

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 27th July, 2006

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-

The Report of the 114th Inter-Parliamentary Union (IPU) Assembly held in Nairobi from 7th - 12th May, 2006.

*(By Mr. Ligale)*

### NOTICE OF MOTION

#### ADOPTION OF REPORT AND RESOLUTIONS OF THE 114TH IPU ASSEMBLY

**Mr. Ligale:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House adopts the Report and Resolutions of the 114th Inter-Parliamentary Union Assembly which was laid on the Table of the House on 27th July, 2006.

### QUESTIONS BY PRIVATE NOTICE

#### CMA'S AUTHORIZATION OF SCANGROUP IPO

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, although I have not received a copy of the written answer, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware that the Capital Markets Authority (CMA) has authorized Scangroup Limited to sell 60,000,000 shares (IPO) to the public worth Kshs721,050,000?

(b) Is he also aware that the company's total movable assets as at 2005 were valued at Kshs38,640,000 while it has no immovable assets?

(c) Is he further aware that the company had a bank overdraft of Kshs175,804,027 as at December, 2005?

(d) Given that the company's share capital in 2002 was Kshs10,000 which was raised to Kshs150 million in 2005, could the Minister assure the House that the public is not exposed to fraud, taking into account that only Kshs13.8 million of the IPO proceeds will be used for expansion?

**Mr. Deputy Speaker:** Mr. Minister for Finance, you may also address yourself to the issue of lack of a written answer that the hon. Member has raised.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I confirm that I signed the answer and it was delivered to Parliament this morning. However, it may not have reached the hon. Member.

**Mr. Deputy Speaker:** I would like to remind Ministers that our Standing Orders require that an hon. Member receives a copy of the written answer 15 minutes before the Question is called out. I believe that the Clerks-at-the-Table will ensure that, that happens in the event that [**Mr. Deputy Speaker**] the answer was delivered.

Proceed, Mr. Minister!

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the CMA has authorised Scangroup Ltd. to offer for sale to the public 60 million ordinary shares of a value of Kshs1 in Scangroup Ltd. at an offer price of Kshs10.45, to offer for subscription to the public of 9 million new ordinary shares of Kshs1 each by Scangroup Ltd. at an offer price of Kshs10.45. The Listing is of 159 million ordinary shares of Scangroup Ltd. on the main investment segment of the Nairobi Stock Exchange (NSE). The gross proceeds of the offer, assuming a full subscription, would be Kshs721,050,000. The gross proceeds received by the vendor would be Kshs627 million whereas the gross proceeds receivable by the company will be Kshs94,050,000.

(b) I am aware that the company's total movable assets as at 2005 were valued at Kshs38,640,000 while it has no immovable assets.

(c) I am further aware that the company had a bank overdraft of Kshs175,804,027 as at December, 2005.

(d) Prior to granting approval of any offer for sale or subscription, the CMA subjects the issuer to rigorous eligibility requirements in accordance with the CMA's security's public offers listing and disclosure regulations of 2002. I have received information from the CMA that it received the information memorandum and was entirely satisfied that it met all the eligibility criteria and made all the required financial and non-financial disclosures. The information memorandum also contains independent financial and legal reviews by reporting accountants and lawyers. The financial statement on the basis of which it is issued has been duly audited in accordance with the international standards. The directors of the issuer and vendor have also attested to completeness and accuracy of the information. The combination of these factors should protect investors from fraud and enable them to make informed decisions as to whether or not to participate in the offer in line with their investment profiles.

*(Loud consultations)*

**Mr. Deputy Speaker:** Hon. Members, consult in low tones. This is a very important Question!

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, I agree with you that this is a very important question. The Minister has admitted that this company has no immovable assets. All that it has as assets are computers and furniture. The Minister has also admitted that the authorised capital in this company in 2002 was only Kshs10,000 which was paid out. In 2005, the authorised capital rose to Kshs150 million, and yet the company had no assets, leave alone what we have been told by the CMA, because the other day, we had Uchumi Supermarkets which were under that Authority--- Is the capable Minister not satisfied that this is purely fraud?

