total Shares</b>			<b><u>1,000</u></b>

Registered Office

Plot LR No 209/4279 City hall Way, Nairobi  
P.O. Box 3954-00506,  
Nairobi.

2. EAST AFRICAN DEVELOPMENT CORPORATION LIMITED(EADC LTD)

East African Development Corporation Limited does not appear in our data base of registered companies/ businesses. However we have a company registered as EADC Ltd, whose details are as follows;

This company was registered on 21<sup>st</sup> November 2011 as Registration No.CPR/2011/61416.


The Directors' and shareholders' details are as follows:

<u>Director</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Ahmed Kassam	P.O. Box 40286 Nairobi	British	499
Punit Dipakkumar Vadgama	P.O. Box 40286 Nairobi	Kenyan	<u>1</u>
		Total Shares	<u>500</u>

The Registered office is:

LR. No. 209/5410 Wabera Street  
2<sup>nd</sup> Floor, Prudential Assurance  
Building  
P.O. Box 40286-00100  
NAIROBI

Yours Faithfully,

  
BERNICE GACHEGU (MRS)  
REGISTRAR GENERAL.

# APPENDIX 4

# APPENDIX 4



Office of the Deputy President  
Chief of Staff Office

*Memo*

To: Secretary Administration

Date: 14<sup>th</sup> May, 2013

Subject: HIRE OF AIRCRAFT FOR H.E. THE DEPUTY PRESIDENT  
TO WEST AFRICA FROM 16<sup>th</sup> - 19<sup>th</sup> May, 2013

H.E. the Deputy President will be making an official visit to four West African Countries Congo Brazzaville, Gabon, Nigeria and Algeria from 16<sup>th</sup> to 19<sup>th</sup> May, 2013.

Please make the necessary arrangements to procure an executive Jet for H.E. the Deputy President and his entourage and facilitate all other Logistical requirements.

M. J. Kitany  
CHIEF OF STAFF



# APPENDIX 5

# APPENDIX 5

MINUTES OF THE SPECIAL MINISTERIAL TENDER COMMITTEE  
MEETING NO. ODP/MTC/P1/2012-2013 HELD IN DEPUTY  
PRESIDENT'S BUILDING AT THE 2ND FLOOR BOARDROOM ON  
WEDNESDAY 15TH MAY 2013 STARTING AT 10:00 AM

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Members Present:

- |                         |                           |
|-------------------------|---------------------------|
| 1. Abdul Mwasserah, EBS | Secretary, Administration |
| 2. Rodgers Hadao        | Member                    |
| 3. Paul Kamau           | "                         |
| 4. Nelson Adeya         | "                         |
| 5. Evans Nyachio        | SAD/SCM, Secretary        |
| 6. Simon Okoth          | Secretariat               |
| 7. Daudi Cheporor       | "                         |

Agenda 1:

Item Description: Hire of chartered aircraft for Deputy President

Departments: Administration

**HIRE OF CHARTERED AIRCRAFT**

The office has received instructions from the Permanent Secretary and Chief of Staff to organize for the trip to Central and West Africa by the Deputy President on official duties. A brief market survey shows that the cost of the trip is likely to exceed KShs.6m and therefore, may need open tendering as per the procurement thresholds in schedule 1 of the Public Procurement and Disposal Regulations (2006).

The purpose of this meeting is to request the Ministerial Tender Committee to consider alternative procurement procedures in accordance with part VI of the Public Procurement and Disposal Act (2005) given that the delegation is to travel tomorrow 16th May 2013.08.02

## MTC DECISION

The tender committee discussed the application at length and made the following observations:-

- i) That the office has received a directive to organize a trip for H.E. The Deputy President to tour several African countries and the trip is to be undertaken the following day.
- ii) That the cost of the trip is likely to exceed the threshold set for use of quotation and therefore open tender method should be used.
- iii) That due to the urgency of the trip, it is necessary to consider an alternative procurement method through which the office is able to beat the deadline.
- iv) That other factors like security, safety and convenience to the delegation should also be put into consideration. This makes the procurement much more complex than expected.

With the above information and observations, the tender committee recommended that restricted tendering procedure be used.

**Agenda 2: A.O.B.**

**There was none**

There being no other business the meeting adjourned at 10:45am.

Confirmed:  Date: 15/5/13  
(Chairman)

Signature:  Date: 15/5/2013  
(Secretary)

# APPENDIX 6

# APPENDIX 6

ABM AVIATION



OFFICE OF THE DEPUTY PRESIDENT  
**RECEIVED**  
16 MAY 2013  
**PROCUREMENT**  
P. O. Box 74434 - 00200 NAIROBI

To: Nyáchio/Okoth  
Office of the Deputy President

From: Nicholas Olure  
Aircraft Business Management

Ref: DC 9 - 15 VIP

Date: 15/05/2013

~~DC 9 - 15 VIP~~

Quotation is valid for 5 days and is subject to aircraft and crew availability.

Purpose: Carrying VIPs

**ROUTE**

JKIA - Congo (Brazzaville) (N/S) - Gabon - Nigeria (N/S) - Algeria - Sudan (Refuel) - JKIA

Number of Aircraft - 1

~~Valid from 12th to 17th May 2013~~

Flight Time - 20.7 hours

Price: US\$289,000.00

VAT 16% US\$0.00

Landing & Navigation US\$7,510.00

Clearance & Handling US\$5,500.00

Airport Tax US\$9,820.00

Night Stop US\$25,750.00

~~Total~~ ~~US\$383,580.00~~

**TERMS AND CONDITIONS**

- Charter Contract terms and conditions apply.
- **Minimum standard aircraft charter rate is 2 hours per day.**
- VAT of 16% to be added to charters unless clients hold VAT exempt status in Kenya, tourists or Medivac flight.
- The flight time may increase or decrease depending on the weather enroute.
- The cost of diversion due to war or weather is directly billed to client.
- The quote is subject to change. Actual hours flown determine the invoice.
- The above is exclusive of any government fees charged on goods or airport departure tax for passengers and park fees.
- The client is required to give weather conditions prior to departure.







# ABM AVIATION

- Crew accommodation, meals, transfers & security for the duration of the charter is client's responsibility.
- Crew per diem is USD 300 per night.
- Cancellation charges are 1 hour flying if cancelled within 48 hrs and 2 hrs fees within 24 hrs.
- A 100% deposit is required at time of confirmation

Payment: The client agrees to pay before the flight or issue us with Local Service Order before the flight.

This quotation is inclusive of passenger airport tax and not night stops; client will be responsible for the cost of pilots transport, food and accommodation. Rate includes: Aircraft, Crew, Maintenance and Insurance. This is a quote but the final invoice will be raised after the flight.



Nicholas Olure

Aircraft Business Management

**SCHEDULE 1  
AIRCRAFT DESCRIPTION**

Make and Model: Dassault Aviation 900B  
 Year Manufactured: 1984  
 Serial Number: 001  
 Registration Number: G-HME  
 Total Time: 11,987.5 hours  
 Total Landings: 6,120

Engines: TFE731SAR-1C  
 Engine Core/MPI Interval 5000/2500 hours  
 Programme Coverage - Honeywell MSP Gold

	LEFT	CENTRE	RIGHT
Serial Number	P95104C	P95107C	P95110C
Total Hours	10,575.4	11,117.4	10,910.4
Total Cycles	4,873	5,291	4,952

APU: Honeywell GTCF-36-150G  
 101  
 Serial Number: September - November 2010  
 Last Shop Visit: 5,211.0  
 Total Time:  
 Programme Coverage: Honeywell MSP

Avionics:  
 Auto Pilot  
 Flight Management System  
 FMS Sensor  
 Communication (VHF) TR  
 Navigation (VHF) Receivers  
 ADF  
 DME  
 ATC Transponder  
 Colour Weather Radar  
 Radar Altimeter  
 SATCOM  
 Artex ELT  
 HF Comm  
 AFIS  
 CVR  
 FDR  
 GPWS  
 TCAS  
 Airshow 400

Honeywell SPZ-800  
 Dual Honeywell FMZ-800  
 Dual Honeywell GPS  
 Dual Collins VHF-22D (8.33 KHz spacing)  
 Dual Collins VTR-32 (FM Immune)  
 Dual Collins ADF-608  
 Dual Collins DME-42  
 Dual Honeywell RCZ 852-XS-850 E Mode S  
 Sperry WU 870  
 Sperry RT 300  
 Universal/Thrane TT-5000  
 ELT 406  
 Allied Signal KTR 953 with SELCAL  
 Allied Signal  
 Fairchild A100A  
 F-800 Fairchild + Mini QAR  
 Allied Signal Mik V  
 Honeywell RT951 Change 7

Exterior:  
 Overall white with grey and green stripes

Interior:  
 Seating: 14 passengers in 4 Forward Club plus two dual seats, two aft cabin 3 seat divans separated from Clubs by a partition, rear toilet, forward galley

Maintenance Highlights  
 Inspection  
 C/2C/4C Completed January 2009  
 Maintained in accordance with Dassault Chapter 5  
 All AD/SB complied with  
 Aircraft is approved for RVSM, MNPS and RHP-10 operations by UKCAA

Specifications subject to verification upon inspection.

OFFICE OF THE DEPUTY PRESIDENT  
**RECEIVED**  
 15 MAY 2013  
**PROCUREMENT**  
 P.O. Box 74434 - 00200 NAIROBI

3101

**e-Africa**  
 Development Corporation (pty) LTD  
 VISTAJET EAST AFRICA

QUOTE

Customer  
 Name Office of the Deputy President  
 Address Harambee Avenue  
 City Nairobi, Kenya  
 ATT:  
 Date May 15th 2013  
 Order No.  
 Rep./Rel 3101  
 Val Reg. No

ITEM	Description	TOTAL
1	Flight Charter - VISTAJET NAIROBI - BRAZZAVILLE - LIBREVILLE - ABUJA - ALGERS	\$221,000.00
SubTotal		\$221,000.00
TOTAL		\$221,000.00

Banking Details: NAME E-ADC

This quote is valid for 7 days  
 2013/3/101

Account Number: 0112946001

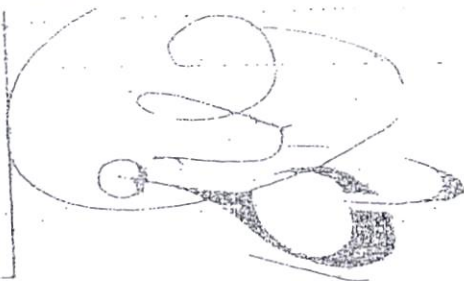
Beneficiary Bank: Diamond Trust Bank Kenya Ltd.

Branch Name: Nation Centre, CODE 63-001

SWIFT CODE: DTKEKENA

Intermediary Bank: Standard Chartered Bank Swift Code: SCBLUS33

OFFICE OF THE DEPUTY PRESIDENT  
**RECEIVED**  
 16 MAY 2013  
**PROCUREMENT**  
 Office Box 74134, Nairobi  
 15<sup>th</sup> May 2013  
 DC9  
 19 Pax



TO  
 DATE  
 AIRCRAFT TYPE  
 PAYLOAD

Helicopter Extraordinary

Customer Order	Concerns	Registration
Simon Okoth	Charter	TBA

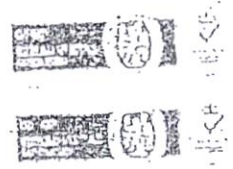
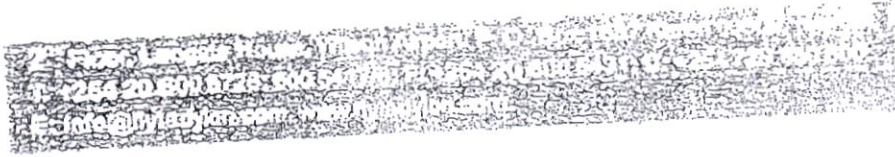
**QUOTATION**

Flight Date: 16 <sup>th</sup> to 19 <sup>th</sup> May 2013	Flight Hours	Rate Per Hour	USD
Flight Routing: 16 May Wilson - BRG (Kinshasa) - Congo Brazzaville 17 May Congo - Gabon - Nigeria 18 May Nigeria - Sudan (refueling) - Algeria 19 May Algeria - Wilson			195,722.00
16% VAT			31,315.50
Airport Landing and Navigation Fees			7,828.50
			<b>USD 234,866.00</b>
		@ 84	Res: 197,287.44

**TERMS AND CONDITIONS**

- Charter contract Terms and Conditions apply.
- VAT of 16% to be added to charters unless clients hold VAT exemption status in Kenya, tourists or Medevac flight.
- The flight time may increase or decrease depending on the weather enroute.
- The cost of diversion due to war or weather is billed directly to the client.
- The quote is subject to change. Actual hours flown will determine the invoice.
- The above is exclusive of any government fees charged on goods or airport departure tax for passengers and park fees.
- Crew accommodation, meals, transfers & security for the duration of the charter is the client's responsibility.
- Crew per diem is USD 200 per night.
- A 100% deposit is required at the time of confirmation.
- Cancellation charges are 50% if cancelled within 24 hrs after confirmation & payment and 100% thereafter.

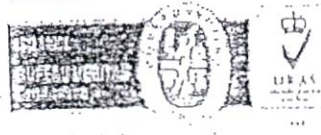
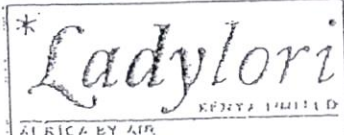
Judy Angima  
 Operations Manager



Lady Lori Kenya Ltd  
ISO 9001 & ISO 14001 Certified

2<sup>nd</sup> Floor, Langata House, Wilson Airport  
P.O. Box 1687 Karen 00502, Nairobi, Kenya.  
T: +254 20 600 5417 / B. +254 20 600 5726  
E: [Info@flyladylori.com](mailto:Info@flyladylori.com)

F: +254 20 600 5431      24Hrs Mobile: +254 7 29 850 600  
Lady Lori Helicopters      Lori Helicopters      [www.flyladylori.com](http://www.flyladylori.com)



From: Sammy Nzoka [mailto:[Sammy.Nzoka@fly540.com](mailto:Sammy.Nzoka@fly540.com)]  
Sent: Wednesday, May 15, 2013 9:07 AM  
To: [judy@flyladylori.com](mailto:judy@flyladylori.com)  
Cc: [judymoraa@yahoo.com](mailto:judymoraa@yahoo.com); 'sammy.nzoka'  
Subject: CREW DETAILS  
Importance: High

Judy,

Regards,

*Sammy Nzoka*

Operations Manager

JKIA, UNIT 3:

P.O. Box 27763-00506

Nairobi, Kenya

mobile :+ 254 720 582208; +254 736 582208

E-mail: [snzoka@easa.co.ke](mailto:snzoka@easa.co.ke)

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1

2

3

# APPENDIX 7

# APPENDIX 7





No. CPR/2011/61416

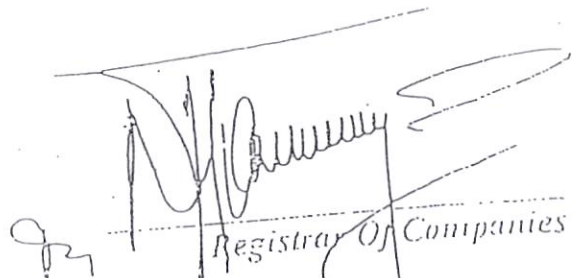
## CERTIFICATE OF INCORPORATION

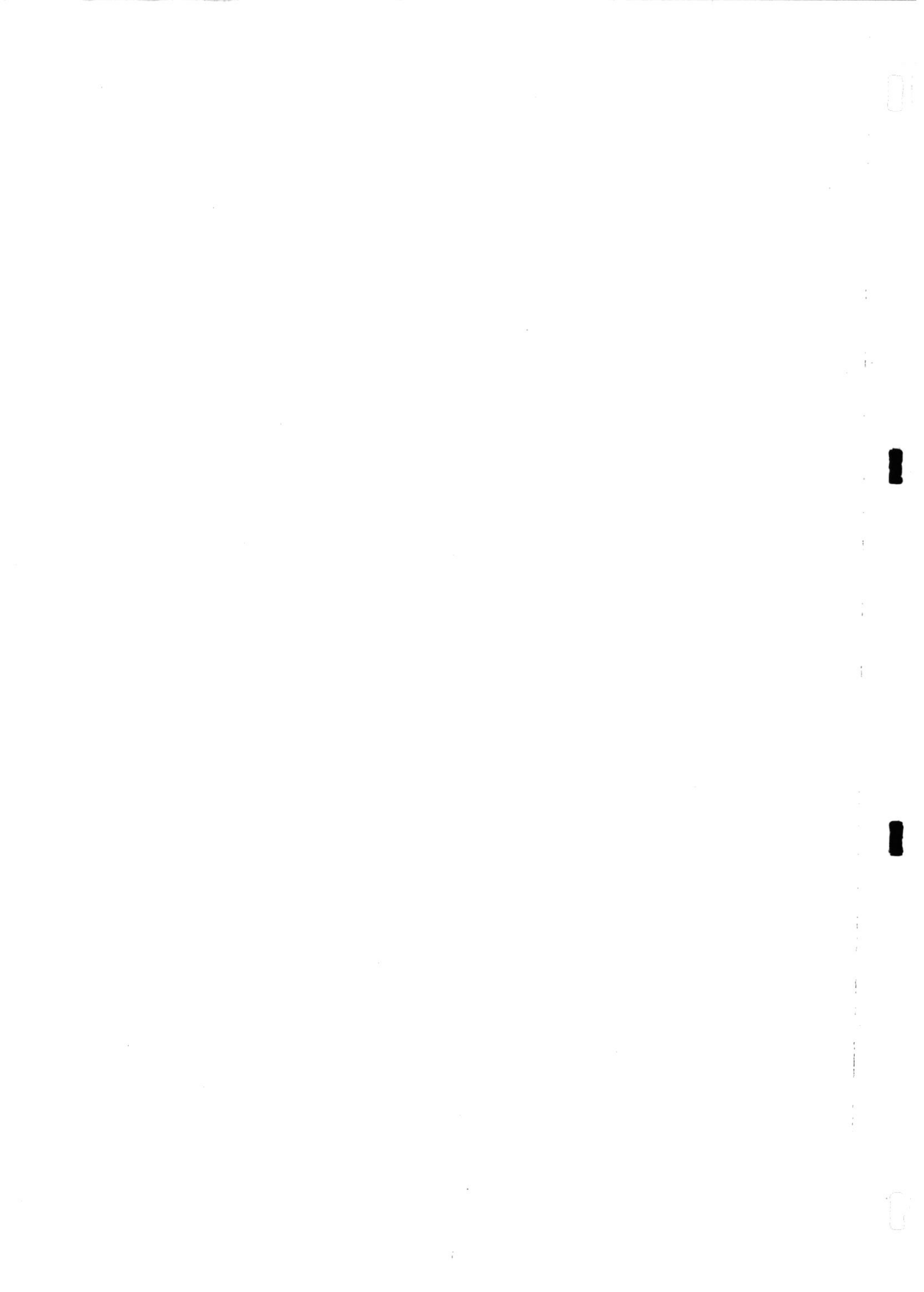
I hereby CERTIFY, that -

EADC LIMITED

is this day Incorporated under the Companies Act (Cap. 486) and that  
the Company is LIMITED.

