

REPUBLIC OF KENYA

PARLIAMENT
OF KENYA
LIBRARY



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION – 2011

THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

REPORT ON MILITARY MODERNISATION PROGRAMES

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

SEPTEMBER, 2011

1. PREFACE

Mr. Speaker,

1.1 MANDATE OF THE COMMITTEE

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

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

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

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

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

1. Defence;

2. Foreign Affairs;
3. East African Community; and
4. National Security Intelligence Service.

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

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

MEMBERSHIP

1.1.5 The Committee comprise the following Members of Parliament:-

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

1.2 THE MILITARY MODERNISATION PROGRAMES

Mr. Speaker,

1.2.1 The Departmental Committee on Defence and Foreign Relations in exercising its oversight mandate inquired into military modernisation programmes, their implementation and value for money. To achieve this objectives the Committee held meetings with the Ministry of State for Defence, contractors and consultants for the various construction works under military modernisation, undertook visits of the military modernisation projects across the country, visited South Africa, Israel, Italy, and Spain to inspect the various equipment under refurbishment and or purchase.

1.2.2 The Ministry conceived the modernisation programme in 2004. The programme was initially to run for a period of 10 years but was fast-tracked and its period of implementation reduced to three years following a reviewed threat analysis/assessment.

1.2.3 The Committee further held meetings with contractors and consultants for the following projects:-

- (i) Kenya Military Academy (KMA), Lanet
- (ii) Recruits Training School (RTS) Eldoret
- (iii) School of Infantry (SOI), Isiolo
- (iv) School of Artillery (SOA), Isiolo
- (v) 15 Kenya Rifles (KR) Military Barracks, Mariakani
- (vi) Laikipia Air Base (LAB) Runway, Nanyuki

1.2.4 From the committee meetings with Ministry of State for Defence officials, project contractors and consultants, visits to military camps and the foreign visits to South Africa, Israel, Italy and Spain the Committee observed and recommends that:-

- (i) The Government should allocate more resources to the Ministry of State for Defence to cater for the modernisation programme.
- (ii) The Ministry of State for Defence should prioritise funds allocation in the modernisation programme so as to address immediate needs of the Kenya Defence Forces.
- (iii) The Ministry of State for Defence should undertake due diligence of companies bidding for defence contracts to determine their capacity and competence in delivering goods and services before entering into any procurement contracts.
- (iv) While procuring goods and services the Ministry of State for Defence should at all times adhere to the Public Procurement and Disposal Act, 2005 and attendant procurement regulations.
- (v) A Financial and forensic audit should be carried out on all the modernisation programmes, undertaken in the last five years, by the Ministry of State for Defence.
- (vi) The public procurement and oversight authority should undertake procurement audits of projects by the Ministry of State for Defence on an annual basis and submit their report to the relevant Parliamentary oversight Committee.
- (vii) The Ministry of State for Defence should develop a comprehensive contract management system and procedures in compliance of section 47 of PPDA and regulation 31 of the PPDR.

These recommendations form part of the recommendations contained in other parts of this report.

ACKNOWLEDGEMENT

Mr. Speaker,

1.2.5 I wish to express my appreciation to Members of the Committee who sacrificed time from their families and constituents to undertake the inquiry. The Committee is grateful to the Speaker for allowing the Committee to undertake the inquiry and to the office of the Clerk, for facilitating and providing technical support to the Committee.

1.2.6 The Committee is also grateful to the Ministry of State for Defence and in particular to the Service Commanders for sharing information and making the visits successful.

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

Mr. Speaker,

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

Signed:

**THE HON. ADAN W. KEYNAN, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS**

Date:

MILITARY MODERNISATION PROGRAMMES

Background to military modernisation programmes.

The military modernisation programme was conceived in 2004 by the Ministry of State for Defence. The programme was initiated to modernise the Kenya Defence Force so as to create credible deterrence and cope with emerging security threats in defending the sovereignty and territorial integrity of the Republic of Kenya. The programme was initially to run for a period of ten (10) years but was fast-tracked to three (3) years.

2.0 PROCUREMENT OF ARMoured PERSONNEL CARRIERS (APC's)

2.1 MEETING WITH THE MINISTER FOR DEFENCE

The Minister for Defence, Hon. Mohamed Yusuf Haji, EGH, MP appeared before the Committee and briefed it as follows:-

Procurement in the Defence Forces

2.1.1 Procurement in the Defence Forces is guided by the provisions of the Public Procurement and Disposal Act, 2005 and Regulations of 2006. The procurement of Armoured Personnel Carriers was done in 2007.

Armored Personnel Carriers (APC)

2.1.2 The current troops carrying vehicles by the Army have soft 'skin' and therefore making them easy target for demobilization by small weapons. As a result, the DOD sought Armored Personnel Carriers with mine plates, plastic protection and reasonable firepower that provides the infantry with the capability to move close to the enemy while minimizing exposure to small arms fire, mines and improvised explosive devices. The acquisition of the APC's would ensure protected mobility for the Defence Forces.

Comment [U1]: Bodies, may be?

2.1.3 In 2010 the Kenyan Army prepared User Service Specification Requirements giving details of the type of APC's to be procured to meet operational needs of one battalion. Using internet, a range of APC's were identified from the Republic

of South Africa. A fact finding mission comprising of three military officers and a civilian visited four firms manufacturing APC's in South Africa in August, 2010.

(i) M/s Mechem Technology Limited – manufactures Casper Mark II APC's.

(ii) M/s OTT Technology – manufactures Puma APC's

(iii) M/s Paramount Group

(iv) M/s Mara Anchor integrated Convoy Protection Revor III

2.1.4 After visiting South Africa, the technical and evaluation team made presentations to the Equipment and Infrastructure Approval Committee (EAIAC) in September, 2010. They recommended Puma M26-15 APC manufactured by ATT Technology after an in-depth analysis of the vehicle performance, technical and operational aspects, technology transfer, delivery period and cost benefit analysis.

2.1.5 The Ministry of State for Defence opted for Direct Procurement, under Section 74 of the Public Procurement and Disposal Act, due to the security threat and the urgent need to provide protected mobility to the soldiers. The procurement was approved by the Ministerial Tender Committee (MTC) in October, 2010 and the contract awarded to M/s OTT Technology of South Africa at a cost of US \$ 18, 150, 000 equivalent to Kshs. 1, 452, 000, 000. M/s OTT Technologies were the lowest in cost and offered the shortest delivery period and were ready to provide technology transfer as per Department of Defence (DOD) specifications.

2.1.6 The draft contract was sent to the Attorney General in October 25, 2010 and the contract was signed on November 30th, 2010. Two DOD engineers will be attached to the company starting March to September 2011 for technology transfer training. The APC's delivery timelines will be May 15th to 10th September, 2011.

2.1.7 When the matter of the purchase of APC's appeared in the press the contract had not been signed and since then the Ministry of State for Defence has taken the responsible media house to court which issued an injunction stopping the media house from publishing the allegations.

2.2 MEETING WITH MAJ. GEN. KIANGA - CHIEF OF GENERAL STAFF

The Chief of the General staff, Maj. Gen. Kianga, appeared before the Committee on 22nd February, 2011 and briefed the Committee as follows, that:-

Operational status of the Defence Forces

2.2.1 The operational status of the Navy is below expectation. The Department of Defence is however addressing the underlying challenges. Due to in adequate funding and other issues it was not possible to retro fit the warships as recommended by the manufacturers thus creating gaps. The ships operated by the navy are ageing and there is therefore need to acquire new equipment. The way forward is to acquire the capacity to repair ships up to the fourth line and this requires technology acquisition and capacity development. The replacement or decommissioning or retrofit for equipment is based on the Strategic Defence Review (SDR).

2.2.2 The force ratio between Kenya and neighbours is a concern in terms of human resource and equipment. To address this challenge, the Department of Defence embarked on the modernization programme and has achieved considerably in the following priority areas.

- (i) Firepower – better equipment
- (ii) Manpower - 98% achievement
- (iii) Early Warning - 70% delivery
- (iv) Mobility - This will ensure the mobility of forces. Equipment such as helicopters, APC's are being purchased to increase mobility. The Department of Defence is also refurbishing AML's and acquiring necessary technology for repair of equipment.
- (v) Infrastructure – The Ministry of State for Defence is investing in the capacity to meet threats, however underfunding is affecting infrastructure development.

Promotions

2.2.3 Each rank in the Defence Forces has a retirement age with a ceiling. Officers are retired when they reach the ceiling in their ranks. While recruitment is on the basis of a calculated strength of each community, promotions are determined by delivery of services/performance and competence.

Committee observations

The Committee made the following observations:-

- (i) Achievement of value for money cannot be ascertained in the procurement process of APC's.
- (ii) The procurement process for the APC's is wanting from the beginning from the identification of the firms, award of the tender and the contract price. The delivery of the AP's not considered as procurement and awarded to M/s OTT without any engagements.
- (iii) The communication equipment and weapons system awarded separately under not so clear terms and process.
- (iv) Alleged malpractices in procurement of major equipment – APC's
- (v) Operational serviceability of defence equipment
- (vi) Slow place in the military modernization programme
- (vii) The method of identifying the four South African firms for tendering purposes was not transparent and in contravention of regulation 54 (3) and (4) of the public procurement and disposal act which requires prequalification of firms.

2.3 MEETING WITH THE ATTORNEY GENERAL

The Attorney General appeared before the Committee and informed it that he was not consulted but the contract was sent to the Solicitor General who submitted comments on the contract.

2.3.1 The Solicitor General on November 5, 2010 submitted comments on the draft contract submitted by the MOSD through letter MOSD 09/15A VOL.XXVI dated

October 22, 2010 to the effect that the use of Direct procurement in the contract was in contravention of section 133 (2) and (3) of the PPDA and advised that the provisions of the PPDA with regard to direct procurement be complied with.

2.4 MEETING WITH THE PUBLIC PROCUREMENT AND OVERSIGHT AUTHORITY

2.4.1 The VCGS wrote (DOD/CGS/23 dated 17/8/10) to the PS requesting for emergency procurement of PC's for Operation Linda Nchi citing the deadline by IGAD Heads of State Summit resolution held in Kampala, availability of funds from treasury for emergency operations and that the Kenya army had devised user specifications requirements (USSSR) and identified a range of APC's from South Africa. In his letter the VCGS requested the PS to appoint a procurement officer to join team identified to form Special Technical and Evaluation Committee (STEC) expected to finalize the task not later than August 28, 2010.

2.4.2 The STEC travelled to South Africa on 23 to 27 August, 2010 and reported to the CGS on August 31, 2010 recommending PUMA M26-15 as the most appropriate due to its low cost, favourable purchase terms and logistical support and further recommended that Reva III be considered as viable alternative in future.

2.4.3 On the request of the COS done through letter DHQ/SYS/LAND/304/01 dated September 01, 2010, the MTC approved restricted tendering for the supply of 66 APC's in September 03, 2010. Four (4) South African firms were identified and evaluated as follows:-

NO	Criteria	Mechem PTY	OTT Tech	Paramount	Integrated Convoy
		Casspir MKII	PUMA	MARAUDER	REVA III
1.	Price basic vehicle (USD)	308,000	265,000	330,000	330,000
2.	Delivery/month (Units)	10	15 - 20	10	30
3.	Lead time (Months)	5	4.5	6 - 8	3

4.	Payment terms	50% advance upon order 50% upon inspection at firms premises	50% advance upon order 40% pre-inspection at firms premises 10% final inspection in Kenya	30% advance on order 50% on final inspection at firms premises	No advance payment
5.	Warranty	12Months/20,000 Kms	12months/20,000 Kms	24 months	24 months
	Specifications	72	89	84	82
	Cost	308,000	265,000	330,000	330,000

2.4.4 The Equipment and Infrastructure Approval Committee (EIAC) chaired by the COS on September 15, 2010 approved the procurement of puma M26-15 APC and the COS wrote to M/s OTT on September 16, 2010 on the evaluation results and requesting them to submit an offer and a draft detailed contract as per specifications by September 22,2010. The Kenya Army HQ wrote the USSR for APC on September 27, 2010.

2.4.5 DHQ vide letter DHQ/SYS/LAND/304/01 wrote to the PS requesting for direct procurement of 66 APC for the Kenya Army citing the urgent effective response to security threat challenges, PUMA most suitable APC to meet these challenges, PUMA best evaluated by the fact finding visit to South Africa and delivery time shorter than others. The MTC in September 29, 2010 approved direct procurement.

2.4.6 The COS wrote to M/s OTT on September 29, 2010 to quote for supply of 66 APC by September 30, 2010 and the offer was to clearly show the cost of :-

- (i) 66 APC complete with weapon system and accessories;
- (ii) Technology transfer up to the 4th line maintenance level;
- (iii) Training of 24 operators and maintenance personnel respectively;
- (iv) Supply of spares parts for two years

2.4.7 M/s OTT responded on September 29, 2010 with offer of for 66 Puma M26-15 mine protected vehicle/mine resistant ambush vehicle :-

- (i) At ex price (Pretoria) of US \$ 270,000 per APC and US \$5,000 weapon system per APC with two payment options
- (ii) Warranty of 24 months
- (iii) Spare parts support not less than 10 year period
- (iv) Delivery charges cost plus 7.5% handling fee
- (v) Lead time of 16 weeks from receipt of deposit of 15 APC's then 20 per month
- (vi) Technology transfer

2.4.8 The systems sent submission fro MTC adjudication and award on September 30, 2010 and on October 01, 2010 the MTC made the award at US\$ 275,000 and total US \$ 18,150,000. Other details for the award;-

- (i) Cost of APC CIF Mombasa – US \$ 18,810,000 (Kshs. 1,504,800,000),
- (ii) Letter of credit in favour of M/s OTT opened on January 14, 2011 with Cooperative bank at 35 % (US \$ 6,583,500 or kshs.526, 680,000).
- (iii) First batch of 15 APC to be delivered in may 2011 followed by 21 in June and the remaining in September 2011.
- (iv) Training in phases.

2.4.9 The Contract MOSD/SYS/APCS/023/2010/2011 was signed by the PS in the presence of Director of Administration for the GOK and Clewis Levis and S. J. Booyesen for M/s OTT on November 30, 2010.

2.4.10 Ministry opened Letter of Credit (LOC) No. TFLCIM11007 for US \$ 6,583,000 through cooperative bank and notifies M/s OTT which confirms the same.

Committee observations

- (i) There were no standard tender documents used in procurement process for the purchase of APC's.

- (ii) The Ministry for State for defence decided to engage companies from South Africa alone at the exclusion of other companies in the tendering process. The process was therefore not competitive enough to allow realisation of value for money.
- (iii) The Ministry of State for Defence tendering committee (MTC) used restricted tendering with no justification as required under section 73 of the Public Procurement and Disposal Act.
- (iv) The Four South Africa firms contacted to submit bids for the manufacture of APC's were not prequalified as required by regulation 54 (2).
- (v) The Ministry of State for Defence flouted regulations 54 (3) and (4) with regard to the number of firms or suppliers required for restricted tendering. Only four firms were invited and not ten as required by law.
- (vi) The Ministry of State for Defence changed the tendering process midstream shifting from restricted tendering to direct procurement citing that restricted tendering would take at least 10 months and direct procurement would take only 5 months for delivery but as at June 2011, after signing of the contract, the APC's had not been supplied.
- (vii) The Ministry of State for Defence did not report the use of direct procurement to the public procurement and oversight authority as required under sect. 74 regulation 62 (3).
- (viii) The Ministry of State for Defence did not comply with the recommendations of the Solicitor General with regard to dual list requirement.
- (ix) The Ministry for State for defence cancelled the use of restricted tendering in favour of direct procurement without proper justifications.

2.5 VISIT TO THE REPUBLIC OF SOUTH AFRICA

The Committee visited the Republic of South Africa to familiarise and inspect the progress of work in the manufacture of Armoured Personnel Carriers (APC) by a South African firm M/s OTT Technologies Limited. While in South Africa the Committee also visited other South African firms that had bid for the manufacture of APC and or

undertaken related works for the Kenya Defence Forces and held meetings with their management, key among them:-

- (i) M/s Mechem industries;
- (ii) M/s Paramount Group Limited;
- (iii) M/s Reva
- (iv) M/s Denel aviation

2.4.1 MEETING WITH THE DEFENCE ATTACHÉ – COL. IBRAHIM OMARI

The delegation held a meeting with Kenya's Defence Attaché in the Republic of South Africa, Col. Ibrahim Omari, at the Kenya High Commission in Pretoria South Africa. He briefed the Committee as follows:-

2.4.1.1 M/s OTT technologies was awarded a contract to manufacture 66 Armoured Personnel Carriers (APC) for the Kenya Army. The contract started on 25th March 2011 after the payment of the first instalment.

2.4.1.2 In August 23rd, 2010 a technical and evaluation team led by Col. G. G. Kabugi from the Armoured Brigade visited South Africa. The team visited four companies:-

- (i) M/s Mechem industries;
- (ii) M/s OTT Technologies (Pty) Limited;
- (iii) M/s Paramount Group Limited; and
- (iv) M/s Reva

2.4.1.3 During the visit, the technical and evaluation team did not test the equipment as is required when purchasing major equipment and neither was the equipment sent to Nairobi for testing in the Kenyan terrain. Due to limited time the team spent less time inspecting the equipments manufactured by the companies. The time spent in South Africa by the technical and evaluation team was not sufficient for the nature of work that they were undertaking.

