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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;
- 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.

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
The Hon. Kirugi L. M' Mukindia, MP
The Hon. (Rtd) Maj. Marsden H. Madoka, MP
The Hon. Samuel L. Poghisio, MP
The Hon. (Rtd) Gen Joseph Nkaissery, MP
The Hon. Mwandawiro Mghanga, MP
The Hon. Daniel L. Khamasi, MP

The Hon Davies Wafula Nakitare, MP
The Hon Abdallah J. Ngozi, MP
The Hon. S. Njoki Ndung'u, MP

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
The Hon Rtd. Maj. Gen Joseph Nkaissery, MP
The Hon Davies W. Nakitare, MP
Mr. Njenga Njuguna–Research Assistant/Secretary to the delegation.

- 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 Imprensa 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 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