GIVEN under my hand at Nairobi this 21<sup>st</sup> day of November  
Two Thousand and Eleven

  
Registrar of Companies



# APPENDIX 8

# APPENDIX 8

SUMMARY ANALYSIS - OFFICE OF THE VICE PRESIDENT AND MINISTRY OF HOME AFFAIRS  
 COST OF FOREIGN TRIPS FOR VICE PRESIDENT, ASSISTANT MINISTERS AND THEIR DELEGATION

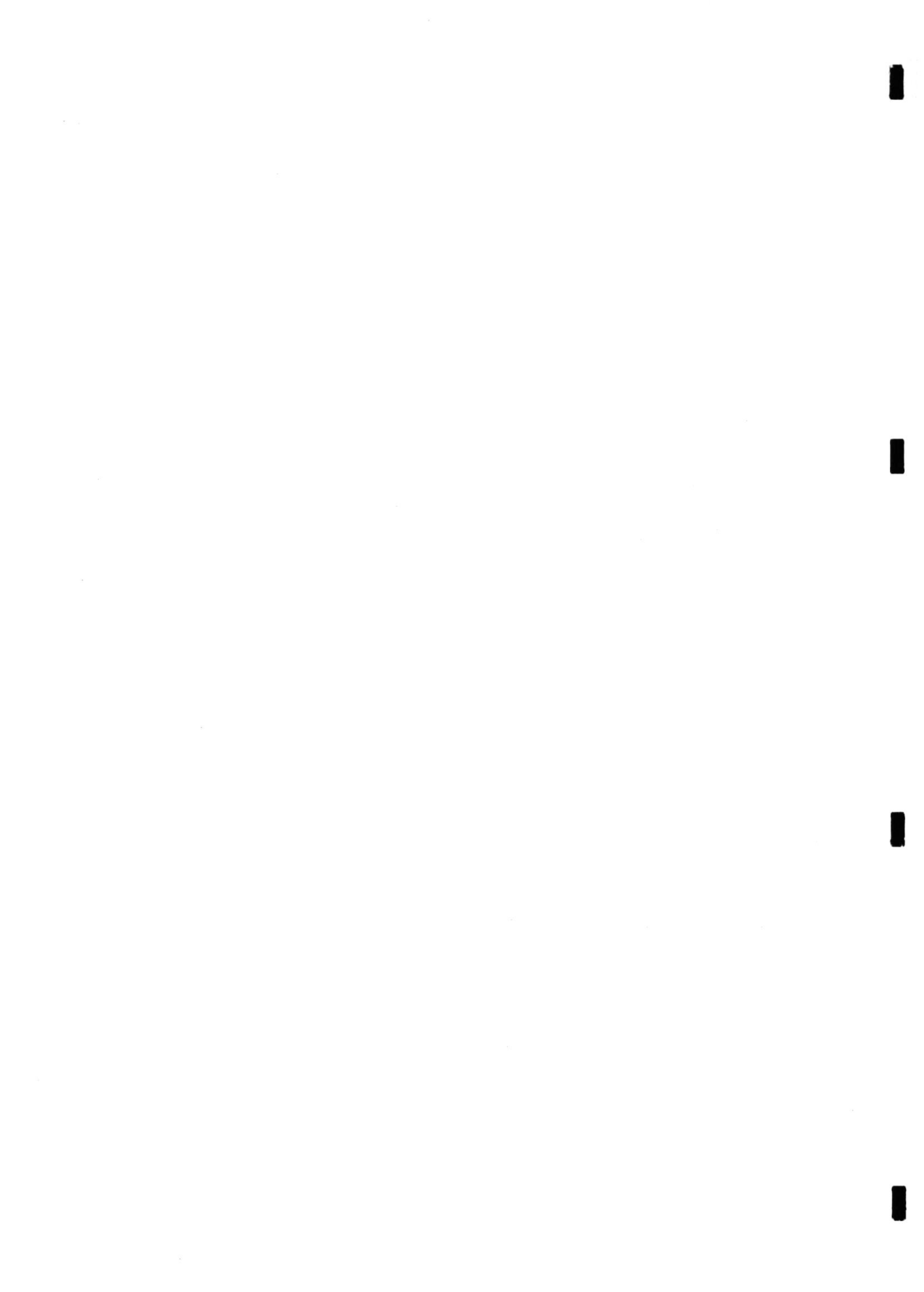
YEAR	TRIP DATE	AIR COST	ACCOMMODATION EXPENSES	TOTAL	FOREIGN TRIP
2012	25-JUN-12	29,044,824.00	28,037,940.00	57,082,764.00	AMERICA, CHINA, DUBAI, UK,
2012	AROUND FEB 2012	729,497.00		729,497.00	TANZANIA DAR ES SALAMU
2012	TOTAL FOR 2012	29,774,321.00	28,037,940.00	57,812,261.00	
2011	13-TO 16 OCT 2011	2,599,790.00		2,599,790.00	LILONGWE MALAWI
2011	11 TO 18 NOV 2011	7,256,470.00		7,256,470.00	LONDON
2011	8 TO 11 OCT 2011	1,503,014.00		1,503,014.00	ENTEBE UGANDA
2011	5-6TH AUG 2011	84,305.00		84,305.00	TANZANIA
2011	10-11 JUNE 2011	1,714,315.00		1,714,315.00	JUBA SUDAN
2011	18 TO 20 JAN 2011	1,557,455.00		4,839,935.00	MALAWI
2011	6 TO 13 MARCH 2011	6,252,794.00		2,568,260.00	UNITED STATES
2011	23 TO 26 MARCH 2011	1,089,030.00		10,316,294.00	EQUATORIAL GUINEA
2011	6 TO 11 MARCH 2011	2,522,790.00		8,098,688.15	NEWYORK
2011	17TH MAY 2011	1,089,030.00		2,986,310.00	JUBA SOUTHERN SUDAN
2011	26 APRIL TO 4 MAY 11	2,522,790.00		13,625,070.00	INDIA
2011	20 TO 23 JAN 2011	6,112,260.00		3,571,760.00	ADDISABABA ETHIOPIA
2011	17TH TO 23 JUNE 2011	2,834,245.00		16,109,880.00	MALYSIA
2011	27 MAY TO 1 JUNE 2011	2,804,460.00		9,050,545.00	NIGERIA
2011	10 TO 14 JAN 2011	4,898,965.00		20,002,965.00	SOUTH AFRICA & UGANDA
2011	25-27TH JAN 2011	1,307,000.00		3,232,760.00	DUBAI, TRIPOLI LIBYA
2011	22-23 MARCH 2011	426,360.00		1,307,000.00	LIBREVILLE - ADDISABABA
2011	AROUND 15 OCT	1,390,500.00		426,360.00	KILIMANJARO, TANZANIA
2011	AROUND JUNE 2011	44,353,753.00		1,390,500.00	DUBAI, BEIJING, WIELA, DOURNE
2011	TOTAL FOR 2011		78,041,716.15	122,395,469.15	
2010	21 TO 22ND MAY 2010		1,003,300.00	1,003,300.00	SOUTHERN SUDAN
2010	28 NOV TO 2 DEC 2010		6,630,160.00	6,630,160.00	TRIPOLI LIBYA - EU SUMMIT
2010	27 OCT TO 5 NOV 2010		12,974,116.00	20,339,106.00	TRIPOLI LIBYA & ABUJA
2010	15 TO 17TH OCT 2010		3,546,180.00	3,546,180.00	ARUSHA TANZANIA
2010	11 TO 17 AUG 2010		10,996,000.00	10,996,000.00	CHINA
2010	9 - 17TH JUNE 2010		3,284,840.00	3,284,840.00	CHINA
2010	26TH 29TH MAY 2010		2,276,000.00	3,257,325.00	KHATOUM SUDAN
2010	15TH TO 27 MAY 2010		8,174,400.00	8,174,400.00	IRAN, TURKEY, GERMANY
2010	30 JAN TO 13 FEB 2010		16,008,500.00	16,008,500.00	UNITED STATES, BRITISH VIRGIN ISLANDS,
2010	13 TO 17 JAN 2010		4,149,600.00	4,149,600.00	KAMPALA - UGANDA
2010	TOTAL FOR 2010		65,659,256.00	77,288,411.00	
2009	23 - 30TH SEP 2009		970,200.00	970,200.00	VENEZUELA
2009	15 - 17TH JUNE 2009		5,250,549.00	5,250,549.00	SWITZERLAND
2009	27 - MAY - 4TH JUNE 2009		3,416,009.60	3,416,009.60	LIBYA
2009	15 - 18TH MAY 2009		433,563.10	433,563.10	TANZANIA

2009	TOTAL FOR 2009	970,200.00	9,100,121.70	10,070,321.70	
2008	1-3RD NOV 2008		187,570.00	187,570.00	ZAMBIA
2008	TOTAL FOR 2008		187,570.00	187,570.00	

TOTAL FOR ALL YEARS

86,738,429.00	181,025,703.85	267,764,132.85
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DATE	COUNTRY	PURPOSE OF VISIT	ACCOMMODATION & OTHER EXPENSES	AIRTICKETS	TOTAL
25-28 JAN 2012	SWITZERLAND	World Economic Forum	5,402,351.40	5,173,194.00	10,575,545.40
30 MAY -1 JUN 2012	TURKEY	Instabul Conference on Somalia	2,618,270.00	3,254,140.00	5,872,410.00
5 - 13 Aug 2012	UK	Olympics	20,494,670.00	6,442,250.00	26,936,920.00
15-21 Nov 2012	MALAYSIA & KOREA	Official Visit	12,612,084.90	6,199,500.00	18,811,584.90
<b>Total .....</b>			<b>41,127,376.30</b>	<b>21,069,084.00</b>	<b>62,196,460.30</b>





# APPENDIX 9

# APPENDIX 9

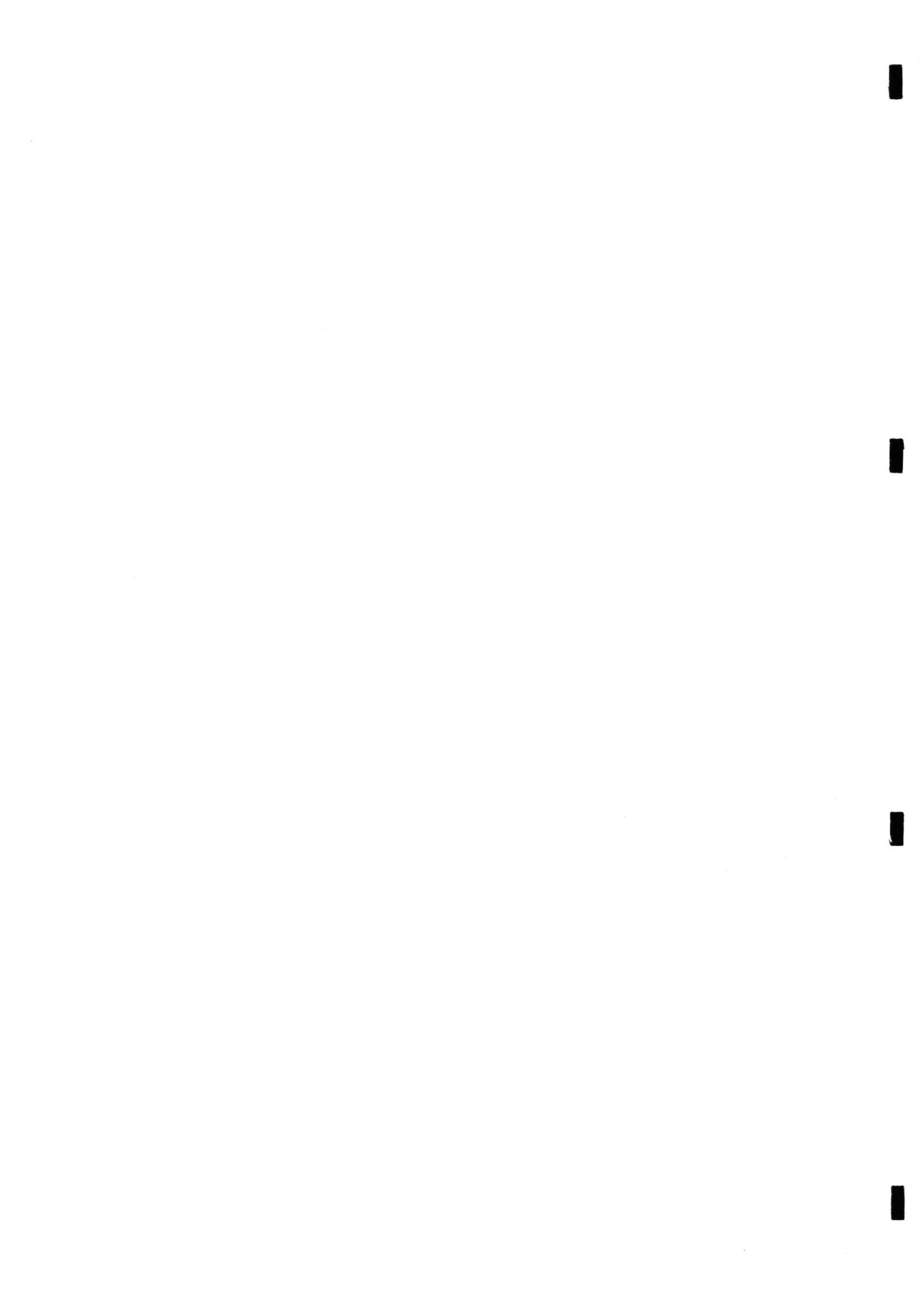
G-Pay System  
PAYMENTS

Archived Transactions-Amount = 18564000

02/07/2013  
Printed By: adeya  
User Access Level : Approver

Processing Ref	Amount	Trans. Code	BankCode	Credit A/C	Beneficiary	Originators Ref.	Debit A/C	Mode
63 DIAMOND TRUST BANK KENYA LTD 072010000036608	18,564,000.00	59	63001	0112946001	EADC LIMITED	STD260613	0010103072	RTGS
	18,564,000.00		No Of Items					
	18,564,000.00		Total No Of Items					

Checked By: \_\_\_\_\_ Date: 2/7/13  
Verified By: \_\_\_\_\_ Date: \_\_\_\_\_



# APPENDIX 10

# APPENDIX 10



OFFICE OF THE DEPUTY PRESIDENT  
INTERNAL MEMO

TO: ALL HEADS OF DEPARTMENTS/ENDUSERS  
FROM: HEAD, SUPPLY CHAIN MANAGEMENT  
DATE: 19<sup>TH</sup> MAY, 2013

RE: MISSING LOCAL PURCHASE ORDERS/LOCAL SERVICE ORDERS

This is to bring to your attention that, the following Local Purchase Orders/Local Service Orders are reported missing from the Procurement Office:-

LSO Nos: 0855002, 0855003, 0855005, 0855011 and LPO No: 1694975.

The unavailability of the above documents is urgent and anybody who may come across them should return the same to the Head of Procurement Unit.