**Mr. Deputy Speaker:** Mr. Muiruri, you have asked the Minister whether he is satisfied

that this is not fraud? I thought you wanted to know whether the Minister is satisfied that the public is not exposed to fraud? You have asked: Is he satisfied that this is fraud?

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, who are the directors---

**Mr. Deputy Speaker:** Order, Mr. Muiruri! You are spoiling an otherwise good Question! What is your question?

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, I have many questions.

**Mr. Deputy Speaker:** Order, Mr. Muiruri! Ask one question at a time!

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, the value of shares as given out is only Kshs1, and yet they are being sold at Kshs10.45, which is an increment of 945 per cent. Is that increment normal in the ordinary market?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I have given the role of the Government in regulating the financial markets. The decision as to whether to invest in a company or not is not and cannot be made by the Government. That has to be an individual decision. Our role, as a Government, is to ensure that there is a level playing ground and all the necessary disclosures by a vendor have been made. That has been made within their prospectus. Any investors would analyze the information that Mr. Muiruri has asked on whether it is worth investing in that company or not by looking at what they want to achieve in the long term. Whether they want to buy assets or value of a company in the long term, is a decision that we cannot make as a Government. That decision lies with the financial adviser of any investor. The financial adviser should advise the investor whether he will get good value for his money or not.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, Kenyans are at the moment rushing to buy the shares that are being floated after the shares which were floated the other day by KenGen. The Government cannot abdicate its responsibility as the watchdog for the public through the CMA. Given the fact that there are murmurs in the capital market that this is fraud, could the Government ensure that the Kenyan public will not be taken for a ride?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, contrary to the impression being created here, Kenyan investors are very clever. They know when it is a good buy and when it is not. Our role, as a Government, and I will state it again, is to ensure that any company that wants to sell shares in the Nairobi Stock Exchange has disclosed the necessary information so that a serious investor can go through it and make a decision in good faith. I confine the role of the Government to regulation rather than advising people on whether to invest in a company or not.

**Mr. Omingo:** Mr. Deputy Speaker, Sir, the Minister who is a fellow accountant knows that even Enron went down with this information. Uchumi is being resuscitated because of this information of misleading the public.

*(Applause)*

Since the information is available and the CMA has a weakness, what has the Minister done to ensure that Kenyans are not duped as opposed to fighting fire?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I am not sure what the excitement is on this issue. The Scangroup has offered shares for sale and has released to the public a prospectus which is a publicly available document. Members have not raised an issue with the information contained in the document. So, I am not even sure what I am supposed to be answering in terms of the concerns of hon. Omingo. If he has any concerns on the contents of the prospectus or whether we have failed in our bit, I can answer that. But as of now, I believe we have done everything we needed to do within the law.

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, would the Minister agree with me that the major

shareholder and chief executive of this company, Scangroup, is a Mr. Barrack Saka who owns 78 per cent of the shareholding, which he is now selling to the public, and in the process, he is going to pocket a sum of Kshs584 million, leaving himself with only 28.5 per cent shareholding? That means that he, himself has no confidence in the company, but he is off-loading it to the public! I would like to lay on the Table all the information that is contained in this sale of shares, which is a fraudulent exercise just like other scandals we have had in this country.

*(Applause)*

*(Mr. Muiruri laid the document on the Table)*

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, let me thank the Member for bringing to the House what is publicly available out there for any Member to pick.

However, just to clarify things for the general understanding of the public, as a Government, we are promoting the listing of companies on the stock exchange. The listing of companies on the stock exchange follows from individual investors promoting a company and bringing it to a state where they would want to share it with the rest of Kenyans. That is what is happening in this case. In terms of what one makes or does not make, nobody is being obligated to buy shares in this company. It is up to the people to decide whether it is a worthy investment or not, just like any of the other companies listed on the stock exchange, or indeed, any other company being offered through private offers. So, I would like to limit it there instead of delving into speculation as to who is making what money or not.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to say that the Government is encouraging the private sector to be listed on the stock exchange and citizens are free to buy shares without proper advice from the two regulatory agencies, the Nairobi Stock Exchange and the Capital Markets Authority?