2.4.1.4 After the visit by the technical and evaluation team, the Ministry of State for Defence wrote to the companies and requested them to submit bids. The

companies submitted their bids without the Ministry of State for Defence providing user specifications for the APC's.

2.4.1.5 The contract was awarded to M/s OTT technologies, but Paramount group complained.

Committee Observations

The Committee made the following observations:-

- (i) The technical and evaluation team spent less than one day visiting the four firms in South Africa and did not test the equipment for suitability and neither was the equipment sent to Kenya for testing as is the practice when introducing new equipment for military use.
- (ii) The Ministry of State for Defence did not provide user specifications for the APC's as is the practice when purchasing military equipment.
- (iii) No proper tender documents were issued by the Ministry except a letter requesting for bids.
- (iv) The award of tender to M/s OTT technologies was shrouded in secrecy as the other companies were never informed of the outcome of the bids evaluation and neither were they invited during the bids opening as is required by the PPDA and PPDR.

2.4.2 VISIT AND MEETING AT PARAMOUNT GROUP LIMITED

The delegation visited Paramount Group factory and offices on Thursday 8th April, 2011 and was shown the Matador and Marauder type of APC's. During the visit the delegation held meetings with the Chairman and senior management of the firm and was briefed as follows:-

2.4.2.1 Paramount group is a well established international organisation that specialises with the provision of integrated turnkey solutions for land, sea and air defence, security and peace keeping operations.

- 2.4.2.2 With regard to military vehicles the company undertakes design and development, blast testing, vehicle proving and mobility testing, system integration, production of armoured vehicles, technology transfer and factory establishment, upgrades and logistic support.
- 2.4.2.3 The company has launched a range of armoured vehicles which include matador and marauder mine protected vehicles (MPV) the maverick internal security vehicles (ISV) and Mbombe which is an Armoured Fighting Vehicle (AFV).
- 2.4.2.4 The marauder, maverick and matador feature the same type of unique double skin monocoque welded steel hull, diesel powered, same drive line and suspension with a difference in the wheel base. The company has access to extensive blast testing and automotive testing facilities that well established in South Africa and use them to carry out rigorous testing of its vehicles to the highest international standards.
- 2.4.2.5 Due to flexibility in design the company is able to manufacture armoured vehicles tailor made to meet user's specific operational requirements with such key areas as protection levels, weapon stations, communications, air conditioning system, situational awareness and special to role equipment. The company also offers training for vehicle operators and maintainers which is offered in South Africa with an option for additional training in the user's own country on an ongoing basis.
- 2.4.2.6 The Matador and Marauder MPV feature a traditional V-shaped monocoque welded steel hull with a ballistic protection provided by double skin spaced armour which can withstand three Anti-tank mines (21kg of TNT). The prototype vehicles were built in 2007 and put through intensive proving trials which included mobility, durability, reliability; endurance and mine blast top ensure mine protection.
- 2.4.2.7 The Matador and Marauder are the World's only armoured vehicles in the 15 tonne Class with STANAG 4569 level 3 ballistic protection for the crew compartment as standard and with this can be increased to STANAG 4569 Level. The engine compartment is protected to STANAG 4569 Level 1.

2.4.2.8 The Ministry of State for Defence visited the company in 2010 and were shown the Matador APC. The technical and evaluation team spent less than an hour at the company's premises and therefore could not sample the available APC. After the visit by the Technical and Evaluation team, the Ministry of State for Defence wrote to the company requesting for quotations for the APC giving deadline for the submission of bids. The company struggled to get User specifications from the Ministry but in vain and decided to send their proposal with the specifications of manufacture with an offer to set up an APC assembly plant in Kenya.

2.4.2.9 The Ministry of State for Defence never notified the bidding companies on the outcome of the bids. They only learnt that M/s OTT technologies had won the tender to supply the APC. The delegation was further informed that the type of APC manufactured by Paramount Group is the best and superior equipment to all the others in the industry in terms of technical specifications, time delivery, serviceability, durability, protection and affordability.

Committee observations

- (i) The Ministry of State for Defence did not provide user specifications for the APC's and the company only bid using its manufacturer specifications.
- (ii) The procurement process for the manufacture of the APC's was flawed as there were no proper tender documents used during the initial stages of the tendering process.
- (iii) Contrary to the requirements of procurement laws, the firms were not informed of the tender results and decision by the Ministry to award the tender to manufacture APC's to M/s OTT Technologies.

2.4.3 VISIT AND MEETING AT M/s OTT TECHNOLOGIES LIMITED

The delegation visited M/s OTT Technologies Limited on Thursday 8th April, 2011 toured the factory and was shown and taken through the various stages in the process

of manufacturing APC's. The delegation held a meeting with the Directors of M/s OTT Technologies, Messrs. Stephen Booysen and Clive Lewis who briefed the delegation as follows:-

2.4.3.1 The Company was established in 1980 and specialises in the remanufacture of the ex military (reconditioned) vehicles and development and manufacture of new military vehicles.

2.4.3.2 The company has unparalleled experience in reconditioned and new armoured vehicles with a capacity to design, develop, manufacture and support vehicles in the field. The company also offers products training (technology transfer) and support both in South Africa and country of destination. OTT has built and supplied over 300 vehicles to NGO's, contractors, Government as well as the UN, AU forces in Africa.

2.4.3.3 M/s OTT Technologies has pioneered the monocoque with proven crew serviceability. It is also economical to operate and serviceable in remote areas. The company manufactures a range of armoured personnel carriers such as CASSPIR, MAMBA Mk 1, 2 and 3, PUMA 4x2 and PUMA M26.

2.4.3.4 In October 2010 a technical and evaluation team from the Ministry of State for Defence visited the company. The technical and evaluation team was led by Col. Kabugi. The team spent half a day at M/s OTT Technologies with demonstrations at gyrotech. After the technical and evaluation team left, they received a request to make bids from the Ministry of Defence, Kenya. The letter from the Ministry of State for Defence did not give user specifications as is the practise for military equipment. M/s OTT Technologies Limited quoted using their own manufacturer specifications.

2.4.3.5 They won the contract and on 30th November 2010 the Contract between the Ministry of State for Defence and M/s OTT Technologies Limited was signed. Thereafter on 26th January, 2011, the Letter of Contract was commissioned and on 18th March 2011 the project commenced upon payment of a down payment of 35 % of contract value. The delivery of first batch of 15 APC's will be done on 6th July, 2011 as per the contract.

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS

DATE OF SITTING: 6TH MARCH, 2012

WITNESS: MINISTRY OF STATE FOR DEFENCE (MOSD)

BRIEF OF ISSUES

The Committee has been inquiring into and investigating on the following major procurements undertaken by MOSD, especially under the "Military Modernization Programme"):

(a) MILITARY EQUIPMENT PROJECTS

1. Refurbishment of Nyayo & Umoja Navy Ships (Italy)
2. Procurement of Armoured Personnel Carriers (APCs) – (NORINCO of China and OTT of S.A.)
3. Refurbishment of Combat system of Kenya Navy Ships (Italy)
4. Procurement/Construction of Kenya Navy Ship – Mv Jasiri (Spain)
5. Procurement of Panhard AML 245 (Israel)
6. Procurement of F-5 Fighter Jets (Jordan)
7. Purchase of Russian made BRDM – Reconnaissance Vehicles and Mi – 171 Helicopters

(b) CONSTRUCTION PROJECTS

1. Construction of administration/tuition block, accommodation and parade ground for School of Infantry, Isiolo
2. Rehabilitation of runway at Laikipia Air Base in Nanyuki
3. School of Artillery, Isiolo
4. Development of Kenya Military Academy - Phase I
5. Development of Kenya Military Academy - Phase II
6. Construction of Modern Kitchen for the Recruits Training School, Eldoret
7. Relocation of 15 KR to Mariakani Barracks, Mombasa

(c) LAND ISSUES

Military land illegally excised and allocated to private developers in Karen and Embakasi.

Common Characteristics of the issues noted by the Committee in the projects (a) and (b)

The Committee wishes to obtain comprehensive responses to the issues noted below, (among others related):

A) MILITARY EQUIPMENT PROJECTS

1. Direct and restricted (*selective*) procurement methods used extensively without any justification as required by law.
2. Possibility of Poor contract planning and management.
3. Failure to take into consideration the whole life costing of the projects thus causing certain decisions to be made midstream.
4. Failure to undertake proper valuations and lack of due diligence.
5. Overpricing (e.g. provision of spares for F-5 Fighter Jets)

6. Failure to prepare proper guidelines for the technical team to make appropriate choices.
7. Revision of costs (avoidable and unnecessary variations).
8. Wanting practice in Department of Defence (DoD) where most of the tender committee members are involved in contract negotiations.
9. Failure to adhere to the Public Procurement and Disposal Act, 2005 and Public Procurement Regulations, 2006. For example (among others), the evaluation committee comprised of two members instead of at least three members as required by regulation 16(3).
10. Possibility of collusion between officers involved and the suppliers.
11. Most of the contracts signed were lopsided, in favour of the suppliers, i.e. Kenyan interests (in case of default by supplier/s) were not well protected.
12. Possibility of huge losses incurred by Government resulting from the above noted inadequacies.
13. Failure to take appropriate action on the responsible officers.
14. Possibility of correlation between premature retirement of military officers and the skewed procurements and/or possible misappropriations.
15. The content of some letters from DoD to suppliers were suspicious since some letters could not be found in files. This was noted since the third parties have quoted them in their subsequent replies to DoD in some instances.
16. Others mentioned in (B) below were also common in these projects.

B) CONSTRUCTION PROJECTS

- 1) Poorly conceived projects
- 2) Inadequate feasibility studies and inadequate consultations leading to midstream change of sites and subsequent variations which could have been avoided.
- 3) Differences between contractors and consultants leading to avoidable costs/ nugatory payments (e.g. Eldoret RTS Project)
- 4) Overpricing (exaggerated figures)
- 5) Projects awarded to contractors with poor performance records.
- 6) Possibility of Poor contract planning, implementation and management.
- 7) Delay in implementation of projects (leading to unnecessary extension of contract period)
- 8) Extensions and variations allowed to certain specific contractors implying possibility of collusion and corruption.
- 9) Failure to complete projects
- 10) Presence of Poor workmanship, hence the Government did not get value for money.
- 11) Others mentioned in (A) above were also common in these projects.

- 2.4.3.6 The training element/ technology transfer on the contract only caters for elementary maintenance.
- 2.4.3.7 The APC manufactured for the Kenyan military are brand new and not from the reconditioned type of vehicles that the company has in its yard. The delegation was informed that the company uses brand new TATA engines for the manufacture of the APC's for Kenya. The company procured long lead items even before the project commencement.
- 2.4.3.8 In October 2010 Mr. Navaz Alibhai visited the company and demanded to be paid a 3% commission failure to which he would prevent M/s OTT technologies from securing the contract.
- 2.4.3.10 In Kenya M/s OTT technologies is represented by Mr. Stuart Herd. As their representative, he will be paid a commission after completion of the contractual targets in accordance with standard practice.

Committee observations

- (i) The Ministry of State for Defence did not provide user specifications for the APC's as the standard practice for military equipment.
- (ii) The Col. Kabugi led technical and evaluation team did not spend adequate time at the company to allow them test the available equipment for suitability. The half day visit to gyrotech was not sufficient enough to enable the technical team to make recommendations on the suitability of the PUMA M26.
- (iii) The visit by Mr. Navaz Alibahi to the company demanding for a commission and the role of Mr. Stuart in the company securing the contract raises the possibility of under hand deals leading to M/s OTT technologies being awarded the contract to manufacture the APC's.
- (iv) M/s OTT technologies specialises in refurbishment of old equipment with limited experience in the manufacture of new APC's.
- (v) The contract was lopsided on the part of technology transfer since M/s OTT technologies was to offer elementary maintenance training.

2.4.4 VISIT AND MEETING AT DENEL AVIATION COMPANY LIMITED

The delegation visited Denel aviation Limited on Thursday 8th April, 2011. The delegation was taken on a tour of the company workshop where they manufacture and repair helicopters and other air crafts and briefed as follows:-

2.4.4.1 M/s Denel (Pty) Limited is the largest manufacturer of defence equipment in South Africa and operates in the military aerospace and landward defence environment. The company was incorporated as a private company in 1992 in terms of the South African Companies Act (No 62 of 1973) with the Government of South African being the sole share holder.

2.4.4.2 Denel plays a key role in the defence sector. It is a key supplier to the South African National Defence Force (SANDF), both as original equipment manufacturer (OEM) and for the overhaul, maintenance, repair, refurbishment and upgrade of equipment in the SANDF's arsenal. In the international front, Denel supplies systems and consumables to end users as well as sub-systems and components to its industrial client base.

2.4.4.3 It was established primarily to manufacture military aircraft and various systems for the South African Air Force (SAAF). In 1968 it was brought under the control of Armscor, a government sponsored South African conglomerate. In 1991 Denel (Pty) Ltd was established, in order to absorb all previous Armscor manufacturing entities. The remainder of Armscor serve as the sole procurement entity for the South African National Defence Force (SANDF).

2.4.5.4 M/s Denel Aviation is a division of Denel (Pty) Ltd. and serves the SAAF in manufacturing and subsystems. It is focused on maintenance, repair and overhaul of both Rotary and Fixed Wing Aircraft and associated components and GS & TE, in support of the SAAF, their primary customer. Denel Aviation also serves other local and international secondary markets.

2.4.4.5 The company is certified by South African Civil Aviation Authority, European Aviation Safety Agency (EASA), South African National Accreditation, System (SANAS) and accredited to Eurocopter Repair & Overhaul Centre

2.4.4.6 The delegation was further informed that the company has in the past undertaken maintenance of Puma helicopters for Kenya.

2.4.5 VISIT AND MEETING AT REVA

The delegation visited Reva, ICP and toured the company factory on Friday 15th April, 2011. The delegation was briefed on the manufacture of the Reva 4x4 MKII.

2.4.5.1 M/s ICP South Africa, manufactures the REVA 4x4 MKII Armoured Personnel Carrier (APC) which is a mine-protected vehicle. The vehicle's V-shaped hull offers protection against land mines and Improvised Explosive Devices (IED)s and has a sitting capacity for 10 personnel. Ten firing ports are also available. Two light machine guns can be used and cover a 360-degree on roller bearing turret hatches.

2.4.5.2 Ten (10) weapons can be used from behind protection at the same time in all round defence, effective defensive armour protection in a solid armour hull with an above average mine protection and ballistic capability. The level of protection influences the size, weight and transposibility of the equipment.

2.4.5.3 The REVA has a top speed of 100km/h as well as a 4x4 low range with a diff lock on the rear wheels making it suitable for all terrain. The vehicle has an operational range of 500km on road and 250km cross-country.

2.4.5.4 The vehicle has an above-average turning circle and a low centre of gravity allowing little body roll and excellent road handling. They use the 240 HPower MAN type of engine from Germany. In the past they manufactured APC's using Tata type of engines but due to changing international standards they switched to MAN which has high HP and has capacity on the axle unlike TATA which has to be upgraded to get the desired HP.

2.4.5.5 M/s ICP currently has a production facility in Baghdad, Iraq and another in New Castle, South Africa and are in the process of expanding their business into the United Arab Emirates.

2.4.5.6 The Government of Kenya sent senior officials to the company in 2010 and after the visit a formal request for quotations/proposals was sent by the Ministry of Defence, Kenya. There were no user specifications by the Ministry of Defence for Reva III and neither were they informed of the outcome after sending their proposal. Prior to the visit of 2010 there was another Kenyan team lead by Jimmy Otunda which visited the company in 2009.

Committee observations

- (i) The Ministry of State for Defence did not give user specifications for the APC's as is the practice for military equipment.
- (ii) Contrary to procurement law and regulations the Ministry of State for Defence did not notify the unsuccessful bidders of the outcome of the tendering process in accordance with section 67 of the procurement law.
- (iii) The technical and evaluation teams that visited the company did not test the equipment as is the general practise for military equipment.

2.4.6 VISIT AND MEETING AT MECHEM LIMITED

The delegation visited Mechem (Pty) Limited located in Littleton South Africa on Friday 15th April, 2011 and was briefed as follows:-

2.4.6.1 The Mine-Protected Vehicles (MPV) offered and utilised by MECHEM (Pty) Ltd is based on a design of a V-shaped monocoque hull manufactured from armoured steel and it is scientifically tested and battle proven concept originated within the Mechem stable. The design offers protection for the occupants against double 7 kg TNT explosive charge or equivalent under any wheel or anywhere underneath the hull of the vehicle.

2.4.6.2 Ballistic protection from the armoured hull and all glass fitted to the vehicle offer protection against 7,62 x 39 mm and 7,62 x 51 mm NATO projectiles at

distances greater than 30 m. The company has undertaken various demining and mine detection works in Egypt, Libya, Sudan, DRC and Somalia. The Casspir brand of APC's was sold to Iraq during the invasion and to the UN Forces in Darfur.

2.4.6.3 In the manufacture of APC they use the Mercedes Benz engines since they are strong and reliable and most suitable due to availability of spares and easy serviceability.

2.4.6.4 In 2010 they were approached by the Department of Defence from Kenya who sent a team of officers to the company. After the visit the Ministry of Defence of Kenya wrote to them requesting that they submit a proposal for 30 APC's. The Ministry did not send user specifications and they only sent bids using their manufacturer specifications for Casspir MK IV.