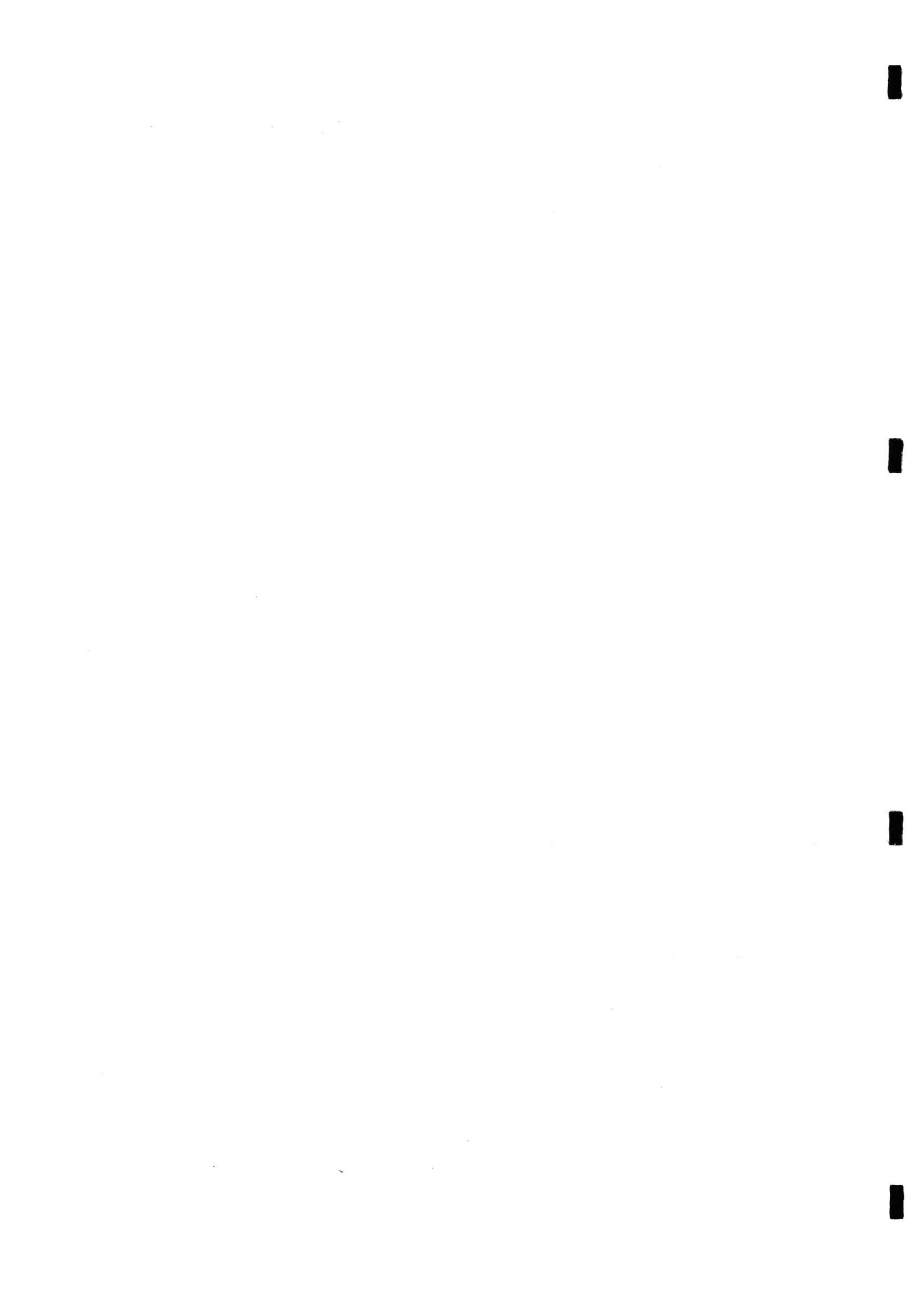
Meanwhile the Head of Accounts is requested to take note of the above missing Local Purchase Orders/Local Service Orders as appropriate.

Your prompt response will be appreciated:-----

E. N. Nyachio

FOR: PERMANENT SECRETARY

Cc: COS  
PS } - TO NOTE  
AS





# APPENDIX 11

# APPENDIX 11

Pelikan

Pelikan

Pelikan

hard

hard carbon 500 H

hard carbon 500 H

500 H

Date

Supplier

I acknowledge receipt of this Order

(Refer to the conditions of acceptance overleaf)

Signature

Accountant J.C. VBC

Date

Station

Designation

Signature

A/C No.

Sub-Head

Head

Vote

Total .. Sh.

Item

18,544.00

Item No.

Description of service

Cost

F.O. Box 7437-0023 - 01023

Terms and conditions stated on the back of this Order, on or before 15/05/13, apply and send the invoice immediately to Department/Ministry.

For carry out the services listed here before 15/05/13, please refer to the office of the JCF at the address below.

Case

Request No.

Date

Contract No.

Invoice No.

Supplier's account L.C. VBC

Suppliers are warned that this Order is INVALID unless and until funds are credited here below by the

LOCAL SERVICE ORDER

0555010

16/5/13

ORIGINAL

Handwritten signature

Handwritten signature

Pelikan

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Pelikan

500 H

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# APPENDIX 12

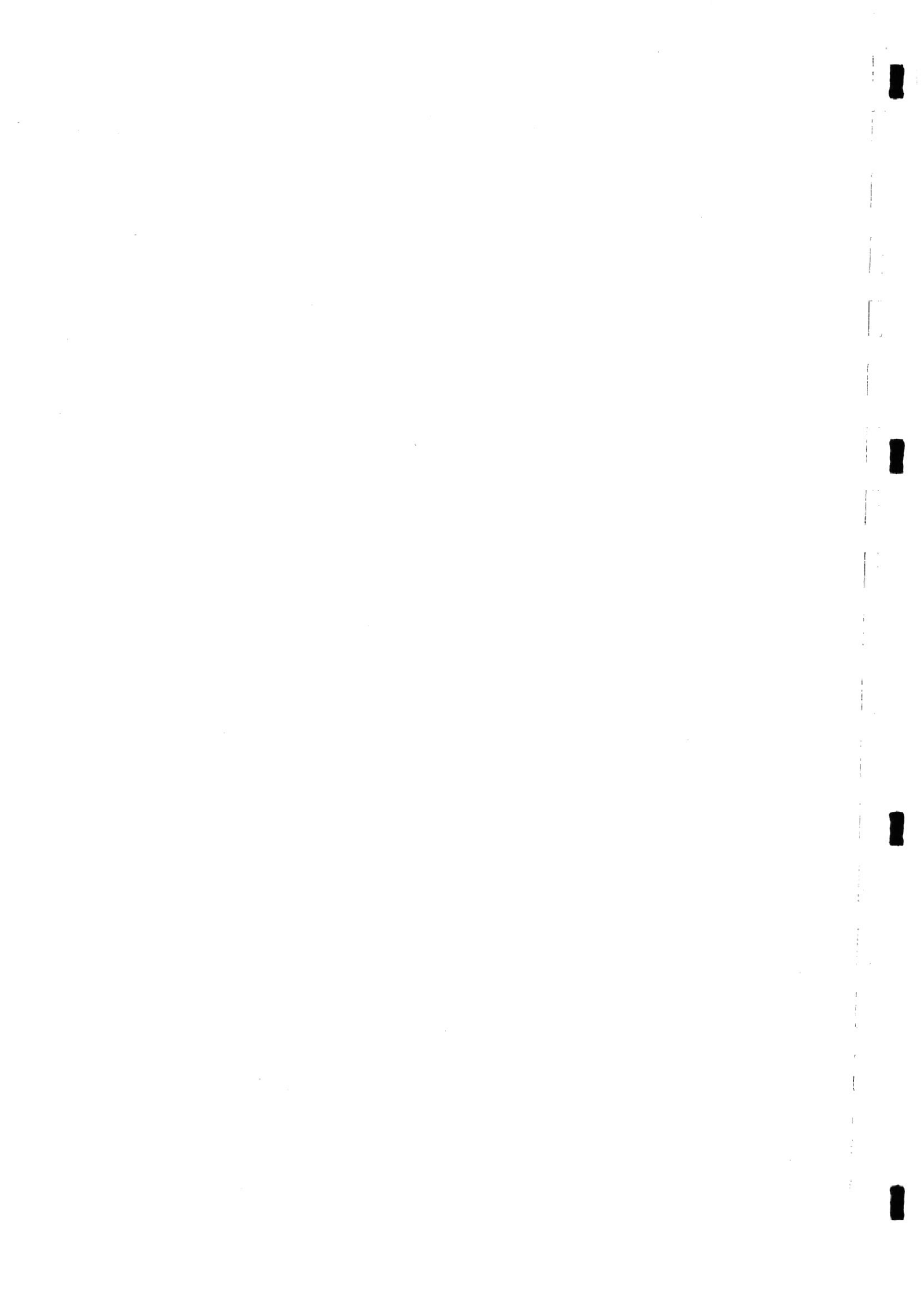
# APPENDIX 12

2013

BRIEF ON THE HIRE OF AN  
AIRCRAFT FOR USE BY THE  
DEPUTY PRESIDENT ON OFFICAL  
TOUR OF FOUR AFRICAN  
NATIONS IN MAY 2013

5/8/2013







# **BRIEF ON THE HIRE OF AN AIRCRAFT FOR USE BY THE DEPUTY PRESIDENT DURING AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY, 2013**

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## **1.0 OBJECTIVE**

The objective of this brief is to apprise the Public Accounts Committee, a select committee of the National Assembly, on the Hire of an aircraft that was used by the Deputy President, during an official tour of four African Nations in May 2013.

The Clerk of the National Assembly, in his letter Ref. NA/PAC/CORR/2013/27 of 30<sup>th</sup> July 2013 addressed to this office on behalf of the select committee, summoned the Secretary Administration to appear before it on 6<sup>th</sup> August 2013 and to produce all documents on procurement of the aircraft and to provide information on the following:-

- (i) How the tour was initiated;
- (ii) The company that was hired to provide the service;
- (iii) Information regarding past travels by officials in similar positions and status;
- (iv) Government policy on hire of aircraft for government officials on official duty;
- (v) Payment for hire of the aircraft

## **1.1 BACKGROUND – HOW THE TOUR WAS INITIATED**

The visit by H.E. the Deputy President to the four African Countries was a State Function.

In accordance with Article 147 (1) and (2) the President instructed the Deputy President to undertake travel from the 16<sup>th</sup> of May, 2013 to the 19<sup>th</sup> of May, 2013 to meet the Heads of State of four African Nations. Copy of extract attached as (Annex 01).

It should be noted that there was no executive order issued for this assignment. Indeed an executive order involves written communication on Government organization and practice. So far only two executive orders have been issued the first on the number of Ministries established and the second defines the functions of these Ministries.

The list of delegation comprised fourteen persons, which included the Deputy President and his Chief of Staff, four Members of Parliament, nominated by the Majority Leaders of Senate and National Assembly, a Protocol Officer from the Ministry of Foreign Affairs, three Security Officers, a Personal Assistant to the Deputy President, two Communications Officers and an Accountant from the Office of the Deputy President.

## 1.2 SPECIFIC PURPOSE OF THE TRIP

The purpose of the visit by the Deputy President to the four African Countries was:

- i) To address the enormous economic and security challenges Somalia has posed to Kenya, it was necessary for Kenya to solicit support and influence the AU position in as far as the management of Somalia is concerned. Specifically the mandate of AMISOM to be enhanced and more resources made available to assist the Somalia Government to set up local administrative and governance structures under the IGAD framework in Southern Somalia.
- ii) There are currently more than 500,000 Refugees who have been residents in Kenya for more than a decade. Kenya was to pursue the matter at the AU Summit held on 23rd and 27th May, 2013.
- iii) To establish a Rapid Deployment Force to firmly deal with Al-Qaeda, Al-Shabaab and other terrorist networks.
- iv) Enhance the capacity of AMISOM and local units to stop the inflow of contraband goods mainly sugar and electronics coming through the Port of Kismayu and causing security instability in Northern Kenya mainly in Garissa, Wajir and Mandera.
- v) Create effective security checks and enhance capacity of AMISOM to stem the entry of AL-Qaeda elements from crossing into Kenya which affects the economic growth of the country.
- vi) To establish mechanisms of African countries enhancing intra-Africa trade collaboration.
- vii) To work on instruments that promotes regional investment and business.
- viii) To enhance communication between the East and West Africa through regional infrastructural projects and other networks such as rail and road to facilitate movement of goods and services so as to promote trade.

The visit carried out by the Deputy President to the four African Countries was undertaken in the best interests of Kenya. The agenda of the visit was entirely official government business and accrued substantial socio-economic benefits for the country as enumerated above. Copy of brief by Chief of Staff attached (**Annex 02**).

## **2.0 THE COMPANY THAT WAS HIRED TO PROVIDE THE SERVICE**

The process of identifying E – ADC – African Development Co-operation, partner of Vista Jet East Africa was as follows;

- (i) On 14<sup>th</sup> May 2013, the Chief of Staff wrote a memo addressed to the Secretary Administration requesting him to procure an executive jet for H. E. the Deputy President and his entourage for his official visit of four West African Countries i.e. Congo Brazzaville, Gabon, Nigeria and Algeria from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. Memo from Chief of Staff to Secretary Administration attached (**Annex 03**).
- (ii) Upon receipt of information regarding the trip, the procurement office requested the ministerial tender committee to approve restricted tendering method of procurement as the requirement was urgent. This is in accordance with Section 29(3) of the Public Procurement and Disposal Act (2005). (The office invited (3) three bids from prequalified firms on provision of Air transport services in accordance with the Public Procurement and Disposal Act 2005 (**Annex 04**). The response is as indicated in the table under No.iii below.
- (iii) On Wednesday 15<sup>th</sup> May 2013, a Ministerial Tender Committee was convened where the issue was tabled, discussed and approved as Minute NO. ODP/MTC/SMTC/2012 – 2013. Attached copy of the Minutes as (**Annex 07**).

The three prequalified service providers used were;

- (a) Lady Lori Kenya
- (b) Aircraft Business Management
- (c) E-ADC African Development Co-operation (partner of Vista jet East Africa).

Attached copy of Register for Pre-qualified registered suppliers/contractors for 2012/2013 Financial Year as (Annex 05).

The response was as follows;

S/No.	FIRM	COST (Kshs)/US\$
1.	E-ADC - African Development Cooperation, Partner of Vista Jet East Africa	18,564,000 (US\$221,000)
2.	ABM Aviation – Aircraft Business Management	28,440,720 (US\$338,380)
3.	Lady Lori Kenya Limited	19,728,744 (US\$234,866)

Attached copies of the quotations as (Annex 06)

The M.T.C. as per MIN. NO. ODP/MTC/SMTC/2012-2013 settled for E – ADC/Vista Jet East Africa as they quoted the lowest amount Copy of minutes attached as (Annex 07)

EADC Limited was incorporated under the Companies Act (Cap 486) on 21<sup>st</sup> November 2011. Copy of certificate of incorporation attached as (Annex 08).

The company's Directors are:-

1. Mr. Punit Vadgama
2. Mr. Ahmed Kassam

### 3.0 INFORMATION ON PAST TRAVELS BY OFFICIALS IN SIMILAR POSITIONS AND STATUS

Regarding travels by officials of similar position and status, it is noted the former Prime Minister and the former Vice President made official trips abroad. (See Annex 11).

### 4.0 GOVERNMENT POLICY ON HIRE OF AIRCRAFTS FOR GOVERNMENT OFFICIALS ON DUTY

It should be noted that there is no government policy on hire of aircrafts and therefore, the general rule on procurement of goods, works and services as per Section 73(2) of the Public Procurement and Disposal Act (2005) applies. Refer to (Annex 04).

However the guiding principle on travel by Deputy President is similar to that of the President. This is according to the procedures and practice as given by Ministry of Foreign Affairs and International Trade.  
**(See Annex 10).**

## **5.0 PAYMENT FOR HIRE OF THE AIRCRAFT**

The Integrated Financial Management Information System(IFMIS) process started after the award of the tender to the service provider. As proof of the availability of funds for the service an LSO (No.0855010) for Kshs.18,564,000.00 was raised on 16<sup>th</sup> May, 2013 and committed, by the Procurement Unit, which was later forwarded to Accounts Unit for approval. When the services had been provided to the satisfaction of this office, a copy of the LSO, the invoice and the relevant supporting documents (i.e. MTC minutes and memos) were taken to Accounts Unit where a payment voucher was prepared and processed.

With all the approvals, the payment voucher was invoiced, validated and paid in the IFMIS system on 26<sup>th</sup> June, 2013. It was then exported to G-pay system which is used to send the funds to Central Bank of Kenya for transmission to the service provider. The transmission to Central Bank of Kenya was done on 2<sup>nd</sup> July, 2013 because the exchequer was received on 1<sup>st</sup> July, 2013. G-pay is a Central Bank of Kenya system that receives fully processed data from IFMIS and therefore it is only used to relay data. Attached are copies of IFMIS extract and G-Pay transmission schedule  
**(Annex 09)**

## **6.0. CONCLUSION**

The Kenya National Audit team was given all the necessary co-operation on the matter and no information was withheld.

It is therefore important to correct the impression created that the office of the Deputy President was un-cooperative thus hindering the completion of the Audit.



M Wasserah

**BRIEF ON EXAMINATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT WHILE ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY 2013**

**1.0. Introduction**

The Auditor General (AG) carried out a special audit on the hire of an aircraft by the Deputy President to tour four African Nations from 16th May, 2013 to 19th May, 2013.

The clerk of the National Assembly, after receiving the final Report from the Auditor General in his letter NA/PAC/CORR/2013/72 of 25<sup>th</sup> October, 2013 invited me amongst other officers to appear before the Parliamentary Accounts committee to make submissions on the matter.

**2.0. Concerns Raised By the Auditor General in his Report**

The Special Audit Report of the Auditor General raised a number of concerns which needed clarifications:

**2.1. Delay in Providing Information**

- The Auditor General mentioned in his report that the Office of the Deputy President delayed in giving information to his team of auditors.
- The Auditor General initially provided a checklist of documents which they needed for the audit exercise. The office of the Deputy President presented all the required documents. The Audit team requested for additional documents/information while carrying out the audit. Their further request is what caused the delay.

**2.2. Unavailability of the EADC Company Directors for Purposes of Interview**

The office wrote to the Company requesting them to avail themselves to the auditors for interview but did not respond within the audit period.

**2.3. Difference between the aircraft quoted and supplied**

The office of the Deputy requested for an aircraft according to the size of the delegation and received the same to our satisfaction befitting the status of the Deputy President and his delegation.

**2.4. Conclusion**

The team from the Auditor General received all the necessary information and documents from the Office the Deputy President.