**Mr. Deputy Speaker:** That is a question and not a point of order! That is not allowed.

#### SALE OF DELAMERE FARM IN NAIVASHA

**(Mrs. Kihara)** to ask the Minister for Lands:-

(a) Is the Minister aware that part of the Delamere Farm in Naivasha has been offered for sale?

(b) Could the Minister purchase the land and resettle numerous squatters in the area?

**Mr. Deputy Speaker:** Hon. Members, the hon. Member has requested the Chair to defer this Question until next week. I believe the Minister for Lands is aware of that.

**The Assistant Minister for Lands (Mr. Kamama):** Mr. Deputy Speaker, Sir, I am not aware of the request to defer the Question.

**Mr. Deputy Speaker:** The Member informed the Chair earlier that she would not be there. So, take it that the Question is deferred to Tuesday next week.

*(Question deferred)*

#### ORAL ANSWERS TO QUESTIONS

*Question No.495*

IMPLEMENTATION OF PAC REPORT  
ON PROCUREMENT OF PASSPORT  
ISSUING EQUIPMENT

**Mr. Ojode** asked the Minister for Finance what action he has taken to implement the Report of the Public Accounts Committee (PAC) on the special audit on procurement of passport issuing equipment by the Department of Immigration, Office of the Vice-President and Ministry of Home Affairs, which was adopted by the House on 18th April, 2006.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to reply.

The Treasury has initiated control measures aimed at ensuring prudent use of public resources in line with the spirit of the PAC Report. In addition, a high level Inter-Ministerial Committee has been appointed by the Government to analyse the contents of the Report jointly with other reports concerning security related contracts and recommend appropriate legal and administrative action necessary to conclude all pending issues arising out of the contract in order to pave way for the implementation of the contents of the Report.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, you will agree with me that the Minister has not answered my Question. The PAC Report did not recommend anything to do with the formation of an Inter-Ministerial Committee. My Question is very simple. The Minister is a very good friend of mine and he knows what I am asking. What is the Minister doing to implement the Special Audit Report of PAC which was adopted in the House?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I have just stated exactly what we are doing to implement the PAC Report. I have left out what we have already done and brought to this House, which was to table the Special Audit Report for all the contracts which were waiting for the PAC to look at and tell us what to do. But on all the other things, we have said what we are doing.

**Mr. Billow:** Mr. Deputy Speaker, Sir, it is the tradition of this Government to appoint task forces to investigate task force reports and so on, and 2007 will come before they will have done anything. There are reports that the chief investigator at the Kenya Anti-Corruption Commission who was investigating this matter was sacked in order to stop further investigations into this matter. Could the Minister confirm or deny that report?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I am not aware of the circumstances under which he was sacked.

**Mr. Marende:** Mr. Deputy Speaker, Sir, the PAC Report did, among other things, find that there were close to, if not more than 18 contracts relating to this matter. The PAC found that although the contracts are, on the face of it, unlawful and/or fraudulent, they have not been terminated. What action has the Minister taken to ensure that these contracts are terminated so that the Government does not suffer any further losses?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, we are concerned as a House about the legality of these contracts. We moved with speed to table all the reports of the auditors so that the PAC could look at them further and tell us what we need to do. I am disappointed that the PAC has not done its bit because we would have moved with speed to do what we need to do.

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to say that the PAC has not done its work yet the Question is concerning the passport issuing equipment which we tabled in this House and it was adopted?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, hon. Marende has asked a Question on the 18 contracts, not on the passports. The 18 contracts are covered within the report of the Controller and Auditor-General, which I tabled here and asked the PAC to look at so that they can help us in expediting the matter. We are looking at it as a Government, but we want the backing of the PAC

in terms of doing things together in tandem. Now, the PAC has not started doing that, and that is my disappointment.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, the Minister is going round in circles because he does not want to answer the actual question. You know, by February, the Government had already spent Kshs15 billion in terms of interest and penalties for these contracts, and that is taxpayers' money. We are losing too much money. The PAC Report, among other things, recommended that those who are adversely mentioned must be prosecuted, yet majority of them are still holding public offices.

