

*laid on 26th of
the table of the House April 2006*



REPUBLIC OF KENYA

**NATIONAL ASSEMBLY
NINTH PARLIAMENT-FOURTH SESSION**

**DEPARTMENTAL COMMITTEE NO - H
ON DEFENCE AND FOREIGN RELATIONS**

**REPORT OF THE STUDY VISIT TO THE
DEMOCRATIC REPUBLIC OF CONGO (DRC)
September 15 - 18, 2005**

**NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS,
NAIROBI**

SEPTEMBER 2005

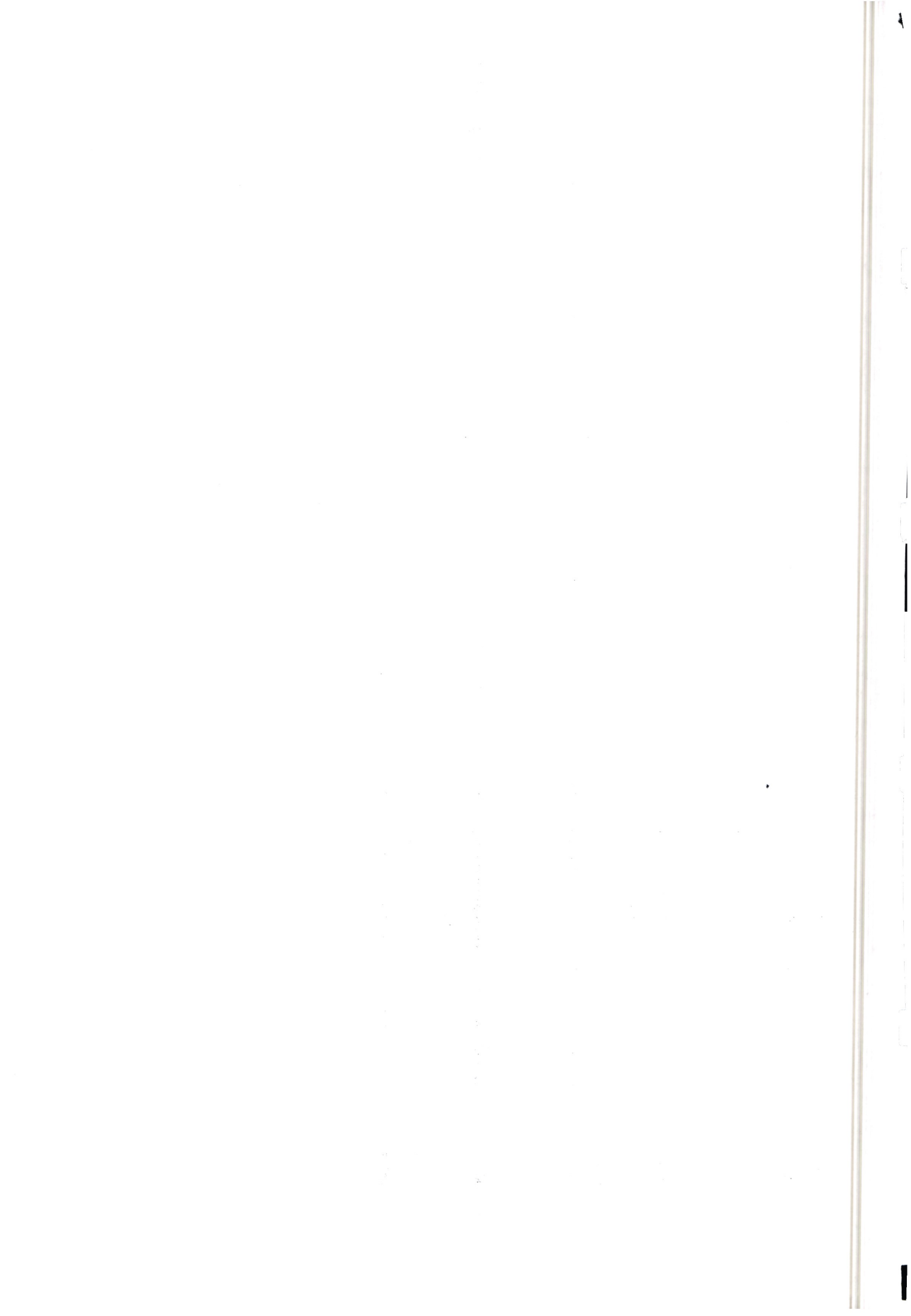
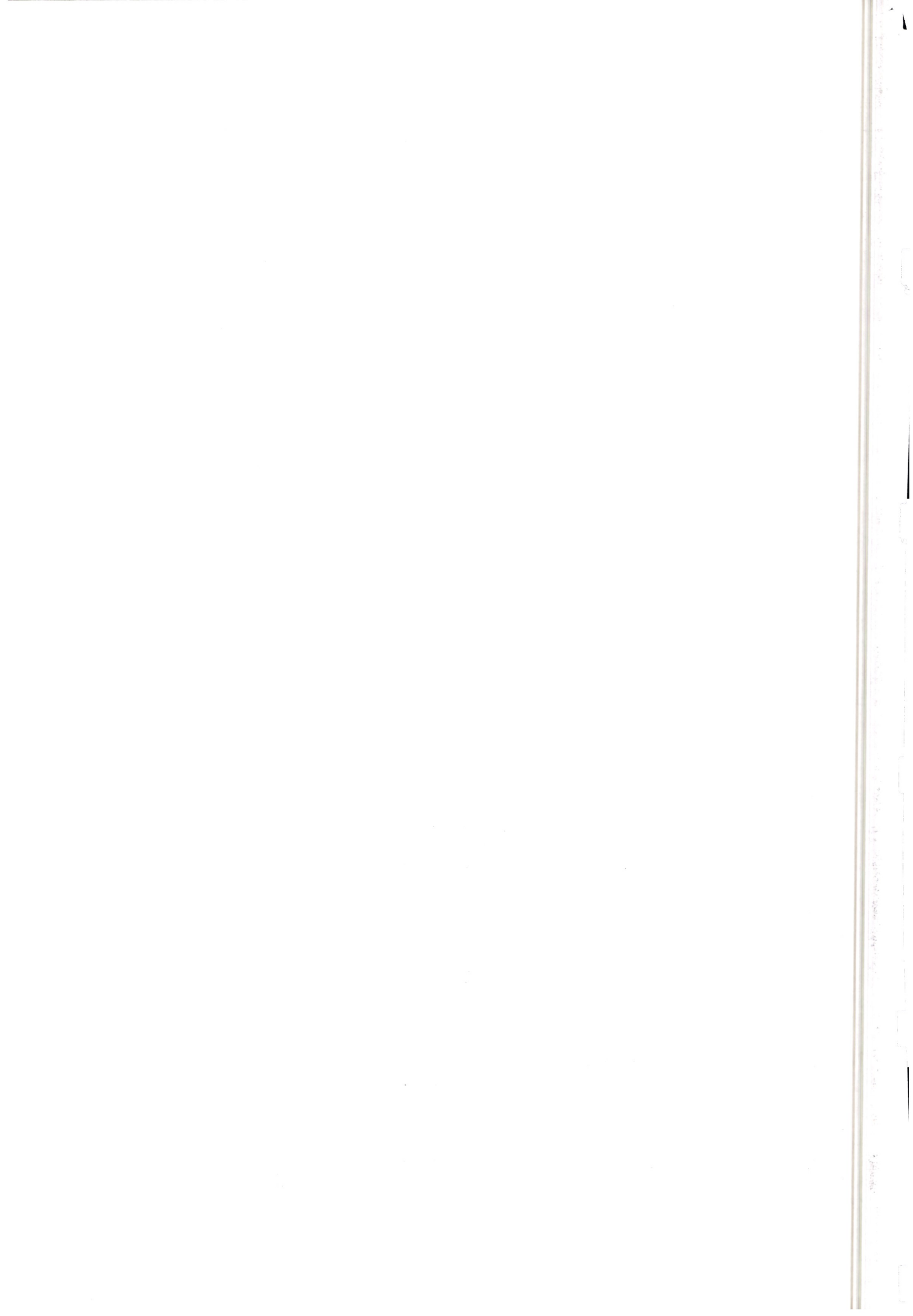


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INTRODUCTION

The Hon Speaker,

The Departmental Committee on Defence and Foreign Relations was constituted at the commencement of the Ninth (9th) Parliament pursuant to provisions of Standing Orders 151. The Committee has executed its mandate in accordance with the provisions of Standing Order 151 (4), which in part states thus:-

- i. investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
- ii. study the programme and policy objectives of the Ministries and Departments and the effectiveness for the implementation;
- iii. study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);
- iv. study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
- v. investigate and inquire into all matters relating to the assigned Ministries and Departments as they deem necessary as may be referred to them by the House or a Minister ; and
- vi. make reports and recommendations to the House as often as possible including recommendations of proposed legislation.

The Committee oversees the following Ministries and Departments:-

- i. Ministry of Foreign Affairs;
- ii. Ministry for East Africa and Regional Cooperation; and
- iii. Department of Defence

The Committee comprises the following Members:-

The Hon. G. G. Kariuki, EGH MP - **Chairperson.**
The Hon. Nyiva W. Mwendwa, MP
The Hon. Kirugi L. M' Mukindia, MP
The Hon. Rtd Maj. Marsden H. Madoka, MP
The Hon. Daniel L. Khamasi, MP
The Hon. Samuel L. Poghisi, MP
The Hon. Rtd Gen Joseph Nkaissery, MP
The Hon. Mwandawiro Mghanga, MP
The Hon Rtd Capt Davies Nakitare, MP
The Hon Abdalla J Ngozi, MP
The Hon. Njoki S. Ndung'u, MP



BACKGROUND FOR THE VISIT TO KINSHASA

- 4 Since the last round of visits to the Democratic Republic Congo (DRC), Tanzania, Rwanda, Burundi and Uganda in June, 2004, to introduce the concept of parliamentary diplomacy, the initiative was well received in all these countries. In October 2004, the Great Lakes Region Inter-parliamentary Forum was formally launched in Mombasa, Kenya, with the first meeting of the Forum being held in March 15-17, 2005 in Kigali, Rwanda. On both occasions, delegates from the DRC failed to show up. This raised serious concern amongst the Committee members, and a resolution was reached soon after the Kigali Conference to travel to DRC to establish the country's position regarding joining the Forum. The Committee visited DRC on September 15-18, 2005

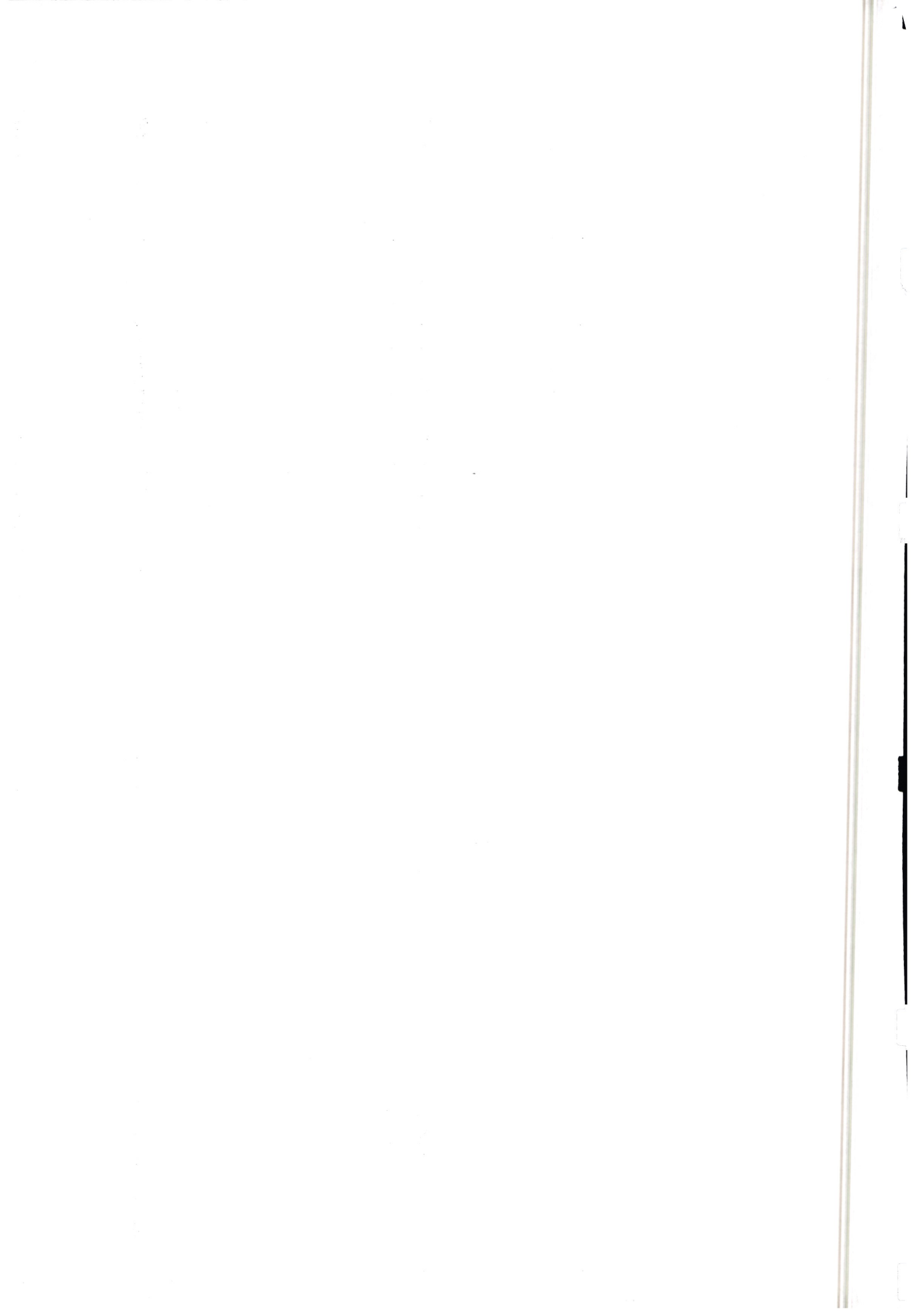
MEMBERSHIP OF THE DELEGATION

- 5 Five Members of the Committee accompanied by one officer visited the DRC between September 15 and 18, 2005. The delegation comprised the following:-

The Hon. G. G. Kariuki, EGH MP	-	Chairperson/
Leader of the delegation		NARC
The Hon. Kirugi L. M' Mukindia, MP		NARC
The Hon. Nyiva W. Mwendwa, MP.		NARC
The Hon Rtd Gen Joseph Nkaissery, MP		KANU
The Hon Rtd Capt Davies Nakitare, MP		NARC
Mr. Njenga Njuguna	-	Secretary to the delegation.

OBJECTIVES OF THE VISIT AND EMERGING ISSUES

- 6 The objectives of the visit included, among, others, to -
- (i) share and discuss the progress made by the Great Lakes and Horn of Africa Region Inter-parliamentary Forum and its future plans in inter-parliamentary diplomacy for peaceful resolution of conflicts;
 - (ii) enhance inter-parliamentary relations between Kenya and the DRC,
 - (iii) explore opportunities for bilateral political, economic and cultural cooperation between the two countries; and
 - (iv) acquaint Committee Members on the political transition process, including plans for the upcoming general elections and other activities in the DRC;
- 7 The delegation held high level meetings and discussions with several high-ranking officers of the Executive and Parliament including, Hon Floribert Bokanga, the Minister for Economy; Hon Mwinga Bila, the Vice Minister



for Foreign Affairs; Dr the Hon Emily Illunga, the First Deputy Speaker of the Senate; the Deputy Speaker of the Chamber of Deputies of the Transitional National Assembly, Hon Philomena Omatuku, Members of Parliament responsible for Foreign Affairs, Security, Economy and Trade. The delegation also met Amb Ross Mountain, the Deputy Representative of the UN Secretary General in charge of the UN Mission for Congo (MONUC); Kenya's outgoing ambassador to DRC Amb (Dr) Meshack Nyambati and staff of the Mission in Kinshasa and several Kenyan residents working and/or doing business in DRC.