Committee observations

- (i) The Ministry of State for Defence did not provide user specifications for the APC's.
- (ii) The Ministry did not notify the company of the outcome of the bidding process.
- (iii) The technical and evaluation team did not test the APC's for suitability as is the standard practise for military equipment.

2.4.7 MEETING WITH SENIOR EXECUTIVE OFFICER DENEL

The delegation held a meeting with the senior executive officer, in charge of Middle East and Africa at the Kenya High Commission, Pretoria on Friday 15th April, 201. He briefed the delegation that:-

2.4.7.1 M/s Denel is an expert in ballistic systems and does business with the ordinance factory in Kenya. In 2005 the company received a formal request for a proposal to refurbish 40 Panhard Vehicles. In the request it sought to change the engines from petrol to diesel and also refurbish the turrets.

2.4.7.2 The Kenyan vehicles were in poor shape and they proposed to purchase the South African Defence Forces (SANDF) vehicles and refurbish them for Kenya. Denel proposed to refurbish some of the vehicles in Kenya and others in South Africa. This would facilitate technology transfer. They later learnt that the contract had been awarded to an Israeli company.

COMMITTEE RECOMMENDATION

1. The Ministry of State for Defence should review its contract with M/s OTT Technologies Limited with a view to realising value for money during the manufacture of APC's.
2. Investigations be undertaken on the role of Mr. Navaz Alibhai and Mr Stuart Herd in the procurement process leading to the award of tender for the manufacture of APC's to M/s OTT technologies of South Africa.
3. The Permanent Secretary Ministry of State for Defence, the procurement Officer and the Ministerial Tender Committee (MTC) be held accountable for flouting the Public Procurement and Disposal Act, 2005 during the tendering process for the APC's. The Ministry did not use any tender documents, did not provide user specifications, the firms invited to bid were not pre qualified as is required etc.
4. M/s OTT Technologies failed to deliver the first batch of the APC's within the contract agreed period of five months thus breaching the contract.
5. The delivery of the APC was not treated as procurement and unilaterally awarded to M/s OTT without negotiations and competition.
6. The installation of communication equipment was awarded without following the due procurement process.
7. The Ministry of State for Defence used direct procurement method in contravention of section 74 of PPDA and regulation 62 O PPDR.
8. The Col Kabugi led technical and evaluation team did not undertake tests on the equipments offered by the four South African firms they visited. The testing of equipment at the factory and at the point of use is critical for any new military equipment. The absence of this critical component of evaluation made the work

of the technical and evaluation team null and void. The report could therefore not be relied upon when awarding the tender as it was misleading. Col Kabugi should therefore be held accountable for misleading the MTC and the DHQ through the incomplete report of his team on the visit to South Africa.

3.0 THE MIDLIFE REFIT OF UMOJA AND NYAYO NAVAL SHIPS

3.1 MEETING WITH THE MINISTER FOR DEFENCE

Midlife refit of naval ships

- 3.1.1 The midlife refit for the naval ships could not be done in 1998 due to lack of funds. During the stripping and assessment of the two ships for refit it was established that additional works was required due to excessive wear and tear plus asbestos decontamination. This was initially not anticipated and is worth Kshs. 880 million and necessary for the ships to be operational.
- 3.1.2 Major repairs and maintenance of navy ships is capital intensive and funding shortfalls in the past have resulted in gaps. The situation has however improved over the years and the Kenya navy is increasingly able to maintain its equipment through scheduled servicing. Kenya Navy Galana and Kenya Navy Tana were due for midlife refit in 2003 but due to lack of funds the refit has not been done. The ships are currently serviceable but will require refitting.

Committee observations

- (i) The delay in midlife refit of equipments (Navy ships) has led to the deterioration of the ships in addition to exposing the country to insecurity.
- (ii) The Commander of the Kenya Navy did not undertake due diligence to determine the actual damage and works required for the midlife refit thus occasioning additional cost.
- (iii) The contract price was varied by 39%. This could have been avoided had the Kenya Navy undertaken due diligence to determine the level of damage. The

variation is way above the 15 % set limit and in contravention of section 47 and regulation 31 of the Public Procurement and Disposal Act, 2005.

3.2 VISIT TO NAVY HEADQUARTERS, MOMBASA

The Committee visited the Kenya Navy Headquarters, Mtongwe in Mombasa on Friday 3rd June, 2011. The Committee was briefed by Kenya Navy Commandant, Maj. Gen. Samson Jefwa Mwachethe on the historical foundations, mission, role developments and modernization of the Kenya Navy as follows:-

3.2.1 The Royal East African Navy (REAN) was formed in 1952 and in 1964 the Royal Navy Training Team (RNTT) was dispatched to train Kenya Naval personnel. After Kenya gained independence, the Kenya Navy was inaugurated by the late President Mzee Jomo Kenyatta in December 12, 1964. The Kenyan Navy has bases in Mombasa, Shimon, Msambweni, Malindi, Kilifi and Manda in Lamu.

3.2.2 The Mission of the Kenya Navy is primarily to defend the country against external sea-borne aggression. The Kenya Navy also supports Civil Authority in the maintenance of Law and Order as well as offering civil assistance in times of disaster and crisis.

3.2.3 As the Service charged with the mandate of protecting the country from sea borne aggression the Kenya Navy protects Kenya's maritime interest which include:-

- Protection of our territorial integrity from sea-borne aggression.
- Exploitation of marine economic resources both living and non living.
- Seaborne trade.
- Tourism.

3.2.4 Development of the Kenya Navy

- The Royal Navy loaned a training ship, HMS Aberford to Kenya Navy in 1965. This was later renamed KNS Nyati.
- In 1966 the Kenya Navy acquired her first squadron named Mamba class, which comprised of three patrol crafts. This was followed in 1976 with the acquisition of the mamba class comprising of 4 ships. The Mamba class initially operated guns but later converted to missile boats.
- The Nyayo class comprising of KNS Nyayo and KNS Umoja were acquired in 1986 followed by the acquisition of logistical vessels in 1993 and the building of a new base and Masura stations. The two 56.7-metre-long vessels have a displacement of 450 tonnes and can reach a maximum speed of 40 knots and accommodate a crew of 40.
- In 1997 the Kenya navy acquired two offshore patrol vessels (OPV) KNS Shujaa and KNS Shupavu.
- 2006 - 5 defender boats and 1 Arch Angel boat were acquired.
- 2009 – 3J Boats acquired followed in 2010 by the acquisition of 4 defender boats.

3.2.5 Military modernization programme - Current major projects

- (i) Major refit of KNS Nyayo and KNS Umoja (**Banksia project**) - The contract for the retrofit of the two Nyayo class vessels was signed in May 22nd 2008 between the Ministry of State for Defence and Ms. Fincantieri of Italy at a contract price of Euro 21,272,100. The ships were delivered to Fincantieri shipyards in Italy on March 10th, 2009. The retrofit works are expected to be completed in June 2011.
- (ii) Midlife refit of Nyayo class weapon system - The contract for the overhaul of the guns was signed on July 2nd 2009 between the Ministry of State for Defence and M/s Otto Melara of Italy at a contract price of Euro 7,963,000. The weapons system is being done at La Spezia Italy.
- (iii) Offshore patrol vessels - The OVP class of vessels comprising of KNS Shujaa and KNS Shupavu were due for mid life refit in 2007 but was delayed due to financial

challenges. The contract for the overhaul of the four main engines of the vessels was signed on May 7th July, 2009 between the Ministry of State for Defence and the M/s DEFEX of Spain at a contract value of Euro 2, 705, 590.92. A supplementary Contract No. MOD/001/OPS/MTC/A for procurement of additional spare parts was signed on April 30th, 2010 at a cost of Euro 621,582.25

- (iv) The first two engines for KNS Shujaa were shipped to the contractor's facility in Spain in May 2009. The works were completed in October, 2010 and are currently in the final stages of being fitted onboard. The second batch of engines was shipped to the contractor's facility in Spain on February 20th, 2011 and are undergoing overhaul.
- (v) OPV Guns - The Guns in KNS Shujaa are all operational but electrical works are being undertaken on the guns for KNS Shupavu.

3.2.6 Challenges facing the Kenya Navy

In executing its mandate the Kenya Navy faces a number of challenges among them:-

- Equipment and funding – the purchase of spares for equipment requires time for manufacturing and are expensive thus high costs and increased time to acquire. The budgetary constraints mean insufficient funding which affects maintenance of equipment and the ships. The Kenya Navy is allocated 8.81% of the Ministry's operation and maintenance budget.
- Maritime domain awareness.
- Piracy and terrorism threat – due to piracy in the Indian ocean ship owners have increased freight charges so as to cover increasing insurance cover this translates to increase in the cost of goods imported into the country.
- Lack of synchronized approach by all Government agencies in handling maritime security threats.

3.2.7 The Committee inspected the shipyard, synchrolift, boats, and KNS Shujaa and Shupavu. KNS Shujaa and Shupavu are undergoing maintenance. The Committee was informed that the Navy undertakes routine maintenance of its fleet of ships but outsources midlife refit of the ships due to lack of capacity within the Navy.

The synchrolift can only lift ships of up to 1500 tonnes. Bigger vessels are taken to private institutions which have higher capacity.

Fight against piracy

3.2.8 The Naval forces operating in the Indian ocean which include European Union, USA, China, India and other world powers are putting up blockades on pirate bases in Somali waters. This is a concerted and coordinated effort aimed at cutting the pirates from accessing the Indian Ocean. When foreign Navies enter the Kenyan territory they must declare their presence within the 12 nautical miles zone. They however can traverse the economic zone without making declaration.

3.2.9 The negotiations on the Mv Jaziri are ongoing and that the matter is being handled by DOD, Ministry of Finance and the Attorney General.

Committee observations

The Committee observed, from the visit to the Kenya Navy Headquarters, that:-

- (i) The Kenya Navy, being the users of equipment are not fully involved in negotiations.
- (ii) The midlife refit of KNS Nyayo and KNS Umoja was long overdue.
- (iii) The Buildings housing the Navy Headquarters are old and dilapidated
- (iv) The jetty is old and dilapidated. It was built in the pre colonial period and has never had maintenance.
- (v) Routine maintenance should be done on the synchrolift and the dockyard while regular maintenance and refurbishment of ships should be undertaken when due.
- (vi) The contract price was varied by 39% contrary to section 47 of the Public Procurement and Disposal Act, 2005 (PPDA).

3.3 VISIT TO THE REPUBLIC OF ITALY

3.3.1 VISIT TO FINCANTIERI COMPANY, La Spezia

The Committee visited the shipyards of M/s. Fincantieri Company Limited and M/s. Oto Melara Company Limited based in La Spezia on 29th July, 2011 to inspect the progress of work in the midlife refit and the refurbishment of the combat system of Kenya Navy ships Umoja and Nyayo. The delegation comprised:-

- (i) Hon. Benedict F. Gunda, MP – Vice Chairperson
- (ii) Hon. Charles Kilonzo, MP
- (iii) Hon. Jeremiah Kioni, MP
- (iv) Mrs. Consolata Munga – Secretariat
- (v) Mr. Nicholas Emejien – Secretariat

The Committee met with the Directors of the M/s Fincantieri Cantieri Navali Italiani S.p.A who briefed the Committee as follows, that:-

3.3.1.1 The company specialises in the building of Merchant vessels, naval vessels and yachts as well as transformation and repair of marine vessels. The company started ship building in 1983 and has built over 300 ships and 100 submarines.

3.3.1.2 M/s Fincantieri Limited is a parastatal that is 85% owned by the Government and 15 % owned by Italian banks. The company is government owned but run as private company. The midlife refit of Kenyan Navy ships Nyayo and Umoja was done at the company's ship yard in Miguanno.

3.3.1.3 M/s Fincantieri Limited was invited to tender for the refurbishment of the Kenyan vessels and won the tender on 26 April, 2007 at a Contract price of Euro 21,272,100 (Kshs.1,948,758,353). The contract DOD/LOGS/MIDLIFE REFIT/002/2006/2007 was signed on 10th July, 2008 with a contract period of 12 months. The contract for the refurbishment of the vessels involved:-

- (i) Hull structure renewal
- (ii) Main engines and reduction gear overhaul
- (iii) Complete cabling renewal

- (iv) Complete navigation/communication equipment renewal
- (v) Complete air conditioning renewal
- (vi) Complete furniture restoration and painting of the vessels

3.3.1.4 In April 2010 the total additional works requested by Fincantieri was Euro 9,731,737 but the cost of additional works agreed with Ministry of Defence was Euro 8,312,229 under contract MOD/423(249)2010/2011.

3.3.1.5 The failure to complete the midlife refit within the initial contract period of 12 months was caused by the delay in procurement of new main engine camshaft for Umoja ship, unavailability of bench test for propulsion engines testing, delay in responding to agreement for extra works and supplying main engine components for Umoja ship by the owner (DOD). These delays necessitated an extra time of 16 months thus bringing the actual contract period to 28 months.

3.3.1.6 The Committee was further briefed on the Status of the ships at the beginning of works. The directors informed the Committee that:-

- (i) The ships were not professionally surveyed before tendering to determine the nature of works to be done;
- (ii) Status of disrepair of the vessels was not clearly known by the navy and contractor at the time of tender award;
- (iii) Mid life refit was 10 years over due;
- (iv) Real status of the works could not be accessed without dry docking, paint removal, plot removal and equipment dismantling.

3.3.1.7 The Committee was informed that midlife refit on the two vessels had been completed and handed over to on 30th June, 2011 and further that the two ships had left Italy on 9th July 2011 and were in the high seas enroute to Kenya. The Committee inspected the shipyard and was briefed on the ship process.

Committee Observations

The Committee observed that:-

- (i) Four (4) firms had tendered for the Midlife refit of Umoja and Nyayo as follows:-

	Euro	USD	KES
Dormac (RSA)	11,829,616	15,591,434	1,082,934,231
Fincantieri (Italy)	21,272,100	28,036,628	1,948,758,353
Fleet support (UK)	48,895,184	64,443,852	4,467,413,110
Damen (Netherlands)	119,866,078	157,983,491	10,981,051,272

- (ii) The Kenya Navy had not undertaken due diligence to determine the extent of repairs required for the two ships before tendering.
- (iii) The midlife refit of the ships was long overdue.
- (iv) The contract price for the midlife refit contract of Kenya Navy ships Nyayo and Umoja increased from Euro 21,272,100 to Euro 29,584,329 after a variation of Euro 8,312,229. This is above the set variation limit of 15%.
- (v) The contract period was extended by 16 months. The contractor did not meet his contractual obligations within the contract period in contravention of regulation 31(d) of the PPDR.

3.3.2 VISIT TO M/s OTO MELARA COMPANY, La Spezia

The Committee visited and held a meeting with the Directors of M/s. Otto Melara Company Limited and were briefed as follows:-

- 3.3.2.1 M/s Oto Melara was awarded the tender to refurbish the combat system of the Kenya Navy ships at a contract price of Euro 7,963 million including the training of Kenya Navy technicians and operators. The contract was signed in July 2009. The Company has installed Medusa combat System comprising of 25 mm gun which fires up to a distance of 2.5 Kms. The system was installed in Italy after the refurbishment of the ships was finalised by M/s Fincantieri Limited.
- 3.3.2.2 The Contract for the refurbishment of the combat system for the two naval ships by M/s Oto Melara included the following activities:-
 - (i) Disembarking of 76/62 compact guns from the ships.

- (ii) Refurbishment of 76/62 compact guns including on-board and base materials and special tools, technical manuals and on job training;
- (iii) Training course for 76/62 compact gun operator and maintainers;
- (iv) E.O.F.C.S MEDUSA MK4/B and relevant logistic support;
- (v) Re-assembly and re-embarking of the 76/62 compact guns and integration and testing of weapon system.

3.3.2.3 M/s Oto Melara is the sole manufacturer of the guns system and the original manufacturer of the gun system in the vessels. The company is 70% owned by the Government and 30 % by market.

Committee Observation

- (i) The delegation observed that the 25 mm gun lacks the optical systems to track enemy targets thus reducing its effectiveness and efficiency that is much needed in marine environment.
- (ii) The installation of the weapons system was to be undertaken in Mombasa as per the contract but was done in Italy thus reducing the cost in terms of transportation of the weapon system from Italy to Mombasa. This reduction in cost only benefited the M/s Otto Melera and the Kenya Navy lost in terms of funds that had been factored in the agreement for transportation and lost opportunity for technology transfer that could have been acquired during the installation of the system in Mombasa.

3.4 MEETING WITH THE PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

The Director General briefed the Committee as follows, that:-

3.4.1 The tender MOD/LOGS/MID LIFE REFIT/002/006 for the refit of KNS Nyayo and Umoja was approved by Treasury in November 2006. The Ministry used restricted tendering method in which only nine (9) firms were invited to tender but only four firms responded:-

- (i) M/s Fleet Support Ltd (UK) -14,463,056

(ii) M/s Dorma Ltd (SA) – 1,091,400,380

(iii) M/s Damen Shipyard (Holland) -10,787,847,620

(iv) M/s Fincantieri Navali (Italy) 21,272,100

3.4.2 Upon evaluation M/s Fincantieri Navali (Italy) was recommended for award. Contract DOD/LOGS/MIDLIFE REFIT/002/2006/2007 was signed between the Government and M/s Fincantieri Navali italiana S.P.A on May 22, 2008 at a contract sum of Euro 21,272,100 to be paid in three equal installments. The contract period was 12 months with delivery in March, 2010.