Abdul Mwasserah, EBS  
SECRETARY ADMINISTRATION

5th November, 2013





# APPENDIX 13

# APPENDIX 13

## PUBLIC ACCOUNTS COMMITTEE

### EXAMINATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON HIRE OF AN AIRCRAFT FOR OFFICE OF H.E. THE DEPUTY PRESIDENT ON OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY, 2013

The Auditor General carried out an Audit on the above subject and submitted the final report to Parliament. The Auditor General raised concerns on the procurement of the above hire of the Aircraft;

❖ Delay in providing information:

Initially the auditor General provided a check-list of documents and items they required for the audit exercise. However, they later requested the office to provide additional documents. This caused the delay;

❖ Unavailability of the EADC Company directors for purpose of interview;

The office wrote to the company requesting them to avail themselves to the auditors for interview and they did not respond within the audit period for interview;

❖ The process of hiring the Aircraft was a normal procurement process arising from an urgent request by the Permanent Secretary and Chief of Staff to procure a suitable Aircraft for H.E the Deputy President Official trip;

❖ Missing LSOs/LPOs;

The office only discovered the missing LSOs/LPOs when the Auditors raised the issue. The processing of LSOs/LPOs passes through several stages before they were duly completed. This includes documentation through the IFMIS System. An initial enquiry was made on loss of these LSOs/LPOs and when there was no response, an advert was made in the daily newspapers to exonerate the Office of the Deputy President from the use of these documents, as is the normal practice when such documents are discovered missing;

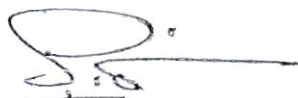
There is no relationship between the missing LSOs and the program Partnership Agreement between Vistajet and EADC;

❖ On the issue of differences in design of the company Logo, the Office went by what was registered with the Registrar of Companies. The registered company was EADC, while E-ADC was only used on company letterheads;

- ❖ On the difference between what was quoted and what was provided Considering the urgency of the requirement and the fact that the Office did not have technical expertise on Aircrafts, it was not possible to identify the difference. What was provided was also found to be equally suitable and befitted the status of H.E the Deputy President official use;
- ❖ On the 14<sup>th</sup> May 2013, we received communication to hire an Aircraft for official use by H.E the Deputy President to West Africa countries i.e Congo Brazzaville, Gabon, Nigeria and Algeria from 16<sup>th</sup> to 19<sup>th</sup> May 2013;
- ❖ On Wednesday 15<sup>th</sup> May 2013 the Tender Committee approved the hire of the above Aircraft from the lowest bidder among the pre-qualified Service Providers M/s EADC at a total cost of USD 221,000(equivalent to Kshs. 18,564,000/=by that time);
- ❖ Payment for the hire of the above Aircraft was processed and made through an LSO No. 0855010 for Kshs. 18,564,000/= through G-pay process, as required.

### Conclusion

I confirm that the Auditor General Team was given the necessary co-operation and support during the Audit period.



Evans Nyachio  
Senior Assistant Director, Supply Chain Management

Dated 5<sup>th</sup> November 2013

# APPENDIX 14

# APPENDIX 14

## PUBLIC ACCOUNTS COMMITTEE

### SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON HIRE OF AN AIRCRAFT FOR OFFICE OF THE DEPUTY PRESIDENT OFFICIAL TOUR OF FOUR AFRICAN NATIONS

Concerns raised by the Auditor General on the procurement of the above aircraft

- Missing LPOs/LSOs

The office discovered the missing LSOs/LPOs when the auditors raised the issue. An initial inquiry was made within the various departments that handle them, on the loss of the LPOs/LSOs and when there was no response, an advert was made in the daily newspapers to exonerate the Office of the Deputy President from the use of these documents, as is the normal practice when such documents are discovered missing.

There was no relationship between the missing LSOs and the programme partnership agreement between Vistajet and EADC.

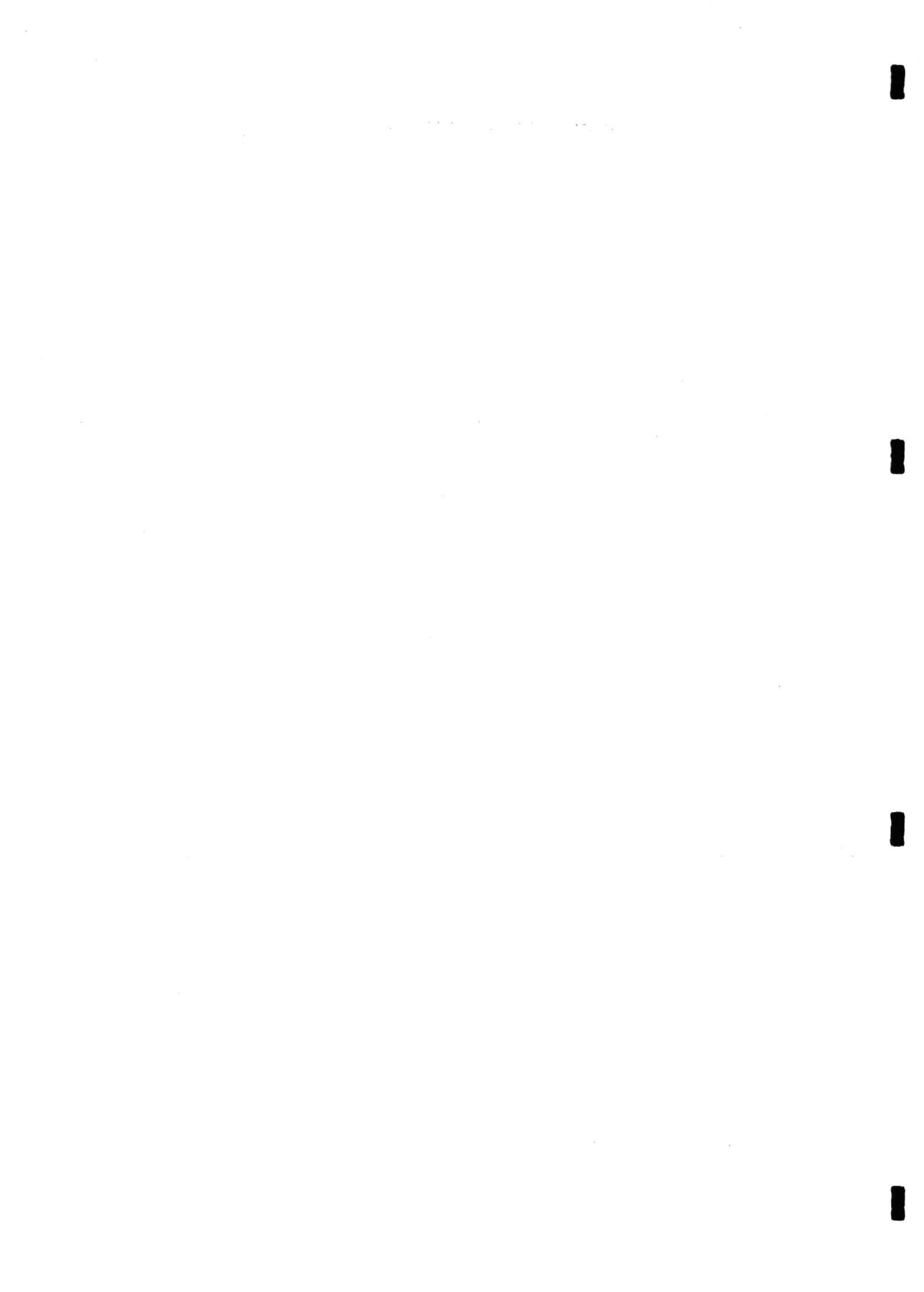
- On the issue of the differences in design of the company logo, the Office went with what was registered with the registrar of companies.

I can confirm that the Auditor General's team was accorded all the necessary cooperation.



Simon Okoth

Supply Chain Management Officer





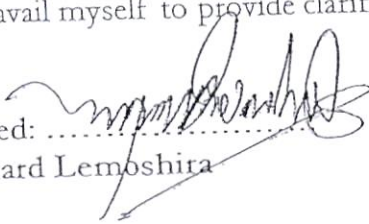
# APPENDIX 15

# APPENDIX 15

SUBMISSION TO THE PUBLIC ACCOUNTS COMMITTEE ON THE  
EXAMINATION OF THE SPECIAL REPORT OF THE AUDITOR GENERAL  
ON THE HIRE OF AIRCRAFT FOR THE DEPUTY PRESIDENT FOR THE  
OFFICIAL TOUR OF FOUR AFRICAN COUNTRIES

In reference to the Letter Ref No. *NA/PAC/CORR/2013/72* of October 25, 2013, I the undersigned would humbly submit as follows;

- i) I have been mentioned in the above referred Special Report in relation to the following;
- (a) Being one of the officers interviewed by the Auditor General's office as shown on page 16 (*paragraph 5.1.7 and Table 1*) and *Annex 31.5*; and
  - (b) As one of the participants in the official tour as shown on pages 19/20 (*paragraph 6.4.3 and Table 4*) and *Annex 10*.
- ii) As regards *i) (b)* I was assigned to accompany His Excellency the Deputy President on official duty to the Republic of Congo, Gabon, Nigeria and Ghana from 16<sup>th</sup> to 19<sup>th</sup> May, 2013. My role in the official visit was to provide protocol services to His Excellency the Deputy President and his delegation as regards;
- a. Preparation of draft Official Letters to foreign governments of the selected countries on the visit and follow-up notification of the visit and requests for appointments at the relevant level;
  - b. Application for Visas and submission of relevant documentation;
  - c. Coordination and escort to official meetings with the host governments;
  - d. Coordination of delivery of official message to the host governments; and
  - e. Coordination of the programme.
- iii) As regards *i) (a)*, I wish to confirm that the meeting between team of two officers of the Auditor-General's Office (Mr. Kibiro and Mr. Mboya) accompanied by the Principal Accountant in the Ministry of Foreign Affairs and International Trade Mrs. Edith Nkanata and myself took place on June 12, 2013.
- iv) It is my considered opinion that the said Official Visit by H.E. the Deputy President to the four countries was highly successful. H.E. the Deputy President was well received and held fruitful meetings with the Head of State of each of the four countries.
- v) I avail myself to provide clarification and or any other additional relevant information.

Signed:   
Richard Lemoshira

Date: 4/11/13

# APPENDIX 16

**APPENDIX 16**

**RE: SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT'S STATE VISIT TO FOUR AFRICAN NATIONS IN MAY 2013**

Honourable members of this Esteemed Parliamentary Committee:

May I begin by sincerely thanking you for affording me the opportunity to shed light on the issue of the hire of an aircraft for the use of His Excellency the Deputy President on an official tour of four African Nations in May, 2013. This matter has been subject to much misinformation and misrepresentation and it is my sincere hope that my statement will dispel the myths that surround the chartering of the aircraft.

As part of the Government's commitment to strengthening relations with African states, developing a continental response to asymmetrical security challenges particularly terrorism and increasing Kenya's export presence within the African continent, the need to make Africa Safe and repatriation of refugees back to Somalia; His Excellency the President instructed His Excellency the Deputy President to make a tour of four African states as a State Visit. The dates for the State Visit were from 16<sup>th</sup> May 2013 to 19<sup>th</sup> May 2013.

Upon receipt of the Presidential instruction; the Deputy President relayed the same to me as his Chief of Staff for implementation. It is to be appreciated that the Deputy President is the President's constitutional assistant and who deputizes him in the execution of Presidential functions. Given the short time frame; I urgently constituted an organizing committee, which comprised of officers from both the Office of the Deputy President as well as the Ministry of Foreign Affairs. This committee sat between the 14<sup>th</sup> and 15<sup>th</sup> of May 2013, two days before the scheduled start of the State Visit.

In a commendable display of diligence and efficiency; the committee was able to ensure that all the requisite logistical issues were dealt with and that the trip materialized as per the Instruction. This was no mean feat indeed. Under such short notice; and with the severe time constraints ahead of a concrete deadline for the start of the State Visit by the Deputy President; the organizing committee was able to arrange for transportation, security, accommodation, subsistence, protocol and reception in four countries as well as coordinating the entire trip with the Diplomatic Representatives of Kenya in those countries.

My office has considered the Special Audit Report on this matter which was undertaken by the Office of the Auditor General and I wish to respond as follows.

The Auditor General's Report makes many findings and recommendations some of which I concur with. There is indeed the need for Government to develop a comprehensive travel policy for government dignitaries and official functions. It is my understanding that the current policy on the same is archaic and not suited to the current circumstances. The Government is therefore in the process of developing a new policy. I wish to stress that process begun prior to the Auditor-General's Report and it seeks to develop a comprehensive approach to travel across the entire Government; including state corporations and independent commissions. Given its scope and importance, such a policy requires extensive consultations as a matter of necessity.

I would like to state that government procedures were adhered to following the discovery of missing LSO's. An internal memo was done to all staff alerting them of the missing documents and thereafter, a notification to the public was placed in two newspapers. I wish to further state that the missing LSO's have never been used for any financial transaction and therefore the government has not incurred any loss based on the same.

On the issue raised on various irregularities in the procurement process, I wish to state that the Public Procurement & Disposal Act 2005 envisages instances when there is need for urgent procurement of goods, works or services and various methods such as open tendering may not be feasible. In the circumstances, restricted tendering method was used to procure the services. This method allows for procurements of upto Ksh. 20 million, which we did not exceed.

In addition, the list of suppliers used was prequalified by the then office of the Prime Minister as per the requirements of the law.

The Report accurately found that there was no corruption or intention to defraud the Government of monies in the hire of the aircraft. I wish to reiterate that the taxpayer did not lose a single cent in this procurement. No one set out to make illicit gains from the procurement and no one made any such illicit gains.

The Report is, however, inaccurate in its assertion that the Office of the Deputy President only considered alternative travel arrangements after the trip. I wish to unequivocally and emphatically state that that was not the case. The organizing committee did in fact conduct an extensive comparison that considered cost, reliability, safety, reputation, aircraft specifications and other relevant factors.





Neither the Auditor General nor any other person has been able to show that for the dates of travel and the destinations scheduled; there was any other cheaper option that would have satisfied the demands of the State Visit.

The fact that the organizing committee's choice has been vindicated as being the cheapest by the Auditor General should have led the Report to conclude that there was definitely a price comparison exercise undertaken.

This Government has an unshakeable commitment to adopting recommendations that increase efficiency and best-use of Taxpayer monies. In that regard it is my sincere belief that all the Recommendations of the Report that can be sanctioned by the Executive will be implemented at the earliest.

Finally, I wish to reiterate that;

- 1) There is not even the slightest hint of any corruption or malfeasance in the procurement of the aircraft hire. This is explicitly clear from the Report of the Auditor General.
- 2) This matter is one that deals with whether the proper procurement procedures; particularly documentation of steps taken, was done; rather than being a question about loss of Taxpayer funds.

I wish to end my Statement by thanking the Committee for affording me this opportunity to clear the air on this matter.



MARIANNE KITANY  
CHIEF OF STAFF  
OFFICE OF THE DEPUTY PRESIDENT

# APPENDIX 17

**APPENDIX 17**

**BRIEF ON EXAMINATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT WHILE ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY 2013**

**1.0. Introduction**

The Auditor General (AG) carried out a special audit on the hire of an aircraft by the Deputy President to tour four African Nations from 16th May, 2013 to 19th May, 2013.

The clerk of the National Assembly, after receiving the final Report from the Auditor General in his letter NA/PAC/CORR/2013/72 of 25<sup>th</sup> October, 2013 invited a team of officers from my office to appear before the Parliamentary Accounts Committee to make submissions on the matter.

**2.0. Concerns Raised By the Auditor General in his Report**

The Special Audit Report of the Auditor General raised a number of concerns which needed clarifications:

**2.1. Delay in Providing Information**

- The Auditor General mentioned in his report that the Office of the Deputy President delayed in giving information to his team of auditors.
- The Auditor General initially provided a checklist of documents which they needed for the audit exercise. My officers presented all the required documents. The Audit team requested for additional documents/information while carrying out the audit. Their further request is what caused the delay.

**2.2. Unavailability of the EADC Company Directors for Purposes of Interview**

I wrote to the Company requesting them to avail themselves to the auditors for interview but they did not respond within the audit period.

**2.3. Difference between the aircraft quoted and supplied**

My officers in the office of the Deputy requested for an aircraft according to the size of the delegation and received the same to our satisfaction befitting the status of the Deputy President and his delegation.

**2.4. Conclusion**

The team from the Auditor General received all the necessary information and documents from my officers in the Office the Deputy President.

Dr. Mohammed Isahakia, CBS  
Former Permanent Secretary  
OFFICE OF THE DEPUTY PRESIDENT

5<sup>th</sup> November, 2013

# APPENDIX 18

# APPENDIX 18

Mr. Justin Bundi  
Clerk of the National Assembly  
Parliament Building  
P.O.Box 41842 - 00100  
NAIROBI

11<sup>th</sup> November, 2013

RE: THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE  
HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT WHILE ON AN  
OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY, 2013

Reference is made to National Assembly letter Ref NA/PAC/CORR/2013/76  
dated 7<sup>th</sup> November, 2013.

Am a Senior Finance Officer in the office of the Deputy President and I was  
heading the finance docket during that time. My roles include sourcing of  
funds from the National Treasury, budget implementation and control and  
ensuring prudent and efficient use of resources

The office of the Deputy President inherited the remaining budget from the  
former Prime Minister's Office

There was enough Budget allocation to accommodate the expenditure in the  
recurrent expenditure estimates for the 2012/2013 financial year

This expenditure was charged from foreign Travel and subsistence and other  
transportation costs at the headquarters

The actual payment for the Aircraft was Kshs. 18,564,000.00. This was paid  
to EADC Ltd

21/11/2013

This is submitted in readiness to my appearance before the Public Accounts  
Committee scheduled for 13<sup>th</sup> November, 2013.