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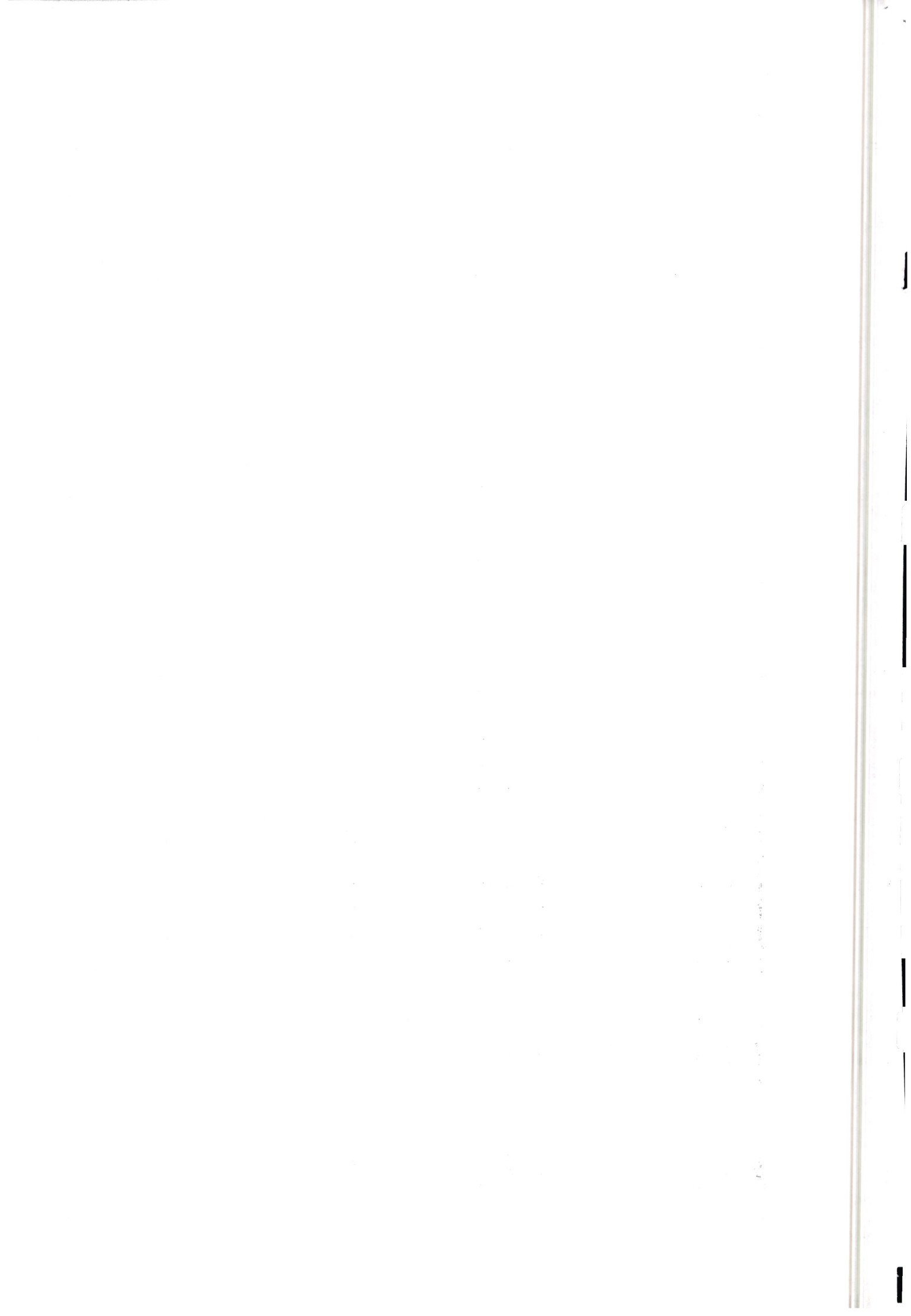
During the visit the following key issues emerged:

- the various leaders met by the Committee expressed strong support for the Inter-parliamentary Forum as the best medium to intervene in addressing various conflicts situations in the Great Lakes and Horn of Africa region. They regretted the failure of the DRC delegates to participate in the Forum's past meetings and promised to join once elections and other ongoing transitional processes are in place;
- the Government of Kenya should take a focused short and long-term interest in the DRC by recognizing President Joseph Kabila's government and formulate a specific policy towards engaging the country's top leadership. This may include a visit by the Minister for Foreign Affairs to Kinshasa soon, coupled by an official invitation of President Kabila;
- areas in which Kenya could consider offering assistance to DRC include: reforming DRC's security systems through training of soldiers including the navy and police;
- a trade mission to travel to Kinshasa to exhibit Kenyan products and services, and exploring investment opportunities in sectors such as infrastructure development, tourism and agriculture among others;
- need for upgrading the status of the Mission in Kinshasa and strengthen its capacity to facilitate political and commercial cooperation with DRC given the fact that the country is now Kenya's fourth (4th) highest trading partner in Africa, despite lack of a well defined and focused official engagement.

ACKNOWLEDGEMENT

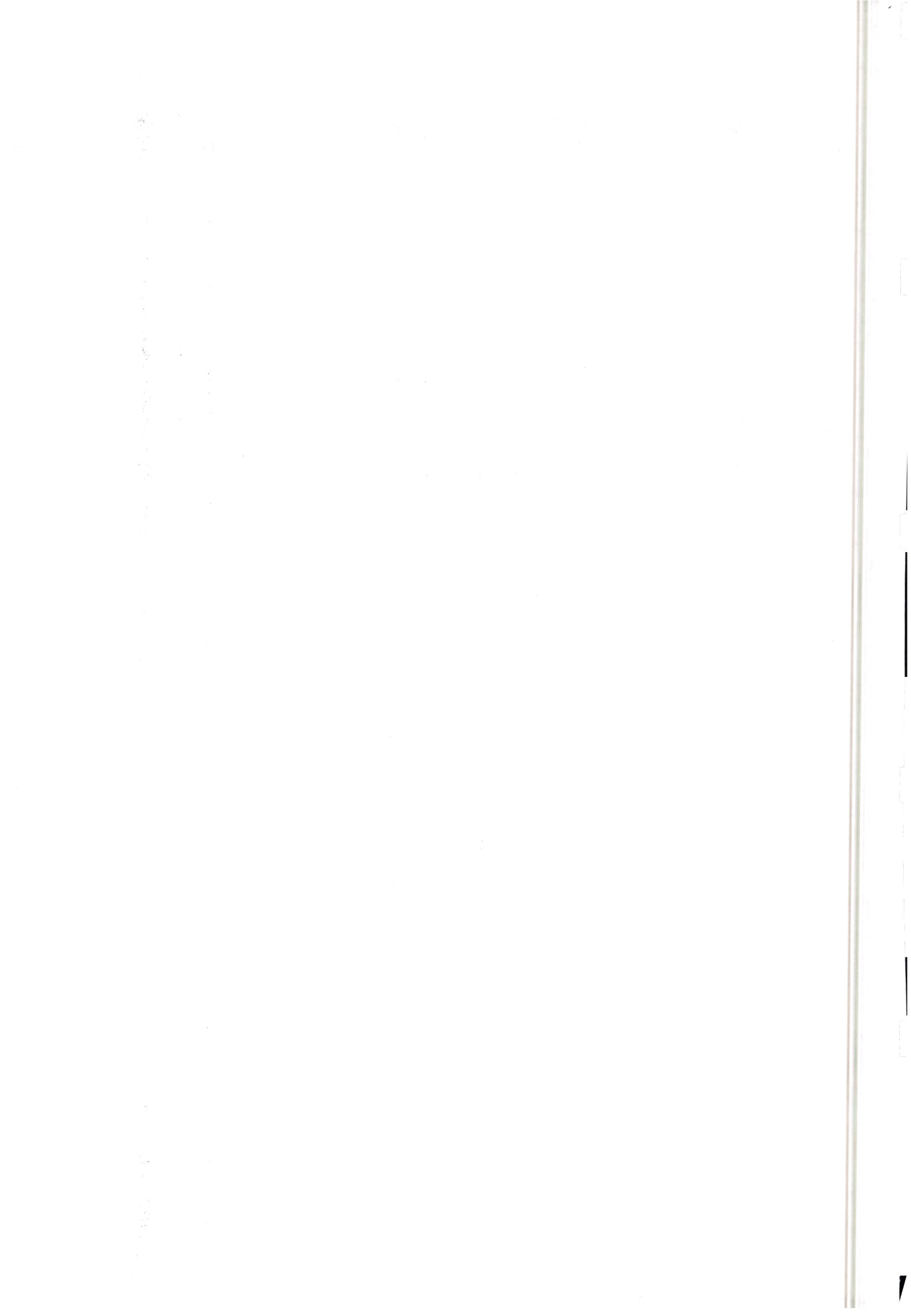
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The Committee is grateful to the Hon Speaker and the Liaison Committee for facilitating the visit, and the office of the Clerk for providing the necessary logistical and technical support. The Committee would also wish to thank officials of the Ministry of Foreign Affairs headquarters, and the staff of the Kenya Embassy in Kinshasa led by Amb Meshack Nyambati for all the support and technical assistance given before and during the study visit.



MEETING WITH HON MBWINGA BILA, VICE MINISTER FOR FOREIGN AFFAIRS, DRC

- 11 The Vice Minister expressed gratitude for the Committee's goodwill visit, which he termed as a good gesture in strengthening bilateral relations with DRC, which dates back to the 1960s. He stated that, the two countries had cordial relations and had cooperated in many areas including the holding of the forthcoming Conference on the Great Lakes to be held in Nairobi in November 2005, as well as the issue of small arms proliferation in the region.
- 12 In his remarks, the leader of the delegation thanked the Vice Minister for receiving the Committee and lauded the cordial relations that have existed between the governments and peoples of the two countries since the 1960s. He defined the mandate and operations of the Committee and highlighted the values and principles of Kenya's foreign policy as incorporating among others, good neighborliness; respect for territorial integrity of other states; respect for the UN and Africa Union Charters. He reiterated that the Committee's mission was meant to urge DRC to actively join the Great Lakes and Horn of Africa Region Inter-parliamentary Forum, as an avenue to address some of the long running conflicts with her neighbours through parliamentary diplomacy. This would help create a stable, peaceful and economically prosperous region.
- 13 He explained the Committee's mission of regional visits dating back to June 2004 that culminated in the formation of an Inter-parliamentary Forum for the Great Lakes Region, and its official launch in October, 2004 in Mombasa, Kenya. He further gave an account of the progress made since including the holding of the First Conference of the Forum in Kigali in March 2005, which was officially opened by H.E. President Paul Kagame. He informed the Vice Minister that the next meeting of the Forum was tentatively scheduled for November, 2005 in Sudan. He also pointed out that, Kenya was keen to strengthen bilateral relations with DRC, and to enhance cooperation in political, trade, cultural, tourism and agricultural sectors.
- 14 The Committee observed that trade between DRC and Kenya had increased remarkably such that DRC occupies the fourth position in Africa for Kenyan goods. They called for the revival of the Joint Commission between the two countries, further indicating that Kenya could assist DRC to develop her tourism and agricultural sectors. The Committee urged the leaders in DRC to pursue economic reforms alongside the political transitional process to address the economic problems facing the people, and sensitize them that change would not occur overnight.



15 In his closing remarks, the Vice Minister concurred with sentiments expressed by the Committee and expressed concern that ignorance, poor infrastructure and communication linkages and negative mental attitude passed on by colonialists had adversely affected relations among Africans people. He expressed support for the Forum as a good initiative and expressed hope that it would assist his country address issues affecting her relations with Burundi, Rwanda and Uganda.

16 The Chairman informed the Vice Minister that Kenya had officially applied to join the UN Security Council and hoped that DRC would support her candidature when the time comes. The Vice Minister promised to communicate the message to the leadership in DRC.

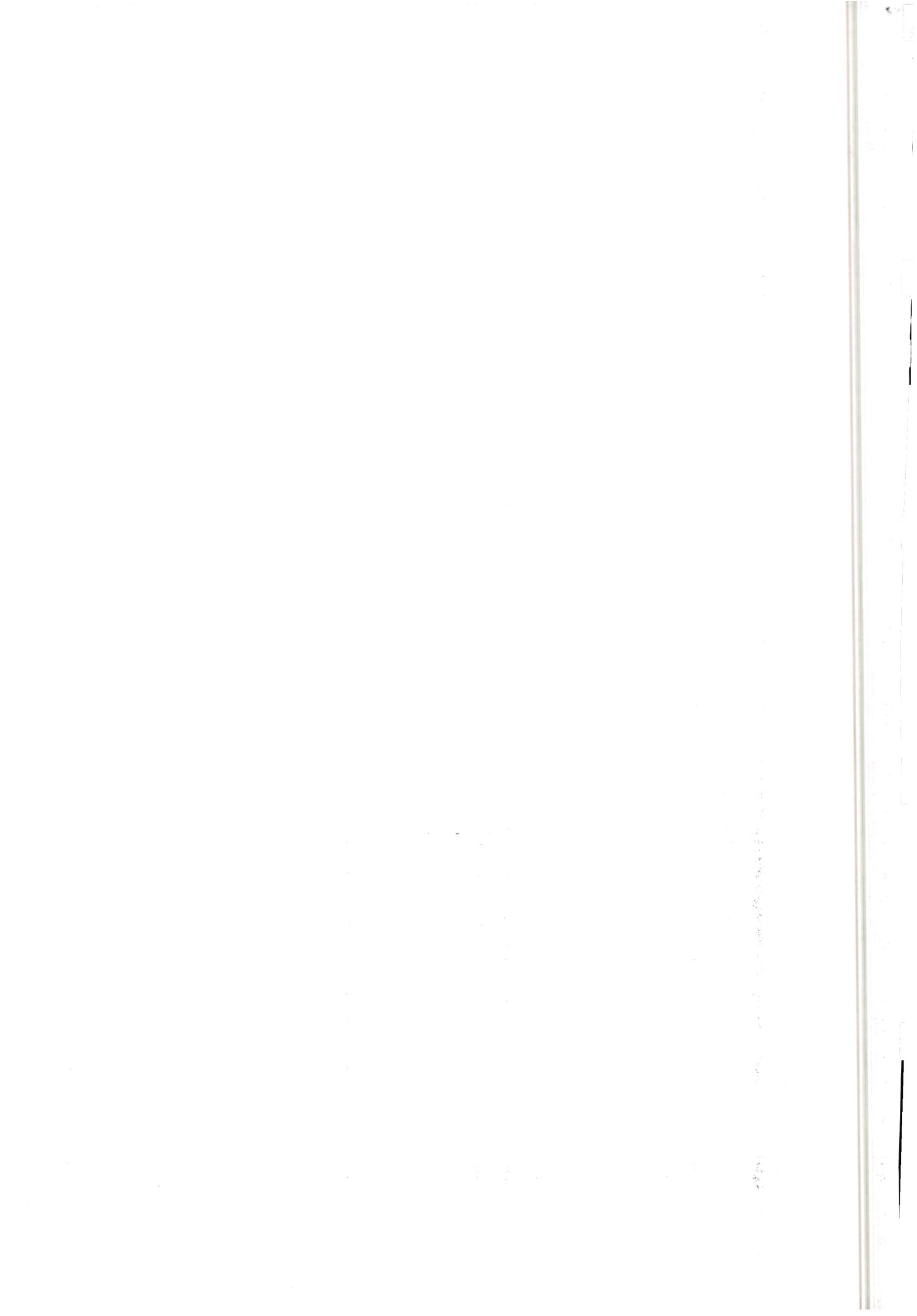
17 There upon, the Committee recommends that: -

1. the Government of Kenya should invite President Joseph Kabila to make a state visit to Nairobi, as a step in forging stronger political, economic, security and cultural cooperation;
2. the Minister of Foreign Affairs should make an official visit to DRC soon to affirm Kenya's recognition of the Government and enhance bilateral cooperation between Kenya and DRC;
3. the Joint Commission between Kenya and DRC be revived as soon as possible to explore opportunities for cooperation in trade, tourism, infrastructure and agricultural interests; its noteworthy that, despite lack of the Joint Commission, DRC is Kenya's fourth biggest trading market in Africa;
4. Kenya could offer support to the transitional process in DRC and now and thereafter the elections through offer of assistance in training of military, security and police officers; electoral officers, tourism training at Kenya *Utalii* College, among, others.

MEETING WITH DRC MEMBERS OF PARLIAMENT FROM VARIOUS COMMITTEES

18 The Committee held discussions with Members representing the following Committees: -

Name	Committee	Designation	Party Affiliation
Hon Dr Mwamba Benjamin	Defence and Security	(Deputy) Lower House	Civil Society
Hon Bellidée Bunga	Foreign Relations	(Deputy) Lower House	RCD Goma
Hon Luhaya	Defence and	(Deputy) Lower	

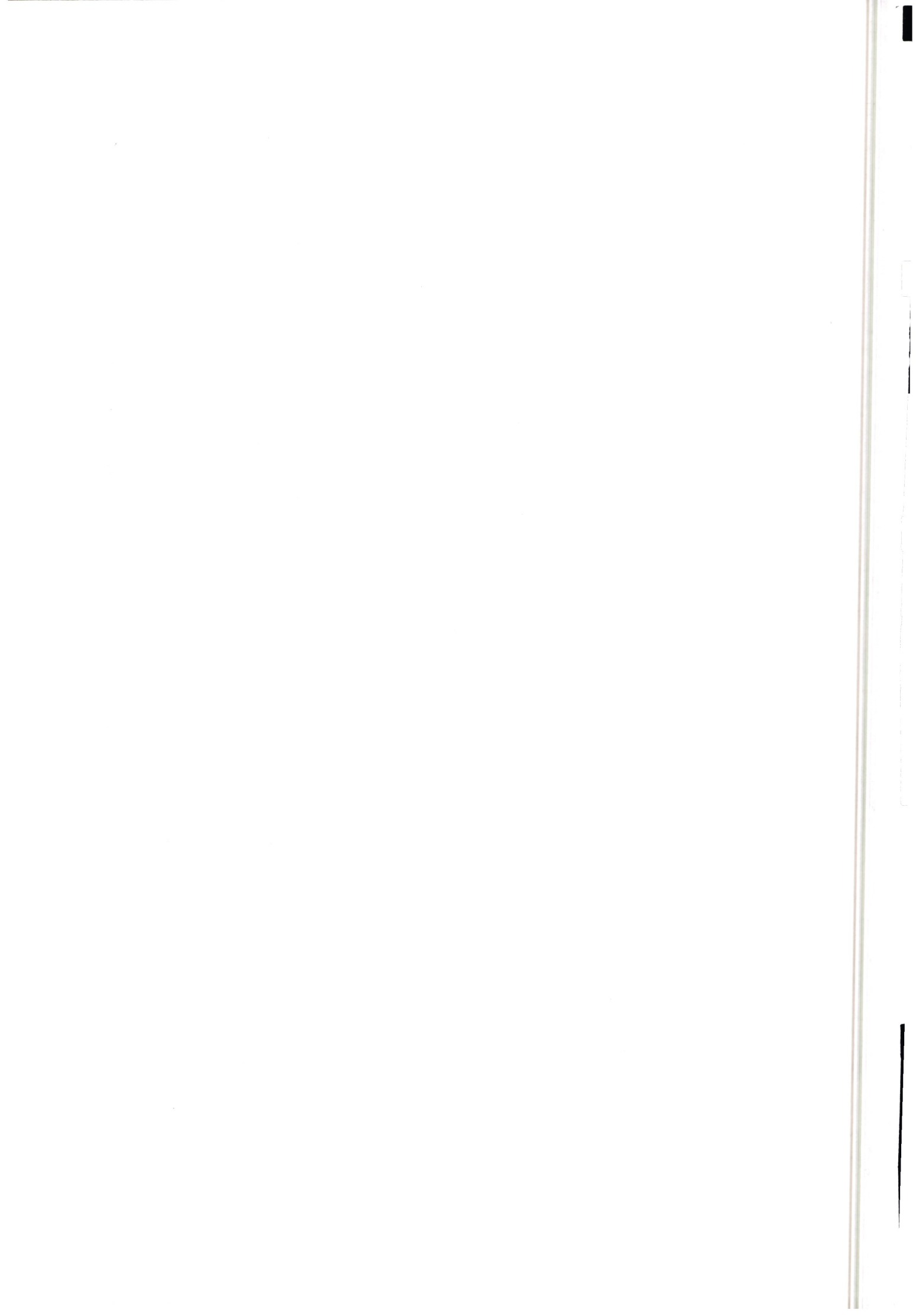


Constant	Security	House	
Hon Kapambwe Marcel	Economy, Finance and Budget	(Deputy) Lower House	
Hon Jean Marie Luhahi Enbungu	Defence and Security	(Deputy) Lower House	
Hon Muyumba Bernard	Economy, Finance and Budget	(Deputy) Lower House	
Hon Victor Balikubwa	Foreign Relations	Senator- Upper House	
Hon Floribert Wakuteka Harry	Defence and Security	Senator -Upper House	

19 Hon Balikubwa who chaired the meeting welcomed the Committee and stated that the parliamentarians were happy when they got the information that the Committee was visiting DRC. He expressed regret that the Hon Speaker Olivier Kamitatu was on assignment outside the country but indicated that the Deputy Speaker would have a chance to meet the delegation.