Once a thief is caught, he should be taken to court, prosecuted and---

**Mr. Deputy Speaker:** Order, Mr. Ojode! This is Question Time. It is not debating time.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, could the Minister confirm to this House that he will implement the PAC Report which was adopted by this House, which recommended prosecution of those who are still scot-free?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, at the point of adoption of this Report by the House, my colleague, the Minister for Justice and Constitutional Affairs did give a Government undertaking to do everything that was required to implement the Report in terms of the investigation and prosecution. We still stand by that commitment.

*Question No.451*

REVIVAL OF ITHANGA MUTHESYA  
WATER PROJECT

**Mr. Mbai** asked the Minister for Water and Irrigation:-

(a) whether he is aware that two water pumps and pipes worth hundreds of thousands of shillings will go to waste as a result of the stalled Ithanga Muthesya Water Project; and,

(b) what urgent measures he is taking to revive this project.

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): Mr. Deputy Speaker, Sir, before I give the answer, this Question was supposed to be answered yesterday. It was deferred to today because the office of the Clerk claimed not to have received the written reply so that they could pass it over to the hon. Member. I want to confirm to the House that the Ministry of Water and Irrigation takes the work of Parliament very seriously. The answer was delivered here on 13th July, 2006, in the office of the Clerk of the National Assembly and it was signed for by one Mwangangi. The same answer was also delivered to the Leader of Government Business on 13th July, 2006. It was equally signed for. Therefore, the Ministry of Water and Irrigation will not continue taking responsibility for the negligence of the office of the Clerk. I will table this document.

*(Mr. Wanjala laid the document  
on the Table)*

**Mr. Deputy Speaker:** That is a good explanation by the Assistant Minister. Could you now address yourself to the Question?

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that two water pumps and pipes were purchased under the Machakos Integrated Development Programme. The pipes were laid for Ithanga-Muthesya line but have never

been utilised because the project wound up.

(b) My Ministry will provide the money for this project, this financial year, 2006/2007.

**Mr. Osundwa:** On a point of order, Mr. Deputy Speaker, Sir. This House was misled by the office of the Clerk that they never received a written reply. Now the Assistant Minister has explained to the House that the reply was delivered to the Clerk's office. What action will the Chair take against the office of the Clerk for misleading the House?

**Mr. Deputy Speaker:** That is a big one. The Chair can only say that it is embarrassing that it had to give a dressing down to the Assistant Minister for not having delivered an answer. Indeed, the office of the Clerk confirmed that no answer had been received. I have now confirmed that an officer in the Clerk's office received the answer. That is an administrative matter. I am directing the Clerk to take action against that officer.

**Mr. Mbai:** Mr. Deputy Speaker, Sir, I want to appreciate the answer given by the Assistant Minister. Could the Assistant Minister tell the House how much money he has allocated to this project this financial year?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, we have allocated Kshs1,150,000 which we are sure, will finish the project. The area that has remained is 2.5 kilometres, two-inch diameter UPPC Class D pipes which will cost Kshs500,000. We will also complete 120 cubic metres masonry tank which will cost us Kshs200,000. We will construct a 150 cubic metres masonry tank which will cost us Kshs350,000. We have also allocated a miscellaneous amount of Kshs100,000 to make a total of Kshs1,150,000. The money will be provided in the current financial year.

**Mr. Mbai:** Mr. Deputy Speaker, Sir, could the Assistant Minister also consider constructing a water storage tank at Ithanga Market?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I have already said that we are building two tanks this financial year. As for the water storage tank at Ithanga Market, the Ministry will consider that project the next financial year.

**Mr. Deputy Speaker:** Thank you, Mr. Wanjala, for a very comprehensive answer.

*Question No.395*

RELOCATION OF MATUNGULU DO TO  
DIVISIONAL HEADQUARTERS

**Mr. M. Maitha** asked the Minister of State for Administration and National Security:-

(a) whether he is aware that residents of Matungulu Division of Machakos District have built a DO's office at the Divisional Headquarters at Kisukioni Market;

(b) why the DOs posted to Matungulu Division are not stationed at the divisional headquarters and continue to occupy the Tala Chief's Office; and,

(c) when the current DO together with the departmental heads will move to the divisional headquarters.