3.2.3 The contract price was varied by Euros 3,080,830 due to extra works. The contract period was also varied by two months. The additional works were approved by the MTC in February 11, 2010 and a supplementary contract to accommodate the variation signed in February 19, 2010.

3.2.4 The Defence Headquarters (DHQ) logistics, requested MTC to terminate the supplementary contract in May 12, 2010 following revaluation by the Kenya Navy and the contract was terminated in May 21, 2010. In June 11, 2010 the DHQ resubmitted to the MTC a contract variation of Euros 8,312,229 which was approved by MTC. The contract for the additional works was signed in September 13, 2010.

Committee observations

- (i) The Defence Headquarters submitted an initial supplementary contract of Euros 3,080,830 for additional works which was approved and signed but requested for its cancellation and thereafter resubmitted another variation of Euros 8,312,229 for approval. The substituted variation was of a higher value and no reasons were advanced for the variation and change in variation.
- (ii) The Ministry failed to follow procedures relating to the use of restricted tendering by inviting less bidders than the number set out in the procurement regulations.
- (iii) The contract variation by 39% was beyond the prescribed limit of 15% in contravention of section 47 of the PPDA and regulation 31 of the PPDR.

(iv)The Ministry invited only 9 firms to tender instead of 10 that are required when undertaking restricted tendering thus in breach of regulation 54 (3) of PPDR.

COMMITTEE RECOMMENDATIONS

From the observations and the visit the Committee recommends:-

- (i) The Permanent Secretary in the Ministry of State for Defence should ensure that variations are approved within the set limits as provided under section 47 of the PPDA, 2005 and regulation 31 of the Public Procurement and Disposal Regulations (PPDR).
- (ii) The Kenya Navy should ensure that the contract period is adhered to as provided for by regulation 31 (d) of the PPDR).
- (iii) Investigations be conducted on the circumstances leading to the cancellation of the supplementary contract and its substitution with another supplementary contract of a higher value.
- (iv)The Accounting Officer, Ministry of Defence should be held accountable for flouting the procurement laws by allowing a variation beyond the set limit of 15% as provided by the PPDA.
- (v) The Ministry of State for Defence failed to prioritize the mid life refit of the Kenya Navy ships Umoja and Nyayo thus leading to their deterioration. The VCDF and the Navy Commander should be held responsible for management failure leading to the deterioration of Kenya Navy ships.

4.0 PURCHASE OF F-5 FIGHTER JETS

4.1 MEETING WITH MINISTRY OF STATE FOR DEFENCE

The Minister appeared before the Committee and briefed it as follows:-

4.1.1 The F-5 Air Craft is a multi role Aircraft designed with air superiority and limited ground attack capacity. It can perform air interceptions, battlefield interdiction, close air support, technical reconnaissance and counter area operation. Though

manufactured in the 60's they remain operational in countries such as Spain, Brazil and Singapore.

4.1.2 The First purchase of the F-5EF by Kenya was in 1978 and again in 1990. The attrition in this air crafts has created security gaps that required urgent action in order to attain acceptable levels of Air Defence. To bridge the gap, the Air Force sought either to purchase new fighter air crafts such as F-16, Fokker 30 or additional F-5. Due to budgetary constrains and unavailability of ready funds to purchase new air crafts which are costly as compared to old but serviceable air crafts, a decision was made to purchase serviceable F-5 jets. Other factors that influenced this decision included:-

- Training of air and ground crew for new air crafts and construction of support in infrastructure
- The long time frame - It would require 5 years for the new platform to be fully operational.

4.1.3 The Ministry of State for Defence had two options available for consideration, to purchase new Air crafts from Saudi Arabia or to purchase old but serviceable air crafts from Jordan. The Jordanian option was cheaper. The Government opted to purchase 15 F-5 from Jordan at a total cost of Kshs. 14, 850, 000, 000. This was only a stop gap measure. With availability of funds the way forward is to purchase modern and powerful aircraft.

4.1.4 The F-5 Fighter Jet is designed with superior fighting ability. The jets were tested in Jordan before being dismantled and shipped in crates to Kenya. Shipment in crates is an international practice. Though cheaper it is cumbersome to fly the planes from Jordan to Kenya since it will require a lot of logistics and fueling expenses in addition to consuming flying hours.

4.1.5 The dismantling of the jets was done by Jordanian Engineers but assembling was done by Kenyan technicians. The purchase of the fleet from Jordan was a stop gap measure but the way forward in the long run is to purchase modern fighter jets. In FY 2009/2010 the Ministry of State for Defence trained six pilots locally

and overseas and in FY 2010/2011 8 pilots have been trained locally and overseas.

4.2 MEETING WITH PUBLIC PROCUREMENT AND OVERSIGHT AUTHORITY

Mr. Maurice Juma, the Director General, Public Procurement and Oversight Authority appeared before the Committee on 17th & 31st March, 2011 and on 1st September, 2011. During his appearance the Director General briefed the Committee as follows, that:-

- 4.2.1 The Authority was never involved in the procurement of fighter jets for the Kenya Defence Forces. During the period of the purchase the Authority was not fully fledged and was under transition. The purchase was undertaken prior to the operationalization of the Public Procurement and Disposal Act, 2005.
- 4.2.2 A Technical team headed by Deputy Commandant , Kenya Air Force visited Jordan April 18, 2007 to inspect and evaluated second hand F-5 Air Crafts and identified 15 F-5 Air Crafts, 10 F-5E - US \$ 450,000; 3F05EM - US \$ 1,250,000; and 2F-5 - US \$ 3,300,000. The Inter-Ministerial negotiation team followed the technical team and travelled to Jordan from 23rd to 29th, April, 2007 comprising of officers from Ministry of State for Defence, Treasury, Ministry of Foreign Affairs and the State Law Office.
- 4.2.3 The Negotiations between the Kenyan and Jordanian teams agreed on a total price of US \$ 59,007,498 (Kshs. 4,130,534,860) being cost of air crafts and spares. The MTC approved the supply of F-5 jets from the Royal Jordanian Air Force (RJAF) at a cost of US \$ 59,007,498 inclusive of spares in May 11, 2007 and thereafter two contracts for the supply of the jets and the other for their maintenance were signed. The contract award of US \$ 59,007,498 comprised of:-
- US \$ 15,291,503 for the jets from RJAF,
 - US \$ 4 12,264,994 for maintenance by Jordanian Aero Nautical Systems (JAC), and
 - US \$ 30,927,000 fro provision of Spares by JAC.

The Ministry later sourced for spares from M/s Avial international (USA) at a cost of US \$ 12,926,827.15 after JAC revised the provision of spares to US \$ 47,303,837.90 and later to US \$ 19,481,696.88

4.2.4 A variation of US \$ 2,136,811 was requested by the technical team supervising works in Jordan due to unforeseen additional works. The contract price for the F-5 jets from Jordan was adjusted to US \$ 30,217,309 less the provision for spares but including the variation. The technical team extended their stay in Jordan by three months at a cost of Kshs. 6,639,964.30

4.2.5 The Ministry awarded M/s Union Logistics the contract to transport the jets to Kenya at a cost of US \$ 2,825,158 (Kshs. 216,265,267) and back up spares at a cost of Kshs. 40,757,267.16. The 15 air crafts were delivered by May 24, 2011 at the Laikipia Air Base.

4.2.6 Section 133 of the Public Procurement and Disposal Act, 2005 provides for certain procurement and disposal by the Defence Forces, Police and other security related procurement entities to be undertaken on the basis of a dual list, covering items subject to open and restricted procurement and disposal methods. The law recognizes the need to classify some security procurements in order to avoid compromising national defence and security system. In this regard the procurement law requires security organs to:-

- (a) Prepare a dual list covering items to be subjected to open and restricted procurement and disposal
- (b) The restricted list of items to be annually approved by PPOA after consultations and agreement with the security organ.
- (c) Procurements on the restricted list to be subjected to classified audit by the controller and Auditor General.

4.2.7 The Ministry of State for Defence has not complied with the provisions of section 33 of the Public Procurement and Disposal Act, 2005 with regard to dual list. The non compliance of these provisions renders military procurement to open tendering system.

4.2.8 All procurements at the Ministry of Defence are expected to be subject to conventional methods of procurement except the items enlisted in the specially permitted procurement procedure under section 92 (4). The Ministry on two occasions requested for authority to use specially permitted procedure for:-

- Repair of Helicopter components - March 2009
- KAF Air Craft repair services and spares – September 2009

4.2.9 In the two instances the PPOA approved the use of specially permitted procedure subject to the Ministry submitting a detailed report upon conclusion of the procurements demonstrating how they were processed and formalized including negotiation reports with supporting tender committee minutes. The ministry has not complied with these requirements.

Committee observations

- (i) The second hand jets procured from Jordan required immediate servicing after the purchase.
- (ii) The Ministry did not undertake valuation of the second hand jets to determine their actual value to guide the negotiations.
- (iii) The revision of the cost of spares by JAC could have been treated as a breach of contract more so when the original contract had the provision for spares.
- (iv) The variation in the contract price was occasioned by poor planning and contract management by the Ministry of Defence.
- (v) The revision of the cost of spares by JAC was suspect considering that they later reduced their price from US \$ 47,303,837.90 to US \$ 19,481,696.88 after the process was opened to allow for competition.
- (vi) The Ministry extensively used direct and restricted procurement methods without justification and in contravention of procurement laws.

4.3 VISIT TO THE KENYA AIR FORCE FORWARD OPERATING BASE, MOMBASA

The Committee visited the Kenya Air Force Forward Operating Base (FOB) in Mombasa on Friday, June 3rd, 2011. The Committee was briefed by the Kenya Air Force Commandant Maj. Gen. Harold M. Tangai on the role of the Air Force and the modernization of the Kenya air force as follows:-

4.3.1 The Kenya Air Force performs the following roles during peacetime and wartime:-

- Air Defence of the national airspace against external aggression and to provide offensive air support to the Kenya Armed Forces against armed external aggression.
- To conduct Close Air Support (CAS), Air Interdictions, Armed and Visual reconnaissance and during wartime
- To support the two sister services in pursuance of national objectives
- To conduct air surveillance of the national airspace on 24 hours to ensure its sovereignty and integrity.
- Tactical air transportation
- Heli-borne operations
- Training of personnel during peace and war times to attain the highest standard of operational readiness
- UN peacekeeping operations.
- To provide aid to civil authority during periods of national calamities, national undertakings and any other activity that may be specified

4.3.2 In pursuant of its mandate, the Kenya Air Force has maintained a modernization programme of its equipment in order to maintain a responsive and effective Air Force in a changing environment. Among the modernization programmes carried out include the acquisition of the medium lift DHC-5D Buffalo aircraft in 1977 to augment the DHC-4A Caribou transport aircraft; the acquisition of the F5 in 1978 and the Hawk in 1979; the acquisition of the Dash-8-100 (DHC-8) and the Tucano in 1990; the Fokker 70ER in 1995 and the Y-12 in 1997.

4.3.3 The modernization programme in the air force covers air craft and ground equipment and other weapon systems critical for mission fulfillment. Air surveillance capability of the National Air Space was first attained in 1974 with the acquisition of long range Air Defence Radar systems which have been improved since then. In 1978, the Air Force acquired Surface to Air Missile capability with acquisition of SAMs fire units.

4.3.4 The Committee inspected the fighter jets that were at the forward operating base. Some of the fighter jets were flown while the Committee was undertaking inspection while some of the fighter jets were undergoing various levels of maintenance.

COMMITTEE RECOMMENDATIONS

- (i) The Ministry of State for Defence flouted procurement laws through use of direct procurement contrary to PPDA provisions.
- (ii) The Ethics and Anti Corruption Commission (EACC) should conduct investigations on the circumstances surrounding the sourcing and award of tender for purchase of the F-5 fighter jets, provision of spares and freighting services.
- (iii) The Ministry of State for Defence did not undertake valuation on the second hand jets to determine value for money and guide negotiations. The VCDF and the commander air force be held accountable for allowing negotiations to take place without valuation and for allowing the purchase of second hand jets that are older or same age as the jets purchased by Kenya in the 1960's.
- (iv) A value for money audit be undertaken on the procurement of second hand jets from Jordan considering that the jets required servicing after the purchase.

5.0 REFURBISHMENT OF PANHARD AML

5.1 MEETING WITH THE MINISTER FOR DEFENCE

The Minister of State for Defence Hon. Mohamed Yusuf Haji, MP appeared before the Committee and briefed it as follows:-

Refurbishment of Panhard AML armored scout cars

5.1.1 Authorization for the refurbishment of the scout cars was done in 2006 by the equipment and infrastructure approval committee. Request for expression of interest was sent to 15 companies but only 5 firms responded and only two firms, Denell of South Africa and Saymar of Israel, responded to the tender documents. A special technical evaluation committee composed of military officers evaluated the two firms and in April 2007 M/s Saymar of Israel was awarded the contract.

5.1.2 In May 2007 the contract was approved by the Ministerial Tender Committee (MTC). September 2007, the Ministry signed a contract with M/s Saymar Limited for the refurbishment and upgrade of 42 Panhard AML 245. In addition, the contract provided for the training of technicians and instructors. Delivery date was on 11th September 2009 i.e. 22 months from the effective date of signing the contract. On the effective date of the contract, 11th November 2007 a bankers cheque of US \$10, 251, 458 equivalent to Kshs. 820, 116, 640 was made. The balance of US \$ 7, 176, 020.60 or Kshs. 574, 816, 048 constituting 70% of the contract sum was paid against a bankers guarantee on 23rd September 2008.

5.1.3. To date only 20 AML's have been finalized and accepted. The delay in the programme was due to Post Election Violence which caused late installation of the machines and renovation of the workshop. This occasioned an adjustment in the delivery date to 11th March 2010 but this was not possible due to the underperformance of the engines in the field. To address the problem of engine underperformance, the Ministry of State for Defence has had several meetings with the company and conducted several engine tests including at the NYS workshops and at the University of Nairobi. The meetings agreed that:-

- (i) M/s Saymar Limited meets its contractual obligations.

- (ii) M/s Saymar Limited Install dynameters in DOD workshop in Lanet by January 2011.
- (iii) Engineers from the two parties to test and ensure that 102 Horse Power is achieved as stipulated in the contract and that the engines perform in the field.
- (iv) Delivery date of the 42 AML's be extended to June 2011.
- (v) M/s Saymar Limited to collect 19 AML, 60 turrets and install thermal signs.

Committee observations

- (i) M/s Saymar Limited had failed to meet its contractual obligations of delivering the agreed upon AML within the contract period.
- (ii) The AML's delivered by M/s Saymar Limited under performed due to failure to meet the required 102 Horse Power.
- (iii) The Contract was varied in terms of contract cost and contract period.

5.2 VISIT TO THE KENYA ARMY, 81 TANK BATALION, LANET

The Committee visited the armored brigade refurbishment programme on Tuesday June 7th, 2011. The Committee was briefed on the role, mission and vision of the Armored Brigade and the modernization programme.

5.2.1 The primary mission of the Armoured brigade is to conduct operations against enemy Armour and the provision of close support to infantry while the Secondary role is to conduct Internal Security Operations in aid to Civil Authority in maintenance of order.

5.2.2 The Vision of the Armoured Brigade is to be a Combat ready manoeuvre formation that is well Trained, Administered, Aggressive and formidable thus being capable of sending shock waves to the opposing forces.

5.2.3 The primary role of Armour is aggressive mobile action to destroy enemy Armour in the battlefield in addition to the provision of close support to Infantry and exploitation of shock action in the battlefield.

5.2.4 The armoured brigade is a formation of the Kenya Army and consists of 5 units namely; the 76 armoured reconnaissance battalion in Gilgil, 78 tank battalion in Isiolo, 81 tank battalion in Lanet armoured brigade and school of armoured brigade in Isiolo.

AML 245 R1 Refurbishment Programme.

The Committee was briefed by Mr. Eli Ben David, M/s Saymar Limited, as follows, that:-

5.2.5 The contract to refurbish Panhard AML's was awarded to M/s Saymar Limited of Israel. The contract was entered into in September, 2007 and included the fitting of reconnaissance system for the 90 ml equipped with ballistic computer that enables the gunner to hit target during day and night as well as the installation of thermal vision for the 60 ml gunner. This enables the gunner to operate day and night. Subsequently two supplementary contracts MOD/SYS/AML245/001/2006/2007A and MOD/SYS/AML245/001/2009/2010 and an additional contract DOD/SYS/245/001/2009/2010 have since been entered into by the two parties by June 2010.

5.2.6 The upgrading of the AML's will lead to improved vehicle capabilities, extends the vehicle operational life and enables the extended use of an existing fleet among other state of the art military vehicles. Through the upgrade contract, Kenya will be able to establish a third echelon maintenance department/unit in Lanet by way of technology transfer from M/s Saymar experts/technicians.

5.2.7 The upgrading includes replacement of the original engine by a more powerful and popular Diesel engine, new and modernized electrical system, new braking system (disc brakes on all 4 wheels), new hydraulic assisted power steering, new lighting system as well as night vision equipment.

9.2.8 During the process of upgrading the AML's it was noted that the engines could not achieve the desired 102 Horse Power but this anomaly was corrected through the installation of turbo and intercoolers and as a result M/s Saymar Limited donated a dynamometer to the Kenya Army for use in determining and measuring the engine Horse Power of the vehicles. New intercoolers were also installed in the vehicles.