20 The Chairman briefed his colleagues of the developments that had occurred since the last Committee visit in June 2004 that culminated in the formation of the Great Lakes and Horn of Africa Region Inter-Parliamentary Forum to spearhead parliamentary diplomacy in the region. He informed the Members that, Kenya recognizes the critical role that DRC has to play for regional stability, peace and development to prevail in the Great Lakes region and beyond. He indicated that it's due to these concerns that the Committee had resolved to make a second visit to DRC to ascertain the reasons why delegates from the country failed to turn up in Mombasa and Kigali during the Forum's launch and First Conference respectively. He added that Congolese cannot afford to be left out of the Forum as it offers regional parliamentarians as representatives of the people, an opportunity to discuss all and every matter that appertains to conflicts in the region. He also informed the Congolese MPs that Kenya was vying for a seat in the UN Security Council, and expressed hope that DRC would support her.

21 The Committee invited their colleagues to join the initiative, reminding them that unlike in the past when the powerful Western countries could intervene directly in African conflicts, nowadays, they insist that Africans solve their own problems. The Committee called for different approaches in addressing African issues, hence the need for the Forum. The Committee further observed that Kenya has experience in peacemaking and wished to share the same with DRC to enable them enjoy peace. The Committee informed the Congolese leaders that Kenya would be willing to offer assistance to DRC during the on going transitional process if called upon.



- 22 The Congolese MPs expressed regret for missing out in Mombasa and Kigali conferences explaining that the country faced various challenges and difficulties including funding and poor communication. They expressed support for the holding of regular meetings amongst parliamentarians on a bi-annual or quarterly basis. They undertook to join in the next meeting tentatively planned for November, 2005 in Khartoum, Sudan. They however pointed that the Forum needs to consider how such meetings could help impact on problems in respective countries in the region.
- 23 The Committee informed them that unlike other associations such as *AMANI* Forum, that brought together MPs and civil society organisations, the Forum was exclusively for sitting Members of Parliament, particularly those in the defence, security and foreign relations Committees.
- 24 In his closing remarks, Hon Balikubwa thanked the Committee for visiting DRC which to them was an indicator that DRC is not forgotten. This also symbolized the importance Kenya attached to the country's participation in regional activities. He expressed confidence that DRC will hence forth actively engage in the Forum's future activities and meetings.

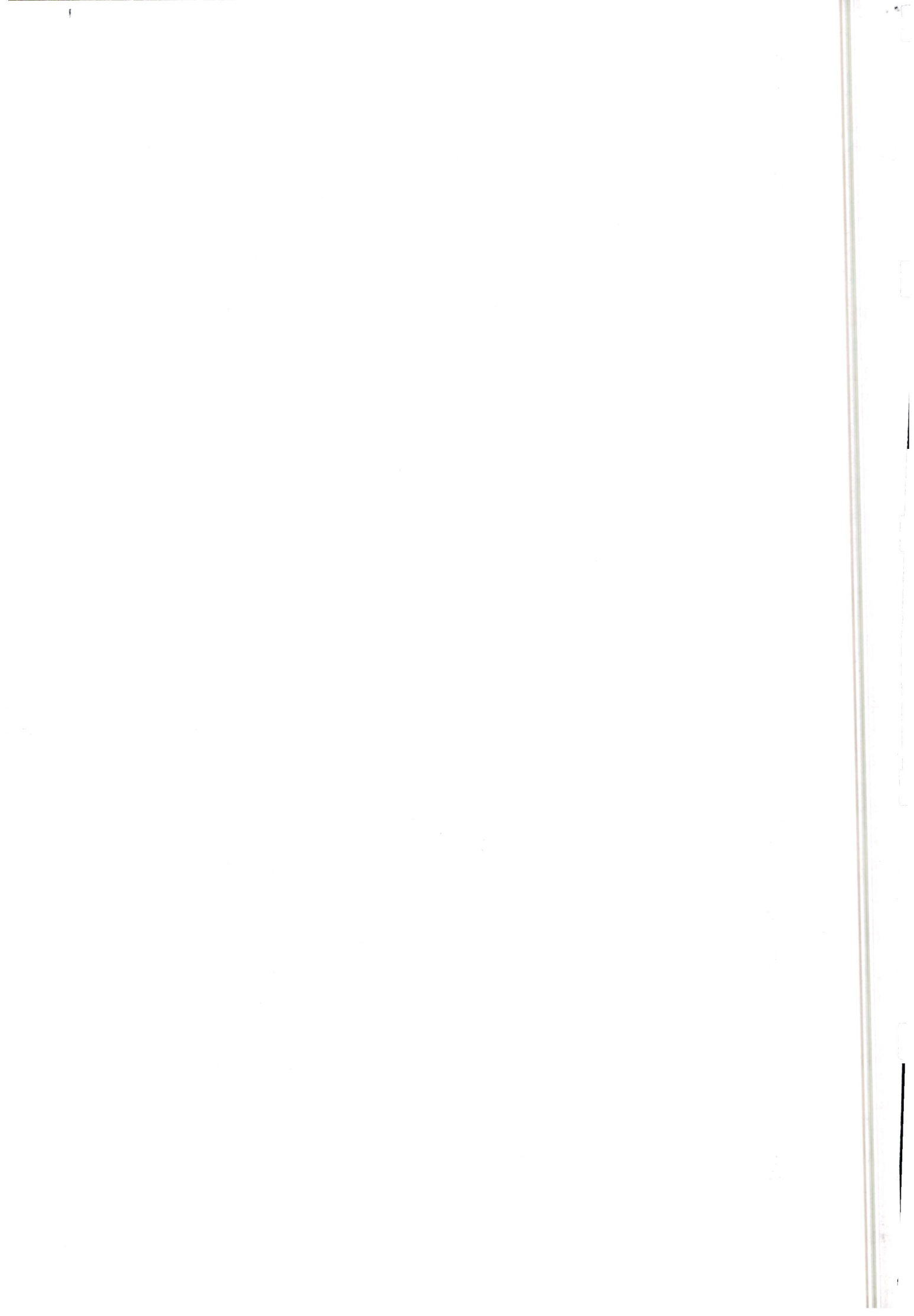
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During the meeting, the Chairman presented the Congolese MPs with a copy of the report of the Great Lakes and Horn of Africa Region Inter-parliamentary Forum's First Conference held in Kigali in March 15-17, 2005.

MEETING WITH THE DEPUTY SPEAKER HON PHILOMENA OMATUKU

- 25 The Deputy Speaker, speaking in Kiswahili, welcomed the Committee. The Leader of the Delegation briefed her on the key objectives of the visit as pertains to the Great Lakes Forum, citing the Committee's regional visit in June 2004, and the subsequent meetings in Mombasa and Kigali in October 2004 and March 2005, respectively. The Chairman further explained that the absence of Congolese representatives in the Forum was a major concern to Kenya, hence the need to travel to Kinshasa to re-affirm their position.

He informed the Deputy Speaker of a resolution reached at the Mombasa meeting to invite the Speakers of Parliament during at least one of the yearly conference of the Forum, with a view to sensitizing them on the importance of parliamentary diplomacy, hence garner their support. He conveyed greetings from the Speaker of Kenya National Assembly.



informed the Committee that DRC parliament lacks the financial autonomy to carry out its activities and has to depend on the Executive arm for allocations which is often inadequate. He pointed out that he was not in a position to comment on the issues raised at the Kigali conferences until he reads the report. He nevertheless expressed support for the Forum while awaiting the conclusion of elections next year to enable MPs exercise their mandate from a legitimate standpoint.

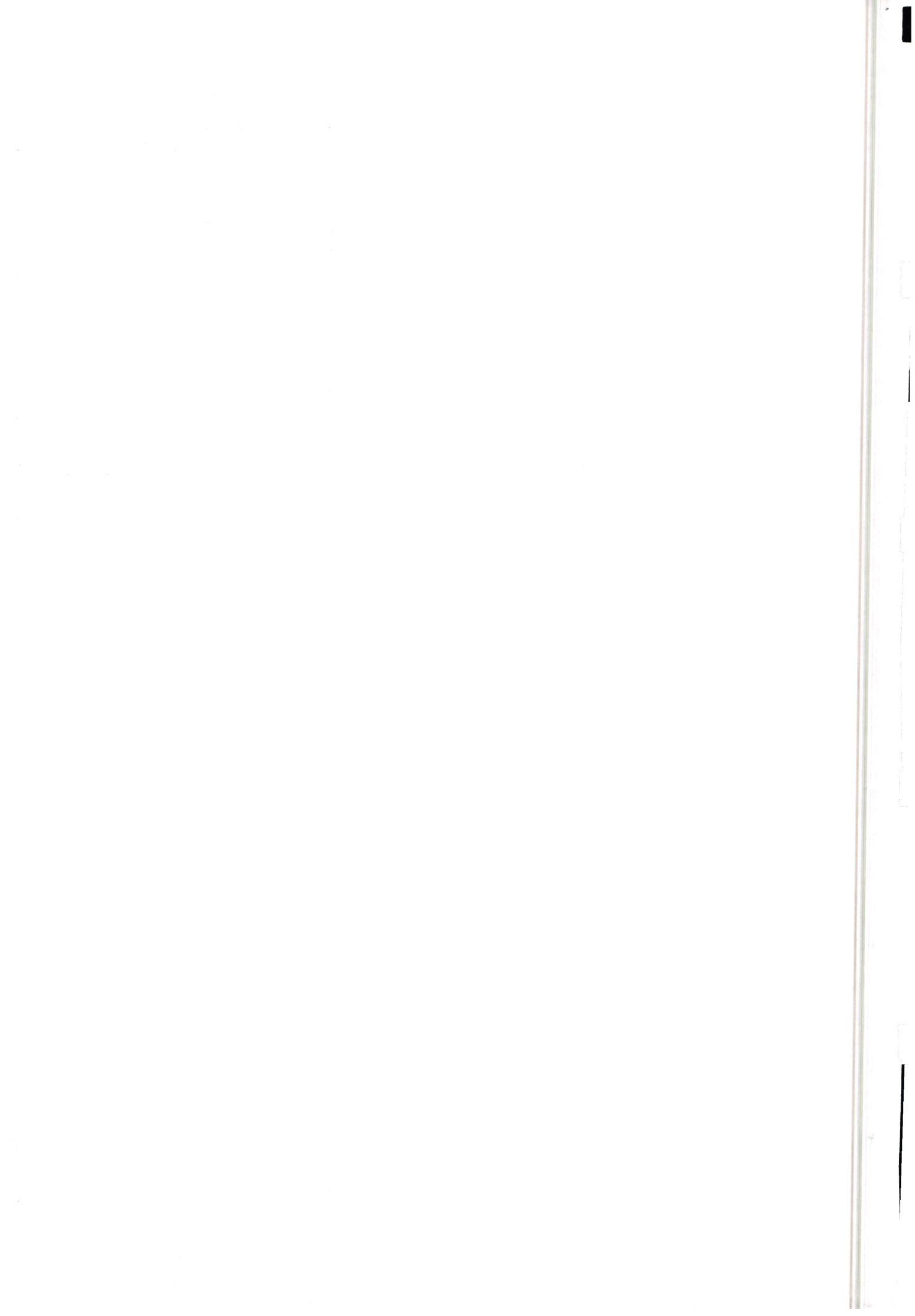
33 The Committee informed the Deputy Speaker that Kenyans are in solidarity with the people of DRC in this transitional process and that they are willing to support it in whatever manner required to ensure lasting peace and stability is attained.

COURTESY CALL ON THE KENYA EMBASSY IN DRC

34 The Committee paid a courtesy visit to the Embassy of the Republic of Kenya, based in Kinshasa and held brief discussions with the outgoing Ambassador, Dr Meshack Nyambati, and his staff. They briefed the Committee on a number of issues and achievements since the last Committee visit in June 2004. Among others, the Committee was informed that: -

- Kenya Tea Packaging (KETEPA), and Farmer's Choice (sausages), have successfully introduced their products in the DRC market through trade exhibitions facilitated by the mission, in conjunction with business persons;
- Kenya Airways has opened a Nairobi-Lubumbashi route since February 2005, and are exploring opportunities for flying to Kisangani, in eastern DRC soon.
- The Mission has written to the Ministry of Energy to explore opportunities for signing a contract for the supply of electricity from the Grand Inga Grid, instead of Zambia which itself relies on imports from DRC. The Committee was urged to follow up on the matter.
- Pyrethrum Board of Kenya's products have now been registered which means they can be distributed in this big market;
- Other Kenyan firms are also exploring opportunities for entering the DRC vast market e.g. Mastermind Tobacco Company

35 The Committee noted that DRC parliament has not ratified the COMESA tariffs regime, hence they cannot be applied to Kenya goods and services, but it is anticipated that tariffs are likely to increase in a bid to protect infant local industries. The Committee challenged the mission in liaison with others in Kampala, Dares salaam and Kigali to vigorously gather intelligence briefs on the commercial and economic spheres to help Kenya monitor and secure its market share in countries such as DRC, Uganda, Rwanda and Tanzania. Kenya needs to move fast through the bilateral lines for duty preference, awaiting the application of COMESA protocol, which is awaiting parliamentary consent. Given the fact that change of



government is likely in 2006 one way or the other after the elections, new trade regimes may be introduced.

36

The Committee therefore recommends that the following measures be considered urgently: -

- ⇒ revival of the Kenya-DRC Joint Trade Commission which has been inactive since 1984;
- ⇒ common /joint efforts be undertaken between Kenya and DRC in security and development of infrastructure along the Northern corridor. Indeed, there is need for factoring its security within the framework of the Great Lakes conference on security, social and Economic development;
- ⇒ renewal of consultations for bilateral air agreements with DRC which has not taken place for some time now. This will enable Kenya airways and other Kenyan airlines, particularly cargo planes to introduce flights to key commercial and economic cities such as Kisangani, Lubumbashi among others;
- ⇒ explores possibility of developing complementary tour packages between Kenya and DRC;
- ⇒ a high powered team comprising the Ministers responsible for Foreign Affairs and his counter-parts in Trade, should visit Kinshasa soon to re-affirm solidarity with the government and people of DRC, and negotiate bilateral agreements for favourable commercial and economic cooperation

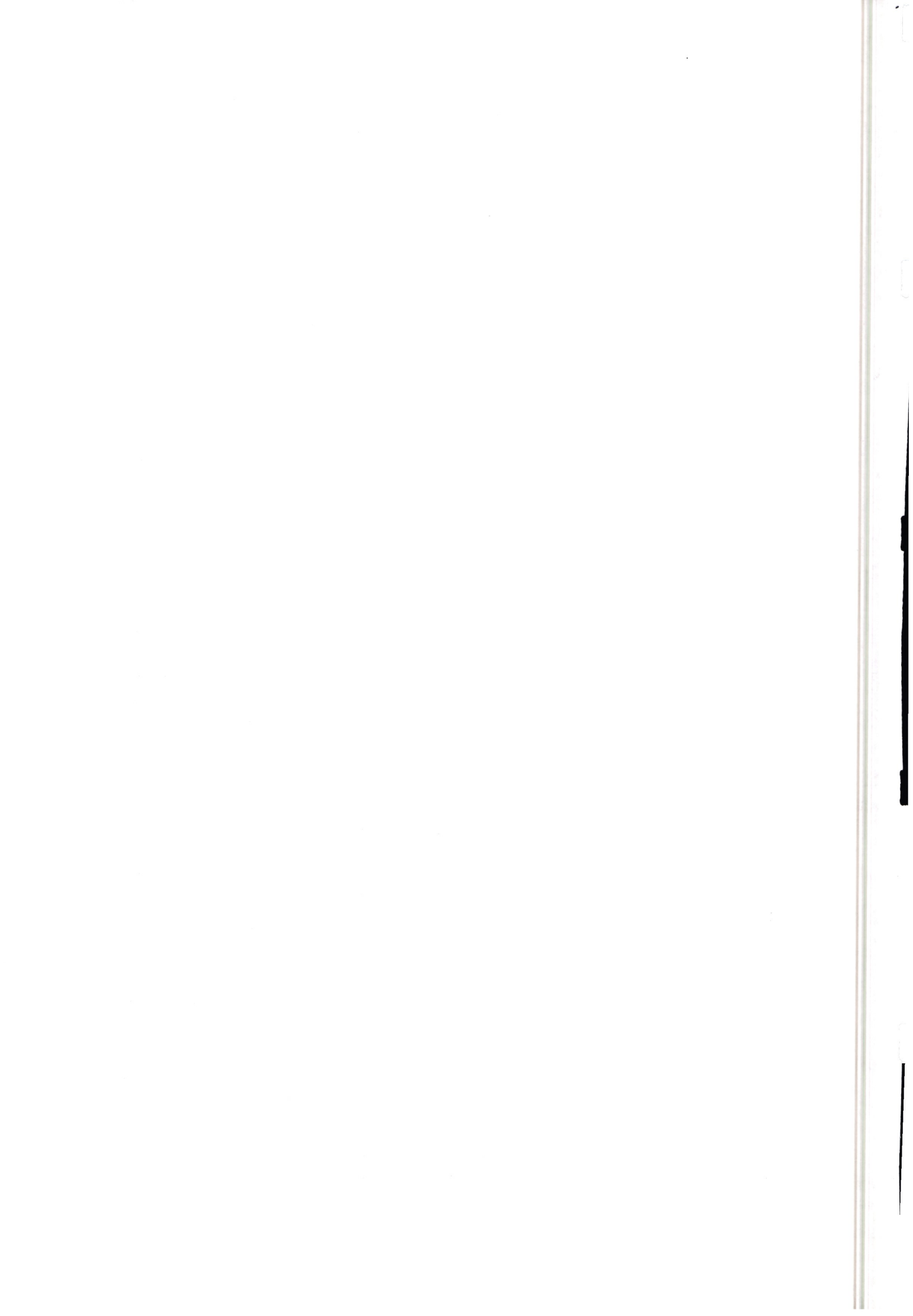
MEETING WITH THE MINISTER FOR ECONOMY HON FLORIBERT BOKANGA

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The Minister welcomed the delegation whereupon; the Chairman briefed him on the key objectives of the Committee's visit. He pointed out that Kenyans are in solidarity with Congolese and are concerned that Parliamentarians representatives from the country did not participate in the two key meetings of the Forum. He also stated the proposed activities including the next meeting in November 2005 in Khartoum and expressed hope that Congolese leaders would participate. He informed the Minister that arising from the Resolution reached in Kigali, respective national assemblies are expected to provide a budget line for financing activities of the Forum.