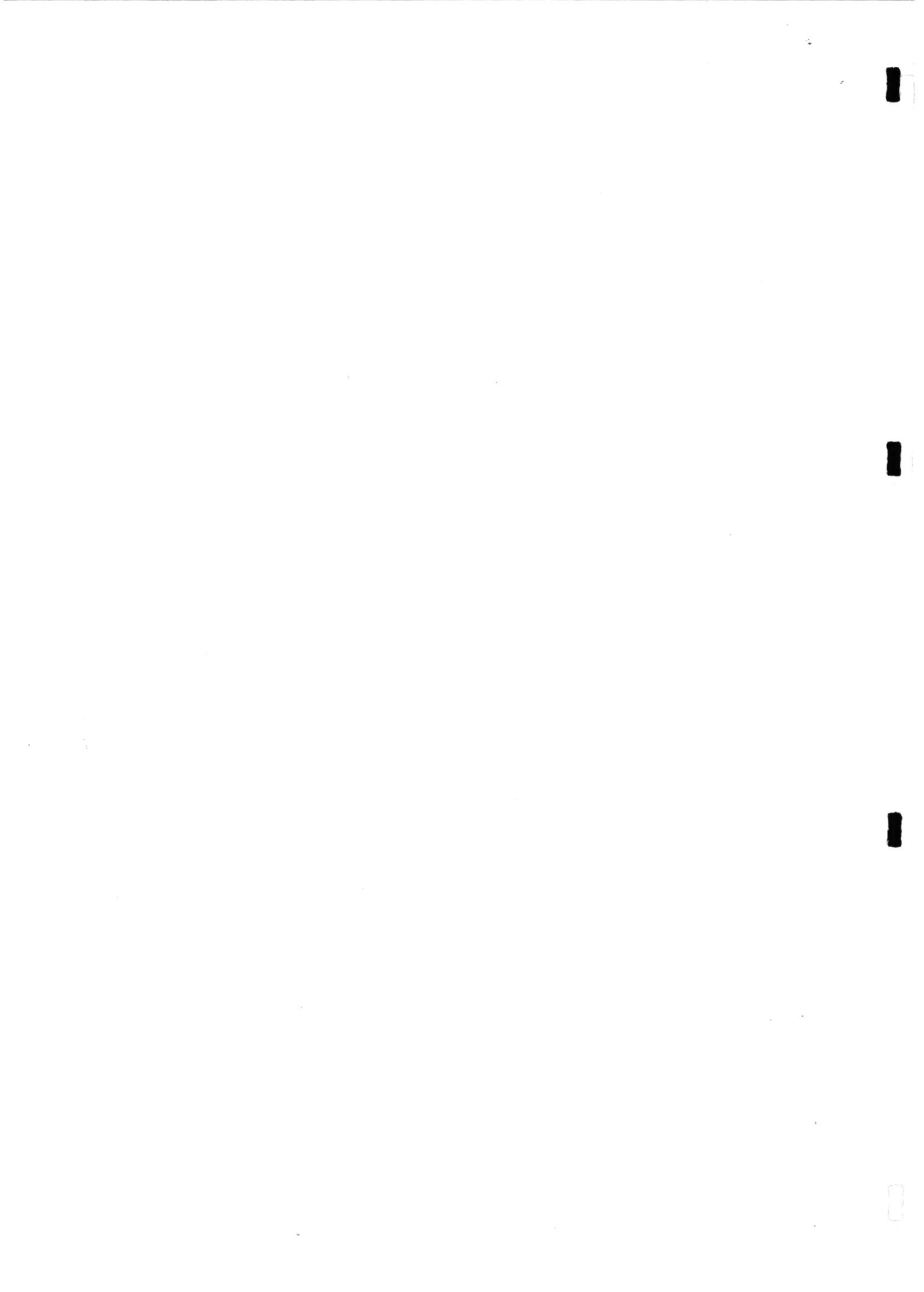
Paul Kamau  
Senior Finance Officer

# APPENDIX 19



# APPENDIX 19





### CONDITIONS

The execution of all or part of this order is subject to the following conditions unless otherwise stated in writing. A supplier who renders services contrary to those conditions does so at his own risk.

1. The Tender/Quotation or Contract Reference Number and the date must be clearly shown on this form for purchases exceeding KSh. 1,000.00 on any one item. Failure to do this may delay the settlement of this order.
2. All services are to be carried out strictly in accordance with specifications given. No departure is allowed without our prior agreement and in writing.
3. Orders must be executed within the period tendered unless instructions are given to the contrary. If the service is not effected as agreed, this order is liable for cancellation and/or payment of penalty.
4. We reserve the right to inspect the service on this order, but such inspection does not relieve the supplier of his responsibility for defects in material and/or workmanship.
5. Receipt of this Order should be acknowledged on the duplicate copy which should be sent within 7 days.
6. Contractors/Suppliers MUST ensure full compliance with the laid down procurement procedures or bear the loss.

All communications to be addressed to the originator of this Order.

#### Distribution of copies:

Original: To be retained by supplier.

Duplicate: To be signed by supplier and returned for attachment to contract documents.

Triplicate: To be attached to P.V. and invoice for payment purposes.

Quadruplicate: To remain in the pad.

# APPENDIX 20

# APPENDIX 20



# KENYA REVENUE AUTHORITY

OUR REF : DTD/MST/HO/54  
YOUR REF : NA/PAC/CORR/2014/10

24<sup>th</sup> February 2014

Clerk of the National Assembly,  
Kenya National Assembly,  
Clerk Chambers,  
Parliament Building,  
P.O. Box 41842 - 00100,  
NAIROBI

*Mr. Ganza*  
*T.M.J.*  
*Sialai*

Attention: Mr. Michael Sialai,

*24/2*

## REPORT ON TAX COMPLIANCE STATUS OF THE THREE COMPANIES THAT BID FOR SUPPLY OF AIRCRAFT FOR AN OFFICIAL TOUR BY THE DEPUTY PRESIDENT TO FOUR AFRICAN NATIONS.

We refer to your letter dated 7<sup>th</sup> February, 2014 in respect of this matter.

The Tax compliance status of the three mentioned companies is as follows:

### 1. LADY LORI (KENYA) LTD

PIN No: P051135609T

Directors: James Stanley De Nooyer PIN A002634646W

Mimano Mbuthia Ian PIN A0001567783M

Njagi Peter Nthiga PIN A002674433T

Silvester Thomas Anson PIN A000230839F

#### Tax Compliance Status:

**Corporation Tax** – The Company has consistently filed the annual self assessment returns since the year 2000.

**VAT** – They are up to date with monthly filing and tax payments.

**PAYE** – They file the monthly returns and make tax payments thereof.

**Directors:** James Stanley De Nooyer has filed Nil self assessment returns up to 2010.

*Tulipe Ushuru Tujitegemee!*







Mimano Mbuthia Ian has filed Nil self assessment returns up to 2012.

Njagi Peter Nthiga has filed Nil self assessment returns up to 2012.

Silvester Thomas Anson has filed payment self assessment returns up to 2010.

**REMARKS:** The Company was audited in 2013 raising additional taxes which have been paid.

They were issued with a valid Tax Compliance Certificate number 19/032325/2013 on 18<sup>th</sup> June, 2013.

## 2. AIRCRAFT BUSINESS MANAGEMENT LTD

PIN No: P051238740E

Directors: Nicholas Oture Owino PIN no A001815841Y

Alice Atieno Oture PIN no A002760353R

### Tax Compliance Status:

**Corporation Tax** – The Company has consistently filed the annual self assessment returns since the year 2008. However, they have been declaring Nil income.

**VAT** – They file the monthly returns however, have not been making payments.

**PAYE** – They do not file PAYE returns since they do not have any employees.

**Directors:** Nicholas Oture Owino has filed nil self assessment returns up to 2011 which include the wife, Alice Atieno Oture's returns. Alice Atieno Oture's account has no further information since she declares her returns under her husband's PIN.

**REMARKS:** The Company operates as a middle entity getting aircraft hire orders and outsourcing the services to firms with aircrafts and pilots.

They were issued with a valid Tax Compliance Certificate Number KRA 19/010207/2013 on 21<sup>st</sup> March, 2013.

The Company and Directors have been profiled for audit.

## 3. EADC LIMITED

PIN No: P051382594L

Directors: Ahmed Haji Kassam PIN A000178323J

Vadgama Punit PIN A003314999F

**Tax Compliance Status:**

**Corporation Tax** – The Company was registered for Income Tax on 23<sup>rd</sup> March, 2012 and is expected to file its first return for the year of income 2013 by 30<sup>th</sup> June 2014.

**VAT** – They were registered for VAT on 8<sup>th</sup> August 2013. The first return was expected to be filed for the month of September, 2013 but none has been filed so far.

**PAYE** – They have not filed any PAYE returns so far.

**Directors:** Ahmed Haji Kassam has not filed his Income Tax self assessment returns for the years 1997, 2000 and from year 2002 to date.

Vadgama Punit only filed his Income Tax self assessment returns for the years 2005 to 2008 from which Kshs. 1,229.00 tax remains outstanding.

**REMARKS:** From our records, **no** Tax Compliance Certificate has been issued to the Company.

We have profiled the Company for a Compliance Check.



Alice Owuor, OGW  
COMMISSIONER,  
DOMESTIC TAXES DEPARTMENT



# APPENDIX 21

# APPENDIX 21

Ruto aircraft deal was above board House told

BY NATION REPORTER

# Official word not backed by invoice

VistaJet document now forms the basis of the first investigation launched by the Public Accounts Committee of Parliament

BY NATION TEAM  
newsdesk@kenationmedia.com

The Daily Nation today publishes a copy of a US\$300,000 (Sh25.14 million) invoice for the leasing of a luxury jet which was submitted by Swiss firm VistaJet to Deputy President William Ruto's office.

The invoice, dated May 15, 2013, contradicts claims by Mr Ruto's office that the cost of hiring the jet was \$221,000 (Sh18.5 million), rather than the amount quoted in the Sunday Nation story.

The document, which now forms the basis of the first investigation launched by the Public Accounts Committee, was obtained from impeccable sources and indicates that Kenyans may pay more than the reported Sh25.14 million.

The invoice from VistaJet offices in Salzburg, Austria, indicates that the payment is a "first instalment of the quarterly payment" for the jet-leasing services as part of a "VistaJet Program Partnership Agreement" with the government.

The Deputy President's office has launched a furious rear-guard action to contain the damage following the

publication of the details of the deal which has triggered anger from civil society and the public. Mr Ruto has also threatened to sue the Nation over the story.

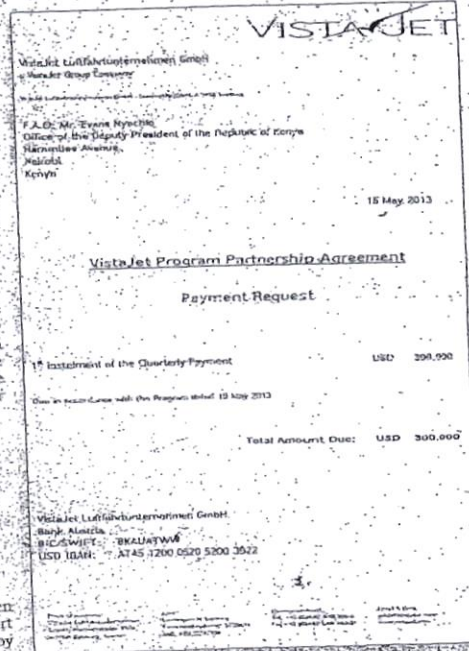
In Parliament yesterday, House Majority Leader Aden Duale tabled a letter from a firm known as E-ADCL limited stating that the "official invoice" sent to the Office of the Deputy President was for \$221,000.

## Sh24.14m

Amount of money Kenyans may pay as first instalment for hiring Deputy President's plane

However, the letter was written one day after the first Nation report and distributed to newsrooms by a Mr Ahmed Kassam, an aviation expert. The letter does not bear an attachment showing the "official invoice" from VistaJet.

The bill obtained by the Nation was addressed to Mr Evans Nyachio, a senior procurement officer in the Deputy President's office.



Although Parliament was told the Nation did not contact the Deputy President's office before publication of the story, that statement is untrue.

Mr Nyachio was called on Saturday and challenged to confirm or deny that the invoice had been received.

He did neither and instead said the matter was "sensitive" and demanded that reporters see him on Monday, May 20.

Various government officials have also made false statements while seeking to justify the expense footed by taxpayers for the four-nation trip to Gabon, Nigeria, Ghana and Congo.

In an interview with NTV, Information permanent secretary Bitange Ndemo claimed that flying by commercial flights would have required the group to fly to France and connect back to West and Central Africa.

In fact, Kenya Airways operates direct flights to Lagos, Accra and to the capital of Congo, Brazzaville. There are no direct flights to Libreville but connections exist in West Africa.

Dr Ndemo also said that hiring a jet was the most cost-effective way the trip could have been made: "If you carry nine senior government officials on business class going to Europe and coming back you will find that the cost would have been much higher," he said.

In fact, information available on the internet indicates that first class fare from Nairobi to Lagos is \$3,345 (Sh280,980).

Assuming that all 16 passengers on Mr Ruto's trip had travelled first class — an

unlikely event considering not all on board were senior officials — the trip to Lagos would have cost \$53,520 (Sh4.5 million excluding connection flight charges).

Dr Ndemo also told his interviewer there was "no contract" between VistaJet and the government and that the deal was "a one-off".

That statement is contradicted by documents obtained by the Nation which indicate that the money was a "first instalment" of a "quarterly payment", the basis for the \$2100 million figure assuming that the Sh25 million fee was to be paid every three months.

Sources within the Public Accounts Committee indicated that the investigation would focus on three aspects.

They will be investigating the procurement process leading up to the award of the contract to VistaJet and whether procedures were flouted in offering the deal.

They will also interrogate whether all those who travelled have been employed by the government and have obtained a PIN number which allows them to travel at taxpayer's expense.

A third strand, the source said, would look at the question of hiring procedures at the office of the Deputy President amid murmurs about the process of recruitment, under way since the Jubilee government came to office.

The government yesterday fiercely defended the hire of the jet used by Mr Ruto to take to four African countries, as it was acquired competitively. Leader of Majority in Parliament Aden Duale said supplier of the luxury jet given the tender after two quoted higher figures.

He said VistaJet East Africa through local partner Ecan Development Cooper quoted the lowest figure Sh18.5 million, including VAT and other charges.

Mr Duale, who has the responsibility of representing the government in the National Assembly, said LadyLori quoted Sh19.7 million (inclusive of other charges, ABM Aviation gave a offer of Sh19.2 million also with other charges as its fee the trip).

The four-nation trip Mr Ruto has attracted controversy following revelation it could have cost the tax more money.

Uguya MP David Oduo sought a statement from the government on the purpose, the cost and the benefits of the trip that saw meet the presidents of the Congo, Gabon and Ghana.

## Sh18.5m

Amount VistaJet quoted for luxury jet, according to

He was also set to meet Algerian leader, but that happened because the Nigerian country leader is still responding, Mr Duale said.

Mr Ruto had been in the visits ahead of the Union Heads of State in Addis Ababa that started.

But Mr Ochieng said President could have other heads of State sidelines of the summit.

However, Mr Duale said Mr Ruto's agenda on Somalia of the assignments with Ruto shared with the presidents — is among stantive topics to be discussed during the summit.

Mr Duale also gave a point agenda Mr Ruto during the May 16-19 that included plans to state over one million re their countries and the on a forest project at Nobel laureate Wangari in Congo.

Mr Duale said the President signed a trade agreement with Nigeria. "The Jubilee government is not hiding a Mr Duale said, adding officials including f

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# APPENDIX 22

# APPENDIX 22



REPUBLIC OF KENYA



Telegraphic Address: ...  
"Bunge", Nairobi  
Telephone: 254-020-221291  
Fax: 254-020-243694  
E-mail: [bunge@swiftkenya.com](mailto:bunge@swiftkenya.com)  
When replying please quote our ref.

CLERK'S CHAMBERS,  
National Assembly,  
Parliament Buildings,  
P O Box 41842-00100,  
NAIROBI, Kenya.

NA/PAC/CORR/2013/28

30<sup>th</sup> July, 2013

Mr. Linus Gitahi,  
Chief Executive Officer,  
Nation Media Group Ltd,  
Nation Centre, 5<sup>th</sup> floor,  
Kimathi Street,  
NAIROBI.



Dear *Linus*

**RE: INVESTIGATION OF HIRE OF AN AIRCRAFT FOR USE BY THE  
DEPUTY PRESIDENT ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS  
IN MAY, 2013**

The Public Accounts Committee (PAC) is a select Committee of the House responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet public expenditure and of such other accounts laid before the House as the Committee may think fit.

The Committee is currently investigating the hire of an aircraft for use by the Deputy President while on an official tour of four African nations sometimes in May, 2013. Your media house carried out own investigations and reported extensively on the matter at the time of occurrence.

Against this backdrop, the Committee is satisfied that your media house has crucial information pertaining to the matter and would like you to assist in investigation by sharing information. The Committee will therefore appreciate to have a session with your media house's representative on 6<sup>th</sup> August, 2013 at 12.00 noon in Committee Room 9, Main Parliament.

Yours

A handwritten signature in black ink, appearing to read 'Justin Bundi'.

Justin Bundi,  
CLERK OF NATIONAL ASSEMBLY

Copied to: Mr. Edward Ouko, CBS  
Auditor General,  
Kenya National Audit Office (KENAO),  
Anniversary Towers,  
University Way,  
NAIROBI.

# APPENDIX 23

# APPENDIX 23



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Ref. No. ....