**The Assistant Minister, Office of the President (Mr. Kingi):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the residents of Matungulu Division of Machakos District are in the process of building a district officer's office which will accommodate four departmental heads when complete.

(b) The DO cannot move into that office because the proposed offices at Kisukioni Market are incomplete.

(c) The DO with the departmental heads will move to the divisional headquarters as soon as the proposed offices are complete. As of now, vital facilities are yet to be constructed.

**Mr. M. Maitha:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for his

answer. Since most of the offices are complete, could the Assistant Minister consider sending some departmental heads to the divisional headquarter which has stayed for over 10 years without a divisional officer or departmental heads?

**Mr. Kingi:** Mr. Deputy Speaker, Sir, we will consider doing that as soon as some of the facilities which are necessary are complete. We require about two to three houses to house some of our *askaris*. We also need toilet facilities which have not been done. When this is done, we will definitely send the officers there.

**Mr. Kagwima:** Mr. Deputy Speaker, Sir, I thought the Government had started constructing offices for DOs, Assistant Chiefs and chiefs. Why can the Government not construct the houses for the *askaris* so that this divisional headquarter starts operating?

**Mr. Kingi:** Mr. Deputy Speaker, Sir, that is one of the things we are doing. If [Mr. Kingi] you look at the financial estimates for this year, we have set aside Kshs151 million for the renovation, refurbishment and construction of district headquarters, divisional headquarters and even offices for the chiefs. This money will be sent to the District Commissioners. I am sure the Members of Parliament will be able to liaise with their DCs, so that the areas that need this money most can be served.

**Mr. M. Maitha:** Mr. Deputy Speaker, Sir, this division was created by the Government. The people of Matungulu Division have put a lot of effort in building the structures which are there. Could the Assistant Minister tell this House how much money Matungulu will be allocated this financial year in order to complete the structures which are not there?

**Mr. Kingi:** Mr. Deputy Speaker, Sir, districts will get about Kshs2.1 million. If the hon. Member could liaise with the District Commissioner, then that money could be used to complete the construction of those offices.

*Question No.379*

REPAIR OF KISII-KILGORIS ROAD

**Mr. Omingo** asked the Minister for Roads and Public Works:-

- (a) whether he is aware that the Kisii-Kilgoris Road is currently not motorable; and,
- (b) why the Kshs50 million allocated for the maintenance of the road during the 2004/2005 financial year has not been utilised for its repair.

**The Assistant Minister for Roads and Public Works** (Eng. Toro): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the Kisii-Kilgoris Road is currently not motorable. However, I am aware that the road is in very poor condition. In this regard, my Ministry has taken the necessary steps to rehabilitate the road. The rehabilitation works will commence at the beginning of November this year.

(b) I am aware that Kshs50 million which was supposed to be utilised for the roads rehabilitation was not spent. The money was never used because the contract documents were not ready by the end of the last financial year. Therefore, the project could not be procured. During this financial year, a total of Kshs182 million has been budgeted for this road.

*(Some hon. Members stood up  
in their places)*

**Mr. Deputy Speaker:** Order! Hon. Members standing there are in contravention of Standing Order No.85. Please, sit down. Mr. Wambora, did you want to ask a question?



**Mr. Wambora:** No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** You see, that is the problem. When I see you standing, I assume you want to ask a question. Mr. Y.M. Haji, do you want to question?

**Mr. Y.M. Haji:** No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** I think you would assist the Chair if you kept sitting. Once you stand, I want to oblige, then you say you were only walking around. It is not right.

**Mr. Omingo:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for accepting to rehabilitate the road with the Kshs182 million. I am also disappointed that the Assistant Minister does not know the state of that road, hence there was no need for providing the money.

Mr. Deputy Speaker, Sir, what measures will the Assistant Minister take to ensure that if they could take back Kshs50 million, they will not take back the Kshs182 million?