38

In response, the Minister stated that the Government of DRC is keen to enhance ties with Kenya. He expressed hope that Kenya could use its influence and the Forum to help address conflicts with neighboring states- Rwanda, Burundi and Uganda. He indicated that DRC was evaluating areas of strengthening trade with Kenya especially in Eastern parts of the country including Goma and Bunia. He stated the outcome of the



evaluation will be handed to the Kenya mission in Kinshasa for consideration. He expressed hope of Congolese reciprocating the visit soon after the transitional process has stabilized.

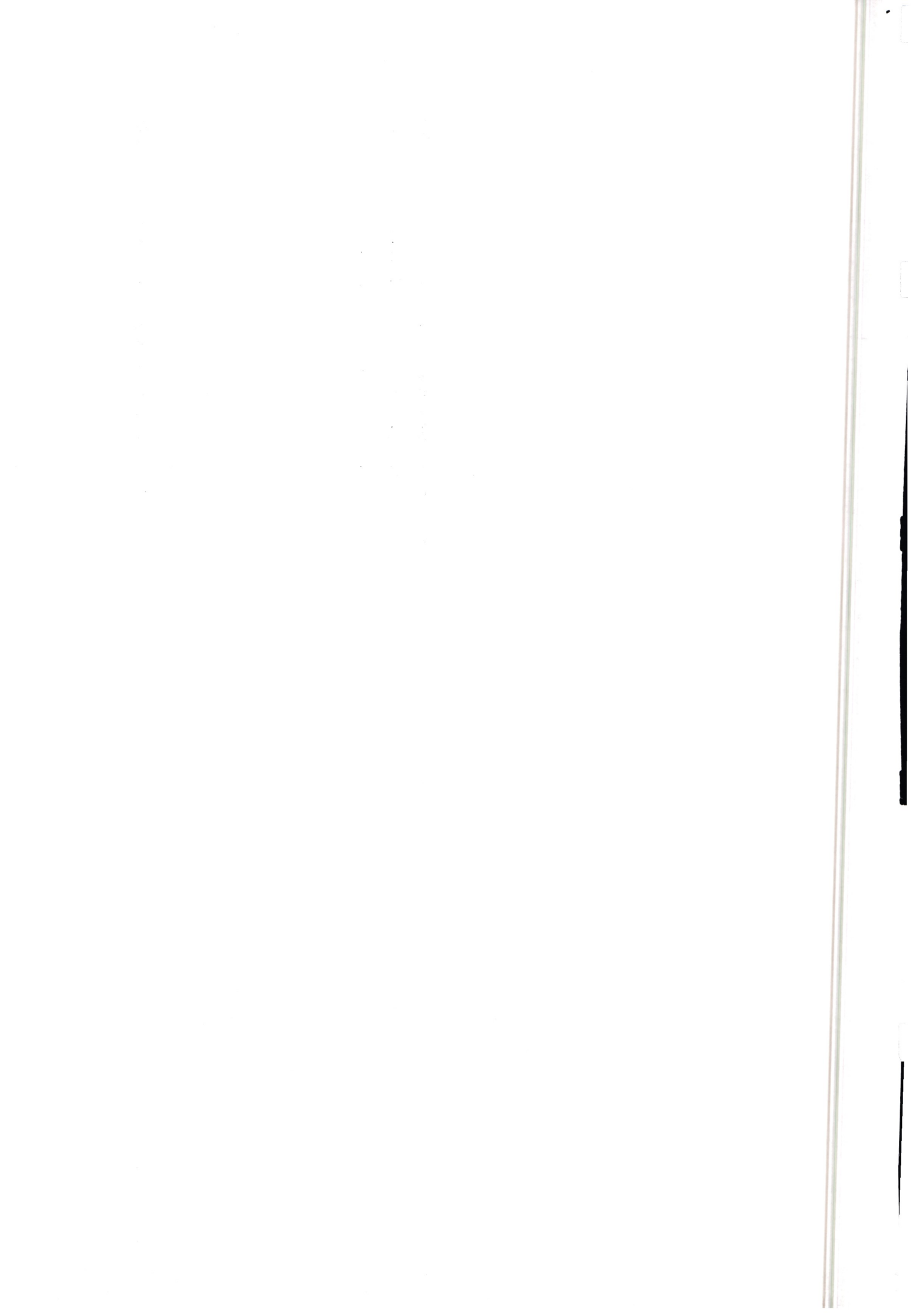
MEETING WITH AMB ROSS MOUNTAIN, THE DEPUTY REPRESENTATIVE, UN MISSION IN CONGO (MONUC)

39 The Chairman informed the Deputy UN Representative of Kenya's interest in securing peaceful transition in DRC, including willingness to send additional troops if invited to. He briefed him on the parliamentary diplomacy initiative to try and institute a culture of solving conflicts through dialogue and cooperation. He informed him that instability in regional countries has adversely affected Kenya as witnessed by rising insecurity, violent crimes and proliferation of small arms, as well as influx of refugees. He informed the UN official that the EAC partner states had embarked on a joint campaign to mop up illegally held arms. Consequently, Kenya has a big stake in the development of stable and democratic states in the region.

40 In response, Amb Mountain stated that he concurred fully with sentiments expressed by the Committee leader. He informed the Committee the DRC now had composite Transitional Government which had international legitimacy but lacks the local mandate. The upcoming elections are thus critical to legitimizing the government. He stated that quite unlike other countries where the EC is expected to be a neutral operator, DRC had a composite Electoral Commission, bringing together representatives of various political interests. DRC has had no elections in the past 44 years.

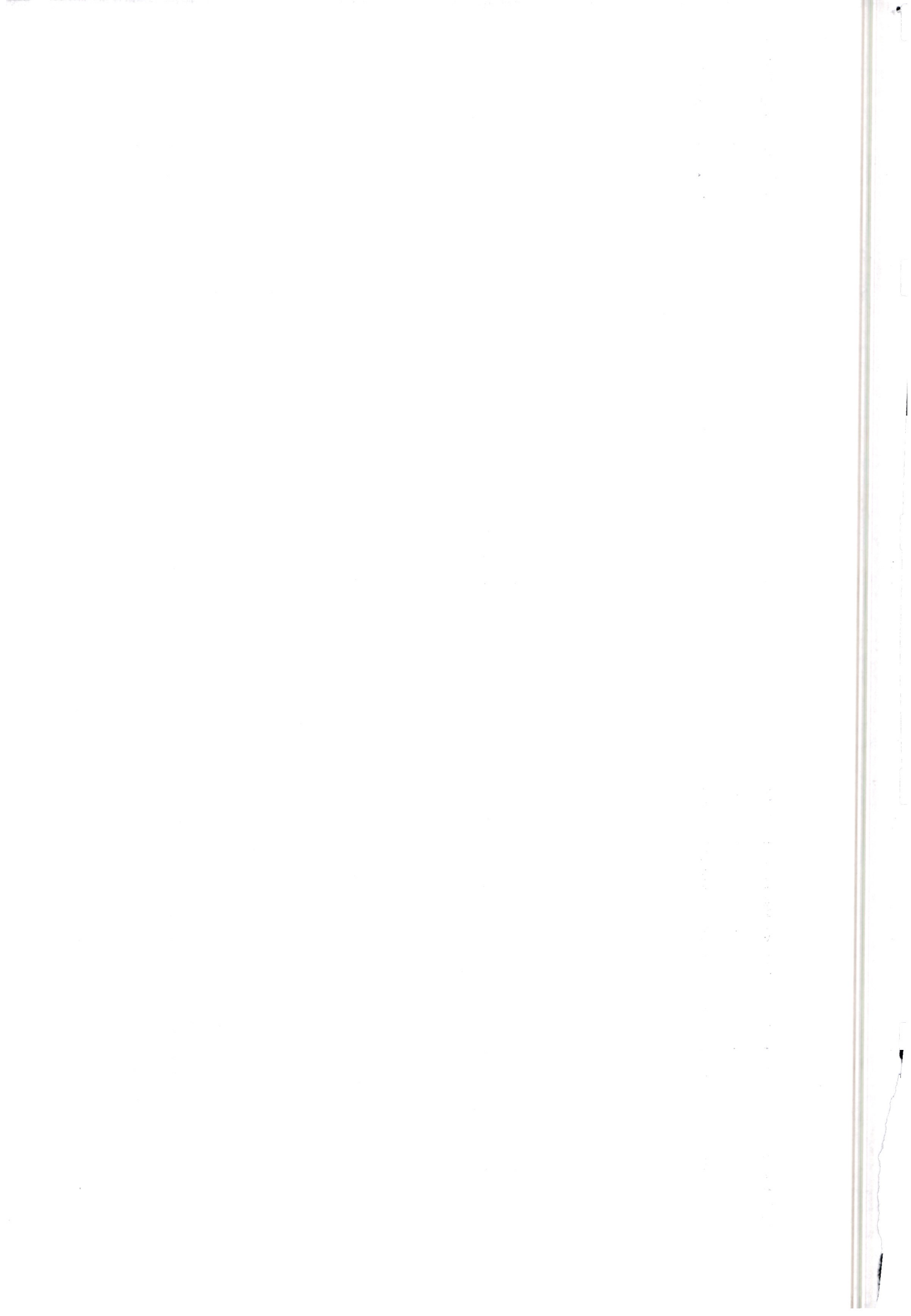
41 He stated that organizing elections in the country is a nightmare as the country is too large (size of Western Europe), yet there were no infrastructure (roads, power, banking services etc) or administrative/operational structures on the ground. Indeed the country has no mechanisms for effecting payments to workers e.g. soldiers, clerical officers and other electoral related officials, hence frequent incidents of strikes, corruption etc.

42 He informed the Committee that the UN is assisting the registration of voters using projections of the census carried out in 1984- estimated to be around 25 million voters, out of an estimated population of 68 million. He added that the elections are estimated to cost around \$484 million, a big chunk of which will be funded by the European Union. He stated around 9,000 electoral centres are required around the country, and so far, 5,000 centres have been set up, and pointed out that it's a logistical nightmare to distribute electoral registration materials and equipment in DRC.



General elections are scheduled to be held by June 2006 are deemed to be a critical factor in ensuring political stability in the country. He stated that the UN is training around 45,000 police personnel in crowd control who so far have performed exemplary well in their duties.

- 43 The UN is also focusing on demobilization and retraining of militias particularly those aligned to Rwanda and Burundi. He indicated that Rwanda has problems with DRC over the *Interahamwe* militias who it accuses of carrying out the 1994 genocide. He stated that the UN has succeeded to some extent on the issue of disarmament but the challenge now is on integration of these militias in national force. He also informed the Committee that the African Union (AU) may put up a separate force to disarm these militias, but so far it's not clear who will provide troops and pay for logistics and coordination. The issue is under consideration but so far nothing is on the ground.
- 44 He added that the UN is operating a peace-keeping force of 16,500 soldiers, which he termed as grossly inadequate given the size of the country. He also expressed concern regarding the issue of rape that has characterized armed forces of both the UN and the various Congolese factions. He attributed these to among others breakdown of the rule of law viz avis unpaid unprofessional soldiers coupled with lack of infrastructure such as roads.
- 45 He also informed the Committee that he was coordinating the UNDP activities in DRC which dealt with strategies to address poverty and promote sustainable development and capacity building of the people. He explained that 90% of the Congolese people lived below the poverty level of US \$ 1 per day including the police. Civil servants earned less than US \$ 6 per month and at least 1,000 people die everyday from preventable causes. He observed that this is regrettably part of the Mobutu legacy that devastated the economy where state organizations were used to enrich a few elite. He pointed out that DRC has immense wealth (natural resources) and potential for prosperity. DRC was in need of FDIs and a donor conference organized by the World Bank and UNDP would be held soon to address the country's economic development needs. The immense mineral wealth required international investors, and governance and administrative structures put in place so that the proceeds benefit the entire country and not individuals as was prevalent today.
- 46 He however pointed out that many positive developments are also being witnessed in the country for example, sharing of power in the TNG, and expressed hope that the coming elections will be a watershed mark to place the country on a new perspective. He called for more support towards the DRC now and even after elections .he stated that if DRC is allowed to collapse or degenerate into chaos, it will destabilize many other states in Africa, hence the need for regional and international support. He further pointed out the possibility that some influential personalities may

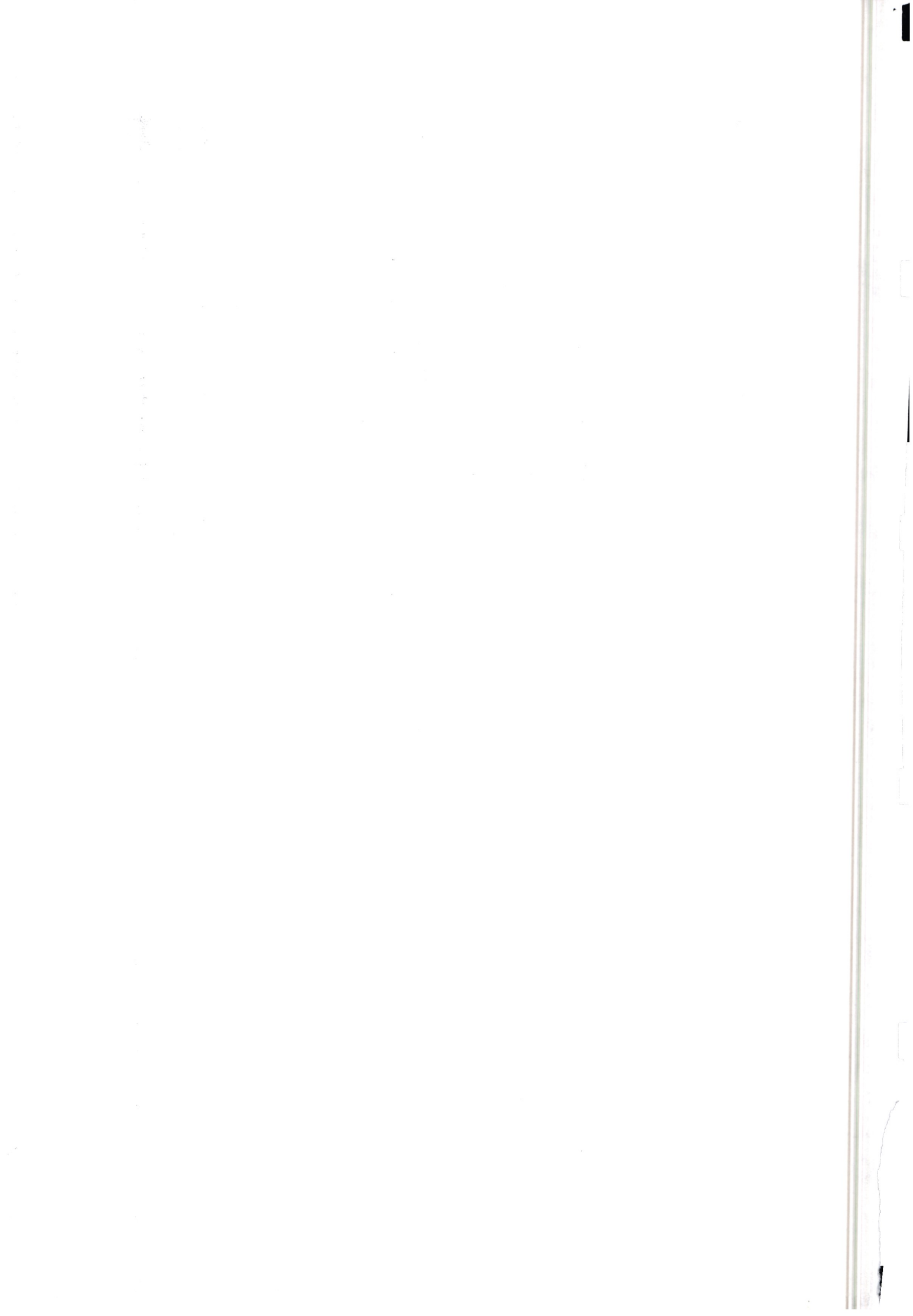


not accept the outcomes of the elections, and the international community needs to be prepared to handle such eventualities.

- 47 Amb Mountain indicated that, the UN has an elaborately well-established logistical base in Entebbe, Uganda which is serving DRC very well. He added that the international community must be encouraged not to leave after elections but should help build confidence and capacity of the new government to be installed. As such some form of international peace-keeping force will be needed. In addition, DRC badly needs institutional structures of governance to be established, and this remains a fundamental challenge.
- 48 The Committee assured the UN Deputy Representative that Kenya would be willing to support DRC's positive development and reconstruction.