5.2.9 Twenty (20) AML 90 and twenty AML 60 have already been delivered to the Kenya Army, some are however undergoing retrofitting for the agreed improved systems and services as per the supplementary and additional contract entered into by Kenya and M/s Saymar Limited as well as going through acceptance procedures which involves training, testing and firing.

5.2.10 The Committee was further briefed that M/s Elbit Systems Land and C4I Limited have acquired M/s Saymar Limited and have since taken over certain assets, operations and activities of M/s Saymar Limited among them the contract for the refurbishment and upgrade of Panhards AML 245 Armoured Scout Cars entered into by the Government of Kenya and M/s Saymar Limited including the two supplementary and additional contracts.

5.2.11 The time frame for the contract was rescheduled due to challenges that were faced during the implementation phase of the contract such as delay in importation of spare parts, lack of capacity in Lanet and the post election violence that rocked Kenya in 2008.

Committee observations

The Committee observed that:-

- (i) M/s Saymar Limited was acquired by Elbit Systems Limited.
- (ii) The time frame for the contract was varied.
- (iii) The Ministry of State for Defence and M/s Saymar Limited entered into two supplementary contracts and an additional contract.

(iv)The AML delivered by M/s Saymar Limited could not deliver the required Horse Power thus leading to installation of intercoolers.

5.3 VISIT TO ISRAEL AND MEETINGS WITH M/s ELBIT SYSTEMS & SAYMAR LIMITED

The Committee visited Israel and held meetings with the directors of M/s Elbit Systems Limited and M/s Saymar Limited on 21st to 24th July, 2011. The delegation comprised:-

- (i) Hon. Adan W. Keynan, MP
- (ii) Hon. Benedict F. Gunda, MP – Vice Chairperson
- (iii) Hon. Charles Kilonzo, MP
- (iv) Hon. Jeremiah Kioni, MP
- (v) Mrs. Consolata Munga – Secretariat
- (vi) Mr. Nicholas Emejien – Secretariat

VISIT AND MEETING AT M/s ELBIT LAND SYSTEMS LIMITED

5.3.1 The Committee visited M/s Elbit Systems Limited and held a meeting with the management of Elbit Systems Limited who briefed the Committee that Elbit system was established in 1996 and is an Israeli based multi domestic defence electronic company. It is the largest defence company in Israel and among the 40 largest defence companies in the world with presence in USA, Brazil and UK.

5.3.2 The Committee further heard that the company specialises in the following business areas:-

- (i) Defence and commercial ordnance systems and simulators
- (ii) Unmanned vehicles
- (iii) Homeland security
- (iv) Data link and radio communication
- (v) Naval systems
- (vi) Combat system vehicles

- 5.3.3 The delegation was further informed that M/s Saymar Limited was acquired by M/s Elbit systems and was placed under the land division which is the largest division of Elbit systems with revenues of up to \$1 billion. The acquisition of Saymar broadened the spectrum of services, capabilities and expertise of Elbit Systems in armoured vehicles.
- 5.3.4 With the acquisition of M/s Saymar Limited, Elbit Systems took over all the liabilities and contractual obligations of M/s Saymar Limited. During the time of acquisition Saymar was a small company that did not have sufficient resources but with the acquisition by Elbit Systems the company gained resources as well as expertise and other capacities.
- 5.3.5 The contract between M/s Saymar Limited and the Government of Kenya was taken over by M/s Elbit Systems Limited and C4I Limited (**Annex 1**). During the implementation of the contract, refurbishment, there were challenges relating to the vehicles horse power (HP). The vehicles were expected to produce 102 HP but due to the high altitude in Kenya the vehicles underperformed and M/s Saymar limited installed turbo and intercoolers to raise the HorsePower to desired user specifications. The intercooler system was not included in the contract but was nonetheless installed in the vehicles.

VISIT AND MEETING AT M/s SAYMAR LIMITED

The Committee visited M/s Saymar Limited and held a meeting with management on the contract to refurbish Panhard AML's. The committee was briefed as follows, that:-

- 5.3.6 M/s Saymar Limited is the leading platform in ammunitions and advanced land Systems Company in Israel. Its business areas include combat vehicles, weapons and ammunitions.
- 5.3.7 The Contract (MOD/SYS/AML245/001/2006/2007) for the refurbishment and upgrade of Panhards AML 245 armoured scout cars entered into by the Republic of Kenya and M/s Saymar Limited on September 17, 2007 included the fitting of reconnaissance system for the 90 ml equipped with ballistic computer enabling

day and night vision as well as the installation of thermal vision for 60 ml gunner. This enables the gunner to operate day and night. Two supplementary contracts MOD/SYS/AML245/001/2006/2007A and MOD/SYS/AML245/001/2009/2010 and an additional contract DOD/SYS/245/001/2009/2010 were entered into in June 2010.

- 5.3.8 The company also supplied the Kenya Defence Forces with a dynamometer device to measure the engine horsepower. The refurbished vehicles will have increased mobility and better combat efficiency. Through the refurbishment there has been established a third echelon maintenance department in Lanet which will support the vehicles after the project/contract. The Army technicians will have been trained on assembly, maintenance and repair of the upgraded AML's. Through the contract M/s Saymar can support the Kenya Army with spare parts for the vehicles for many years.
- 5.3.9 The time frame for the contract was rescheduled due to challenges that were faced during the implementation phase of the contract. The rescheduling in the time frame was occasioned by importation of spare parts, lack of capacity in Lanet and the post election violence that rocked Kenya in 2008. The original contract covered 42 AML's and installation of the thermal cooler was in a supplementary contract.
- 5.3.10 Twenty (20) of the AML 90 and 10 AML 60 have been refurbished and are already in service. The rest are going through acceptance procedures which involves training, testing and firing. The programme will be concluded in early September, 2011.
- 5.3.11 The delegation was further informed that due to the high cost of purchasing new equipment the trend in military equipment is to upgrade the existing equipment as it is cost effective. Upgrades inject new life to the equipment in addition to increasing its performance by way of fitting new technology. The life span of upgraded or refurbished equipment depends on the maintenance and usage of the equipment. The refurbishment of the AML's for the Kenya Army will bring in

an additional 15 years of service to the vehicles, however regular service and maintenance is required.

Committee Observations

- (i) The AML refurbished by could not produce the required Horse Power leading to the installation of Turbo and intercoolers.
- (ii) M/s Saymar Limited was acquired by M/s Elbit Land Systems Limited which took over all responsibilities of the contract between Kenya and M/s Saymar Limited.
- (iii) M/s Saymar Limited has failed to deliver on the contractual obligations

COMMITTEE RECOMMENDATIONS

- (i) The Ministry of State for Defence should conclusively establish the fate of its contract with M/s Saymar Limited in light of the acquisition of M/s Saymar Limited by M/s Elbit land systems.
- (ii) The Ministry of State for Defence should ensure that M/s Saymar Limited meets its contractual obligations within the contract period.

CONSTRUCTION PROJECTS BY THE KENYA DEFENCE FORCES

6.0 THE 15 KENYA RIFLES MILITARY BARACKS, MARIAKANI

6.1 VISIT TO THE 15 KENYA RIFLES MILITARY BARACKS, MARIAKANI

The Committee visited the proposed home of the 15 Kenya Rifles (15KR) in Mariakani. The Barracks is located close to the 77 Kenya Army Barracks. The Committee was briefed as follows:-

6.1.1 The primary mission of the Army is the defence of the nation against external land based aggression, while the secondary mission is the provision of aid and support to civil authority in the maintenance of order as provided for under the Armed Forces Act. Inherent in the secondary mission is participation in

international peacekeeping missions in support of national Foreign Policy objectives.

6.1.2 The vision of the army is to develop an Army deeply rooted in professionalism and certain of its ability to achieve its mission.

6.1.3 The roles of the Kenya Army include:-

- Defence of Kenya against land based external aggression.
- Aid to civil Authority in the maintenance of order.
- Perform any other tasks as may be assigned by the state through the CGS.

Military modernization project - 15 Kenya Rifles Mariakani Barracks

6.1.4 The project was approved in 2006 and construction works started in 2008. The project was initially estimated at a cost of Kshs. 5.8 billion but was scaled down due to budgetary constraints to Kshs. 1.7 billion to cater for essential facilities and will be undertaken in phases. The contract was awarded to M/s Njuca Consolidated Limited.

6.1.5 The project commenced on October 21st, 2008. The contract period is 130 weeks with completion expected on April 22nd, 2011. Already the water line supply from Samburu to 15KR Barracks, the elevated water tank and the under ground water tank are all complete, functional and containing water. There is a variation of Kshs. 200 million associated with additional works (kitchen). The kitchen and the dining were not in the initial contract as it was envisaged that the 15 KR would share the facilities with the 77 Kenya Army.

6.1.6 The Committee toured the project and inspected the Armoury, Magazine, sewerage treatment plant, Battalion Headquarters and Kitchen company offices. The above facilities are complete except the kitchen which is under construction.

6.1.7 In the implementation of the project the following challenges have been faced by the contractor:-

- Infrastructure – lack of basic infrastructure like roads, water and electricity.

- Concrete roofing - from the design concrete roofing was adopted. It is environmentally friendly.

6.2 MEETING WITH NJUCA CONSOLIDATED LIMITED

6.3 MEETING WITH THE PUBLIC PROCUREMENT AND OVERSIGHT AUTHORITY

The Director General informed the Committee that:-

- 6.3.1 The MTC in April 2008 advised the use of restricted tendering method where 9 firms were invited plumbing, drainage and fighting works and 10 firms invited for the main works.
- 6.3.2 The tender was opened in June 10, 2008 and only four firms responded for the main works, 6 for plumbing and 2 for air conditioning. The evaluation of the bids was done by Tana and Associates who are the project consultants.
- 6.3.3 All the bidders including the successful bidder did not provide evidence of registration with the relevant Ministry, prove of incorporation certificate, list of similar works undertaken, list of plants and equipment.

Committee observations

- (i) The use of restricted tendering method was irregular as the contract sum was beyond the prescribed limit of Kshs. 20 million.
- (ii) The successful bidder did not provide the required documentation

7.0 REHABILITATION OF THE LAIKIPIA AIRBASE RUNWAY, NANYUKI

7.1 VISIT TO LAIKIPIA AIR BASE, NANYUKI

The Committee was received at the Laikipia Air Base by the Kenya Air Force Commander, Maj. Gen. Harold M. Tangai. He briefed the Committee on the construction

of the run way and the maintenance of fighter jets at the Laikipia Air Base (LAB), Nanyuki.

7.1.1 The Committee inspected the fleet of F-5 fighter jets at the LAB as well as the progress in the works for the construction of the run way. However the committee could not establish if the jets at LAB could fly or not due to the unavailability of pilots who were said to be in Mombasa and the short runway due to the ongoing construction works at the runway.

Inspection of the F-5 Fighter Jets

7.1.2 The Committee was informed that the jets are used for training purposes and maritime surveillance. The Committee was further informed that engine servicing is done at Moi Air Base, Eastleigh and that it takes a period of one month to fully service an engine.

Laikipia Air Base (LAB) runway rehabilitation

The Committee was briefed by Lead Consultant, Eng. S. Mirungu of Mirsa and associates limited on the history and rehabilitation of the runway as follows, that:-

7.1.3 The initial runway was constructed in 1978 covering 2.8 Kilometres. Major rehabilitation was undertaken in 1992 and the runway was extended to 4 Kilometres. The run way rehabilitation project under the military modernization programme was initiated as a three year contract but was fast tracked to 2 years. The run way was to be done on asphalt but the consultant designed a concrete runway which is suitable for the soil type in the area.

7.1.4 The project team comprises of the client, two consultants and three contractors:-

- (i) The consultants for the project are:-
 - Mirsa and Associates Limited consultants for the Civil Works
 - Gibb Africa Limited consultants for Electrical and Mechanical works

(ii) Project contractors are:-

- China Wu Yi ltd – They were awarded the contract for Civil Works at a contract price of Kshs. 1,750,724.30
- Mehta Electrical – The contract for Electrical Works was awarded to Mehta electrical at a contract price of Kshs. 1,281,071,157.
- Pioneer plumbers – They were awarded the contract for Mechanical (plumbing) Works at a contract price of Kshs. 15,198,883.

7.1.5 The rehabilitation work is being undertaken in three phases:-

- Phase 1: covers 1.2 kilometers (km) of the runway from Ch 0+00 – 1 +200. Construction on this phase is already complete.
- Phase 2: covering 1.2 km of the runway starting from Ch 4+00 – 2 +800. The construction of this section of the runway which begins from the far end is already complete.
- Phase 3: covers 1.6 km of the runway (middle section) starting from Ch 2+800 - 1+200. The construction for the middle section of the runway is ongoing. Concrete laying is in progress.

7.1.6 During the current rehabilitation, major foundation problems associated to the highly expansive soil (black cotton soil) were noted leading to more works and excavation of up to 3.8 meters, to remove the unstable black cotton soil and filling the excavation with murrum and other suitable soils for stability. This was not anticipated in the original scope of works. The concrete run way after completion will measure 30 meters wide and 4 kilometers long.

7.1.7 Scope of works - The scope of works for the contract involved:-

- (i) Civil works - The contract for the civil works covered the rehabilitation of the existing runway, taxiway and perimeter road; replacement of the existing asphalt runway with concrete; asphalt overlay on the runway shoulders, taxiway and perimeter road.

(ii) Electrical works - The contract covers replacement of the airfield ground lighting system (AGL); replacement of 11kv (high voltage) reticulation and switchgear; replacement of street lighting system.

(iii) Mechanical (plumbing works) - The mechanical works are limited to the rehabilitation of the fire hydrant system only. The ancillary civil works comprise of the construction of the engineers laboratory and offices; drilling of boreholes for the provision of construction water; establishment of ballast quarry and gravel borrow site.

7.1.8 During the implementation of the project, the following the challenges were faced by the civil works contractor:-

(i) Excessive excavation of the runway to lower level due to high water retention water and expansive cotton soil. This will necessitate additional funding.

(ii) The increased scope of work which was not in the original scope of works. This will require additional funds.

(iii) Imported rock filling material will result to extra cost

(iv) Underground water chainage 3+200

7.1.9 The challenges associated with additional works will eventually lead to additional funding.

Committee Observations

The Committee observed that:-

- The Fighter jets at Laikipia Air Base were undergoing various levels of maintenance. There is need to establish engine servicing facility at LAB to reduce the time taken to transport engines to Nairobi.
- The Ministry should put in place long term measures to train additional fighter jets pilots.

7.2 MEETING WITH MIRSA AND ASSOCIATES LIMITED

Mirsa and Associates Limited appeared before the Committee on 2nd August, 2011 and 28th September, 2011. During the two meetings the Committee was briefed by Eng. Samuel Mirungu who informed it that:-

7.2.1 The consultants for the rehabilitation of the Laikipia Air Base Runway, Nanyuki were formally appointed on 7th April, 2008 after prequalification process that commenced in 2006.

7.2.2 The initial scope of works for civil works comprised of:-

- Temporary works including acquisition of quarries, setting up of mixing plant, contractors camps.
- Support services for electrical works
- Reconstruction of the 30m wide asphalt paved runway to include earthworks. Concrete pavement and finishing.
- 50mm asphalt overlay to the runway shoulders, entire main taxiway and link taxiways.
- 50mm asphalt overlay to the perimeter road.
- Rehabilitation of runway storm water drainage.

7.2.3 The contract was awarded to China Wu Yi Company Limited. The contract period is 24 months and the initial contract price of Kshs. 1,750,573,724.30. The project cost has however been varied by Kshs. 249,531,274.49. The approval was vide ref: DODWKS/401/1/PROJ dated 7th September, 2011 The total cost for the project has now risen to Kshs. 2,000,104.79. The variation is as a result of additional works which include:-

- (i) Additional power costs – Kshs. 4,959,000
- (ii) Disruption to existing telecommunication services – Kshs. 2,577,586.21
- (iii) Runway overruns total area of 5400m.sq – Kshs. 13,309,603.45
- (iv) Bomb dump road – Kshs. 76,506,250
- (v) Additional dispersal area – Kshs.29,093,663.79

- (vi) Taxiway reconstruction – Kshs. 66,172,413.79
- (vii) Additional runway re-measurements – Kshs. 5,851,589.87
- (viii) Runway and taxiway electrical ducts – Kshs. 12,285,000

Works for the approved variations have not been done yet.

7.2.4 The progress of works for the civil works is as follows:-

- Runway works – the entire concrete panels for the runway and also laying of asphalt concrete in the shoulders have been completed.
- Perimeter road – the earthworks are complete for the entire road and 3 Kms out of the total 4kms of the road has been surfaced with asphalt.
- Taxiway – the earthworks have commenced on the taxi way after approval of the sought variation.

The runway phases I, II, III civil works are complete. Only partial completion certificates are issued to enable use of the runway. The overall works completed is 90% out of which 86% has been certified for payment at Kshs. 1,509,157,565,119.

7.2.5 During implementation of the project the following challenges were experienced:-

- (i) High cost of power due to unreliable power supply leading to use of generators.
- (ii) Shortage of water (inconsistent water supply).
- (iii) Marking on the runway, displacing threshold.
- (iv) Unexpected ground water. The runway has three low areas with high water table. This was not expected leading to extra excavation of the ground and subsequent filling of the ground.
- (v) Poor soil conditions.
- (vi) Runway Lights – the runway light accessories are stolen. Need to install new and to erect a wire fence including razor wire to prevent theft.
- (vii) Additional works for the runway shoulders. This was not expected. The contractor was forced to dig deeper for shoulders to allow heavy trucks to pass on the runway shoulders.