**Eng. Toro:** Mr. Deputy Speaker, Sir, this year, we are very serious. If I have to give any apologies, I would give apologies to Mr. Manoti because I promised him last year that we would start doing this road using Kshs50 million. However, the design that was being done internally in the Ministry took a bit longer. Now that the design is complete, this road was advertised on 19th July, 2006, and we are currently in the procurement process. I am sure that by November, the tender will have been awarded and the contractor will be in place.

**Mr. Manoti:** Mr. Deputy Speaker, Sir, I thank the Minister for the good answer he has given. The Government has given that road which covers Kisii and Transmara Kshs182 million for construction works. What is the estimated total cost to complete that road?

**Eng. Toro:** Mr. Deputy Speaker, Sir, I did not get the question properly.

**Mr. Deputy Speaker:** The Chair is there to help. The hon. Member says that you allocated Kshs182 million to the Kisii-Kilgoris Road. What is the total estimated cost of that road?

**Eng. Toro:** Mr. Deputy Speaker, Sir, I will know the estimated cost once the contractors have presented their bids. Since they have not presented their bids, it is not possible to say how much it is going to cost. So, I cannot preempt the cost of the road.

**Mr. Karaba:** Mr. Deputy Speaker, Sir, we are getting from the Assistant Minister a scenario where this Ministry is now abandoning stalled road projects. Instead of the Government embarking on completing stalled road projects, it is constructing new ones. Could the Assistant Minister inform the House the current Government policy on stalled roads projects? I have in mind the case of Kagio-Baricho-Kerugoya Road.

**Eng. Toro:** Mr. Deputy Speaker, Sir, we are addressing the issue of stalled road projects. I know there is a road in Mr. Karaba's Constituency that was started over 10 years ago but which has stalled. We have to look at this case afresh because the design that was applied at that time is no longer applicable.

**Mr. Kagwima:** On a point of order, Mr. Deputy Speaker, Sir. The question that hon. Manoti asked was not answered. Is the Assistant Minister in order to say that they went to tender when they did not know the total cost of the project?

*(Applause)*

**Mr. Deputy Speaker:** Mr. Kagwima, with respect to you, that is a question and not a point of order.

**Mr. Omingo:** Mr. Deputy Speaker, Sir, when I thanked the Assistant Minister once, again, I was not seeking credit since the issue here is representing my people. However, could the Assistant Minister assure this House that this project will commence? Secondly, could he tell the House on what basis they awarded Kshs182 million?

**Eng. Toro:** Mr. Deputy Speaker, Sir, Kshs182 million is the budgetary provision for this financial year. We have taken into account that by the time the contractor is mobilised to start construction and given that the certificates will come at the end of the financial year, the contractor might not be able to spend more than Kshs182 million in this financial year. However, if we find that the contractor who has been contracted is hardworking, his certificates are honoured and that by the time we come to Supplementary Estimates we see that he has exhausted Kshs182 million, we will do the necessary adjustments.

**Mr. Deputy Speaker:** Next Question by Mr. Kajwang!

*Question No.268*

MARKETING OF KENYA AS AN  
INDUSTRIAL/TRADING DESTINATION

**Mr. Kajwang** asked the Minister for Trade and Industry:-

- (a) how the Government is marketing Kenya as an attractive industrial and trading destination; and,
- (b) what steps are being taken to make the cost of power, telephone and transport services competitive so as to make Kenya an investment destination of choice.

**The Assistant Minister for Trade and Industry** (Mr. Abdirahman): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government initiatives to market Kenya as an attractive, industrial and trading destination include the following:

- (1) The implementation of various reform efforts such as improvement in security and micro-economic stability aimed at improving service delivery.
- (2) The provision of incentives such as the one stop shop for investment facility under the Kenya Investment Authority that attracts significant higher inflows of financial direct investment from investors.
- (3) Implementation of various export strategies such as our current active engagement and participation in the East African Community (EAC), Common Market for Eastern and Southern African (COMESA) and World Trade Organisation (WTO) that improves the competitiveness of the Kenyan products; and,
- (4) The implementation of the Private Sector Development Strategy developed by my Ministry of Trade and Industry that enhances the private sector growth and competitiveness.