SUMMARY OF RECOMMENDATIONS

- The Government of Kenya should **URGENTLY** consider inviting President Joseph Kabila to visit Kenya soon as a gesture of Kenya's support and solidarity with the government and people of that country in the on going transition and negotiate a wide range of protocols favourable to Kenya's economic and commercial interests;
- Given the fact the DRC is the fourth largest trading export destinations of Kenya's goods (Ksh 7.8 billion, 2004) in Africa, there is need for the Ministers of Foreign Affairs, and Trade to make a visit to Kinshasa as soon as possible, to re-affirm and strengthen bilateral relations and pursue the issue of reviving the Joint Trade Commission that has been inactive since 1984;
- Kenya, like South Africa and Egypt needs to move fast to negotiate through the bilateral line for duty preference with DRC while awaiting the application of COMESA Protocol, which awaiting parliamentary consent;
- Given that the Northern Corridor is Kenya's artery for market access to the DRC, issues pertaining to the security of the corridor/highway are of paramount importance to Kenya's strategic interest. There is need therefore for a joint/common effort between Kenya, DRC and Uganda in developing and securing the corridor. This can be factored in within the framework of the great Lakes Conference on security, infrastructure and economic development;
- Need for new consultations for a Bilateral Air agreements with DRC to enable Kenya Airways and cargo airlines to introduce flights to Kinshasa



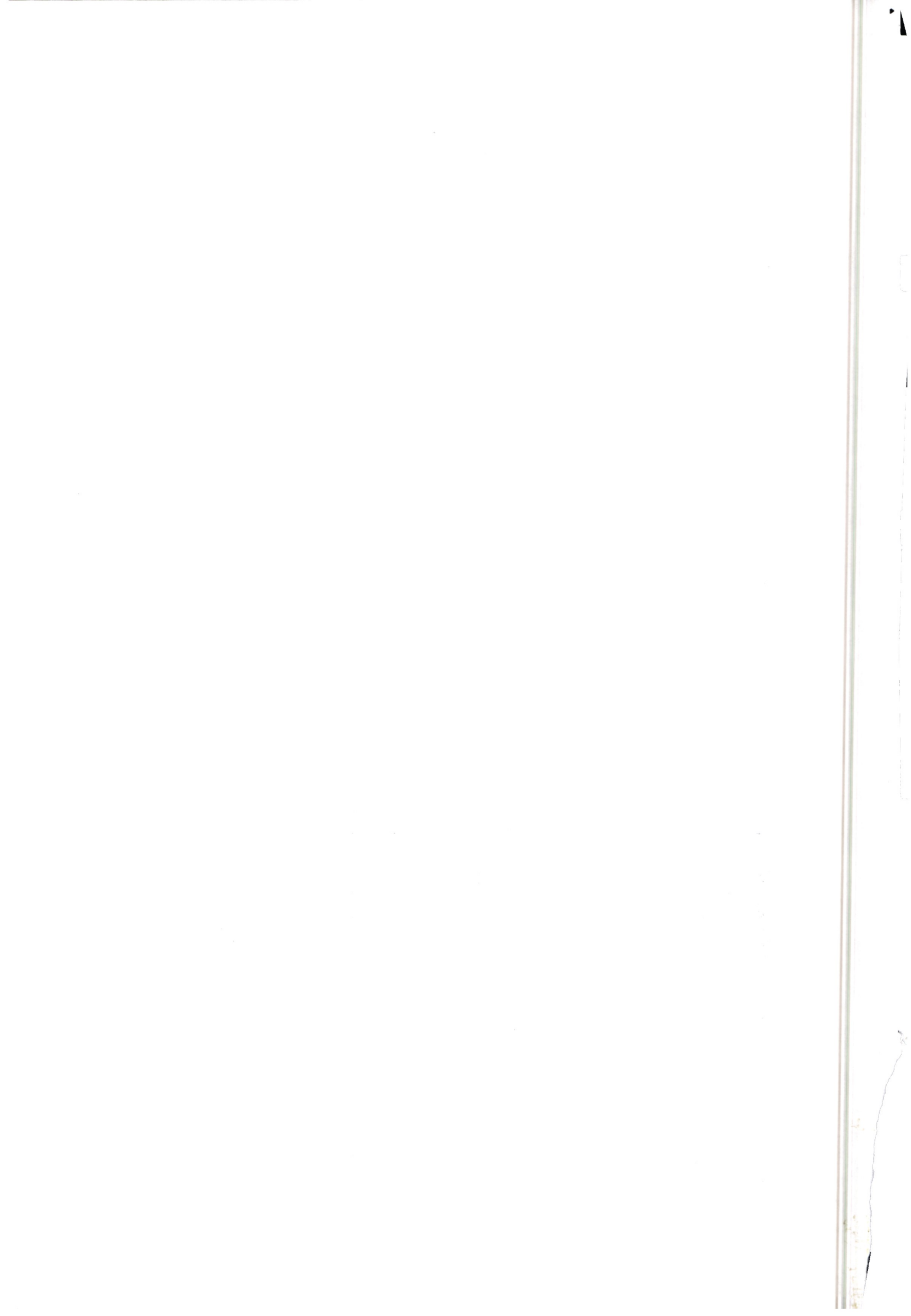
and eastern DRC main cities such as Kisangani, Lubumbashi among others;

- On tourism, DRC has inadequate and poorly developed infrastructure and manpower. There is need to explore potential for developing complementary tour packages and training programmes between Kenya and DRC to exploit this potential;
- Although DRC is the fourth largest export market for Kenyan goods, the distribution system is relatively shaky and most of the exports are demand driven. There is need for enhanced product display (trade fairs) and establishment of distribution centres in Kisangani and other key towns in eastern DRC;
- Given the fact that DRC is a definite gateway to other central African countries-Angola, Central Africa Republic, Gabon, Republic of Congo etc, Kenya Government needs to be proactive and send trade missions to these countries and negotiate bilateral air agreements to enable our airlines have direct flights for both cargo and passenger planes. In this regard, strengthening the Kinshasa mission in terms of funding, facilities and capacity of staff to focus more on econo-diplomacy should be the key strategy.

49 It is now my humble duty to present and commend this report to the House.

The Hon G. G. Kariuki, EGH, MP
Chairperson, Defence and Foreign Relations Committee

September, 2005



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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

NINTH PARLIAMENT-FIFTH SESSION, 2006

DEPARTMENTAL COMMITTEE NO. H

ON DEFENCE AND FOREIGN RELATIONS

REPORT OF THE FACTFINDING

VISIT TO THE KINGDOM OF SPAIN TO

INSPECT THE OCEANOGRAPHIC SURVEY

VESSEL

September 24 - 28, 2006

NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS,
NAIROBI

October 2006

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PREFACE

Mr. Speaker Sir,

- 1 The Departmental Committee on Defence and Foreign Relations was constituted at the commencement of the Ninth (9th) Parliament pursuant to provisions of Standing Orders 151. The Committee has executed its mandate in accordance with the provisions of Standing Order 151 (4), from which it draws its mandate to-
 - i. investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
 - ii. study the programme and policy objectives of the Ministries and Departments and the effectiveness for the implementation;
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 - vi. make reports and recommendations to the House as often as possible including recommendations of proposed legislation.

- 2 The Committee oversees the following Ministries and Departments:
 - i. Ministry of Foreign Affairs
 - ii. Ministry for East Africa Community (EAC)
 - iii. Ministry of Defence, Office of the President

- 3 The Committee comprises the following Members: -

The Hon. G. G. Kariuki, EGH MP – Chairperson.
The Hon. Nyiva W. Mwendwa, MP
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Objectives of the Visit

Mr. Speaker Sir,

- 4 The objective of the visit was:-
- a) to inspect the controversy-ridden oceanographic survey vessel under construction by Euro Marine Industries in Ribadeo, Asturias Province in Spain for the Kenya Navy;
 - b) hold discussions with relevant officials to understand their perspectives and establish the situation as it is.

Composition of the Delegation

- 5 Four Members of the Committee accompanied by one officer made a fact-finding study visit to the kingdoms of Spain, on September 24 -28, 2006. The delegation comprised: -

The Hon. G. G. Kariuki, EGH MP–Chairperson/Leader of the delegation
The Hon Rtd. Maj. Marsden Madoka, MP
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- 6 The delegation had a successful visit during which the Committee inspected the naval ship, and held meetings and discussions with an official representing Kenya's mission in Paris (to which Spain is accredited); the Kenya's honorary consul in Spain; and officials representing Euromarine Industries.

Acknowledgements

- 7 The Committee is grateful to the Honourable Speaker and the Liaison Committee for authorizing the visit, as well as the office of the Clerk for providing the necessary logistical and technical support. The Committee would also wish to thank the Ministry of Foreign Affairs; the Ministry of Defence; Embassy of the Kingdom of Spain Nairobi, Kenya; the staff of the Kenya Embassy led by the Ambassador in Paris, for all the support and assistance given before and during the study visit.

EXECUTIVE SUMMARY

- 8 Following the Anglo-leasing scandal expose in the media and the resultant public outrage, the Defence and Foreign Relations Committee which has the mandate to oversee the policy and operations of Ministry of Defence, took upon itself the responsibility and duty to establish the truth regarding allegations of irregular procurement of a naval ship for the Kenya Navy. In this regard, the Committee invited various public officials including the Minister and Permanent Secretary responsible for Defence as well as senior military officials; officials from Treasury; the Director of the Kenya Anti-Corruption Commission (KACC) among other key officials. Public concern had been raised by media reports to the effect that the government paid for a non-existence ship, while other reports suggested that the ship was a civilian boat that had been converted for military use. No official response had been communicated to address these allegations.

It is from this confusing background that the Committee resolved to make an official fact-finding visit to the shipyard where the naval ship is under construction to clarify the issue and establish the correct situation as it is. The Committee wrote to the Ministry of Defence to request a naval officer to accompany the delegation, and provide the necessary technical briefing. Lt. Col P. Kituku, a marine engineer and Commanding Officer of the Kenya Navy, who had been involved in the construction of the ship since its inception was nominated by the Ministry to accompany the delegation.

VISIT TO THE KINGDOM OF SPAIN

- 9 During the fact-finding visit to Spain (September 25-28, 2006), the Committee indeed inspected the ship and established that the naval ship (a frigate) exist and has been christened '*Jasiri Mombasa*', complete with a Kenyan flag. The naval ship is 1400 tons, 85 metres long and 13 metres wide (hull) with a maximum speed of 28 knots (Nautical miles per hour). The Committee held discussions with officials representing the contractor, Euro Marine Industries, in Ribadeo, Spain. The Committee was informed that the ship is practically over 90 per cent complete. The outstanding activities include the sea testing (by Kenya Navy) and training of Kenya Navy personnel and the fitting of the arms. The Committee was informed that all these could be done within two months once payment outstanding and interests accrued are paid as these were interrupted when the Government of Kenya recalled its officers on July 18, 2005, after the Anglo-Leasing saga broke out in the media and the government stopped further payments while awaiting further investigations.
- 10 The Committee further established that Euromarine Industries is a registered firm in Barcelona, Spain, and had facilitated the construction of at least 7 other naval vessels in the early 1990s for the Kenya Navy. Euro

Marine Industries had sub-contracted Astilleros Gondan, the actual ship builders.

- 12 The Committee also learnt that Euromarine Industries, the contractor, had taken the matter of nonpayment to the International Court of Arbitration. The firm's officials however expressed keenness to have the matter resolved amicably as Kenya Government has been their long-standing client.
- 13 The two officials urged the Kenya government to consider negotiating a bilateral air service agreement with Spanish government to allow Kenya Airways and Iberia to fly directly to their respective capitals. This will not only enhance tourism but also trade in coffee, tea and flowers and horticulture products which are currently impeded by lack of direct flights and marketing in Spain.

Recommendations

14 The Committee recommends that: -

- i. **investigations on the naval ship by KACC should be expedited and finalized to help the government make a decision or form a basis to engage the contractors in the Arbitration case filed at the Hague;**
- ii. **the Government of Kenya should, in the meanwhile, make an official response to the case filed by Euromarine Industries in the International Court of Arbitration. In this context, it should be guided by the need to safeguard public funds, Kenya's image and international standing;**
- iii. **the Government of Kenya should consider commissioning an independent ship surveyor to inspect the ship and ascertain that the ship was built according to agreed specifications and advise on the best course of action, including a re-negotiation of the terms of the contract to facilitate release of the ship to the Kenya Navy;**
- iv. **deal firmly (both politically and legally) with persons implicated with deliberate fraudulent engagements to commit public funds in irregular and lop-sided procurement contracts where Kenya stands to lose public funds, image and international standing;**
- v. **develop an effective information, education and communication strategy to address public concerns and queries raised on governance issues in good time to safeguard Kenyans and international community's confidence;**
- vi. **the Kenyan media to carry out research and establish facts before publishing unfounded but damaging articles that hurt Kenya's overall image, standing and confidence. The media is advised to learn from their counter-parts in developed countries on how they**

report sensitive national or public concern stories without cover-up of bad governance and mismanagement of public funds;

FACT-FINDING VISIT TO THE KINGDOM OF SPAIN (September 25-28, 2006)

Background

- 15 The delegation to Spain comprised the Hon G.G Kariuki, EGH, MP, Chairman and leader of delegation; the Hon Rtd Maj. Marsden Madoka, MP; the Hon Rtd Maj. Gen Joseph Nkaissery, MP; and the Hon Davies W. Nakitare, MP. Mr. Njenga Njuguna (Research Assistant) accompanied the Members as Secretary to the delegation.
- 16 The need to visit Spain to ascertain the correct situation or otherwise of the existence of the naval ship Spain emanated from the publications of the 18 security-related Anglo-Leasing projects that had allegedly been procured illegally using public funds. As the Committee mandated to oversee the Ministry of Defence, the Committee invited the Minister for Defence, his Permanent Secretary and other senior military officers to explain the circumstances surrounding the procurement of the ship. The Committee also held discussions with Mr. Francis Muthaura, the Head of Public Service, Permanent Secretary, and Secretary to the Cabinet; senior officials from Treasury led by the Financial Secretary, Mr. Mutua Kilaka on behalf of the PS among others. Similarly, Justice Aaron Ringera, Director of KACC, had informed the Committee that while he had completed local investigations, the international level investigation was still incomplete. Several planned meetings between the Committee and the Attorney General failed to take off due to his busy schedule.
- 17 Arising from these discussions, coupled with press allegations that the ship actually never existed and that even if it did, it had been converted from a civilian one for military purposes, the Committee resolved to undertake a fact-finding visit to inspect the naval ship under construction in Spain, and hear the side of the story from the contractor. The visit took place from September 24-27, 2006. The Ministry of Defence, at the request of the Committee, sent a marine engineer and commanding officer of the Kenya Navy, Lt. Col P Kituku, to accompany the Committee and provide technical briefing to the Members.

BRIEFING BY LT. COL. P. KITUKU, MARINE ENGINEER AND COMMANDING OFFICER, KENYA NAVY, ON KNS `JASIRI`

- 18 Lt. Col. Kituku explained to the Committee that Euromarine Industries, a Spanish registered firm was contracted by the Government of Kenya to build a navy ship on July 15, 2003. Euromarine in turn sub-contracted another Spanish shipbuilding Company, Astilleros Gondan to undertake the actual construction. Other firms contracted by the Government to provide lease financing were Impresa de Financas, and Navigia Capita

Corporation. He stated that he had been appointed to oversee the ship's construction in 2002 by the Defence Council, and arrived at the Astilleros Gondan's shipyard in Spain in January 2002. He added that through Euromarine, Astilleros Gondan had been contracted by GoK to build other marine vessels in the past. For instance, he mentioned the two logistic ships delivered in 1993; five inshore patrol boats delivered in 1994; and two offshore patrol boats delivered in 1996, all of which are still in service to date.

- 19 Describing the particulars of Kenya Navy Ship "*Jasiri*" whose construction he supervised right from onset, Col Kituku informed the Committee that the ship has a tonnage of 1400; is 85 metres long and 13 metres wide (hull) and could travel at a maximum speed of 28 knots (nautical miles). It is designed to take on board at least 60 personnel but has a capacity for 81. The ship was designed and built as a military vessel (frigate) and is to be fitted with sophisticated weaponries. However, these arms have not yet been fitted, as fitting them requires a separate contract by arms suppliers.
- 20 Col Kituku explained at great details the process involved in the construction of the ship, of which he oversaw all phases of the assembling, starting from steel works in March 2003 closely followed by kiln laying. In January 2005, the navy ship was officially launched to sea and the ceremony was attended by the Kenya Navy Commander, Chief of Systems (DoD), Director of Logistics, Kenya Navy among others high ranking military officials. After the launch into the sea on January 2005, outfitting of equipments started and continued up to July 18 2005, when he was abruptly recalled back in Kenya. Before then, scheduled plans for training of at least 20 technical personnel by various equipment manufacturers did not take place due to non payment as GoK stopped all payments while awaiting investigations. As such the Kenya navy crew has not been trained as per the contract nor have they participated in sea and harbour trials to test the ship's maneuverability and equipments respectively as per the contracts. He assured the Committee that the ship was built according to Kenya and Lloyd's specifications and other international marine standards adding that a Lloyd representative was onsite to record tests for their Register in London.
- 21 Col Kituku informed the Committee that in his view, the ship was almost 90 % ready for delivery once the issues pending between GoK and Euromarine regarding payments are settled. Other outstanding issues that have to be finalized include: -
- Harbour and sea trials
 - Training of Kenya Navy personnel
 - Testing of equipments
- 22 The delegation also held discussions with, the Principal Counselor Kenya Embassy in Paris, Mr. Samuel Githaiya, and the Honorary Consul

representing Kenya in Spain, Mr. Enrico Facchetti. Thereupon, they informed the Committee that the Government of Spain is keenly following the issue of the naval ship as a matter of bilateral concern, pointing out that what was at stake was Kenya's international image as pertaining to honouring of contracts. The implication is that the government would in future be held in suspicion in international and bilateral contracts, which may entail demands for upfront payments and costly insurance covers. The issue of non-payment of dues and violations of contract is a serious matter in international business.