**MFA.ADM.1/103A/VOL.XXV**



7<sup>th</sup> March, 2014

**Mr. Justin Bundi, CBS**  
Clerk of the National Assembly  
Clerk's Chambers  
Parliament Building.  
**Nairobi.**

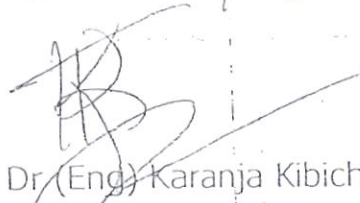
Dear *Mr. Bundi*

**INQUIRY BY THE PUBLIC ACCOUNTS COMMITTEE (PAC) INTO  
THE HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT TO  
WEST AFRICAN COUNTRIES IN MAY 2013.**

Please refer to your letter Ref. NA/PAC/CORR/2014/08 dated 7<sup>th</sup> February, 2014 on the subject matter.

Enclosed herewith is the brief and copy of the Decisions, declarations and resolutions adopted at the 21<sup>st</sup> Ordinary Session of the Assembly of the African Union in May 2013 as requested for your kind attention.

Yours

*Sincerely,*  
  
Dr (Eng) Karanja Kibicho, CBS  
**PRINCIPAL SECRETARY.**

## **ENQUIRY BY THE PUBLIC ACCOUNTS COMMITTEE (PAC) INTO THE HIRE OF AN AIRCRAFT FOR THE DEPUTY PRESIDENT WHILE ON AN OFFICIAL TOUR OF FOUR AFRICAN NATIONS IN MAY 2013**

The Committee requests to be furnished with a detailed brief containing Kenya's agenda items before the African Union Summit and decisions on the matter.

### 1. Introduction

- a. The African Union (AU), a successor to the Organization of African Unity (OAU) is a continental body formed in 1963 and open for membership to all African Countries. Prior to its transformation from the Organisation of African Unity to African Union, the Organisation mainly focussed on promoting the unity and solidarity of the African states, act as a collective voice for the African continent, co-ordinate and intensify the co-operation of African states in order to achieve a better life for the people of Africa, defend the sovereignty, territorial integrity and independence of African states.
- b. The decision to transform OAU to AU was made in 1999 and the Constitutive Act adopted in 2000 in Lome, Togo with the vision to achieve an "An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena."
- c. Kenya is a full and ardent Member of the AU, where she pursues her interests both collectively or bilaterally within the context outlined above. The Jubilee manifesto provides a significant roadmap about Kenya's foreign policy direction, with particular attention to Pan-Africanism. This is the message H.E the President carried during his maiden Speech at the AU Summit where he emphasized the need to stimulate greater African social-economic integration in order to achieve the African aspiration for renewal and renaissance. He called for accelerated integration, enhanced trade, particularly, intra-Africa trade, investment and creation of a web of infrastructural network.

- d. In appreciation of the complex nature of Diplomacy, pursuit of National Interest demands that states remain engaged in a strategic fashion, since the window of opportunity, often does not remain open long. It is only those that play their cards well that influence decisions, sometimes with short, medium and long term goals. Many a times, actions of state may not present any immediate gains to observers, but are realised much later. It is therefore characteristic for states to invest in consensus building even on matters that are strictly not for the individual state but collective interest, and hence, international relations.
2. The Agenda before the 21<sup>st</sup> African Union Ordinary Session of the Assembly held from 26 - 27 May 2013 in Addis Ababa had before it the following:-
- i. The African common position on the Post - 2015 Development Agenda.
  - ii. The establishment of the High Level Committee of Heads of State and Government on the Post 2015 Development Agenda
  - iii. The development of the African Union Commission Strategic Plan 2014 -2017 and the AU Agenda 2063
  - iv. The Report of the Aids Watch Africa (AWA)
  - v. The implementation of the Global African Diaspora Legacy Projects
  - vi. The need to strengthen African leadership in the United Nations convention to combat desertification (UNCCD) process
  - vii. "Supporting film production for increased contribution to Africa's development"
  - viii. The Amendment of Article 8.2 of the Statutes of the Pan - African University
  - ix. International jurisdiction, Justice and the International Criminal Court (ICC)
  - x. The election of four (4) Members of the African Commission on Human and Peoples' Rights (ACHPR)
  - xi. The election of four (4) members of the African Committee of Experts on the Rights and Welfare of the Child (ACEWRC)
  - xii. The Twelfth Report of the Committee of Ten on UN Security Council Reform
  - xiii. Alternative Sources of Financing the African Union
  - xiv. The establishment of an African Union Foundation for Voluntary Contributions towards financing the African Union

- xv. The Report of Heads of State and Government Orientation Committee (HSGOC) on NEPAD
  - xvi. The establishment of an African Capacity for immediate response to crises
  - xvii. The Report of the Peace and Security Council on its activities and the state of peace and security in Africa
  - xviii. The terrorist attacks in Niger and/on the solidarity of Africa with the Republic of Niger
  - xix. The lifting of the economic and trade embargo imposed on the Republic of Cuba by the United States of America
3. In all these Agendas, Kenya had an interest which continues and remains relevant by virtue of her membership to the Union on the one hand, and on the other, in pursuit of her national interest. Specifically, the decisions reached by the Assembly in Kenya's favour include:-

- a) **The election of four (4) Members of the African Commission on Human and Peoples' Rights (ACHPR)** – In line with Kenya's policy of supporting her nationals for International jobs, Mr. **Lawrence Murugu Mute** was appointed a Member of the Institution for a period of six years. (*Assembly/AU/Dec.483 (XXI)*)
- b) **The Twelfth Report of the Committee of Ten on UN Security Council Reform** – The reforms of the UN Security Council has been on the table for a long time. The reforms are intended to democratize most powerful decisions making organ of the United Nations to take global realities into context, but has since inception in 1945 excluded the developing world, including Africa.

The continent has taken a common position on the reforms of the UN Security Council, notably the **Ezulwini Consensus** and the **Sirte Declaration**. These landmark decisions are meant to maintain and safeguard the interest of Africa and for Africa to continue to speak with one voice. Over time, however, there have been indications that some countries may be pushing a different direction, to the detriment of the collective interest of the continent. As an interested party, and a Member of the Committee of Ten representing the Eastern Africa region, Kenya feels the need to maintain high level consultations to



sustain the spirit and momentum of the common position as adopted by the Union. *(Assembly/AU/Dec.485 (XXI))*

- c) **International jurisdiction, Justice and the International Criminal Court (ICC)** – The Assembly expressed regret to the UN Security Council failure to act on the request to defer the proceedings initiated against President Omar Al Bashir of The Sudan and Senior State Officials of Kenya. The Assembly further expressed concern at the threat that the indictment of H.E Uhuru Muigai Kenyatta and H.E William Ruto, the President and Deputy President of the Republic of Kenya respectively, may pose threat to the ongoing efforts in the promotion of peace, national healing and reconciliation as well as the rule of law and stability, not only in Kenya but also the region.

The Assembly further supported the Eastern Africa Region's request for referral of the ICC investigations and prosecution in relations to 2007 post-election violence in Kenya, in line with the Principle of complementarity, to allow for a National Mechanism to investigate and try these cases under the reformed judiciary. *(Assembly/AU/Dec.482 (XXI))*

The Assembly decision was instrumental and marked the beginning of a journey which culminated into key amendments to the Rules of Procedure of the ICC and adoption of several new rules by the Assembly of State Parties held in Paris in December 2013

- d) **The Report of the Peace and Security Council on its activities and the state of peace and security in Africa** – The Assembly reviewed the steps taken to hasten the attainment of a conflict free Africa. Kenya suffers from global terrorism, particularly the Al Shabaab which thrives from lack of an effective government in Somalia. To safeguard her territorial integrity and sovereignty, Kenya deployed her troops in Somalia under the "Operation Linda Nchi".

To sustain the Africa Union efforts to bring peace in Somalia, and following the signing of the Memorandum of Understanding with the AU Commission, the Kenya Defence Forces (KDF) converted into

AMISOM in February 2012 to further augment Africa's desire to deal with African problems by the Africans themselves.

As it is to be appreciated, Kenya has a huge stake in the restoration of peace and tranquillities in Somalia. To push this agenda, the IGAD Member Assembly Heads of State met on the sidelines of the AU Assembly and issued a Communiqué appealing to the AU to enhance engagements, operational capacity and coordination of AMISOM with the Somalia National Forces for peace and greater stability. This was submitted to the AU Assembly and greatly contributed to the Assembly's decision.

e) **Alternative Sources of Financing the African Union** – Following concerns that the African Union's programs were largely donor-funded and therefore only served the interests and priorities of the donors, a select committee was formed to explore alternative sources of financing the AU. The Committee headed by former President Olusegun Obasanjo recommended that member states impose 3 new levies nationally.

- a) Levy on international travel (USD 2.5 for travel outside the continent and USD 1 for travel within the continent);
- b) Hospitality levy (USD 1 per day); and
- c) Levy on text messages (USD 5 cents or Kshs.4.35 per message).

Kenya opposed these proposals in view of the negative impact they would have on the service and tourism sectors as well as on the citizens. Kenya therefore lobbied like-minded countries to push for a review of the proposals. Consequently the matter was deferred for consideration by Ministers of Finance & Economy (**Assembly /AU/Dec.486 (XXI)**).

f) **The Report of the Aids Watch Africa (AWA)** – A meeting of the Aids Watch Committee of Heads of State and Government was held on 26<sup>th</sup> May 2013 on the sidelines of the Summit. Kenya is a member of this Committee whose objective is to set pace for high level advocacy by Heads of State and Government. The Committee was chaired by H.E Hailemariam Desalegn, Prime Minister of Ethiopia. This meeting focused on the review of the strategic challenges that hinder access to medicines in the continent, especially as they relate to local

production, ranging from ensuring policy coherence to facilitate sustainable financing (*Assembly/AU/dec.477(XXI)*).

- g) **The Amendment of Article 8.2 of the Statutes of the Pan - African University** - Kenya successfully lobbied to host the Pan-African University for Science, Technology & Innovation (PAUSTI), which is domicile at the JKUAT. PAUSTI is one of five specialized campuses implemented by the AU, one in each region of the continent (i.e Nigeria, Cameroun, Algeria, South Africa and Kenya) and each with a different focus. During the Summit, Kenya participated in the discussions on the amendment of the statues of PAU and a Host Country Agreement concluded between Kenya and the AU Commission on the sidelines of the Summit (*Assembly/AU/Dec.481 (XXI)*).
- h) **The implementation of the Global African Diaspora Legacy Projects** - Following the Global African Diaspora Summit that took place in Sandton, South Africa on 25<sup>th</sup> May 2012, five Diaspora legacy projects were identified and adopted. These were:
- ✓ Development of skills database
  - ✓ Establishment of the African Diaspora volunteer Corps
  - ✓ Africa Diaspora Investment Fund
  - ✓ Development market place of the Diaspora
  - ✓ African Institute of Remittances (AIR)

Kenya offered to host the AIR but was unsuccessful due to other competing offers from Egypt, Mauritius and Djibouti. Following the ensuing intensive and extensive lobbying machinery Kenya put in place among member states during the May 2013 Summit, together with favourable review by the AU Technical Team, Kenya's offer was finally accepted in January 2014, to host the Office and operationalize the project (*Assembly/au/Dec.478 (XXI)*)

4. The Decisions, Declarations and Resolutions of the Assembly of the Union Twenty-First Ordinary Session 26-27 May 2013 as well as the IGAD Communiqué of the 22<sup>nd</sup> Extra Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in Somalia issued in Addis Ababa on 24<sup>th</sup> May, 2013 are submitted herewith.

February 2014

Ministry of Foreign Affairs and International Trade.

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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ASSEMBLY OF THE UNION  
Twenty-First Ordinary Session  
26 - 27 May 2013  
Addis Ababa, ETHIOPIA

Assembly/AU/Dec.474-489(XXI)

Assembly/AU/Decl.1-2(XXI)

Assembly/AU/Res.1(XXI)

DECISIONS, DECLARATIONS AND RESOLUTION

DECISION ON THE AFRICAN COMMON POSITION ON THE  
POST-2015 DEVELOPMENT AGENDA  
Doc.Assembly/AU/10(XXI)

The Assembly,

1. **TAKES NOTE** of the report on progress made in 2013 towards attaining the Millennium Development Goals (MDGs) in Africa;
2. **COMMENDS** the African Union Commission, the United Nations Economic Commission for Africa (UNECA), the African Development Bank (AfDB) and the United Nations Development Programme (UNDP) for preparing the report which documents the progress made, lessons learned and challenges to be addressed in implementing the MDGs in each country;
3. **REQUESTS** the Commission, in consultation with Regional Economic Communities and relevant Stakeholders, to continue to engage Member States, including the Permanent Representatives' Committee in Addis Ababa and the African Group in New York, with a view to developing the African common position on the Post-2015 Development Agenda for consideration during the next Summit to be held in January 2014;
4. **FURTHER REQUESTS** the Commission, the NEPAD Agency, the UNECA, the ADB, the UNDP, the United Nations Population Fund (UNFPA) and other relevant Organizations working in the social domain to set up a technical working group to translate the African priorities for the Post-2015 Development Agenda into goals, targets and specific indicators for inclusion in the Sustainable Development Goals (SDG) process and the Post-2015 Global Agenda;
5. **INVITES** Member States to provide inputs and contributions towards the elaboration of the Post-2015 Development Agenda;
6. **CALLS UPON** all Member States and Regional Economic Communities (RECs) to support, promote, own and build alliances for the African Common Position to enable Africa to speak with one voice during the discussions at the UN General Assembly aimed at defining the Post-2015 Development Agenda;
7. **MANDATES** the Commission to update on regular basis the statistical data and other relevant information in concert with Member States; and in this regard, appeals to Member States to sign and ratify the African Charter on Statistics.

DECISION ON THE DEVELOPMENT OF THE AFRICAN UNION COMMISSION  
STRATEGIC PLAN 2014-2017 AND THE AU AGENDA 2063  
Doc. Assembly/AU/3(XXI)

The Assembly,

1. **TAKES NOTE** of Decision Ext/EX.CL/Dec.1(XIV) taken by the Executive Council during its 14th Extraordinary Session held in Addis Ababa, Ethiopia, on 8 April 2013, and Decision EX.CL/Dec.768(XXIII) of the 23<sup>rd</sup> Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, on 22 and 23 May 2013 which approved and recommended the Draft Strategic Plan 2014-2017 of the African Union(AU) Commission to the Assembly for adoption;
2. **ALSO TAKES NOTE** that all inputs provided by Member States during the above-mentioned sessions of the Executive Council have been adequately integrated into the document;
3. **ADOPTS** the Strategic Plan 2014-2017 of the AU Commission;
4. **CALLS UPON** Member States to support the implementation of the Strategic Plan 2014-2017 of the AU Commission;
5. **FUTHER TAKES NOTE** of the progress in the development of AU Agenda 2063 and **ENCOURAGES** the AU Commission, the African Development Bank and the Economic Commission for Africa to continue refining the Draft Framework document through a consultative process involving all segments of African society;
6. **ENDORSES** the recommendation by the Executive Council calling upon the Commission to present the Framework Document for consideration by AU Policy organs in January 2014 and the final Agenda 2063 for adoption in June 2014.

DECISION ON THE ESTABLISHMENT OF THE HIGH LEVEL  
COMMITTEE OF HEADS OF STATE AND GOVERNMENT  
ON THE POST 2015 DEVELOPMENT AGENDA  
Doc.Assembly/AU/10(XXI)

The Assembly,

1. **DECIDES** to establish a High level Committee of Heads of State and Government to sensitise and coordinate the activities of African Leaders and members of the High Level Panel, and build regional and inter-continental alliances on the African Common Position on the post 2015 Development Agenda;
2. **APPOINTS** Her Excellency Mrs Ellen Johnson Sirleaf, the President of the Republic of Liberia as the Chairperson of the High Level Committee which comprise two Heads of State and Government per region to be nominated by the five (5) regions, through consultations to be carried out by the Regional Deans;
3. **REQUESTS** the High Level Committee to further cristalize and synthesize, and even further consult as deemed necessary, so as to finalize the African Common Position and ensure that the priorities identified in the said African Common Position are integrated on the New Global Agenda;
4. **ALSO REQUESTS** the High Level Committee to report annually on the implementation process by Member States of the new development agenda;
5. **MANDATES** the Commission, the NEPAD Agency, in collaboration with UNECA, AfDB and UNDP and other relevant Organizations operating in the social sector to support the activities of the High-Level Committee.

DECISION ON THE REPORT OF THE AIDS WATCH AFRICA (AWA)  
Doc. Assembly/AU/8(XXI)

The Assembly,

1. **TAKES NOTE** of the Report of the AIDS Watch Africa (AWA) and the recommendations contained therein;
2. **URGES** Member States to ensure the effective implementation of the Roadmap on Shared Responsibility and Global Solidarity for AIDS, TB and Malaria in Africa and to report on progress made;
3. **DECIDES** to include AIDS, TB and Malaria Indicators as well as those of Maternal, Newborn and Child Health in the African Peer Review Mechanism (APRM) as part of our accountability for the implementation of commitments undertaken and **DIRECTS** the Commission to facilitate this;
4. **FURTHER URGES** AWA to ensure that best practices amongst Member States in the prevention and control of HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases are identified, propagated and adopted by all;
5. **CALLS UPON** countries and all partners to take action in support of achieving the USD 15 billion target and to fully fund the Global Fund in order to completely control the three diseases and save lives;
6. **REQUESTS** AU Member states to develop a sustainable investment plan for health, particularly AIDS, TB and Malaria, with year on year increases in domestic funding;
7. **ALSO REQUESTS** the Commission to convene a meeting of the Pharmaceutical Manufacturing Plan for Africa (PMPA) Consortium including the pharmaceutical private sector in Africa during the Abuja+12 Special Summit on HIV/AIDS, TB & Malaria in Abuja, Nigeria in July 2013;
8. **FURTHER REQUESTS** the Chairperson of AWA to report on progress made to the next June/July 2014 Ordinary Session of the Assembly.