Committee observations

- (i) The consultant and the client (DOD) did not undertake due diligence in the planning and execution of the project thus leading to variations.
- (ii) The process of identifying the lead consultant (Mirsa and Associates Ltd) and other consultants was not clear and shrouded in mystery.

7.3 MEETING WITH GIBB AFRICA LIMITED

Mr. Hirani, Director of GIBB Africa Limited and others appeared before the Committee on 2nd August, 2011 and 28th September, 2011 and briefed the Committee as follows, that:-

7.3.1 The rehabilitation of Laikipia airbase project comprises of the runway, taxi way, aprons and related facilities, civil works, electrical installations and minor mechanical installations.

7.3.2 GIBB Africa Limited was appointed the mechanical/electrical consultant for the rehabilitation of the Laikipia Air Base vide letter ref: DODWKS/364/PROJ dated 7th April, 2008. The scope of the consultancy was preparation and production of a full development plan, sketch plans, working drawings and complete documentation in conjunction with other consultants as well as post contract supervision.

7.3.3 The scope of Electrical installations for the runway comprise:-

- (i) Airfield ground lighting (AGL) system installations - This comprises installation of complete ICAO compliant AGL system that provides lighted visual aids to pilots. This enables the pilot to see the runway lights identifying the runway centre line while approaching the runway and thus enabling safe landing of the aircraft when there is good visibility at any time of the day. All AGL materials and accessories for the 4kms runway and taxi way have been delivered to site. The contractor has completed installation of the runway lights, primary cables for runway lights and ducts for runway lights. Testing and commissioning of the lights will be done when the 11kv system is complete. Trenching and cabling for the taxiway lights is currently underway.

(ii) 415V and 11Kv power reticulation systems installations – This comprises low voltage and 11Kv Systems for providing power supply to the base operations areas including the runway. The contractor has delivered to site all the 415 V and 11 Kv cabling and switch gear materials comprising cables, transformers, 415 V and 11 Kv distribution boards for the 10 substations. The contractor has completed trenching, ducting and cabling works for the reticulation system installation.

(ii) Road and car parking – This comprises installation street lights to the base operation areas including the residential materials. The contractor has completed installation of 15kms of street lighting cables which represents 100% of the works and installation of 300 street lighting poles and lamps.

This works commenced on 8th February, 2010 and expected to be complete by 8th February, 2012. The contract period is 24 months and the contract price for the electrical works which was awarded to Mehta Electrical Ltd is Kshs. 1,287,278,572.

The amount certified is Kshs. 707,908,119.48 for 84 % completed works.

7.3.4 The scope of Mechanical installations comprise replacement and repairs of existing fire hydrant valves and chambers and an extension of the existing fire hydrant line by 1.5 Kms. The contract period was 6 months. The contractor completed the works and handed over to the client on 19th August, 2011. The contract price for the mechanical sub-contract which was awarded to Pioneer Plumbers Ltd was Kshs. 15, 198,808 but the amount certified for payment is Kshs. 13,533,943.

7.3.5 In the initial scope of work specialized equipment was included but due to financial constrains this aspect of the project was removed. It will require close to Kshs. 600 million to install the specialized instrument landing system at the runway. There are no variations to the contract price and the contract is within the contract period.

Committee observations

The Committee observed that:-

- (i) The project lacks specialized instrument landing system thus meaning that the runway is not safe for night landing.
- (ii) The failure by the Ministry to cater for night landing gear at the runway renders the project incomplete and inaccessible during the night.
- (iii) The installation of night landing equipment in the future might be expensive and additional cost will be incurred to tunnel and place ducts for instruments in the already completed runway.

7.4 MEETING WITH CHINA WU YI COMPANY LIMITED

Mr. Hong Rigui appeared before the Committee on 19th and 28th September, 2011 and briefed it as follows, that:-

7.4.1 M/s. China Wu Yi was awarded the contract for the rehabilitation of the runway at Laikipia airbase on 26th June, 2009. The contract agreement was signed on 30th September, 2009 at a contract price of Kshs. 1,750,573,724.30. The project works commenced on 8th February, 2010 and is projected to be completed by 8th February, 2012.

7.4.2 Since the commencement date the contractor has been in site for 84 weeks and has managed to complete 90% of the contract works. The contractor has so far been paid 86% of the certified works translating to Kshs. 1,509,157,565,119.

7.4.3 The initial scope of works for civil works comprised of:-

- Temporary works including acquisition of quarries, setting up of mixing plant, contractors camps.
- Support services for electrical works
- Reconstruction of the 30m wide asphalt paved runway to include earthworks. Concrete pavement and finishing.

- 50mm asphalt overlay to the runway shoulders, entire main taxiway and link taxiways – The runway works have been completed and earth works have commenced for the taxi way after approval of the sought variation.
- 50mm asphalt overlay to the perimeter road – The earth works have been completed for the entire road and 3 Kms of the entire 4 Kms of the road has been surfaced with asphalt.
- Rehabilitation of runway storm water drainage.

7.4.4 The project cost has been varied by Kshs. 249,531,274.49. The approval was vide Ref: DODWKS/401/1/PROJ dated 7th September, 2011 The total cost for the project has now risen to Kshs. 2, 000,104.79.

Committee observations

The Committee observed that:-

- (i) The contract price was varied from Kshs. 1,750,573,724.30 to Kshs. 2, 000,104.79. This is a variation of Kshs. 249,531,274.49.
- (ii) The Ministry of State for Defence and the consultants did not undertake proper planning of the project thus leading to variations.

7.5 MEETING WITH MEHTA ELECTRICAL LIMITED

Mr. Pravin Soni appeared before the Committee on 28th September, 2011 and briefed it as follows, that:-

7.5.1 The contractor has been on site for 84 weeks and the overall works completed is 84%. Mehta Electrical Limited was awarded the tender for the rehabilitation of the Laikipia air base runway (Electrical sub-contract) on 26th June, 2011. The Electrical works sub-contract comprise of:-

- (a) 11kv power reticulation works - - the works include:-
 - (i) Trenching works – the trenching works for the 11kv power reticulation and SCADA systems has been finalized with 14814 and 9093 meters of trenching excavated for both systems respectively.

- (ii) Ducting works – installation of 110mm UPVC ducts for the power reticulation works while ducting work for the SCADA system is ongoing with 7678 meters installed.
 - (iii) Concrete works – construction and installation of 280 deep concrete manholes for the power reticulation and SCADA systems has been completed.
 - (iv) Cabling works – a total of 15121 meters of 3Cx 95 mm sq high voltage cable has been installed for the 11kv power reticulation system.
 - (v) Installation works – installation of the switch gear, transformer and LV switchboard in the bomb dump substation has been completed.
- (b) Road and car park lighting
- (i) Trenching works - excavation of 14854 meters of 600mm deep trenches for the street lighting cabling works has been completed.
 - (ii) Concrete works – casting and installation on site of 235; 800x800x800 mm deep concrete bases for the street lighting poles has been finalized.
 - (iii) Installation works – installation of 14254 and 4700 meters of 2Cx6mm.sq and 4Cx35mm.sq cables for the street lighting works has been completed. Installation, termination and testing of 220 8meters high street lighting poles have also been completed.
- (c) AGL works
- (i) Excavation works - A total of 21,546 meters of trenching for the primary and secondary cables has been completed.
 - (ii) Ducting works – installation of the 50mm HDPE ducts for the runway EDGE lights has been completed. Installation of 32mm HDPE pipes for all the taxi way edge is ongoing.
 - (iii) Cabling works – installation of runway and taxiway primary cables is ongoing with 55,400 meters has been installed.
 - (iv) Installation works – installation of the runway EDGE lights has been completed while the installation of the taxiway edge lights (ORP lights) is ongoing.

7.5.2 The contract price for the electrical sub-contract was Kshs. 1,287,278,572. The amount certified for completed works is Kshs. 707,908,119.48.

7.6 MEETING WITH PIONEER PLUMBERS LIMITED

Mr. Bharat Patel appeared before the Committee on 28th September, 2011. During his appearance he briefed the Committee as follows, that:-

7.6.1 Pioneer Plumbers Limited was awarded the mechanical sub-contract for the rehabilitation of the Laikipia airbase, Nanyuki on 26th June, 2009. The contract for the rehabilitation of the Laikipia Air Base (Mechanical Works) was signed on 23rd June, 2010 between Government of Kenya and pioneer plumbers for a contract price of Kshs. 15,198,803.

7.6.2 The scope of the works involved:-

- (i) Removal of old fire hydrants valve and installation of new hydrant valve – The old fire hydrant valves were leaking and others were not functioning. The installations of new hydrant valves will ensure there is no water wastage and thus reduction in water bills.
- (ii) Installation of fire hydrant marker post – this enables the easy location of water points.
- (iii) Extension of fire hydrant line - This ensured water draw off points in case of emergencies. The different locations of the hydrants makes it easier for the user to reach them when need arises.

7.6.3 The project is complete and handed over to the client on 19th August, 2011. As per the contract agreement, the contractor is still liable for any defects that might come up within the six months from the date of handing over. The mechanical works were not in any way tied to the electrical and mechanical works. This enabled the independent working on the works and quick completion of the contract.

7.6.4 From the contract price of Kshs. 15,198,803 there has been a saving of Kshs. 1.6 million for the client after the approved works of Kshs. 13,533,943.

Committee observations

- (i) The Ministry of State for defence was able to save Kshs 1,664,860.
- (ii) The mechanical sub contract completed and handed over within the contract stipulated time.

COMMITTEE RECOMMENDATIONS

- (i) The Ministry of State for Defence should ensure that the runway is fitted with night landing system as a matter of urgency. The failure by the Ministry to cater for night landing gear at the runway renders the project incomplete and inaccessible during the night.
- (ii) The installation of night landing equipment in the future might be expensive and additional cost will be incurred to tunnel and place ducts for instruments in the already completed runway. The accounting officer, the Chief of Staff and the Air Force Commander should be held responsible for poor planning leading to omission of the night landing instruments.
- (iii) The contract price was varied from Kshs. 1,750,573,724.30 to Kshs. 2,000,104.79. This is a variation of Kshs. 249,531,274.49.

8.0 PROPOSED ADMINISTRATION/TUITION BLOCK, ACCOMODATION BLOCKS AND PARADE GROUND FOR THE SCHOOL OF INFANTRY, ISIOLO

8.1 VISIT TO THE KENYA ARMY SCHOOL OF INFANTRY, ISIOLO

The Committee visited the Kenya Army School of Infantry based in Isiolo on Monday June 6th, 2011. The Committee was met and briefed by the Commandant, School of Infantry as follows, that:-

8.1.1 Infantry is the principle fighting arm of the Kenya Army. The Primary mission of the Infantry formations is to fight and win land battles within area of operational responsibilities in the defence of the nation against land – based aggression,

while the secondary mission is the provision of aid and support to civil authorities in the maintenance of order.

8.1.2 The school of infantry's sole Mission is to provide training at different levels for both tactical and weaponry courses to Officers, men and women of the Kenya Army in order to enhance professionalism and proficiency.

8.1.3 Its vision is to produce Officers, men and women who are capable of professionally Commanding, controlling and administering troops and equipments in both peace and war time.

8.1.4 Other roles of the school of infantry include:-

- (i) The primary role of the school is training through organized instructional and professional military skills for the Infantry personnel of the Kenya Army and allied nations.
- (ii) The school undertakes to embrace, teach and maintain the Infantry Doctrine in harmony with the other service sister school in conformity with the operational concepts of the Kenya Armed Forces.
- (iii) The school undertakes to embrace trials of new Infantry weapon systems introduced into the service through conducting initial test firing of the weapon system and providing instructional training to the systems end user/operators.

Inspection of the modernization project

8.1.5 The Committee inspected parts of the administration/tuition block, parade and accommodation facilities and observed that the works were almost complete except for the electrical wiring and minor works. The Committee further observed that the grills and window/doors frames are weak.

8.1.6 The contract commenced on February 5th, 2009 with a contract period of 80 weeks with a completion date of August 18th, 2010 but this was revised to September 10th, 2010. The contract was awarded to M/s Donwoods Limited at a

contract price of Kshs. 424,763,882. The project comprises of a double storey administration/tuition block, accommodation block for corporals and SNCO's and parade ground.

8.1.7 Due to additional works there is a variation Kshs. 56, 731, 711. 40 which is equivalent to 13.36% of the contract price. The anticipated final account will be Kshs. 481,495,593.40. The variations were occasioned by:-

- Site conditions – rocky soil at the parade ground
 - Unanticipated depth of black cotton soil was encountered at more than what was anticipated at the administration/tuition block. The contractor submitted estimates based on the provisional site depth.
- User requirements – additional two sheds and VIP rest rooms to the parade ground and foul water drainage thereto
 - Changes in the corporals accommodation to cater for female officers
 - Additional toilets and stores in the administration block
 - Additional parking areas to the accommodation and administration blocks
 - Construction of new bridge on the main spine access road.
 - Change in location of the administration block
 - Structural cabling

8.1.8 The project was certified practically complete (100%) on May 1st, 2011 with some facilities having been handed over to the Department of Defence.

Committee observations

During the visit the Committee made the following observations:-

- (i) Construction not in conformity with the original designs.
- (ii) Inadequate soil testing done to determine soil depth and therefore cost of construction. In future proper site investigations be undertaken before commencement of projects/designs.

(iii) There is variation to the contract price, Kshs. 56,731,711. 40, which could have been avoided had due diligence been undertaken by the client and consultant before commencement of project.

8.2 MEETING WITH INTERSHELTER SULLIVAN ARCHITECTS

Mr. William S.W Busolo, principal architect, Intershelter Sullivan Architects appeared before the Committee on 6th and 15th September, 2011. He briefed the Committee as follows, that:-

8.2.1 The scope of project data includes, Administration block/Tuition block (double storey) which consists of 9 class rooms, library, conference room, 18 offices, computer room, 2 auditorium, washrooms, access road and parking, 28 self contained rooms for 56 officers and 2 laundry blocks. Among other projects includes, Corporals accommodation block(28 double rooms to accommodate 56 officers,2 laundry blocks, washrooms and ironing rooms, access road and parking) Senior Commanding officers block (2 laundry rooms, 27 double rooms to accommodate 54 senior officers, washrooms and ironing rooms, 2 store. 1 RSM room self-contained with lounge, kitchenette, store, 1 common room, access road and Parking. Other works undertaken includes, Parade ground, dais, 2 sheds and parking, 800 metre spine access road, water reticulation and foul water disposal and landscaping

8.2.2 The contract was awarded to M/s Donwoods Limited and commenced on 5th February, 2009 with a contract period of 80 wks and the completion date was supposed to be 18th August 2010. The initial contract price was Kshs 424,763,882,00 but the anticipated amount was 481,495,593.40 due unexpected variations. The contract variation was 13.36 % above the contract sum which was Kshs 56,731,711.40. This is within the limits provided by the Public Procurement and Disposal Act of 2005. Variations are recognized in the contract documents for procurement of works, specifications and Bills of quantities. Variations can also result in net decrease in cost if for example where the new specifications given

costs less than that originally specified. Change in design and additional works was discussed extensively by the consultants and it was noted that the requests would enhance the functionality of the facilities. It was noted that the opportunity costs would have been high if the facilities were not incorporated. There was no written requests that lead to changes hence variations. The variations were discussed between the client and the consultant.

8.2.3 Reasons for variations includes:-

- (i) Rocky soil at the parade ground - an anticipated depth of black cotton soil was encountered at more than what was anticipated at the Administration block/Tuition block.
- (ii) Addition of two sheds and VIP restrooms to the parade ground and foul Water drainage thereto.
- (iii) Changes in the corporals' accommodation to take care of female of officers.
- (iv) Additional toilets and stores in the Administration/Tuition block.
- (v) Additional parking areas to accommodate blocks and the Administration/Tuition blocks.
- (vi) Construction of new bridge on the main spine access road. This was not anticipated.

8.2.4 Due to a number of reasons, the Contractor was unable to complete within the specified period. The project is now complete with some facilities having been handed over to the client and in use. Other facilities are practically complete but are awaiting furnishing. The project also delayed because the mechanical sub-contractor was not able to execute his duties and his services had to be terminated.

8.2.5 The completed facilities are of high quality workmanship and spacious and will go a long way in providing the much needed office space, classrooms, residential accommodation and training grounds for training of middle level officers in our Kenya Defence Forces.

8.2.6 The professional services from the team of contractors were procured through competitive bidding in accordance with the conditions of engagement and scale of fees for professional services for Building and civil and Engineering works.

8.2.7 The mandate of the Consultant include:-

- (a) Supervising the construction works as the Lead Consultant and ensure the desired workmanship is achieved, and the contractor is executing the work as per the design
- (b) Coordinating the consultancy team in the course of the project
- (c) Chairing site meetings and leading the project inspection teams
- (d) Regularly updating the client on the progress of the works through reports, minutes of the site meetings and inspection reports
- (e) Advising the client on any desired change of specification or variations and contractor's request for extension of time
- (f) Certifying the work done and issuance of the interim certificates of payment
- (g) Issuance off practical completion certificate to the contractor upon practical completion
- (h) Arbitrating on any dispute that might arise between the client and the contractor.