MEETING WITH EUROMARINE INDUSTRIES' OFFICIALS

- 23 The Committee held a meeting on 26th September 2006 with among others, the Managing Director of Euromarine Industries Mr. Salvador Surroca Vineta, accompanied by his firm's lawyers, namely Mr. Alejandro Briones and Ms. Salome Lopez of Bartolome & Briones Advocates, of Barcelona, Spain. Mr. Surroca gave an account of the current status of the KNS Jasiri pointing out that the vessel was officially launched into the sea in January 2005 officiated by senior Kenya Navy officials. It was completed on time as scheduled in July 2005, ready for acceptance trials by Kenya Navy personnel and delivery. However, the Kenya navy supervisors and inspectors were then recalled abruptly. He informed the Committee that the first sea trial of the ship was conducted on July 21, 2005. He indicated that the contractual payments due to Euromarine and other financiers was still outstanding hence the delays in completing the tests and final delivery of the ship to Mombasa. He stated that acceptance trials with inspectors from Lloyd's Registers and Kenya navy personnel would be conducted once outstanding issues are settled.
- 24 He informed the Committee that his firm had been a long term supplier to Kenya navy since early 1990 when it constructed and delivered the following vessels; two landing crafts: MV *Tana* and MV *Galana* delivered in 1994; and two oceanographic patrol vessels, MV *Shujaa* and MV *Shupavu* in 1997, and was the sole representative of Astilleros Gondan in the Indian Ocean region, and had delivered more than 300 vessels to governments and private owners since 1925. He stated that his firm, registered by the Spanish government to construct sea vessels, both military and civilian, had a staff establishment of 250. He pointed out that his firm had constructed similar vessels as follows: -

- a) Customs patrol vessel-Government of Spain
- b) Customs patrol vessel- Government of Indonesia
- c) Oceanographic (research) vessel- Government of Philippines
- d) North Sea oil platform support vessel- Government of Norway
- e) North Sea oil supply vessel- Norway – Government of Norway

- 25 He informed the Committee that Euromarine had responded to the International tenders floated by GOk on September 11, 2002, by submitting an expression of interest letter on 14th October 2002. In November 2002, Astilleros Gondan wrote to the Department of Defence (DoD) to advise that Euromarine Industries would submit a detailed bid proposal for construction of the navy ship, which they eventually did and was formally awarded a contract in July 15, 2003.
- 26 The Committee was informed that Euromarine had sought the intervention of the Permanent International Court of Arbitration in The Hague over the non-adherence to the contract terms by Government of Kenya. It had further sent a legal notice to which no response had been received from Kenya government to-date. The Euromarine Director however added that his firm wished to have the issue of payments sorted out amicably hence the decision to go for arbitration, rather a court of law, citing previous good working relations with GoK. He added that Euromarine started the process of arbitration around 18 months after GoK's first non-adherence to contract terms. He expressed deep concern that GoK has not officially responded to Euro marine's letter informing it the firm had sought arbitration to resolve the stalemate. He informed the Committee that Euromarine was waiting an official GoK response on its position or direction it intends to take on the navy ship as it is now one year and two months late for delivery and receipt by GoK as per the contract schedule.
- 27 He pointed out that if Euromarine was to receive its dues as per the contract, then the only other outstanding work is the training of Kenya navy crew, and conducting of harbour and sea trials in the presence of various equipment manufacturers. All these could take place for a maximum period of two moths. With regard to arming the ship, the Director stated that GoK would have to sign a new contract with arms manufacturers to fit its desired weaponry system. He however added that the ship is already equipped with a satellite communications system, but only parts of the oceanographic vessel's survey equipment have been installed to date. He further pointed out that warranties of various equipment suppliers have since expired, but if GoK expressed interest in the ship, Euromarine would negotiate the terms with suppliers for a new arrangement. He lamented that his firm has been forced to meet regular costs of maintenance such as oiling and lubrication of the ship while it remains docked unutilized. He nevertheless acknowledged that such expenses are borne by the builder until the ship is commissioned.
- 28 Mr. Surroca confided that his firm had received queries on the ship from at least three governments, including Indonesia, Thailand, and Philippines as its value has since risen due to increased cost of steel internationally.

- 29 The Committee expressed gratitude to the Euromarine officials for presenting information and details regarding the ship, and expressed satisfaction with the physical structure and state of the ship. Members expressed optimism that GoK will soon make a decision on the fate of the ship as there is still clear need for such a vessel by the Kenya Navy.

The Committee notes with great concern that officials at the Ministry of Defence have maintained a hands off attitude towards the naval ship in spite of having sent senior navy officials to officiate its launch. The Officials should have at least proactively provided the public with facts and other information on the ship to dissuade unwarranted claims and allegations targeting Kenya's disciplined forces.

- 30 Consequent upon the tour and inspection of the Kenya Navy Ship Jasiri, the Committee recommends that:

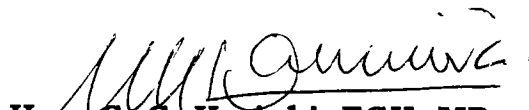
- a) **GOK needs to urgently give an official response at the International Arbitration Court at The Hague regarding its position on the fate of the navy ship, while carefully considering the legal and international impact this may have on public funds, Kenya's image and integrity in international trade and investment profile;**
- b) **GoK should consider having an independent surveyor to undertake the naval ship's inspection and evaluation of the works and services done as a basis for responding to the case filed in the Arbitration Court. Other options GoK may consider include nullifying existing contracts and re-negotiating new terms and entering into new well thought out agreements, with clear exit strategy to safeguard public funds;**
- c) **Whichever course of action GoK may consider taking, this should be guided by the need to protect loss of public funds, both the amounts already spent in construction of the ship and other funds likely to be incurred should Kenya opt to terminate the contracts, gets sued and wins or lose the case after arbitration/ruling of the Court;**
- d) **Gok should deal firmly (both politically and legally) with persons implicated in committing the state through deliberate fraudulent engagements of public funds in irregular and lop-sided procurement contracts where Kenya stands to lose money, image and international standing;**
- e) **an effective information, education and communication strategy be developed and faithfully implemented to address public concerns and queries raised on governance issues in good time to safeguard Kenyans and international community's confidence;**
- f) **the Kenyan media to carry out research and establish facts before publishing unfounded but damaging articles that hurt Kenya's overall image, standing and confidence. The media is advised to learn from their counter-parts in developed countries on how they report sensitive national or public concern stories without necessarily covering up bad governance and mismanagement of public funds;**

Conclusion

- 31 The Committee is convinced that the oceanographic survey vessel, a frigate, is still urgently needed by the Kenya Navy. Every necessary measure to resolve the issues hindering its delivery to Mombasa should be expedited while at the same time giving premium as much as possible to safeguarding of public funds.

Mr. Speaker Sir

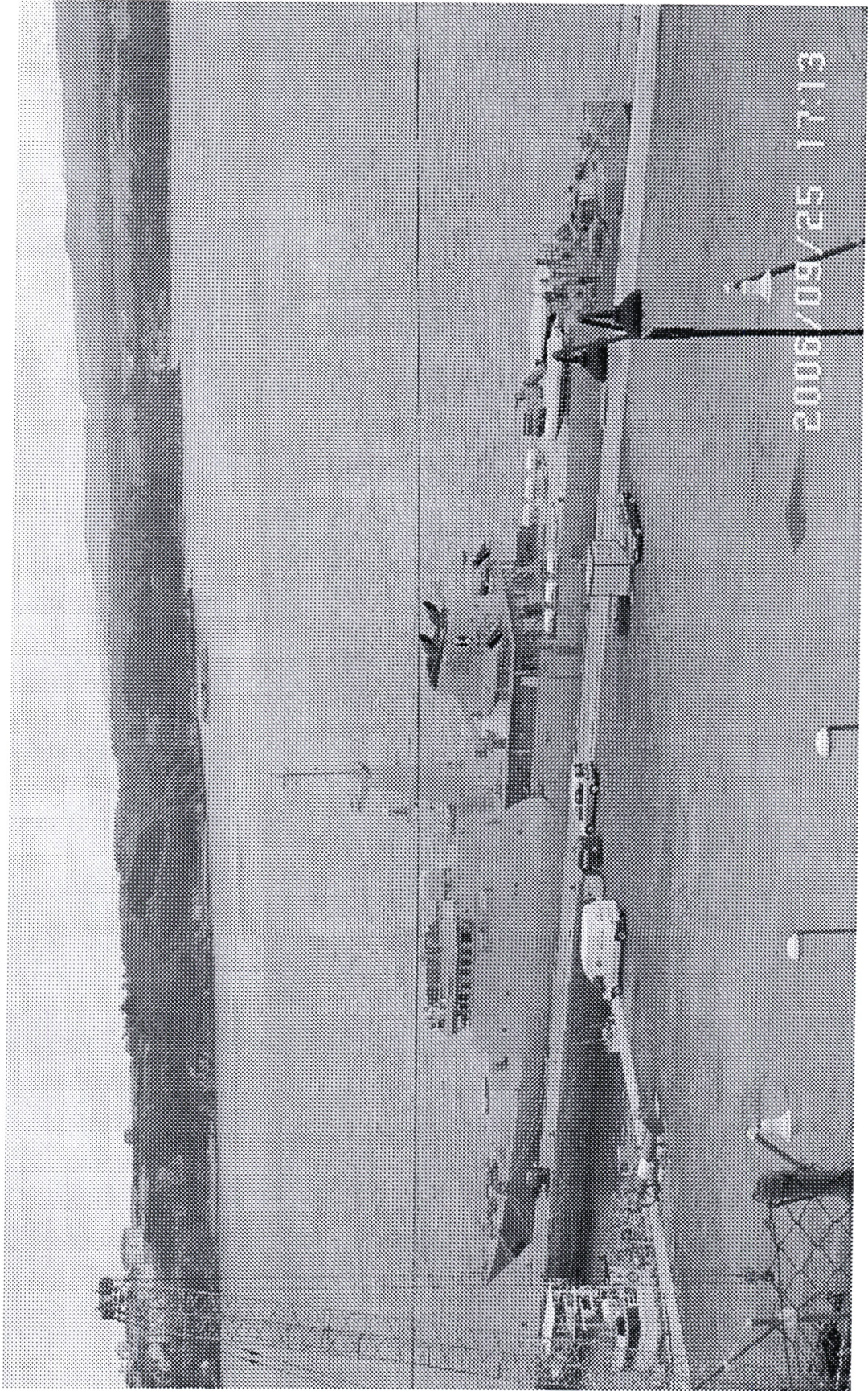
- 32 On behalf of the Committee, I now wish to present to the House, the specific Report on the fact-finding visit to the Kingdom of Spain to inspect the Oceanographic Survey vessel, pursuant to the provisions of Standing Order 162.