DECISION ON THE IMPLEMENTATION OF THE GLOBAL  
AFRICAN DIASPORA LEGACY PROJECTS  
Doc. Assembly/AU/12(XXI)Add.1

The Assembly,

1. **TAKES NOTE AND WELCOMES** the proposal by the Republic of South Africa for the establishment of a self-funding Technical Committee of Experts for the implementation of the Diaspora Legacy Projects;
2. **RECALLS** the outcomes of the Global African Diaspora Summit that took place in Sandton, South Africa on the 25 May 2012 and the adoption of the Declaration on the Global African Diaspora Summit;
3. **FURTHER RECALLS** the deliberations of the Assembly during its 19th Ordinary Session that took place in Addis Ababa in July 2012 and that which endorsed these outcomes;
4. **RECOGNIZES** that such a Technical Committee of Experts will have the necessary capacity and technical expertise to ensure the expeditious implementation of the five Diaspora Legacy Projects;
5. **APPROVES** the Establishment of a self-funding Technical Committee of Experts for the implementation of the Diaspora Legacy Projects;
6. **FURTHER APPROVES** the composition of the Technical Committee of Experts composed of the Heads/Representatives of the following Institutions:
  - i) African Union Commission;
  - ii) NEPAD Planning and Coordinating Agency (NPCA);
  - iii) African Development Bank;
  - iv) United Nations Development Programme;
  - v) United Nations Economic Commission for Africa;
  - vi) Regional Economic Communities;
  - vii) Africa Capacity Building Institute;
  - viii) Representatives of the Private Sector;
  - ix) Representatives of the Diaspora;
  - x) Heads/Representatives of Implementing Agencies (to be identified)
7. **MANDATES** the Technical Committee of Experts to co-ordinate and monitor the implementation of the Five Legacy Projects that were adopted at the Global African Diaspora Summit in May 2012, and endorsed by the Assembly in July 2012;

8. **FURTHER MANDATES** the Committee to establish the parameters, terms of reference, identify implementing agencies and explore funding modalities for the implementation of each of the five legacy projects;
9. **REQUESTS** the Commission to facilitate the convening of the first meeting of this Committee in June 2013, in order to expedite the fulfilment of its mandate in this regard;
10. **ALSO REQUESTS** the Technical Committee of Experts to report to the next Ordinary Session of the African Union in January 2014.

DECISION ON THE NEED TO STRENGTHEN AFRICAN LEADERSHIP  
IN THE UNITED NATIONS CONVENTION TO COMBAT  
DESERTIFICATION (UNCCD) PROCESS

Doc. Assembly/AU/12(XXI) Add.2

The Assembly,

1. **REITERATES** the terms of Decision Assembly/AU/Dec. 255(XIII) taken at the 13th Ordinary Session of the Assembly of the Union held in Sirte, Libya, in July 2009, recognizing the importance of the United Nations Convention to Combat Desertification (UNCCD) in those countries experiencing serious drought and/or desertification, particularly in Africa, for the livelihoods of millions of Africans affected by land degradation, desertification and drought;
2. **TAKES NOTE** of the various Declarations and Decisions of the African Ministerial Conference on the Environment, particularly its 13th Session (Bamako Declaration of June 2010) and its 14th Session (Arusha Declaration of September 2012) on the Rio+20 Commitments and their effective implementation by the African continent, within the framework of the United Nations Convention to Combat Desertification;
3. **INVITES** Member States to include land degradation, desertification and drought related issues on the list of priorities for their sustainable development;
4. **URGES** Member States to place desertification, land degradation and drought related issues at the centre of the debate on the Post-2015 Development Agenda, and recognize it as one of the sustainable development goals, particularly the neutralization of land degradation (Zero Net Land Degradation);
5. **REITERATES** the crucial importance accorded by Africa to the Convention, and **RECOMMENDS** that the Secretary General of the United Nations ensure that African leadership is maintained at the helm of the UNCCD Permanent Secretariat and **CALL UPON** the UN to provide adequate financial support to that important institution;
6. **PAYS TRIBUTE** to the outgoing Executive Secretary Mr Luc Gnacadja who has greatly contributed to the advancement of the objectives of the Convention;
7. **REQUESTS** the Chairperson of the Commission to initiate consultations with all the principal stakeholders, take all appropriate measures for implementation of this Decision, and report thereon to the next ordinary session of the Assembly;
8. **URGES** Member States to participate actively in the Conference organized on the UNCCD in Namibia next September 2013 and **COMMENDS** Namibia for hosting that important Conference.

DECISION ON "SUPPORTING FILM PRODUCTION FOR INCREASED  
CONTRIBUTION TO AFRICA'S DEVELOPMENT"  
Doc. Assembly/AU/12(XXI) Add.3

The Assembly,

1. **TAKES NOTE** of and **COMMENDS** the proposal by Burkina Faso for the initiative as well as the observations made by Member States on the same;
2. **COMMENDS** Burkina Faso for hosting the Symposium of African Movie Professionals as a side event of the 23rd edition of the Pan-African Film and Television Festival of Ouagadougou (FESPACO);
3. **CONGRATULATES** the President of Burkina Faso, H.E. Blaise Compaoré, for the excellent initiative he has taken to place such an important issue on the agenda for discussion by the Assembly;
4. **TAKES NOTE** of the Ouagadougou Declaration and the concerns expressed by the participants at the Symposium and endorses the recommendations thereon;
5. **URGES** Member States to:
  - join forces for a more dynamic pursuit of public policies for the African film industry, focusing on priority and innovative actions that could, most expeditiously, allow for the production, dissemination and distribution of African movie and audio-visual products;
  - establish a credit fund in each Member State as a way to step up film production;
  - implement the legal instruments and tools provided for in national cultural policies;
  - ensure progressive and sustainable systematization of co-production with all TV networks.
6. **REQUESTS** the African Union and the Regional Economic Communities to support African film production, promote free circulation of African film industry products and activate movie production tools and instruments;
7. **REQUESTS** the Commission to report on a regular basis to the Assembly on the status of implementation of this Decision.

DECISION ON THE AMENDMENT OF ARTICLE 8.2 OF THE  
STATUTES OF THE PAN-AFRICAN UNIVERSITY

The Assembly,

1. RECALLS its Decision, Assembly/AU/Dec. 451(XX) adopted in Addis Ababa, Ethiopia, in January 2013 on the adoption of the Statutes of the Pan-African University;
2. ALSO RECALLS Decision, Assembly/AU/Dec.418(XIX) adopted in Addis Ababa, Ethiopia in July, 2012 on the operationalization of the PAU;
3. TAKES NOTE of the recommendation of the Executive Council contained in Decision EX.CL/Dec.3(XXIII) regarding the amendment of Article 8.2 of the Pan-African University Statutes;
4. DECIDES to amend Article 8.2 of the Pan-African University Statutes to read as follows:

*Article 8.2 "The grades and privileges of PAU Rectorate and all other positions should be determined by the Executive Council, upon the recommendation of the Permanent Representatives Committee (PRC).*

DECISION ON INTERNATIONAL JURISDICTION, JUSTICE AND  
THE INTERNATIONAL CRIMINAL COURT (ICC)<sup>1</sup>  
Doc. Assembly/AU/13(XXI)

The Assembly,

1. **TAKES NOTE** of the presentation made by the Republic of Uganda, on behalf of the Eastern African Region, on International Jurisdiction, International Justice and the International Criminal Court, as well as the recommendations made by the Executive Council;
2. **REITERATES** the African Union's unflinching commitment to combating impunity and promoting democracy, the rule of law and good governance throughout the entire continent, in conformity with its Constitutive Act;
3. **DEEPLY REGRETS** that the request by the African Union (AU) to the United Nations (UN) Security Council to defer the proceedings initiated against President Omar Al Bashir of The Sudan and Senior State Official of Kenya, in accordance with Article 16 of the Rome Statute of the International Criminal Court (ICC) on deferral of cases by the UN Security Council, has not been acted upon; **REAFFIRMS** that Member States such as the Republic of Chad that had welcomed President Omar Al Bashir of The Sudan did so in conformity with the decisions of the Assembly and therefore, should not be penalized;
4. **FURTHER REAFFIRMS** its previous Decisions on the activities of the ICC in Africa, adopted in January and July 2009, January and July 2010, January and July 2011, January and July 2012 respectively, in which it expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace and reiterated AU's concern with the misuse of indictments against African leaders;
5. **STRESSES** the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard, in conformity with the principles of international law, and **EXPRESSES CONCERN** at the threat that the indictment of H.E Uhuru Muigai Kenyatta and H.E William Samoei Ruto, the President and Deputy-President of the Republic of Kenya respectively, may pose to the on-going efforts in the promotion of peace, national healing and reconciliation, as well as the rule of law and stability, not only in Kenya, but also in the Region;
6. **RECALLS** that, pursuant to the principle of complementarity enshrined in the Rome Statute of the ICC, Kenya has primary jurisdiction over the investigations and prosecutions of crimes in relation to the 2007 post-election violence, in this

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<sup>1</sup>Reservation entered by the Republic of Botswana on the entire decision

regard, **DEEPLY REGRETS** the Decisions of the Pre-trial Chamber II and the appeals Chamber of the ICC on the admissibility of the cases dated 30 May and 30 August 2011 respectively, which denied the right of Kenya to prosecute and try alleged perpetrators of crimes committed on its territory in relation to the 2007 post-election violence;

7. **SUPPORTS AND ENDORSES** the Eastern Africa Region's request for a referral of the ICC investigations and prosecutions in relation to the 2007 post-election violence in Kenya, in line with the principle of complementarity, to allow for a National Mechanism to investigate and prosecute the cases under a reformed Judiciary provided for in the new constitutional dispensation, in support of the on-going peace building and national reconciliation processes, in order to prevent the resumption of conflict and violence in Kenya;
8. **REQUESTS** the African Union Commission, in collaboration with the African Union Commission on International Law (AUCIL), to organize, with the participation of Member States, all the relevant Organs of the African Union and other relevant Stakeholders, a brainstorming session, as part of the 50th Anniversary discussion on the broad areas of International Criminal Justice System, Peace, Justice and Reconciliation as well as the impact/actions of the ICC in Africa, in order not only to inform the ICC process, but also to seek ways of strengthening African mechanisms to deal with African challenges and problems;
9. **ALSO REQUESTS** the African Union Commission to follow-up on this matter and to report regularly on the implementation of the various Assembly decisions on the ICC.

**DECISION ON THE ELECTION OF FOUR (4) MEMBERS OF THE AFRICAN  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)  
Doc. EX.CL/793(XXIII)**

The Assembly,

1. **TAKES NOTE** of the election of four (4) Members of the African Commission on Human and Peoples' Rights (ACHPR) by the Twenty-Third Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia in May 2013;
2. **APPOINTS** the following Members of the ACHPR for a six (6)-year term:

No	Name	Country
1.	Ms. Lucy Asuagbor	Cameroon
2.	Ms. Soyata	Mali
3.	Mr. Lawrence Murugu Mute	Kenya
4.	Mr. Yeung Kam John Yeung Sik Yuen	Mauritius



DECISION ON THE ELECTION OF FOUR (4) MEMBERS OF THE  
AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND  
WELFARE OF THE CHILD (ACEWRC)  
Doc. EX.CL/794(XXIII)

The Assembly,

1. TAKES NOTE of the election of four (4) Members of the African Committee of Experts on the Rights and welfare of the Child (ACEWRC) by the Twenty-Third Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia in May 2013;
2. APPOINTS the following Members of the ACEWRC for a five (5)-year term:

No	Name	Country
1.	Ms. Azza Ashmawy	Egypt
2.	Ms. Suzanne Aho-Assouma	Togo
3.	Ms. Sidikou Aissatou Alassane Moulaye	Niger
4.	Mr. Joseph Ndayisenga	Burundi

DECISION ON THE TWELFTH REPORT OF THE COMMITTEE  
OF TEN ON UN SECURITY COUNCIL REFORM  
Doc. Assembly/AU/9(XXI)

The Assembly,

1. **RECALLS** Decision Assembly/AU/Dec430 (XIX), **TAKES NOTE** of the Twelfth Report of His Excellency Dr. Ernest Bai Koroma, President of the Republic of Sierra Leone and Coordinator of the Committee of Ten Heads of State and Government on the reform of the United Nations (UN) Security Council;
2. **ALSO TAKES NOTE** of the recent developments in the intergovernmental negotiations on the Security Council reform; in particular, the High-level meetings of the Committee of Ten Heads of State and Government at the levels of Ministers of Foreign Affairs and Permanent Representatives held in Freetown;
3. **REAFFIRMS** its strong commitment to the **Ezulwini Consensus** and **Sirte Declaration** containing the African common position on the reform of the UN Security Council; and **COMMENDS** the Committee of Ten Heads of State and Government for implementing the aspect of holding high-level meetings;
4. **WELCOMES** the efforts of the African Permanent Representatives to the UN in promoting and defending the continent's interest in the UN Security Council Reform process and **UNDERScores** the overriding need to ensure that the interest of Africa continues to be maintained and safeguarded at all times in the ongoing intergovernmental negotiations on Security Council reform, and **REITERATES ITS CALL** for Africa to continue to speak with one voice and cohesively on all issues relating to the UN Security Council reform and related matters;
5. **REITERATES** its request that the African Permanent Representatives of the Committee of Ten to the UN in participating in the on-going intergovernmental negotiations on the UN Security Council reform, continue to liaise with other African Permanent Representatives to the United Nations, and to continue also, to dialogue with and engage other Member States and interest groups in the reform process, with a view to advocating, canvassing and promoting the African common position;
6. **ENCOURAGES** the African Permanent Representatives of the Committee of Ten to the UN to continue to build on and intensify efforts directed at building alliances in support of the African common position with diverse interest groups engaged in the intergovernmental negotiations and to seek any further guidance if necessary, in furtherance of its mandate;
7. **REQUESTS** the Committee of Ten to continue with its high-level meeting outside the margins of the Summit to discuss issues relating to the reform of the Security Council with a view to further building on the gains made so far;

8. **ALSO REQUESTS** the Committee of Ten in continuing to intensify efforts in advocating, canvassing and promoting the African common position to endeavour to reach out at the highest political levels for the purpose of garnering and galvanizing the necessary political will in support of the African common position;
9. **FURTHER REQUESTS** the Commission to continue to facilitate the activities of the African Permanent Representatives of the Committee of Ten to the UN in the intergovernmental negotiations on UN Security Council reform and related consultations thereon;
10. **REITERATES** that the Committee of Ten remains seized of this matter until Africa achieves its objectives on the reform of the UN Security Council, and requests the Committee to present a report to the next Ordinary Session of the Assembly in January 2014.

DECISION ON ALTERNATIVE SOURCES OF  
FINANCING THE AFRICAN UNION  
Doc. Assembly/AU/6(XXI)

The Assembly,

1. **COMMENDS** H.E. Olusegun Obasanjo, Former President of the Federal Republic of Nigeria and Members of his Panel for the excellent Report and its recommendations;
2. **AGREES** that the African Union should be provided with adequate and predictable resources to enable it to fund its programmes, thus reducing the dependency on external resources in this regard;
3. **APPROVES** the Report in principle<sup>2</sup>;
4. **COMMITTS** to self-reliance in the mobilisation of resources in the financing of the African Union programmes in order to avert undue dependency;
5. **REQUESTS** the Commission to submit the Report to the Conference of Ministers of Finance and Economic Planning for their urgent consideration and concrete proposals of financing and the implementation modalities of different options proposed, including exploring increased assessed contributions and other additional proposals by Member States, and report to the Assembly at its next Ordinary Session in January 2014.

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<sup>2</sup> Reservation entered by the Republic of Cape Verde on Paragraph 3

DECISION ON THE ESTABLISHMENT OF AN AFRICAN UNION  
FOUNDATION FOR VOLUNTARY CONTRIBUTIONS  
TOWARDS FINANCING THE AFRICAN UNION  
Doc. Assembly/AU/6(XXI)

The Assembly,

1. **COMMENDS** the High Level Panel on Alternative Sources of Financing the African Union for the quality of their work undertaken over the past two years;
2. **WELCOMES** the proposal of creating an AU Foundation for voluntary contributions towards financing the African Union;
3. **DECIDES** to establish an AU Foundation to accommodate the private sector, individuals and any other donations or contributions;
4. **CALLS UPON** Member States, private sector, donors, philanthropists, and individuals to contribute towards the Foundation to ensure its operationalization.