Committee observations

The Committee observed that:-

- (a) The Consultant and the Ministry of State for Defence failed in initial planning resulting in such huge variations to the contract price.

8.3 MEETING WITH M/s DONWOODS COMPANY LIMITED

Mr. Don Mwaura appeared before the Committee on 4th August, 2011 and briefed it as follows, that:-

8.3.1 The contract (DODWORKS/006/08/09) for the construction of the proposed administration/tuition block, accommodation blocks and parade ground complete

with associated civil works for the School of Infantry, Isiolo was awarded to Don Woods Limited vide letter DODWS/311/1/PROJ dated 28th November 2008. The tender award price was Kshs. Three hundred million seven hundred ninety seven thousands seven hundred forty three (Kshs. 374,797,743.00).

8.3.2 The contract was signed on 17th July, 2009 with a contract period of 80 weeks and a contract price of Kshs. 424,763,882.00 comprising of:-

- Builder's works - Kshs. 374,797,743
- Electrical installations - Kshs. 25,933,810
- Plumbing and drainage installations - Kshs. 24,032,329

8.3.3 The project was practically completed on 30th April, 2011 and a certificate of practical completion issued on May 4th 2011. The defects liability period commenced on May 1st, 2011 to last for a period of six months till October 31st, 2011. The project was handed over to DOD on March 3rd 2011 and a hand over certificate issued on March 24th 2011.

8.3.4 The contract period was varied and so was the contract price. Price variations were issued during the construction period. All instructions on the variation is given by the lead consultant. The total price variations amounts to Kshs. 56,731,711.40 comprising of Kshs. 48,570,315.60 that were approved and Kshs. 8,161,395.75 that is awaiting client's approval. The anticipated final account will therefore be Kshs. 481,495,593.40.

8.3.5 The variations were in respect of among other things:-

- Site was move from the original murram soil site to new location with black cotton soil.
- VIP rest rooms at dais
- Two spectator sheds at parade ground
- New projector and simulator store rooms in simulator room
- New toilets on either side of the stairwell
- Rehabilitation works to the existing septic tank
- Extension of parade ground surface

- Additional road work at the main gate

8.3.6 M/s Donwoods Limited participated in the tender process for Kenya Military Academy II. During the first tender process for KMA II, M/s Don Woods Limited was the lowest bidder out of the 10 tenderers. They were called again to re-tender with an addition of six other firms invited to tender. They wrote a protest letter to the Public Procurement and Oversight Authority (PPOA) but no response has been forthcoming. They re-tendered but did not win the tender. The tender was awarded to M/s N. K. Brothers Limited at a tender price of Kshs. 1.3 Billion but with a reduced scope of work and in spite the fact that they were number three in the tender results. M/s N. K. Brothers were not among those who had tendered during the first tender process that was nullified. Letters on the results of the tender were issued five days before the end of the 14 days period for raising objections.

Committee concerns

The Committee raised the following concerns:-

- (i) The Ministry of State for Defence did not take due diligence when deciding the location of the buildings. Poor planning by the Ministry and consultant led to change of the site thus resulting to variations.
- (ii) The tender process for KMA I was cancelled to accommodate six firms that were not in the original tender process.
- (iii) M/s N.K. Brothers Limited won the tender in spite not being the lowest bidder.
- (iv) The tender process was flawed and skewed to favour M/s N.K. Brothers.

8.4 MEETING WITH COM TWENTY ONE LIMITED

Mr. Evans Mwaura Githua, the Managing Director, Com Twenty One Limited appeared before the Committee on 4th and 9th August, 2011. During his appearance he briefed the Committee as follows, that:-

8.4.1 The contract (DODWORKS/083/09/010) for the supply, delivery, installation, testing and commissioning of data and voice communication installation works at

the proposed administration/tuition block, accommodation blocks and parade ground at the School of Infantry, Isiolo was signed on 3rd May, 2011. The contract price is Kshs. 12, 192,676.53.

8.4.2 M/s Com Twenty One Limited participated in the tender process and were awarded the contract. The first letter of offer by DOD to Com Twenty One Limited was issued on 14th September 2010 as a subcontractor to the main contractor, M/s Don Woods Limited. In November, 2010 DOD issued another letter of offer to M/s Com Twenty One Limited as an independent contractor but the contract price remained the same.

8.4.3 The project was to be completed and handed over on 2nd July, 2011 after a period of 10 weeks starting 25th April, 2011. They have been experiencing delays in the progress of works. The delay was occasioned by communication delays with the client on the provision of staff to be trained on the IT systems. The delay was also caused by the fact that the works were dependent upon other contractors. Due to the delays they have applied for extension of contract period to September, 2011 but there will be no variation to the contract price.

8.4.4 In the past they have undertaken ICT works for the Department of Defence. In 2009 they were awarded a contract to install 5 military barracks (Lanet, Gilgil, Embakasi, Mombasa and Defence College) with PABX. The Contract was fixed and there were no variation to the contract price. The contract was for the modernization of the military IT project.

Committee observations

- (i) The project has overshot its contract completion date.
- (ii) The Ministry of State for Defence failed to provide officers to be trained on IT system in spite request by the contractor.

8.5 MEETING WITH THE PUBLIC PROCUREMENT AND OVERSIGHT AUTHORITY

The Committee heard that:-

8.5.1 Intershelter Sullivan were appointed as the lead consultants for the project. They submitted a preliminary cost of Kshs. 156,000,000 based on elemental costing planning. This was later revised to Kshs. 400 million after change of scope and submission of designs.

8.5.2 In April 2008, the Permanent Secretary commissioned various works to the following consultants at an estimated cost of Kshs. 395 million

- (j) Intershelter Sullivan Architects – Architects
- (k) Mecoy Consultants – Mechanical/Electrical
- (l) Builecon Associates – Quantity Surveyor
- (m) Wanjohi Consulting Engineers – Structural/Civil Engineers

8.5.3 The Ministry after requesting the architects to forward a list of contractors for main works and specialized works approved the use of restricted tendering through its Ministerial Tender Committee (MTC). The bids were evaluated and the MTC awarded the contract at a revised contract price of Kshs. 424,763,882 including the subcontracts. The contract agreement was signed on July 17, 2009.

The contracts were as follows:-

- Builder's works - Kshs. 374,797,743
- Electrical installations - Kshs. 25,933,810
- Plumbing and drainage installations - Kshs. 24,032,329

8.5.4 The Ministry also commissioned contract for the data and voice communication installation works at a contract price of Kshs. 12, 192,676.53.

8.5.5 The contract was varied by Kshs. 56,731,711.40 accounting for 13.36% of the contract price from Kshs 424,763,882 to Kshs. 481,495,593.40

Committee observations

- (i) The process of identifying and procuring the consultants was not clear and the Ministry did not determine the consultancy fees.

- (ii) There were delays in project implementation on the part of the electrical installations.
- (iii) There was change in design and location which was not done in writing.
- (iv) The contract was varied by 13.36% thus raising the contract price to Kshs. 481,495,593.40

COMMITTEE RECOMMENDATIONS

- (i) The Ministry of State for Defence should undertake due diligence in project planning and management. Due to poor project planning the site for the construction works and designs were changed.
- (ii) The variation in contract price of upto 13.36% was as a result of poor planning and project designs. The colonel works and the project architect should be held accountable for poor project designs and planning leading to additional works.

9.0 THE KENYA ARMY SCHOOL OF ARTILLERY, ISIOLO

9.1 VISIT TO THE KENYA ARMY SCHOOL OF ARTILLERY, ISIOLO

The Committee visited the School of Artillery (SOA) on Monday June 6th, 2011 and was briefed by the Commandant School of Artillery, Lieutenant Col. Lokia. He briefed the Committee on the role, mission and vision of the School of Artillery.

9.1.1 The primary Mission is to provide fire support to the Kenya Army in the defence of the nation against external land based aggression, while the Secondary role is to support the Civil Authority in maintenance of order and during national disasters within the assigned area of responsibility.

9.1.2 The vision of the Kenya Army Artillery is to have a professionally well-trained Brigade capable of successfully achieving the primary mission within the laid down Artillery training and operation standards.

9.1.3 The Kenya Army Artillery division plays the following roles:-

- Provide dedicated close and general Artillery fire support to Army manoeuvre units and Battle Field Intelligence through Artillery Surveillance Units and communication systems.
- Provide Anti-Aircraft Artillery cover of all vital Areas, Vulnerable Areas and Manoeuvre units.
- Assist the Kenya Air force in defence of the nation airspace by providing Air defence support.
- Augment Naval Gun fire support in close to shore maritime operations.
- Support to civil authority in the maintenance of order.
- Perform any other tasks as may be assigned by the Commander Kenya Army.

9.1.4 The role of the Kenya school of artillery is to produce technically and tactically proficient officers and men/women capable of effectively deploying and employing Artillery resources in Combat, in line with Artillery training standards and Army Commanders training directives.

155 mm Artillery gun shed

9.1.5 The project for the construction of artillery gunshed was designed by the Department of Defence. The building will be used to house the NOR 155 mm BTH equipment. The project cost Kshs. 55.9 million and took one year to complete. The project comprises of a building to house 14 trucks complete with a sewerage system. The project started in June 3rd 2010 and handed over in April, 14th 2011.

9.1.6 There were no variations and the Ministry saved Kshs. 1 million after project completion.

Committee Observations

The Ministry of Defence was able to save Kshs. 1 million from the projected cost of the project partly due to use of its own engineers in designing the building.

9.2 MEETING WITH GAPS ENGINEERING LIMITED

Mr. Elijah Kyuli, Managing Director, Gap Engineering Limited appeared before the Committee on 8th September, 2011. He briefed the Committee as follows, that:-

9.2.1 The contract for the construction and completion of Artillery gun shed in Isiolo was awarded on 10/06/2010 and it was supposed to be completed by 21/06/2011. The contract was awarded at a price of Kshs. 55,995,270.00.

9.2.2 The construction was completed by 14/10/2011 (ten months) way before the contract timeline at a cost of Kshs 54,993,270.00. Handing over and practical completion certificate was awarded the same day.

9.2.3 There was no variation incurred, instead Ksh. 1 million was saved. Normally variations arise due to poor planning. In our cases we did sample and trials of soil texture and type before embarking on the projects. There was no external interruption especially from the Department of Defence. This was made clear to contractor that any changes by any officer in uniform be made in writing prior to the commencement of the project by the officer in charge of projects.

9.2.4 In the past the company undertook projects from Department of Defence, for instance, we constructed the house for Vice -Chief -of- General Staff and a block of offices at Kahawa Barracks at a cost of a half million and eleven million respectively.

9.2.5 There is value for money if consultants from Department of Defence were engaged instead of outsourcing externally.

Committee observations

The Committee observed that:-

- (i) The project was implemented and completed within the contract time.

- (iii) The Ministry of State for Defence saved Kshs. 1 million.
- (iv) The Ministry engaged its own consultants.

COMMITTEE RECOMMENDATIONS

- (iii) The Ministry should utilize its specialized human resource where necessary and particularly in the construction projects so as to minimize cost.

10.0 THE KENYA MILITARY ACADEMY, LANET

10.1 MEETING WITH THE MINISTER FOR DEFENCE

The Hon. Mohamed Yusuf Haji, EGH, MP Minister of State for Defence, appeared before the Committee and briefed it as follows:-

Kenya Military Academy

- 10.1.1 The military academy infrastructure was planned to be completed in one phase at a budgetary proposal of Kshs. 1.2 billion but due to low funding levels it was split into two phases.
- 10.1.2 Phase I was to be completed at a cost of Kshs. 459, 909, 101 and involved the construction of administration and tuition blocks. The contract was awarded to M/s NK Brothers Limited. Construction is in progress and the completion date is August 2011.
- 10.1.3 Phase II of the project will cover construction for the accommodation block. The tendering for phase II is ongoing and the project is expected to cost Kshs 0.9 billion. The Ministry is aware that there are interest groups that are trying to manipulate the process and will conduct the procurement process in accordance to the procurement laws.

10.2 VISIT TO THE KENYA MILITARY ACADEMY, LANET

The Committee visited the Kenya Military Academy in Lanet on 7th June, 2011 and was briefed on the history, mission and functions of the academy as well as the progress in the construction works. The Committee was briefed as follows, that:-

10.2.1 The Academy started as training centre for Kenya regiment in 1955 and was then named Sergeant Leakey barracks before becoming a fully fledged barracks in 1960 and latter in 1963 renamed Lanet barracks. It was restructured to Armed Forces Training College (AFTC) in 1968. In July 2008 the AFTC was renamed Kenya Military Academy. In the past it has housed the recruits training school, school of infantry and staff wing which moved out over time.

10.2.2 The vision of the academy is to be a centre of excellence for foundational military training and education with its core function being to train selected cadets to commission as young officers in Defence Forces. The academy offers equips officers with basic knowledge and professional skills in physical, mental and moral spheres so as to lay the foundation for special service and arm training.

10.2.3 The military academy offers diploma and degree courses on military studies. The academy however faces a major challenge in terms of inadequate and old facilities. The facilities cannot cope with the increased intake of cadets. Further the academic programme has been upgraded to a degree level while the institution lacks the human resource and other facilities and resources on research and development to meet the new demands.

10.2.4 In line with the Kenya Defence Forces modernization programme and the transition/ upgrade of the institution from offering diploma to degree courses the department of defence is currently undertaking the construction of phase I of the Kenya military academy which comprises of administration, library and tuition blocks at Lanet.

The consultant Tectura International and the contractor M/s N.K. Brothers Limited took the Committee on a tour of the buildings under construction and briefed it that:-

10.2.5 The tender for the construction of an administration, library and tuition blocks for the Kenya Military Academy in Lanet was awarded to M/s N.K. Brothers Limited at a contract price of Kshs. 459,909,101. The project is scheduled for completion (130 week period) on 7th August, 2011.

10.2.6 The project has run smoothly meeting all its monthly targets in line with the programme of works and is nearing completion. Due to client request, the works have been accelerated and are programmed for completion by 20th June, 2011 in readiness for commissioning by H.E. the President.

10.2.7 Due to additional works there are variations amounting to Kshs. 68, 256, 582 was occasioned by:-

- (i) Substructure re-measurement
- (ii) Extensions to library and tuition block
- (iii) Magazine specifications
- (iv) Mini-corrugations to roof coverings
- (v) Theatre seats
- (vi) New borehole pipe works

Committee observations

The Committee made the following observations:-

- (i) The construction works is in progress but might not be complete in readiness for the commissioning by the President in June 2011.
- (ii) The project already has variations arising from poor planning and lack of specifications by the employer, Ministry of Defence.

10.3 MEETING WITH M/s N. K. BROTHERS LIMITED

Mr. Pravin Khoda, the Managing Director M/s N. K. Brothers Limited appeared before the Committee on 30th May, 2011 and 4th August, 2011 and briefed the Committee as follows, that:-

10.3.1 The company was incorporated in 1953 and is registered as a class A contractor by the Ministry of Public Works. It is based in Nairobi at Lunga Lunga road. The company engages in building and general construction, earth works, paving and grading as well as precast concrete works. The company has undertaken several major projects for schools, hospitals, the Kenya armed forces, the police and other private sector clients.

10.3.2. The company has undertaken the following construction works for the Kenya Defence Forces:-

- Administration block and Officers mess for the 7th Battalion in Gilgil – 1969 – Kshs. 1 million
- Armed Forces store and corporals houses in Gilgil – 1970 – Kshs. 1 million
- Workshop and office block for Lanet Armed Forces Academy – 1970 – Kshs. 1 million
- Administration block for the Armed Forces Hospital – 1973 – Kshs. 2.2 million
- Captains and Corporals houses at Moi Airbase - 1986 - Kshs. 69 million
- Corporals housing at water works camp – Army HQ – 1987 – Kshs. 20 million
- 192 married quarters at Langata Barracks – 2002 – Kshs. 404,344,373.94
- 192 Married quarters at Moi Air Base – 2002 – Kshs. 410,828,885.89
- Kenya Military Academy - 2009 - Kshs. 459,909,101 – project is ongoing.

10.3.3 In the course of business they have one litigation and two arbitration cases which are related and are in accordance with the provisions of the agreement and conditions of contract for each project. The cases are as follows:-

- Construction of Police lines –the matter is under litigation – ruling pending in court
- Lake Basin Development Authority, construction of HQ. – arbitration is ongoing
- NSSF parking silo- arbitration concluded in favour of NK Brothers.