(b) The steps to be taken to make the cost of power, telephone and transport services competitive include the following:

- (1) Putting in place a Road Investment Charter that addresses the problems in the communication sector.
- (2) Strengthening the legislative platform for privatisation of public assets.
- (3) Restructuring of operations of State Corporations and,
- (4) The strengthening of institutions of governance.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, I want to say that my Question really was addressing some of the questions that people ask about Kenya as an investment destination and one of them is the cost of power, telephone and transport services. The answer which has been given is rather general and talks of something called a Road Investment Charter which is not explained. If this is one of the things the Government is doing, could the Assistant Minister explain to us what this Road Investment Charter is and how it is going to solve the problem of communication? Secondly, how is his Ministry reducing the cost of power and telephone services?

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, the Road Investment Charter is being developed to improve access within the industrial area. A working group has already been

identified comprising various Ministries including the Ministries of Roads and Public Works, Local Government and Transport. They are actually taking a key role in participating in what we are now calling the Road Investment Charter.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, this is one of the Questions which made me come to Parliament today. The Question asked by hon. Kajwang is very specific. It says: "What steps are being taken to make the cost of power, telephone and transport services competitive so as to make Kenya an investment destination of choice?"

Mr. Deputy Speaker, Sir, we belong to the EAC and any investor wanting to invest here will compare prices in Tanzania, Uganda and Kenya, and make up his or her mind. Could the Assistant Minister tell us with facts and figures, how Kenya is competitive specifically in the EAC market that could make an investor prefer it rather than Uganda and Tanzania with specific reference to these three matters; power, telephone and transport?

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, maybe it would have been appropriate for the hon. Member to come to Parliament because of every Question and not necessarily this one. However, I will be very specific and say that we are trying to encourage group applications, spread out payment of connections over time and also help in making timely acquisition of material through the Kenya Power and Lighting Company (KPLC). That is why we are talking about developing an investment climate action plan which will draw inputs from all Ministries.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Professor, let me make one thing very clear. You may not like the answer that the Assistant Minister is giving but give him the opportunity to finish, whether it is good or bad. However, if he is breaching the Standing Orders, then you can interrupt him.

Proceed, Mr. Abdirahman!

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, I want to clarify that investment in this country is a collective responsibility by various Ministries. The Ministry of Trade and Industry plays a facilitating role through the development of the investment climate action plan which is developed collectively, as I said. What we are doing is to encourage group applications, working with the Ministry of Energy so that as we encourage group applications, they can also help in enhancing the facilitation in terms of improving their procurement processes. That is what I said.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Professor, I am sorry since I have to go to the last Question due to shortage of time. With respect, what you have is a supplementary question but not a point of order. What is the point of order?

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I am very frustrated in this House because when hon. Kimunya was answering his Question he was not answering the Question asked by Members on this side. I asked the Assistant Minister a very specific question. Could he tell us with facts and figures how competitive Kenya is with respect to Uganda and Tanzania, if one is investing in the EAC market? This question is very specific and he answers it in a general manner while meandering around by talking about policies of development. That is not the answer!

*(Applause)*

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, I would like to request Prof. Anyang'-Nyong'o to ask a separate Question if he wants facts and figures in relation to costs. However, we are talking about standardising costs in relation to power provision.

**Mr. Deputy Speaker:** Mr. Abdirahman, that is fair. However, the easier thing you would have done was to state that you do not have the figures. I am sure that if you are given time, you can give those details. But, be that as it may, let us rest the matter there.

Last question, Mr. Kajwang!

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, the Assistant Minister is responding to questions

as if the Question did ask for these facts and figures. I want to know how the Ministry is trying very hard, if at all, to make power, telephone and transport services competitive, so that Kenya can be an investment destination of choice. If the Assistant Minister cannot show us how Kenya is better placed to invest in than Rwanda, Burundi and Tanzania, he is not helping us. He is not answering the Question!

Mr. Abdirahman, why do you think Kenya is more competitive? How are you making it competitive? That is the question.

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, what I was trying to bring in, in terms of answering part "b" of the Question, was to give strategies that can address and improve competitiveness in Kenya. If need be, I will bring those facts and figures. However, we are talking about out-sourcing of service line connection, which is being completed. We are also encouraging group applications, which can help in reducing the costs. As a Ministry, these are the strategies we are talking about.