DECISION ON THE REPORT OF HEADS OF STATE AND GOVERNMENT  
ORIENTATION COMMITTEE (HSGOC) ON NEPAD  
Doc. Assembly/AU/7(XXI)

The Assembly,

1. **NOTES WITH APPRECIATION** the Report by the Chairperson of the NEPAD Heads of State and Government Orientation Committee (HSGOC), H.E. Macky Sall, President of the Republic of Senegal;
2. **ENDORSES** the conclusions of the Twenty-Ninth Session of the NEPAD HSGOC;
3. **RE-AFFIRMS** the continued relevance and role of NEPAD as the African Union flagship development strategy and programme and its continued contributions to advancing continental transformation in the spirit of championing Pan-Africanism and African Renaissance as Africa celebrates the 50<sup>th</sup> OAU-AU anniversary;
4. **RECALLS** the Decision Assembly/AU/Dec.413(XVI11) based on the conclusions of 26<sup>th</sup> HSGOC Session on Domestic Resource Mobilization (DRM) for NEPAD programmes and projects regarding the conduct of a comprehensive study on innovative mechanisms and instruments, towards energizing African ownership of the continent's development agenda and programmes;
5. **WELCOMES** the offer of the Republic of Senegal to convene a High-Level Summit and Business Conference on Financing NEPAD programmes and projects in Senegal at a later date, to taking forward to the domestic resource mobilization agenda with a view for focused discussion at the High Level Conference;
6. **TO THIS EFFECT, REQUESTS** the NPCA and UNECA to finalize the findings and conclusions of the study report on "*Mobilizing Domestic Financial Resources for implementing NEPAD National and Regional Programmes - Africa Looks Within*" in collaboration with UNDP and African Development Bank, after due consideration by the NEPAD Steering Committee;
7. **APPRECIATES** the launching of the Virtual PIDA Information Centre (VPic) by the HSGOC as a centralized platform to consolidate information and statistical data on regional infrastructure projects in the context of the Programme for Infrastructure Development in Africa (PIDA) and the Presidential Infrastructure Champion Initiative (PICl);
8. **COMMENDS** the NPCA and AUC for this critical milestone to improve communication on PIDA Priority Action Projects (PAP) and PICl by targeting African countries, policy makers, investors and the RECs. **EMPHASIZES** that VPic will support the PIDA Africa Infrastructure Database (AID) and advance monitoring and evaluation of infrastructure project implementation;

9. **AFFIRMS** the critical need to include key regional infrastructure projects covering the Central and East African sub-region in the PIDA Priority Action Projects (PAP) which was raised during the BRICS-Africa Dialogue. Based on the recommendation of the Chairperson of the Commission, **WELCOMES** the set-up of the AU-RECs Task Team on Infrastructure coordinated by the NPCA Chief Executive Officer as a key outcome of the AUC-RECs Retreat held of March 2013 in Durban following the 5<sup>th</sup> BRICS Summit and **AGREES** to place the progress report of the work of the Task Team on the agenda of the next HSGOC;
10. **CONGRATULATES** the Government of the Republic of South Africa under the leadership of H.E. President Jacob Zuma for his vision and successfully hosting the 5<sup>th</sup> Brazil, Russia, India, China, South Africa (BRICS) Summit in Durban in March 2013, along with the landmark BRICS-Africa Dialogue Forum, wherein Africa's priority regional infrastructure projects were showcased by the NEPAD HSGOC Chairperson on behalf of the Union;
11. **SPECIFICALLY NOTES** the briefing by H.E. President Jacob Zuma on the outcomes of the BRICS Summit, particularly the high attendance and unity displayed by African leaders, commitment by BRICS countries to strengthen cooperation with the continent in infrastructure and industrialization and the proposed BRICS-led Development Bank as the expected funding model to promote and accelerate the implementation of multi-country projects;
12. **THEREFORE WELCOMES** the key outcomes of the 5<sup>th</sup> BRICS Summit reflected in the eThekweni Declaration premised on the theme: 'BRICS and Africa - Partnership for Development, Integration and Industrialization' and the path being forged to strengthen partnership between the BRICS countries, AUC, NPCA and RECs and the proposition to convene similar BRICS-Africa Retreat during the upcoming 6<sup>th</sup> BRICS and G20 Summits to be hosted by Brazil and Russia respectively;
13. **ALSO WELCOMES AND ENDORSES** the 2013 African Union accountability report on Africa-G8 commitments focusing on HIV/AIDS, Tuberculosis and Malaria as a firm demonstration of Africa's pledge to advance mutual accountability in its partnership engagements and **EXPRESSES APPRECIATION** to the NPCA, AUC and UNAIDS for jointly producing this second African accountability report;
14. **REQUESTS** the NPCA, AUC and UNAIDS to widely disseminate the key messages in the accountability report to African stakeholders and partners for the implementation of the conclusions;
15. **REITERATES** the need for Africa's partnership engagement with the G8 and G20 to remain focused on the continent's development priorities especially in agriculture and infrastructure development.

**DECISION ON THE ESTABLISHMENT OF AN AFRICAN CAPACITY  
FOR IMMEDIATE RESPONSE TO CRISES**

The Assembly,

1. **RECALLS** the Report of the Chairperson of the Commission on the establishment of an Capacity for Immediate Response to Crises (ACIRC) submitted to the 6<sup>th</sup> Ordinary meeting of the Specialized Technical Committee on Defense, Security and Safety (STCDSS), held in Addis Ababa, on 30 April 2013, as well as the Declaration adopted by the STCDSS requesting a comprehensive assessment and evaluation of the challenges encountered in the operationalization of the African Standby Force (ASF) and its Rapid Deployment Capability (RDC);
2. **DECIDES** in principle to immediately establish, as a transitional arrangement and pending the full operationalization of the ASF and its RDC, an African Capacity for Immediate Response to Crises, to provide the AU with a flexible and robust force, made up of military/police capabilities, force enablers and multipliers, equipment and resources to be voluntarily provided by Member States on the basis of their willingness and capabilities, to be deployed very rapidly to effectively respond to emergency situations, within the framework of the African Peace and Security Architecture (APSA);
3. **DECIDES FURTHER** that the contributions, referred to in paragraph 2 above, will be promptly provided by individual Member States and/or by the regional capabilities being developed within the framework of ASF;
4. **DECIDES ALSO** that Member States willing and ready to immediately contribute military and police capabilities, force enablers and multipliers, as well as equipment and financial resources and any other necessary assets, or make a contribution in any specific area among the above, will make appropriate notification to the AU Commission at their earliest convenience;
5. **DETERMINES** that this strategic endeavour of historic value and scope, aimed at helping in bringing about African solutions to Africa's problems, calls for continued commitment and involvement of Heads of State and Government themselves;
6. **REQUESTS** the Chair of the Union and the Chairperson of the Commission to undertake appropriate consultations to build the broadest possible support and adherence to the implementation of this decision;
7. **REQUESTS** the Commission to work out the detailed modalities for the operationalization of the ACIRC and to submit recommendations in this respect to a meeting of the Specialized Technical Committee on Defense, Security and Safety (STCDSS) to be held not later than the last quarter of 2013;
8. **FURTHER REQUESTS** the Chairperson of the Commission to submit to it a report on the implementation of this decision at its next ordinary session, in January 2014.



DECLARATION ON THE REPORT OF THE PEACE AND SECURITY COUNCIL ON  
ITS ACTIVITIES AND THE STATE OF PEACE AND SECURITY IN AFRICA  
Doc. Assembly/AU/5(XXI)

The Assembly,

*Having reviewed* the state of peace and security on the continent and the steps we need to take to hasten the attainment of our common objective of a conflict-free Africa, on the basis of the report of the Peace and Security Council on its activities and the state of peace and security in Africa;

*Welcoming* the significant progress made in the operationalization of the African Peace and Security Architecture (APSA), the adoption of a number of instruments on democracy, human rights and good governance, which represent a consolidated framework of norms and principles towards the structural prevention of conflicts, the advances in conflict resolution and peace building on the continent, as well as the partnerships built with relevant international stakeholders;

*Noting*, however, the challenges that continue to be encountered in the full operationalization of the APSA, including key components such as the African Standby Force (ASF), continued prevalence of conflict, insecurity and instability in some parts of the continent, with its attendant humanitarian consequences and socio-economic impact, as well as the resurgence of unconstitutional changes of Government, the frequent recourse to armed rebellion to further political claims, the threats posed by terrorism, hostage taking and the attendant payment of ransoms, illicit proliferation of arms, transnational organized crime, drug trafficking, piracy, and illicit exploitation of natural resources to fuel conflicts;

*Noting also* the need for increased funding from within the continent to assert Africa's ownership and leadership, as well as the challenges faced in building innovative and flexible partnership with the United Nations and other stakeholders;

*Stressing* that the 50<sup>th</sup> anniversary of the OAU/AU offers a unique opportunity to review progress made and challenges encountered, as well as to chart the way forward, and *reiterating*, in this respect, our determination to address decisively the scourge of conflict and violence on our continent, with the view to bequeath to the next generation of Africans a prosperous continent at peace with itself:

1. **RECOMMIT OURSELVES** to accelerate the full operationalization of the APSA, including refinement, where necessary, of existing provisions to facilitate their implementation. **WE CALL FOR** the strengthening of the relations between the AU and the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution (RECs/RMs), notably through the effective implementation of the relevant provisions of the PSC Protocol and the Memorandum of Understanding between the AU and the RECs/RMs, bearing in mind AU's primary responsibility in the maintenance of peace and security in Africa. **WE ENDORSE** the establishment of the Pan-Wise network comprising the

Panel of the Wise, similar structures within the RECs/RMs and all other African actors contributing to peace-making through preventive action and mediation, as agreed to during the second retreat of these organs held in Addis Ababa from 11 to 12 April 2013;

2. **UNDERTAKE** to make renewed efforts to address the root causes of conflicts in a holistic and systematic manner, including through implementing existing instruments in the areas of human rights, rule of law, democracy, elections and good governance, as well as programmes relating to cooperation, human development, youth and employment. In this respect, **WE CALL ON** all Member States that have not yet done so, to become parties to these instruments, by the end of 2013, and **REQUEST** the Commission to review thoroughly the implementation status of these instruments and programmes and to submit to the Assembly, by January 2014, concrete proposals on how to improve compliance;
3. **COMMIT OURSELVES**, within the framework of the African Solidary Initiative, to extend full support to those African countries emerging from conflict, to assist them to consolidate their hard-won peace and avoid relapse into violence. **WE LOOK FORWARD** to the convening of the planned African Solidary Conference (ASC), in Addis Ababa, in September 2013, and **COMMIT** to making significant pledges on that occasion;
4. **STRESS** the need for all Member States to extend full cooperation and support to the PSC, bearing in mind that, in carrying out its duties under the Protocol, the PSC acts on behalf of the entire membership of the AU;
5. **COMMIT** ourselves to increase substantially our contribution to the Peace Fund, for Africa truly to own the efforts to promote peace, security and stability on the continent. In this respect, we request the Commission to submit concrete proposals to the Assembly, in January 2014, including with respect to the statutory transfer from the AU regular budget to the Peace Fund. In the meantime, **WE ENCOURAGE** all Member States to make exceptional voluntary contributions to the Peace Fund on the occasion of the OAU Golden Jubilee, and **REQUEST** the Commission to report, by January 2014, to the Assembly on Member States response to this appeal;
6. **STRESS THE NEED** to build an innovative, flexible action-oriented and balanced partnership with the international partners, notably the United Nations, to ensure that Africa's concerns and positions are adequately taken into account by the Security Council when making decisions on matters of fundamental interest to Africa, **REITERATE** the terms of the communiqué issued by the PSC at its 307th meeting held on 9 January 2012, and **REQUEST** the PSC to convene an open session at Summit level, in order to review the partnership with the United Nations in light of the challenges encountered recently regarding the situation in Mali and other issues related to peace and security on the continent;

7. **CALL ON** the African civil society to continue to play its positive role in promoting peace, security and stability as called for by the PSC Protocol and **REQUEST** the Commission and the PSC to take all necessary steps to enhance interaction with civil society;
8. **WELCOME** the progress made in the relations between Sudan and South Sudan, with the signing of the Implementation Matrix for the Agreements signed of 27 September 2012 and **CALL** for a transparent inquiry into the killing of the paramount Chief of the Ngok Dinga Community in Abyei, as well as the strengthening and acceleration of the process of resolving the Abyei issue; in Somalia, with the consolidation of the security and political gains recorded over the past few years; the Great Lakes Region, with the signing of Peace, Security and Cooperation Framework; and in Mali, with the liberation of the northern part of the country and on-going efforts for the holding of elections. **WE CALL ON** all concerned stakeholders to spare no efforts in consolidating these achievements, and addressing the challenges at hand, in line with the relevant PSC communiqués. **WE ALSO WELCOME** the progress made in peace building and post-conflict recovery in Burundi, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Liberia and Sierra Leone, **ENCOURAGE** the countries concerned to pursue their efforts and **CALL ON** fellow African countries and the rest of the international community to continue assisting them in their efforts;
9. **REITERATE** the AU's concern at the continued challenges in the peace processes between Eritrea and Ethiopia and the relations between Eritrea and Djibouti, and **REQUEST** the Chairperson of the Commission to take appropriate steps to facilitate progress in these situations, in line with the powers entrusted to her by the PSC Protocol and earlier relevant decisions of the Assembly, and to report to the PSC, no later than October 2013, on the steps taken in this regard. **WE ALSO REITERATE OUR CONCERN** at the continued impasse in the conflict in Western Sahara, and **CALL FOR** renewed efforts based on relevant OAU/AU and UN resolutions, in order to overcome this impasse;
10. **ALSO EXPRESS CONCERN** at the prevailing situation in Madagascar and fully support the PSC and SADC decisions on the issue of candidatures to the forthcoming presidential elections. **WE CONDEMN** the illegal seizure of power in Central African Republic and the serious violations of human rights committed by the Seleka rebel group and in this regard, **COMMEND** the efforts of the Economic Community of Central African States (ECCAS), **ENDORSE** the PSC decisions on the matter and **CALL FOR** renewed efforts to restore security and ensure the return to constitutional order, bearing in mind the relevant PSC decisions and conclusions of the inaugural meeting of the International Contact Group on CAR (ICG-CAR). **WE STRESS THE NEED** for the early return to constitutional order in Guinea Bissau, noting with satisfaction ECOWAS, AU, CPLP, EU and UN coordinated efforts;

11. **REITERATE** our support to the sovereignty of the Union of the Comoros over the island of Mayotte, as well as the sovereignty of the Republic of Mauritius over the archipelago of Chagos;
12. **REQUEST** the PSC to actively keep under review the implementation of the Declaration and Plan of Action adopted by the Special Session on the Consideration and Resolution of Conflicts in Africa, held in August 2009, at its Summit meeting referred to in paragraph 6 above;
13. **PLEDGE OUR FULL COMMITMENT** to the effective implementation of this Declaration and to adopting new measures, as and of necessary, so as to open a new chapter in our collective action in favor of peace, security, stability and shared prosperity throughout Africa and the rest of the world.

DECLARATION ON THE TERRORIST ATTACKS IN NIGER AND/ON THE  
SOLIDARITY OF AFRICA WITH THE REPUBLIC OF NIGER

The Assembly,

*Deeply shocked* and aggrieved by the two heinous terrorist attacks against the public and industrial establishments in Agadez and Arlit in Niger on 23 May 2013;

*Recognising* the commitment and determination of Niger to fight against the scourges of terrorism and cross border criminality as well as its invaluable contribution to the African led International Support Mission in Mali (AFISMA);

*Recalling* the AU instruments relating to the prevention and fight against terrorism, *reaffirming* the need to pursue and intensify efforts to face the scourges of terrorism and trans-national crimes, stressing, in this regard, the importance of enhancing cooperation between the Member States as regards security and bearing in mind the seriousness of the terrorist threat in the Sahelo-Saharan Region;

1. **STRONGLY CONDEMNS** the treacherous terrorist attacks perpetrated in Agadez and Arlit, **EXPRESSES** the solidarity of Africa with the people and Government of Niger and **ASSURES** them of its full support in their efforts to fight against terrorism and organised transnational crimes;
2. **CONVEYS** its heartfelt condolence to the families of the victims of the terrorist attacks in Agadez and Arlit and **EXPRESSES** its wishes for the prompt recovery of the injured persons;
3. **WELCOMES** the renewed commitment and courageous actions of President Mahamadou Issoufou for the promotion of peace, security and stability in the Sahelo-Sahara Region as demonstrated particularly by the remarkable contribution of Niger to AFISMA;
4. **STRESSES ONCE AGAIN** the need for enhanced cooperation and coordination between the AU Member States in the fight against the scourge of terrorism and organised transnational crimes and **ENCOURAGES**, in this regard, the Commission to pursue the efforts initiated with the countries of the Sahelo-Saharan Region, with the organisation on 17 March 2013 of the Ministerial Meeting in Nouakchott and that of the Heads Security and Intelligence Services in Bamako on 18 April 2013 and **LOOKS FORWARD** with interests to the next similar meeting scheduled in June 2013;
5. **REQUESTS** the Commission, in cooperation with the African Centre for Studies and Research on Terrorism (CAERT) and the Committee of African Security and Intelligence Services (CISSA), to send urgently an assessment mission to Niger to determine the modalities for assistance to that country and report to the meeting of the Heads of Security and Intelligence Services scheduled in June 2013;

6. APPEALS to all Member States which have not yet done so to become party to all the African and International Legal Instruments relating to the prevention and elimination of terrorism and to take all appropriate measures for cooperation and mutual assistance in this field.

**RESOLUTION ON THE LIFTING OF THE ECONOMIC AND TRADE  
EMBARGO IMPOSED ON THE REPUBLIC OF CUBA BY  
THE UNITED STATES OF AMERICA**

**We**, the Heads of State and Government of the African Union meeting in our Twenty-First Ordinary Session in Addis Ababa, Ethiopia from 26 to 27 May 2013;

*Recalling* Resolution Assembly/AU/Res.1(XV) adopted by our Assembly at its 15th Ordinary Session held in Kampala, Uganda, on 27 July 2012, Resolution Assembly/AU/Res.(XVII) adopted at its 17th Ordinary Session held in Malabo, Equatorial Guinea, on 1 July 2011, and Resolution Assembly (AU/Res.1(XIX) adopted at its 19th Ordinary Session held in Addis Ababa, Ethiopia, in July 2012 and in particular, the calls made to the Government of the United States of America to lift the unjustifiable and long-standing economic and trade embargo imposed on the Republic of Cuba to enable it enjoy all the legitimate prospects for sustainable development;

*Reaffirming* our commitment to further strengthen Africa-Caribbean relations as expressed by the Assembly of Heads of State and Government in Kampala, Uganda in June 2010;

*Also Reaffirming* our full support for the Resolution of the General Assembly of the United Nations on the: "Necessity of ending the economic, financial and commercial embargo imposed by the United States of America against Cuba";

*REITERATE* our call and, once again *INVITE* the Government of the United State of America to lift long-standing and unjustifiable economic and trade embargo imposed on the Cuban people.