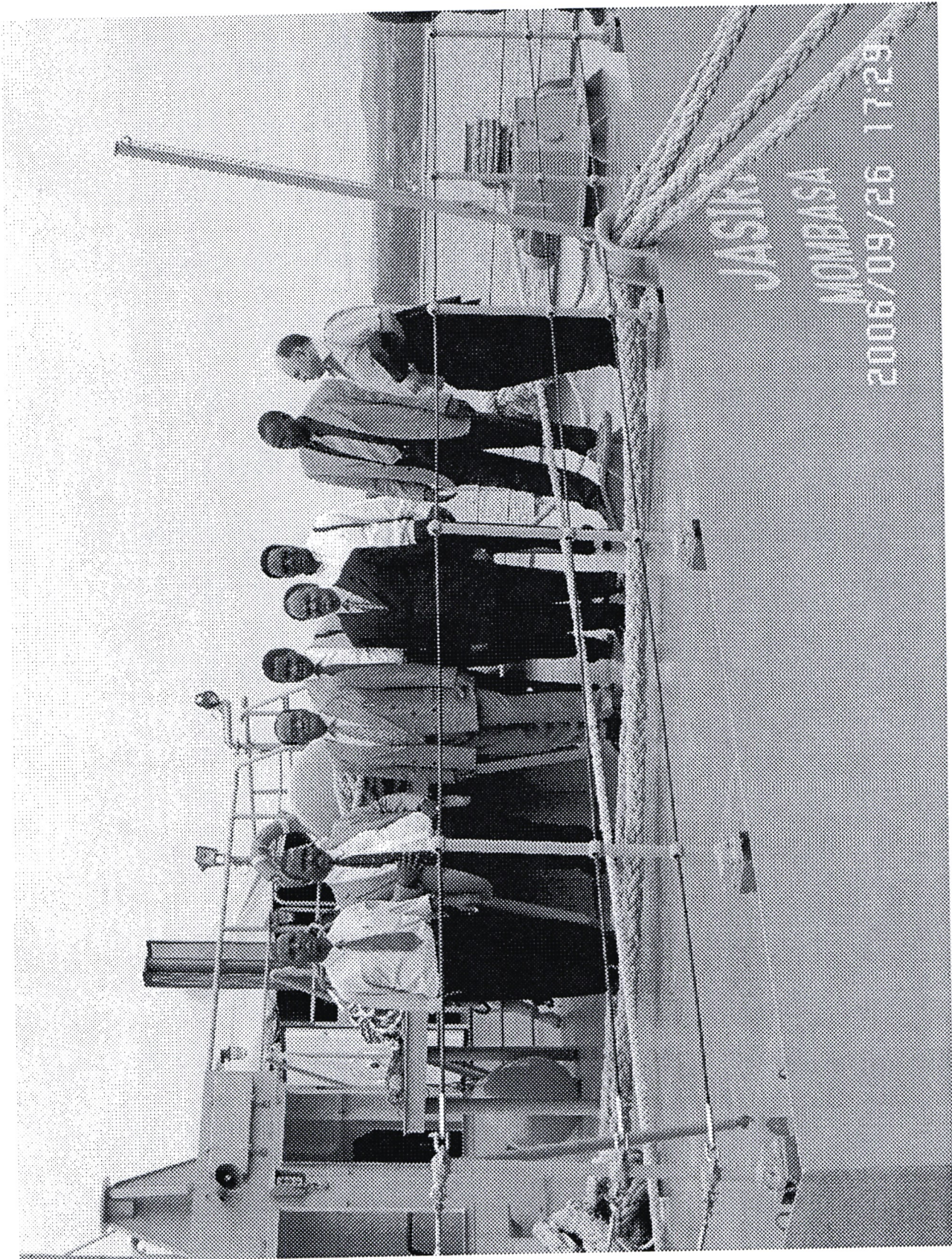

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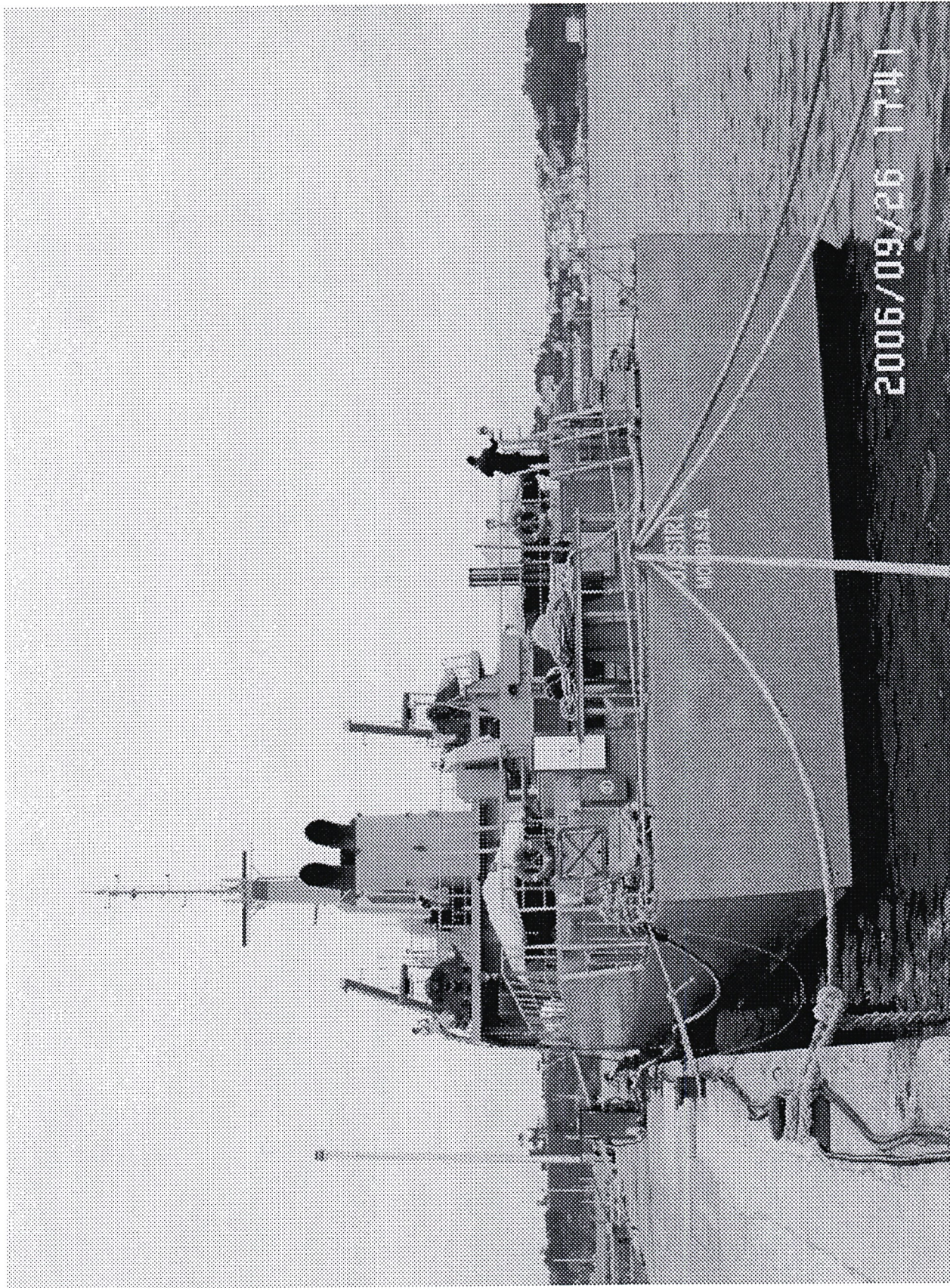
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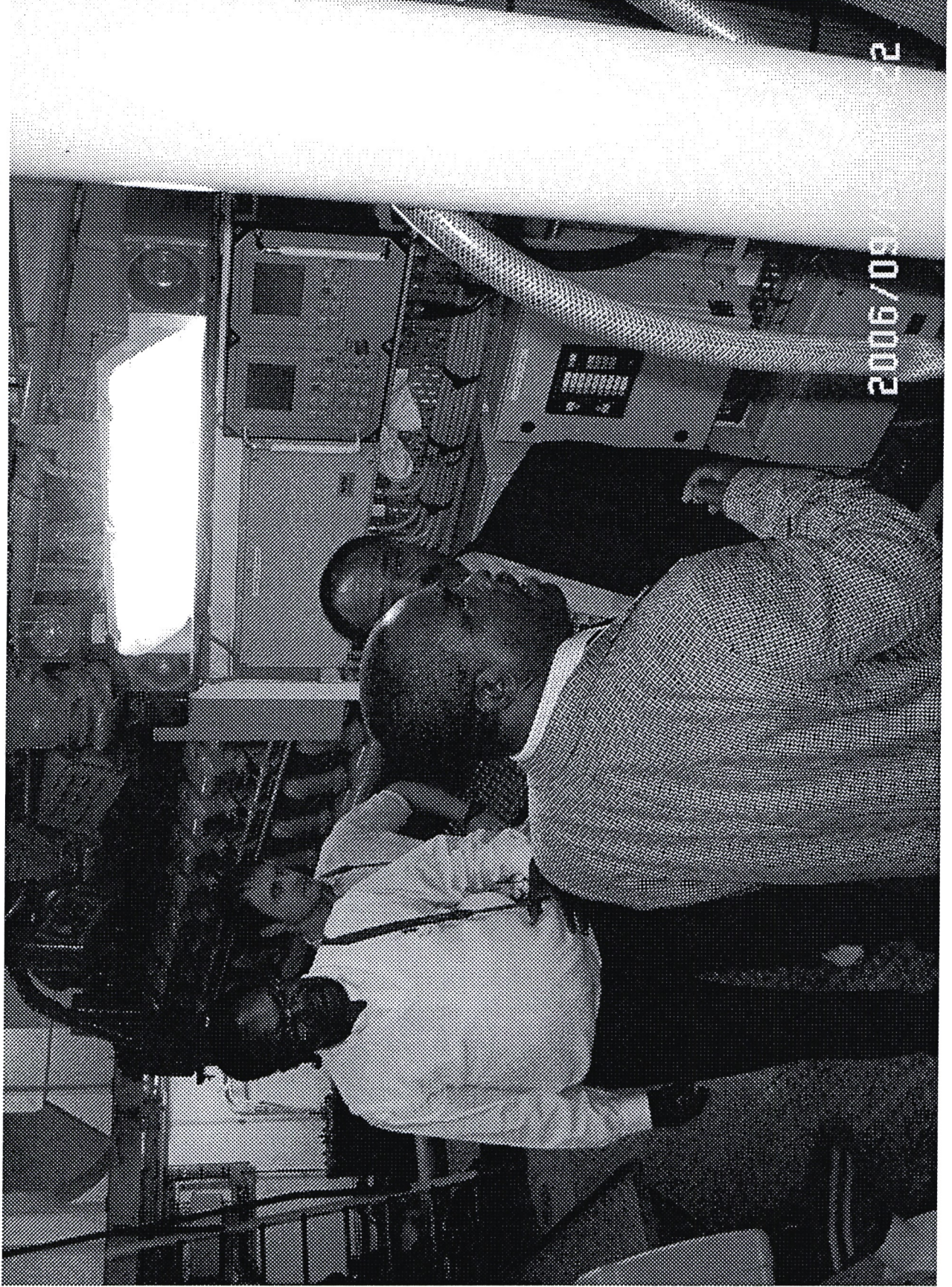
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1 PHOTOS

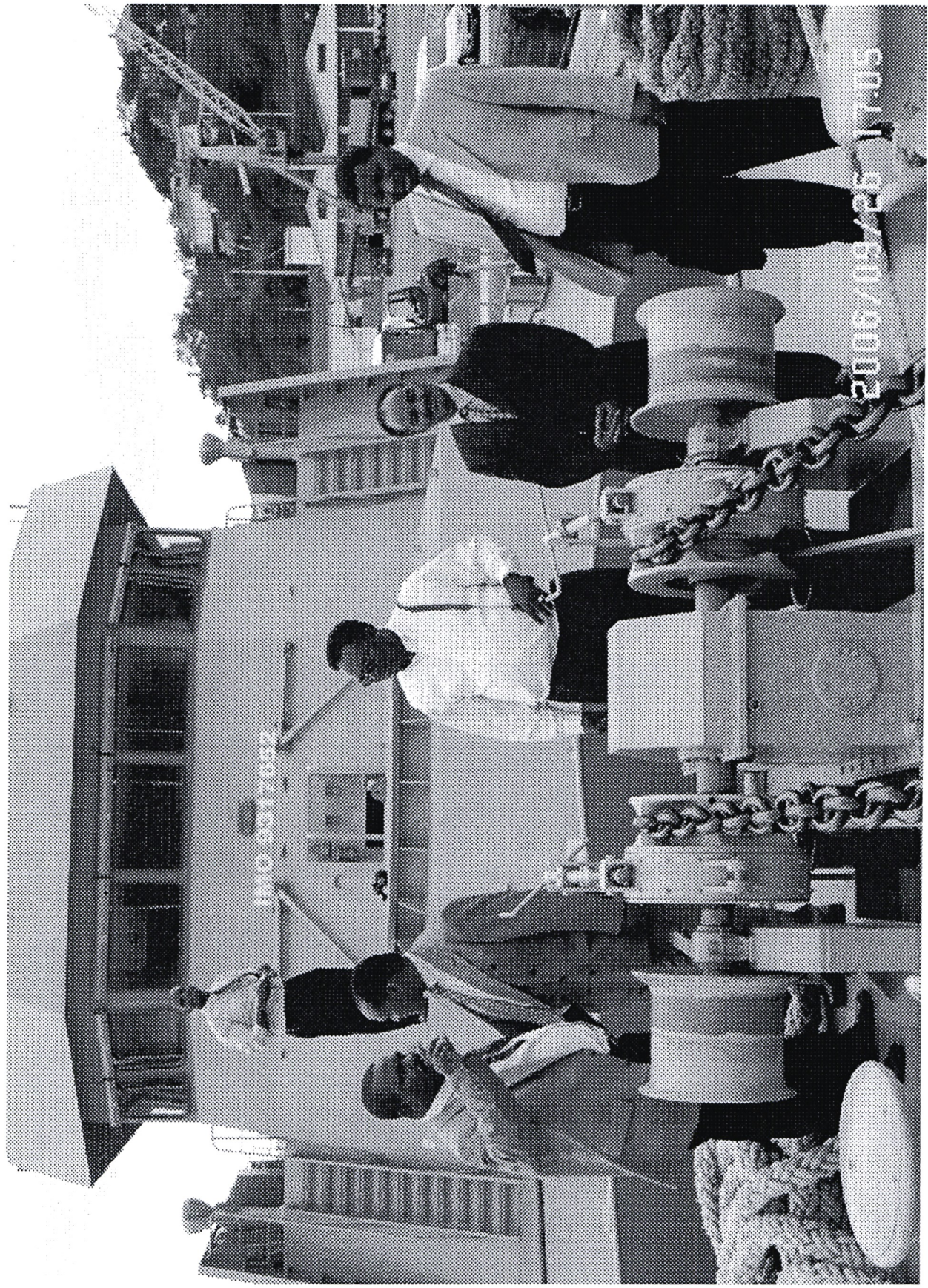




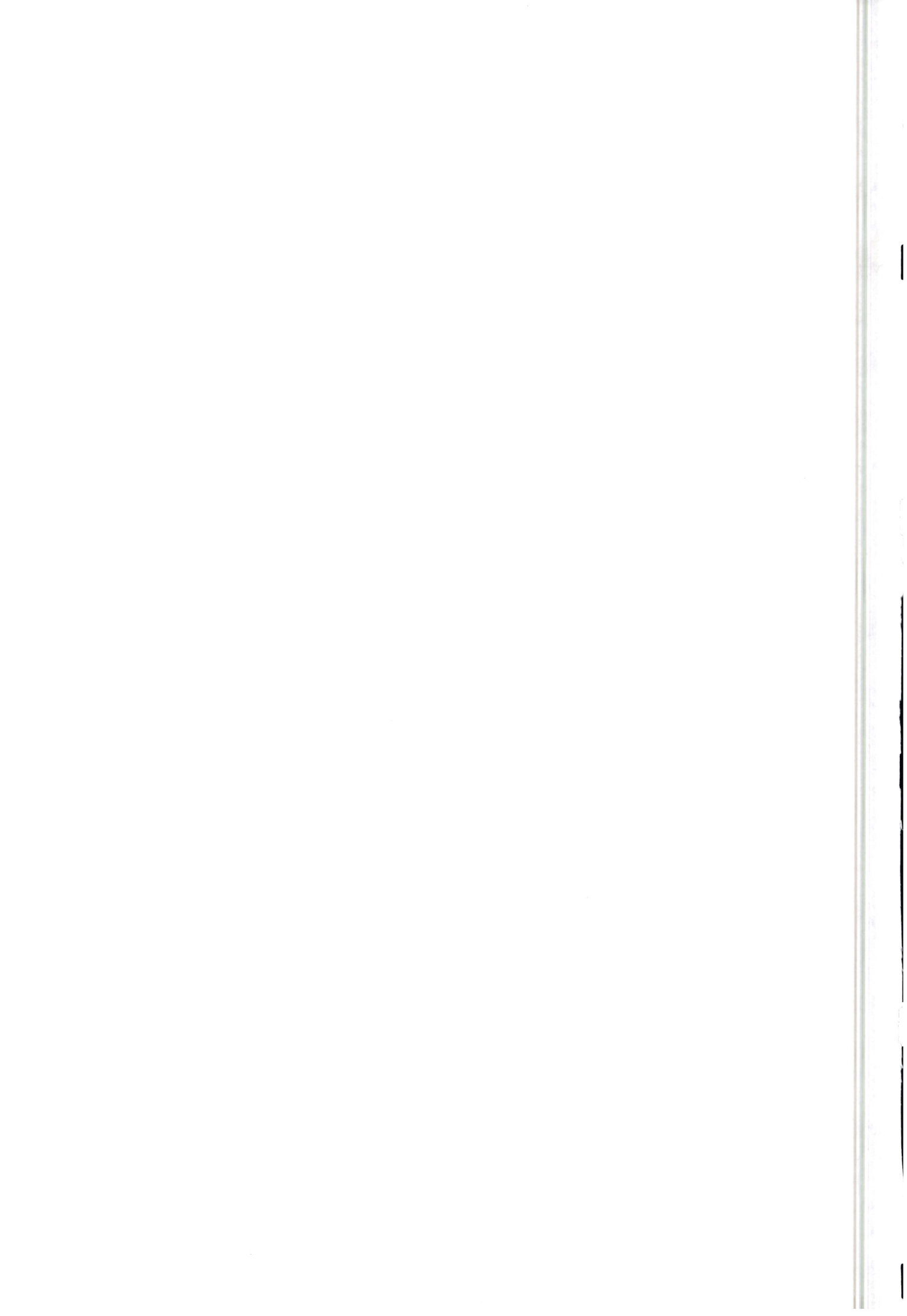








Defence and Foreign Relations Committee: Report of the Fact-finding visit to inspect the Oceanographic Survey Vessel in the Kingdom of Spain- September 24-28, 2006 20



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 - iii. **the Government of Kenya should consider commissioning an independent ship surveyor to inspect the ship and ascertain that the ship was built according to agreed specifications and advise on the best course of action, including a re-negotiation of the terms of the contract to facilitate release of the ship to the Kenya Navy;**
 - iv. **deal firmly (both politically and legally) with persons implicated with deliberate fraudulent engagements to commit public funds in irregular and lop-sided procurement contracts where Kenya stands to lose public funds, image and international standing;**
 - v. **develop an effective information, education and communication strategy to address public concerns and queries raised on governance issues in good time to safeguard Kenyans and international community's confidence;**
 - vi. **the Kenyan media to carry out research and establish facts before publishing unfounded but damaging articles that hurt Kenya's overall image, standing and confidence. The media is advised to learn from their counter-parts in developed countries on how they**

report sensitive national or public concern stories without cover-up of bad governance and mismanagement of public funds;

FACT-FINDING VISIT TO THE KINGDOM OF SPAIN (September 25-28, 2006)

Background

- 15 The delegation to Spain comprised the Hon G.G Kariuki, EGH, MP, Chairman and leader of delegation; the Hon Rtd Maj. Marsden Madoka, MP; the Hon Rtd Maj. Gen Joseph Nkaissery, MP; and the Hon Davies W. Nakitare, MP. Mr. Njenga Njuguna (Research Assistant) accompanied the Members as Secretary to the delegation.
- 16 The need to visit Spain to ascertain the correct situation or otherwise of the existence of the naval ship Spain emanated from the publications of the 18 security-related Anglo-Leasing projects that had allegedly been procured illegally using public funds. As the Committee mandated to oversee the Ministry of Defence, the Committee invited the Minister for Defence, his Permanent Secretary and other senior military officers to explain the circumstances surrounding the procurement of the ship. The Committee also held discussions with Mr. Francis Muthaura, the Head of Public Service, Permanent Secretary, and Secretary to the Cabinet; senior officials from Treasury led by the Financial Secretary, Mr. Mutua Kilaka on behalf of the PS among others. Similarly, Justice Aaron Ringera, Director of KACC, had informed the Committee that while he had completed local investigations, the international level investigation was still incomplete. Several planned meetings between the Committee and the Attorney General failed to take off due to his busy schedule.
- 17 Arising from these discussions, coupled with press allegations that the ship actually never existed and that even if it did, it had been converted from a civilian one for military purposes, the Committee resolved to undertake a fact-finding visit to inspect the naval ship under construction in Spain, and hear the side of the story from the contractor. The visit took place from September 24-27, 2006. The Ministry of Defence, at the request of the Committee, sent a marine engineer and commanding officer of the Kenya Navy, Lt. Col P Kituku, to accompany the Committee and provide technical briefing to the Members.

BRIEFING BY LT. COL. P. KITUKU, MARINE ENGINEER AND COMMANDING OFFICER, KENYA NAVY, ON KNS `JASIRI`

- 18 Lt. Col. Kituku explained to the Committee that Euromarine Industries, a Spanish registered firm was contracted by the Government of Kenya to build a navy ship on July 15, 2003. Euromarine in turn sub-contracted another Spanish shipbuilding Company, Astilleros Gondan to undertake the actual construction. Other firms contracted by the Government to provide lease financing were Impresa de Financas, and Navigia Capita

Corporation. He stated that he had been appointed to oversee the ship's construction in 2002 by the Defence Council, and arrived at the Astilleros Gondan's shipyard in Spain in January 2002. He added that through Euromarine, Astilleros Gondan had been contracted by GoK to build other marine vessels in the past. For instance, he mentioned the two logistic ships delivered in 1993; five inshore patrol boats delivered in 1994; and two offshore patrol boats delivered in 1996, all of which are still in service to date.

- 19 Describing the particulars of Kenya Navy Ship "*Jasiri*" whose construction he supervised right from onset, Col Kituku informed the Committee that the ship has a tonnage of 1400; is 85 metres long and 13 metres wide (hull) and could travel at a maximum speed of 28 knots (nautical miles). It is designed to take on board at least 60 personnel but has a capacity for 81. The ship was designed and built as a military vessel (frigate) and is to be fitted with sophisticated weaponry. However, these arms have not yet been fitted, as fitting them requires a separate contract by arms suppliers.
- 20 Col Kituku explained at great details the process involved in the construction of the ship, of which he oversaw all phases of the assembling, starting from steel works in March 2003 closely followed by kiln laying. In January 2005, the navy ship was officially launched to sea and the ceremony was attended by the Kenya Navy Commander, Chief of Systems (DoD), Director of Logistics, Kenya Navy among others high ranking military officials. After the launch into the sea on January 2005, outfitting of equipments started and continued up to July 18 2005, when he was abruptly recalled back in Kenya. Before then, scheduled plans for training of at least 20 technical personnel by various equipment manufacturers did not take place due to non payment as GoK stopped all payments while awaiting investigations. As such the Kenya navy crew has not been trained as per the contract nor have they participated in sea and harbour trials to test the ship's maneuverability and equipments respectively as per the contracts. He assured the Committee that the ship was built according to Kenya and Lloyd's specifications and other international marine standards adding that a Lloyd representative was onsite to record tests for their Register in London.
- 21 Col Kituku informed the Committee that in his view, the ship was almost 90 % ready for delivery once the issues pending between GoK and Euromarine regarding payments are settled. Other outstanding issues that have to be finalized include: -
- Harbour and sea trials
 - Training of Kenya Navy personnel
 - Testing of equipments
- 22 The delegation also held discussions with, the Principal Counselor Kenya Embassy in Paris, Mr. Samuel Githaiya, and the Honorary Consul

representing Kenya in Spain, Mr. Enrico Facchetti. Thereupon, they informed the Committee that the Government of Spain is keenly following the issue of the naval ship as a matter of bilateral concern, pointing out that what was at stake was Kenya's international image as pertaining to honouring of contracts. The implication is that the government would in future be held in suspicion in international and bilateral contracts, which may entail demands for upfront payments and costly insurance covers. The issue of non-payment of dues and violations of contract is a serious matter in international business.