KENYA MILITARY ACADEMY (KMA) PHASE I

- 10.3.4 Phase I of the project commenced on February 2009 with a contract period of 130 weeks and was projected to be completed by 7th August 2011. The project comprises of construction of Administration, Library and Tuition blocks. Due to client request, the works were accelerated to ensure completion by 20th June, 2011 in readiness for the commissioning by H.E. the President. By the time The President opened the facility, the project was 98% complete.
- 10.3.5 The project team include M/s N.K. Brothers as the main contractor while the project manager /consultant is M/s Tectura International while M/s Jagar Consultants and Shako Partners being the quantity surveyors and mechanical engineers respectively.
- 10.3.6 M/s N.K. Brothers Limited were awarded the tender in September 2009 at a contract price of Kshs. 459,909,101 with a completion date of 7th August, 2011 (130 weeks period).
- 10.3.7 The inspection of works for phase I was carried out on 2nd August, 2011 way after the facility was commissioned by H. E. the President. The inspection was carried out on the same day that Col. Works wrote a letter directing that an inspection of the project be undertaken.
- 10.3.8 The variations on the project amounting to Kshs. 68 Million were on the works done and agreed upon between the employer and the contractor with authority for the variations granted. The variations were paid as they were executed and upon approval of the client (DOD). The variations covered the following aspects:-
- (i) Superstructure
 - (ii) Magazine
 - (iii) Extension of the tuition block
 - (iv) Extension of the library block
 - (v) Borehole
 - (vi) Roof underlay and masonry

- (vii) Ground tank bearers
- (viii) Stair case
- (ix) External works
- (x) Miscellaneous

10.3.9 The Kenya military academy Phase I is complete and certificate of practical completion was issued by the project architects/mangers (Tectura International) on 9th August, 2011. The client took possession of the complete project (minus the auditorium) on 17th August, 2011. However the defect liability period will end on 17th February, 2011. (**annex**)

KENYA MILITARY ACADEMY PHASE II

10.3.10 M/s N.K. Brothers received an invitation to tender for KMA phase II on 7th March, 2011. They submitted their tender on 11th April, 2011. They were not invited in the initial tender for the project in spite being the contractor on ground but were subsequently invited to tender.

10.3.11 M/s N.K. Brother were awarded the contract through a letter dated 8th June, 2011. The works include a kitchen and three accommodation blocks.

10.3.12 The contract agreement for KMA phase II was entered into on 23rd June, 2011 at a contract price of Kshs. 1,149,909,101 and a contract period of 104 weeks. Completion date is 7th July, 2013. The contractor is already on site and works for the project have begun.

Committee observations

The Committee observed, that:-

- (i) The project for KMA I was commissioned by the President yet it was not complete.
- (ii) The Department of Defence misled the Committee during the budget hearings to the effect that KMA phase II had not been awarded yet the contract had by then been awarded to M/s N.K. Brothers Limited.

(iii) The company was paid for variations in KMA I project towards the end of the Financial Year and awarded the contract for Phase II during the same period.

(iv) M/s NK Brother Limited were awarded the contract after it was retendered to include them contrary to public procurement laws.

10.4 MEETING WITH TECTURA INTERNATIONAL AND JAGAAR CONSULT

The Consultant and the Architects appeared before the Committee on 5th and 15th September, 2011. They briefed the Committee on construction works at the Kenya Military Academy as follows, that:-

10.4.1 Kenya Military Academy (KMA) Phase I comprised of the administration block, tuition block, the library, magazine and external works while KMA Phase II comprises of the three cadet accommodation blocks, Kitchen and Dining halls, Cadet messes and external works.

10.4.2 The main works and subcontract works were awarded based on their (Tectura/Jagaar) recommendation except for the standby generator, which they considered unresponsive as only two tenderers had submitted tenders. This subcontract was later retendered.

10.4.3 The contract was awarded to M/s N.K. Brother Limited at a contract price of Kshs 459,909,101.00. Works for the project commenced on 2nd February 2009 with a construction period of 130 weeks. The construction went on smoothly up to completion. During construction, there were variations amounting to Kshs. 68, 256, 582.60 which were issued either for reasons of design requirements or due to clients instructions. The variations affected all disciplines i.e. the main works and the services. The variations were within the 15% allowable in the contract and have been approved by the client.

10.4.4 During the site meeting No.18 held on 21st July 2010 the client (DOD) expressed the wish to have the works completed by end of May 2011. The client wrote on 5th August 2010 to confirm the same request. During the various site meetings the matter was discussed further and the contractor promised in non-committal

manner that he would try and achieve the clients request though the works had been programmed to be completed by 7th August 2011.

10.4.5 By the time the President performed the ceremonial opening of the building on 29th June 2011, the works were substantially complete and the buildings were usable, except the auditorium seats and fittings to the model rooms. The seats were not on the original contract and were part of the variations.

10.4.6 Due to the speed to achieve substantial completion before the President's ceremonial opening, the snag lists was long and therefore the completion certificate could not be issued. The contractor was by then attending to snag. The certificate of completion was however issued on 9th August 2011.

10.4.7 All works were completed and the building is in use except for the auditorium seats which are to be imported and the contractor is awaiting their arrival in order to fix them.

10.5 MEETING WITH THE PUBLIC PROCUREMENT AND OVERSIGHT AUTHORITY

The Committee heard that:-

10.5.1 The Ministry of Roads and Public Works advertised tenders for the construction of proposed administration block at the Armed Forces Training School, Lanet. This process was abandoned after the Ministry of Defence sought to be consulted on the project.

10.5.2 M/s Tectura International, a consultant, was brought on board, and organized a consultative forum with other consultants on issues related to the project.

10.5.3 In August 2007 M/s Jagaar Consultants was cleared by the Ministry to proceed with documentation for tendering after the chief of logistics submitted a request to MTC for approval to advertise for tenders for KMA, the notice of which had been approved by the accounting officer. M/s Jagaar Consultants submitted pretender costs of estimates of Kshs. 726,516,785.50 to the Ministry in December 4, 2007.

10.5.4 The MTC on December 14, 2007 approved a request to advertise an open tender for the KMA project on condition that the user branch clarifies on issues related to funding and supervision but on February 8, 2008 the MTC nullified the above approval for open tender and without justification approved the restricted procurement method.

10.5.5 Nine (9) bidders were invited for the main works but only four responded, M/s N.K Brother Limited, M/s Kilimanjaro Construction, M/s Epco Builders and M/s Twiga Construction. The bids were evaluated by Mr. Simon N. Waburi of M/s Jagaar consultants and recommended award of the tender to M/s N.K. Brothers Limited at Kshs. 459,909,101.00. The winner had not signed the tender questionnaire and confidential business questionnaire.

10.5.6 In April 7, 2008 the Ministry brought on board M/s Syncro consult/shako and partners as consultants for electrical/mechanical services in an unclear process.

Committee observations

From the meeting the Committee observed that:-

- (i) The process of identifying and engaging the consultants was not clear.
- (ii) The evaluation process was done by an individual and not in three stages as required by regulations 47, 49, and 50 of the PPDR.
- (iii) The evaluation criterion was not clear and objective as required by section 66 of the PPDA.
- (iv) M/s N.K. Brothers had not signed the tender questionnaire and confidential business questionnaire to certify that information provided in the bid is correct.

COMMITTEE RECOMMENDATIONS

- (i) The Ministry of State for Defence decided without justification to use restricted tendering mid stream after an approval for open tendering was granted. The Accounting officer should be held accountable for poor contract planning and management leading to unnecessary use of restricted tendering method.

- (ii) The Ethics and Anti Corruption Commission should investigate circumstances under which M/s N.K. Brothers Limited were awarded the contract for KMA I and II.
- (iii) The Former CGS, Gen. Jeremiah Kianga should be held accountable for abuse of office by influencing the award of contract for KMA II to M/s N. K. Brothers Limited through the cancelation of the tender for the KMA II so as to include M/s N.K. Brothers who were later awarded the contract.
- (iv) The contract for the KMA II was varied by Kshs. 68 million which was paid out towards the end of the Financial Year. The variation was occasioned by the poor planning and contract management on the part of the Ministry of Defence.
- (v) The Minister for Defence and the current Chief of Defence Forces misled the Committee in contravention of the section 21 of the National Assembly (Powers and Privileges) Act, when they appeared before it during the budget scrutiny to the effect that the contract for the KMA II had not been awarded while in actual fact the contract was awarded in June 23, 2011 at a contract price of Kshs. 1,149,909,101. The Committee recommends that necessary action be taken against the Minister in accordance with Standing Order 97.

11.0 THE RECRUITS TRAINING SCHOOL, ELDORET

10.1 VISIT TO THE RECRUITS TRAINING SCHOOL, ELDORET

The Committee visited the Recruits Training School (RTS) in Eldoret on Tuesday June 7th, 2011. The Committee was accompanied by the General, Commanding the Western Brigade and was briefed as follows, that:-

- 11.1.1 The Mission of the Recruits Training School is to transform selected civilians to military soldiers for deployment in the Kenya Defence Forces.
- 11.1.2 After civilians have been selected from the districts by the recruiting teams they are received at the recruits training school. Medical tests are conducted to determine the medical fitness of the recruits and their documents are scrutinized to ensure that they are all in order. During the training period

recruits undergo a continuous medical, vetting, and character & discipline assessment whereby those found not fit for military training, are discontinued. There is no replacement of recruits at the training school.

11.1.3 Under the modernization programme the recruit's training school has prioritized the following works:-

- (i) New kitchen
- (ii) Accommodation
- (iii) School headquarters and division offices
- (iv) Tuition blocks
- (v) Magazine
- (vi) Communication
- (vii) Expansion of medical reception station

11.1.4 The new kitchen will comprise of 3 kitchens with three identical dining's under one roof with a total capacity of 2,500 seated personnel. The kitchen will serve the three divisions within the training school; Simba, Nyati and Chui.

11.1.5 The new kitchen block has enhanced hygiene, efficient feeding of the recruits and instructors. It uses renewable energy (solar) thus reducing reliance on firewood. The block is environmentally friendly built with modern architecture.

12.0 RECOMMENDATIONS

The Committee recommends that:-

PROCUREMENT OF ARMoured PERSONEL CARRIERS (APC's)

1. The Ministry of State for Defence should review its contract with M/s OTT Technologies Limited with a view to realising value for money during the manufacture of APC's.
2. Investigations be undertaken on the role of Mr. Navaz Alibhai and Mr Stuart Herd in the procurement process leading to the award of tender for the manufacture of APC's to M/s OTT technologies of South Africa.

3. The Permanent Secretary Ministry of State for Defence, the procurement Officer and the Ministerial Tender Committee (MTC) be held accountable for flouting the provisions of the Public Procurement and Disposal Act, 2005, during the tendering process for the APC's. The Ministry did not use any tender documents, did not provide user specifications, the firms invited to bid were not pre qualified as is required etc.
4. The Ministry of State for Defence used direct procurement method in contravention of section 74 of the Public Procurement and Disposal Act (PPDA) and regulation 62 of the Public Procurement and Disposal Regulations (PPDR). The accounting officer should be held responsible for flawed procurement.
5. The Col Kabugi-led technical and evaluation team did not undertake tests on the equipments offered by the four South African firms they visited. The testing of equipment at the factory and at the point of use is critical for any new military equipment. The absence of this critical component of evaluation made the work irregular and raises questions on the utility of the equipment for its main purpose.

RETROFIT OF NYAYO CLASS VESSELS

1. The Permanent Secretary in the Ministry of State for Defence should ensure that variations are approved within the set limits as provided under section 47 of the Public Procurement and Disposal Act (PPDA), 2005 and regulation 31 of the Public Procurement and Disposal Regulations (PPDR).
2. Investigations be conducted on the circumstances leading to the cancellation of the supplementary contract and its substitution with another supplementary contract of a higher value.
3. The Accounting Officer, Ministry of Defence should be held accountable for flouting the procurement laws by allowing a variation beyond the set limit of 15% as provided by the PPDA.
4. The Ministry of State for Defence failed to prioritize the mid life refit of the Kenya Navy ships Umoja and Nyayo thus leading to their deterioration. The Chief of

Staff and the Navy Commander should be held responsible for management failure leading to the deterioration of Kenya Navy ships.

PROCUREMENT OF F-5 FIGHTER JETS

1. The Ministry of State for Defence flouted procurement laws through use of direct procurement contrary to PPDA provisions.
2. The Ethics and Anti Corruption Commission (EACC) should conduct investigations on the circumstances surrounding the sourcing and award of tender for purchase of the F-5 fighter jets, provision of spares and freighting services.
3. The Ministry of State for Defence did not undertake valuation on the second hand jets to determine value for money and guide negotiations. The VCDF and the commander air force be held accountable for allowing negotiations to take place without valuation and for allowing the purchase of second hand jets that are older or same age as the jets purchased by Kenya in the 1960's.
4. A value for money audit be undertaken on the procurement of second hand jets from Jordan considering that the jets required servicing after the purchase.

REFURBISHMENT OF PANHARD AML 245

1. The Ministry of State for Defence should conclusively establish the fate of its contract with M/s Saymar Limited in light of the acquisition of M/s Saymar Limited by M/s Elbit Land Systems.
2. The Ministry of State for Defence should ensure that M/s Saymar Limited meets its contractual obligations within the contract period.

15 KENYA RIFLES MILITARY BARACKS, MARIAKANI

- Poor planning
- 1. Variation-The Ministry of State for Defence and M/s Njuga Consolidated Limited should be held responsible for the large variation sum in the construction works which resulted in the delay and unnecessary costliness of the works.
- 2. The Ministry of State for Defence through its Accounting Officer should be held accountable for poor contract planning thus resulting in budgetary deficit, inclusion of hitherto excluded projects, thus costing the Taxpayer unnecessary extra burden.

Formatted: Justified

Formatted: Justified, Numbered + Level 1 +
Numbering Style 1, 2, 3, + Start at 1 +
Alignment: Left + Aligned at 0.25" + Indent
at: 0.5"

THE LAIKIPIA AIRBASE RUNWAY, NANYUKI

1. The Ministry of State for Defence should ensure that the runway is fitted with night landing system as a matter of urgency. The failure by the Ministry to cater for night landing gear at the runway renders the project incomplete and inaccessible during the night.
2. The installation of night landing equipment in the future might be expensive and additional cost will be incurred to tunnel and place ducts for instruments in the already completed runway. The accounting officer, the Chief of Staff and the Air Force Commander should be held responsible for poor planning leading to omission of the night landing instruments.
3. The contract price was varied from Kshs. 1,750,573,724.30 to Kshs. 2,000,104.79. This is a variation of Kshs. 249,531,274.49.

THE KENYA ARMY SCHOOL OF INFANTRY, ISIOLO

1. The Ministry of State for Defence should undertake due diligence in project planning and management. Due to poor project planning the site for the construction works and designs were changed.
2. The variation in contract price of upto 13.36% was as a result of poor planning and project designs. The Colonel Works and the project Architect should be held accountable for poor project conceptions, designs and planning leading to additional works.

THE KENYA ARMY SCHOOL OF ARTILLERY, ISIOLO

1. The Ministry should utilize its specialized human resource where necessary and particularly in the construction projects so as to minimize cost.

THE KENYA MILITARY ACADEMY, LANET

1. The Ministry of State for Defence decided without justification to use restricted tendering mid stream after an approval for open tendering was granted. The Accounting officer should be held accountable for poor contract planning and management leading to unnecessary use of restricted tendering method.
2. The Ethics and Anti Corruption Commission should investigate circumstances under which M/s N.K. Brothers Limited were awarded the contract for KMA I and II.
3. The Former CGS, Gen. Jeremiah Kianga, should be held accountable for abuse of office by influencing the award of contract for KMA II to M/s N. K. Brothers Limited through the cancelation of the tender for the KMA II so as to include M/s N.K. Brothers who were later awarded the contract.
4. The contract for the KMA II was varied by Kshs. 68 million which was paid out towards the end of the Financial Year. The variation was occasioned by the poor planning and contract management on the part of the Ministry of Defence.
5. The Minister for Defence and the current Chief of Defence Forces misled the Committee in contravention of the section 21 of the National Assembly (Powers and Privileges) Act, when they appeared before it during the budget scrutiny to the effect that the contract for the KMA II had not been awarded while in actual fact the contract was awarded in June 23, 2011 at a contract price of Kshs. 1,149,909,101. The Committee recommends that necessary action be taken against the Minister in accordance with Standing Order 97.

RECRUITS TRAINING SCHOOL, ELDORET

It was established that there were differences between Contractors (Njama-Contractors) and Consultants during the Construction Project. Due to the adverse effects this has on the Construction works, the Committee encourages parties to solve their matters amicably, pay outstanding bills to the Contractor and ensure that a project is not halted against the clear terms of the contract.

- Outstanding bill for contractor
-

Formatted: Font Not Bold

Formatted: Justified

Formatted: Font Not Bold

Formatted: No bullets or numbering

RECOMMENDATIONS

Formatted: Font: Bold

From the committee meetings with Ministry of State for Defence officials, project contractors and consultants, visits to military camps and the foreign visits to South Africa, Israel, Italy and Spain the Committee observed and recommends that:-

- i. The Government should allocate more resources to the Ministry of State for Defence to cater for the modernisation programme.
- ii. The Ministry of State for Defence should prioritise funds allocation in the modernisation programme so as to address immediate needs of the Kenya Defence Forces.
- iii. The Ministry of State for Defence should undertake due diligence of companies bidding for defence contracts to determine their capacity and competence in delivering goods and services before entering into any procurement contracts.
- iv. While procuring goods and services the Ministry of State for Defence should at all times adhere to the Public Procurement and Disposal Act, 2005 and attendant procurement regulations.
- v. A Financial and forensic audit should be carried out on all the modernisation programmes, undertaken in the last five years, by the Ministry of State for Defence.
- vi. The public procurement and oversight authority should undertake procurement audits of projects by the Ministry of State for Defence on an annual basis and submit their report to the relevant Parliamentary oversight Committee.
- vii. The Ministry of State for Defence should develop a comprehensive contract management system and procedures in compliance of section 47 of PPDA and regulation 31 of the PPDR.

Formatted: Numbered + Level: 1 +
Numbering Style: i, ii, iii, ... + Start at: 1 +
Alignment: Right + Aligned at: 1" + Indent at:
1.25"

These recommendations form part of the recommendations contained in other parts of this report.

Formatted: Justified