MEETING WITH EUROMARINE INDUSTRIES' OFFICIALS

- 23 The Committee held a meeting on 26th September 2006 with among others, the Managing Director of Euromarine Industries Mr. Salvador Surroca Vineta, accompanied by his firm's lawyers, namely Mr. Alejandro Briones and Ms. Salome Lopez of Bartolome & Briones Advocates, of Barcelona, Spain. Mr. Surroca gave an account of the current status of the KNS Jasiri pointing out that the vessel was officially launched into the sea in January 2005 officiated by senior Kenya Navy officials. It was completed on time as scheduled in July 2005, ready for acceptance trials by Kenya Navy personnel and delivery. However, the Kenya navy supervisors and inspectors were then recalled abruptly. He informed the Committee that the first sea trial of the ship was conducted on July 21, 2005. He indicated that the contractual payments due to Euromarine and other financiers was still outstanding hence the delays in completing the tests and final delivery of the ship to Mombasa. He stated that acceptance trials with inspectors from Lloyd's Registers and Kenya navy personnel would be conducted once outstanding issues are settled.
- 24 He informed the Committee that his firm had been a long term supplier to Kenya navy since early 1990 when it constructed and delivered the following vessels; two landing crafts: MV *Tana* and MV *Galana* delivered in 1994; and two oceanographic patrol vessels, MV *Shujaa* and MV *Shupavu* in 1997, and was the sole representative of Astilleros Gondan in the Indian Ocean region, and had delivered more than 300 vessels to governments and private owners since 1925. He stated that his firm, registered by the Spanish government to construct sea vessels, both military and civilian, had a staff establishment of 250. He pointed out that his firm had constructed similar vessels as follows: -
- a) Customs patrol vessel-Government of Spain
 - b) Customs patrol vessel- Government of Indonesia
 - c) Oceanographic (research) vessel- Government of Philippines
 - d) North Sea oil platform support vessel- Government of Norway
 - e) North Sea oil supply vessel- Norway – Government of Norway

- 25 He informed the Committee that Euromarine had responded to the International tenders floated by GOK on September 11, 2002, by submitting an expression of interest letter on 14th October 2002. In November 2002, Astilleros Gondan wrote to the Department of Defence (DoD) to advise that Euromarine Industries would submit a detailed bid proposal for construction of the navy ship, which they eventually did and was formally awarded a contract in July 15, 2003.
- 26 The Committee was informed that Euromarine had sought the intervention of the Permanent International Court of Arbitration in The Hague over the non-adherence to the contract terms by Government of Kenya. It had further sent a legal notice to which no response had been received from Kenya government to-date. The Euromarine Director however added that his firm wished to have the issue of payments sorted out amicably hence the decision to go for arbitration, rather a court of law, citing previous good working relations with GoK. He added that Euromarine started the process of arbitration around 18 months after GoK's first non-adherence to contract terms. He expressed deep concern that GoK has not officially responded to Euro marine's letter informing it the firm had sought arbitration to resolve the stalemate. He informed the Committee that Euromarine was waiting an official GoK response on its position or direction it intends to take on the navy ship as it is now one year and two months late for delivery and receipt by GoK as per the contract schedule.
- 27 He pointed out that if Euromarine was to receive its dues as per the contract, then the only other outstanding work is the training of Kenya navy crew, and conducting of harbour and sea trials in the presence of various equipment manufacturers. All these could take place for a maximum period of two months. With regard to arming the ship, the Director stated that GoK would have to sign a new contract with arms manufacturers to fit its desired weaponry system. He however added that the ship is already equipped with a satellite communications system, but only parts of the oceanographic vessel's survey equipment have been installed to date. He further pointed out that warranties of various equipment suppliers have since expired, but if GoK expressed interest in the ship, Euromarine would negotiate the terms with suppliers for a new arrangement. He lamented that his firm has been forced to meet regular costs of maintenance such as oiling and lubrication of the ship while it remains docked unutilized. He nevertheless acknowledged that such expenses are borne by the builder until the ship is commissioned.
- 28 Mr. Surroca confided that his firm had received queries on the ship from at least three governments, including Indonesia, Thailand, and Philippines as its value has since risen due to increased cost of steel internationally.

- 29 The Committee expressed gratitude to the Euromarine officials for presenting information and details regarding the ship, and expressed satisfaction with the physical structure and state of the ship. Members expressed optimism that GoK will soon make a decision on the fate of the ship as there is still clear need for such a vessel by the Kenya Navy.

The Committee notes with great concern that officials at the Ministry of Defence have maintained a hands off attitude towards the naval ship in spite of having sent senior navy officials to officiate its launch. The Officials should have at least proactively provided the public with facts and other information on the ship to dissuade unwarranted claims and allegations targeting Kenya's disciplined forces.

- 30 Consequent upon the tour and inspection of the Kenya Navy Ship Jasiri, the Committee recommends that:

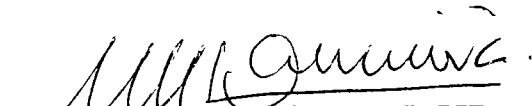
- a) **GOK needs to urgently give an official response at the International Arbitration Court at The Hague regarding its position on the fate of the navy ship, while carefully considering the legal and international impact this may have on public funds, Kenya's image and integrity in international trade and investment profile;**
- b) **GoK should consider having an independent surveyor to undertake the naval ship's inspection and evaluation of the works and services done as a basis for responding to the case filed in the Arbitration Court. Other options GoK may consider include nullifying existing contracts and re-negotiating new terms and entering into new well thought out agreements, with clear exit strategy to safeguard public funds;**
- c) **Whichever course of action GoK may consider taking, this should be guided by the need to protect loss of public funds, both the amounts already spent in construction of the ship and other funds likely to be incurred should Kenya opt to terminate the contracts, gets sued and wins or lose the case after arbitration/ruling of the Court;**
- d) **Gok should deal firmly (both politically and legally) with persons implicated in committing the state through deliberate fraudulent engagements of public funds in irregular and lop-sided procurement contracts where Kenya stands to lose money, image and international standing;**
- e) **an effective information, education and communication strategy be developed and faithfully implemented to address public concerns and queries raised on governance issues in good time to safeguard Kenyans and international community's confidence;**
- f) **the Kenyan media to carry out research and establish facts before publishing unfounded but damaging articles that hurt Kenya's overall image, standing and confidence. The media is advised to learn from their counter-parts in developed countries on how they report sensitive national or public concern stories without necessarily covering up bad governance and mismanagement of public funds;**

Conclusion

- 31 The Committee is convinced that the oceanographic survey vessel, a frigate, is still urgently needed by the Kenya Navy. Every necessary measure to resolve the issues hindering its delivery to Mombasa should be expedited while at the same time giving premium as much as possible to safeguarding of public funds.

Mr. Speaker Sir

- 32 On behalf of the Committee, I now wish to present to the House, the specific Report on the fact-finding visit to the Kingdom of Spain to inspect the Oceanographic Survey vessel, pursuant to the provisions of Standing Order 162.

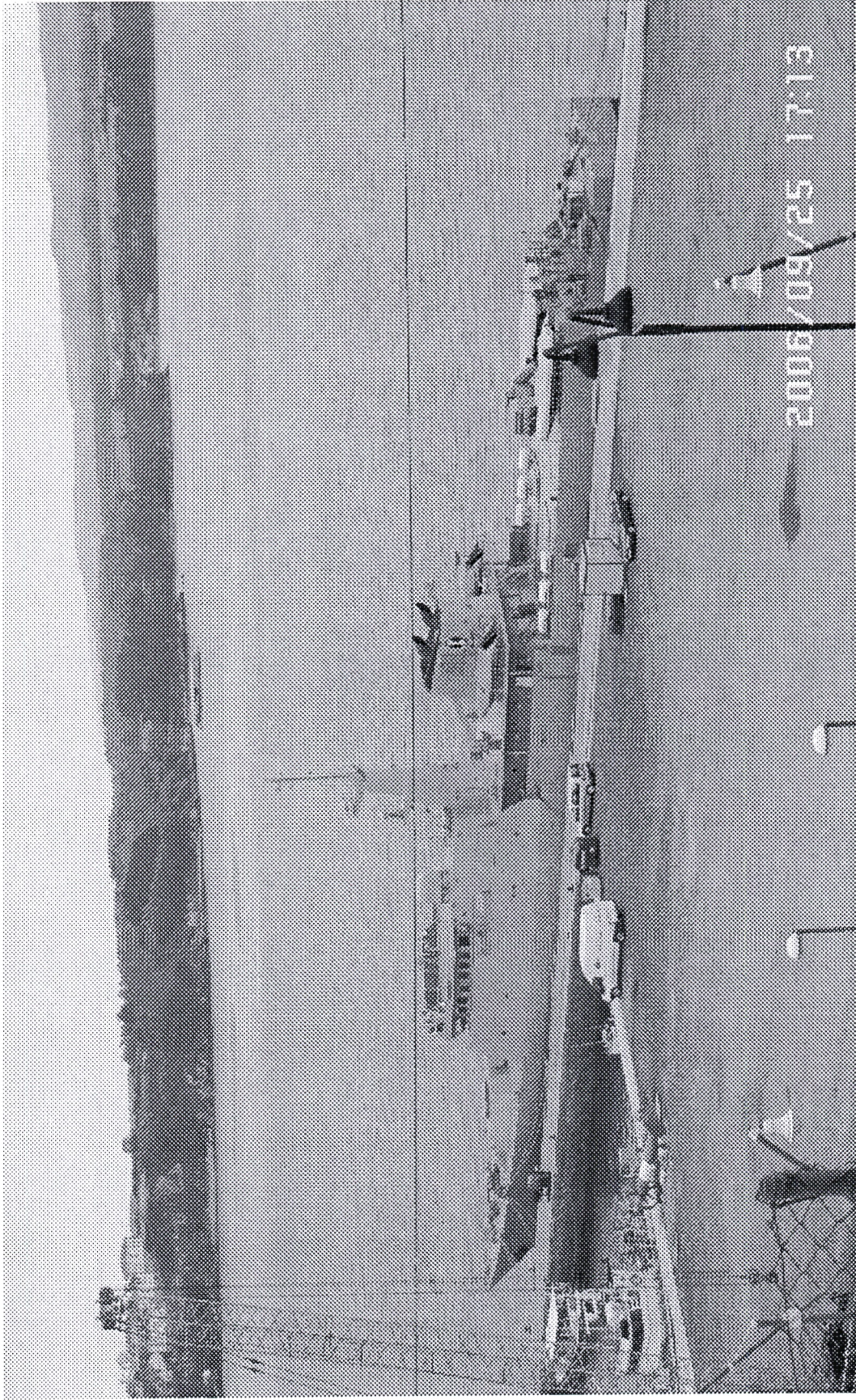


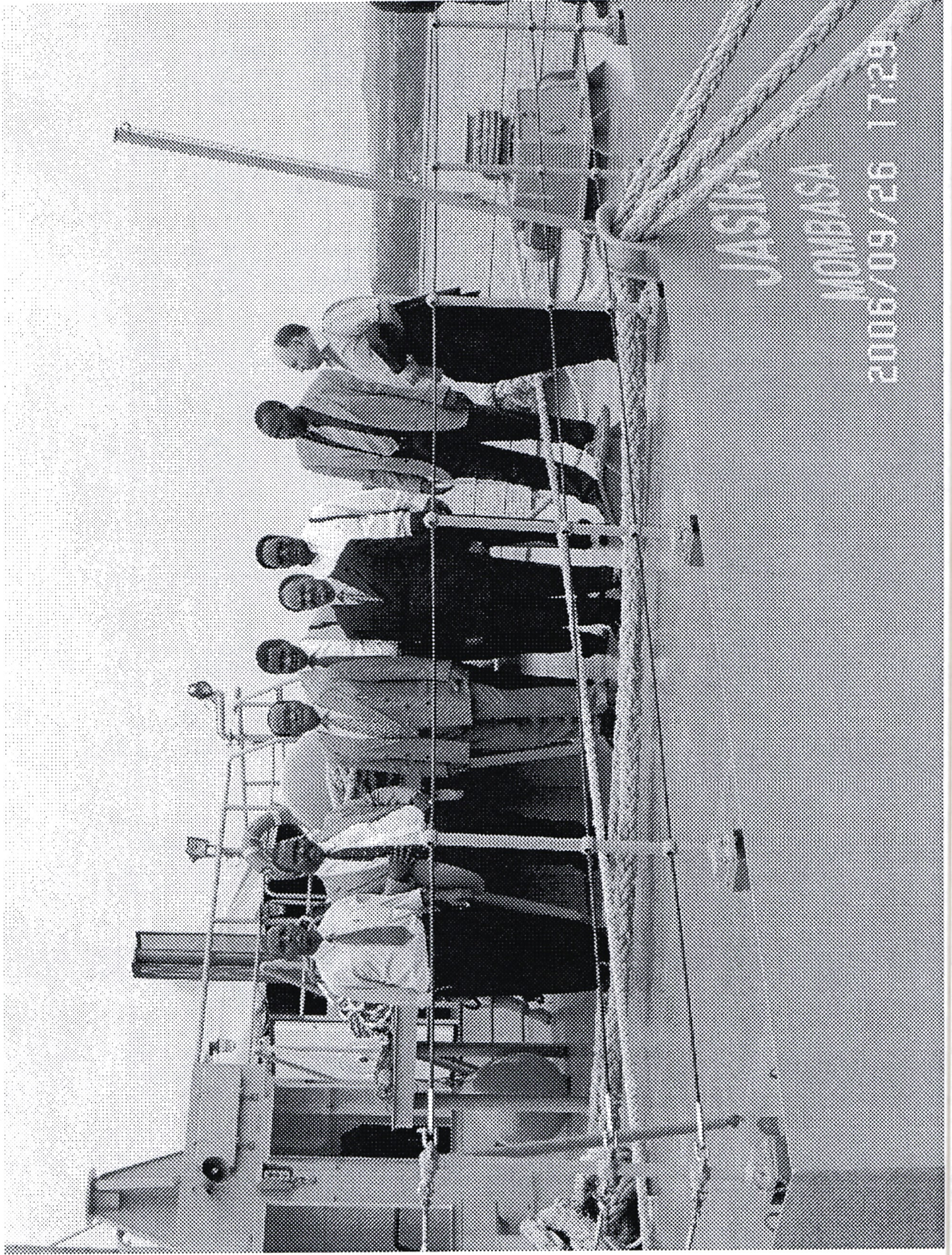
Hon. G. G. Kariuki, EGH, MP
Chairperson, Departmental Committee No -H- : Defence and Foreign Relations

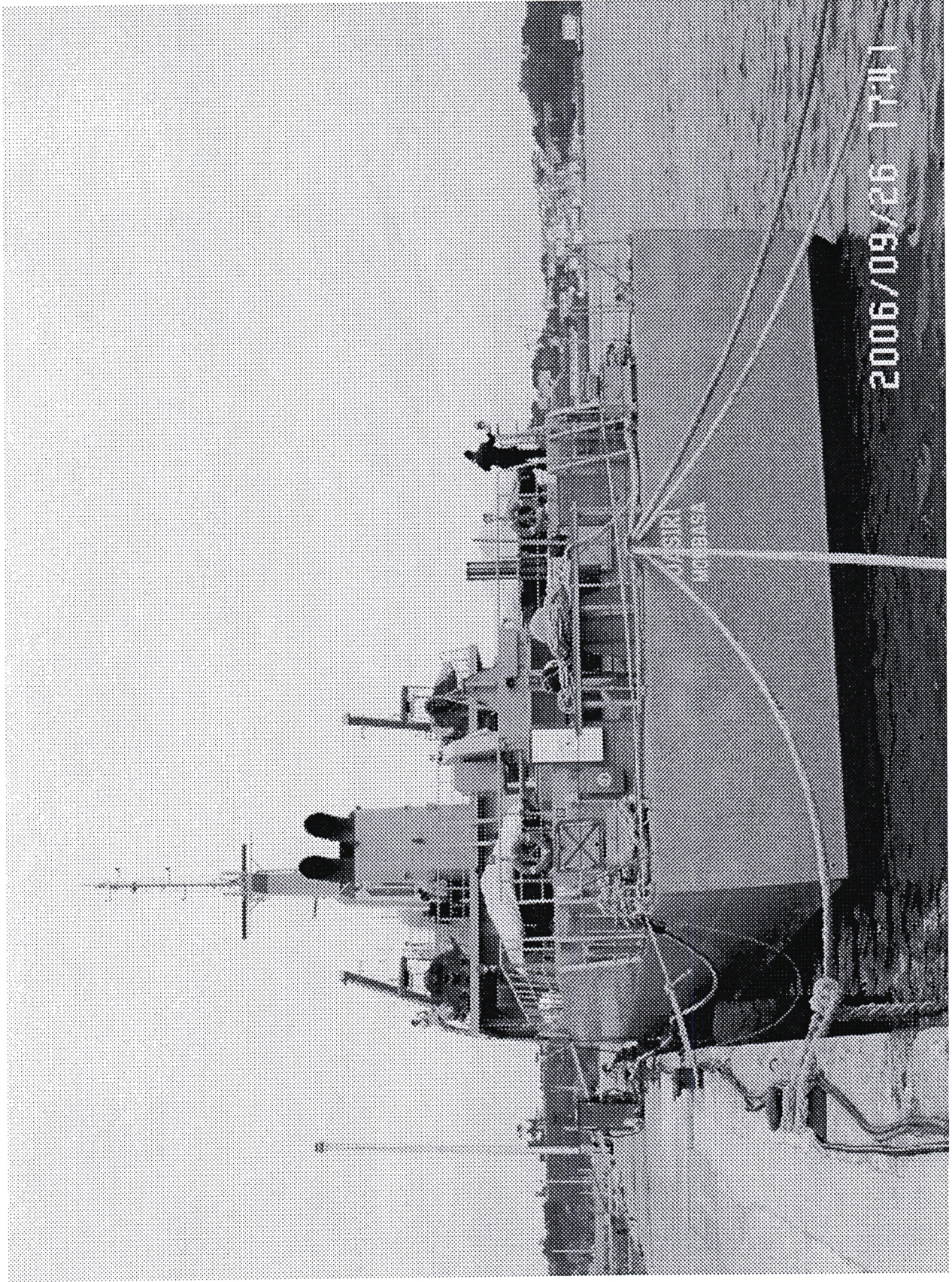
October 2006

ANNEXES

1 PHOTOS







Defence and Foreign Relations Committee: Report of the Fact-finding visit to inspect the Oceanographic Survey Vessel in the Kingdom of Spain- September 24-28, 2006