**Mr. Deputy Speaker:** Next Question, Mr. J.M. Mutiso!

*Question No.290*

THEFT OF FPE STATIONERY IN  
KILOME CONSTITUENCY

**Mr. Deputy Speaker:** Mr. J.M. Mutiso is absent; therefore, his Question is dropped.

*(Question dropped)*

*Question No.248*

ISSUANCE OF ID CARDS IN  
BOMET/BURET/KERICHO DISTRICTS

**Mr. Deputy Speaker:** Mr. Bett is also absent. His Question is dropped.

*(Question dropped)*

*Question No.467*

PAYMENT OF DUES TO FORMER EMPLOYEES  
OF NALIN NAIL WORKS

**Mr. Gitau** asked the Minister for Labour and Human Resource Development:-

- (a) if he is aware that Nalin Nail Works in Ruiru closed down in 1998, but the workers have never been paid their terminal dues to date;
- (b) if he is further aware that the factory was later sold by Kenya Commercial Bank to Devki Engineering who re-opened it in August, 2005; and,
- (c) when the former workers will be paid.

**The Assistant Minister for Labour and Human Resource Development** (Mr. Leshore):  
Mr. Deputy Speaker, Sir, I beg to reply.

I am aware that Nalin Nail Works in Ruiru, which had been in business since 1952, was placed under receivership in 1999 by the Kenya Commercial Bank (KCB) limited. The receiver managers, KPMG, proceeded to declare the employees redundant and has never paid their terminal dues to date.

My office investigated the matter on 30th May, 2002 and recommended that the redundant employees be paid as outlined below:-

(i) Severance and notice pay as per the collective bargaining agreement between the employer and the union.

(ii) Those declared redundant by 31st December, 1998, be paid any outstanding salaries in full, up to the date of the redundancy.

(iii) The employees who were declared redundant between January, 1999 and 30th September, 1999, be paid any outstanding salaries at one-third of their basic pay as was agreed on by the parties up to the date they were declared so.

(iv) Any outstanding housing allowance should be paid in full up to the date the grievants were declared redundant.

Mr. Deputy Speaker, Sir, Nalin Nail Works Limited under receivership did not accept our recommendation and the dispute was referred to the Industrial Court on 27th September, 2002, under Case No.79 of 2002.

Mr. Deputy Speaker, Sir, on 6th December, 2004, the Industrial Court gave its award that Nalin Nail Works pays workers as follows:-

(i) A sum of Kshs3,000 transport allowance promised by the receiver manager pursuant to the agreement.

(ii) Up to four months' wages covering the period prior to the declaration of the redundancy.

(iii) All their benefits, including severance pay, outstanding pay in lieu of accrued leave, housing and any other allowances for the years of service with the respondent as per the collective bargaining agreement between the parties, save that such sum in total does not exceed 12 months wages of the individual grievant.

(iv) All other claims beyond the amounts paid under (iii) above rank at the next level of privilege and immediately after the debenture holder has secured his debt.

(v) The aforesaid sum, be paid within 60 days of 6th December, 2004.

Mr. Deputy Speaker, Sir, Nalin Nail Works again refused to accept this award and instead referred the dispute to the High Court under Miscellaneous Application No.134 of 2005. It is still pending in court and the affected workers' payment will be known once the matter is heard in full and judgement delivered.

Mr. Deputy Speaker, Sir, I am further aware that the factory was later sold by the Kenya Commercial Bank to Devki Engineering through public auction, who re-opened it in August, 2005.

**Mr. Gitau:** Mr. Deputy Speaker, Sir, this Government has a contract with Kenyans. This Government was brought to power, among other things, to take care of the plight of Kenyan workers. Over 600 workers of Nalin Nail Works have not been paid their dues since 1998. The Assistant Minister is not even making reference to High Court Case No.2083 of 2001, where the court ruled that the workers must be paid. He is also telling us about the Industrial Court, the Ministry's recommendations and---

**Mr. Deputy Speaker:** Now ask your question!

**Mr. Gitau:** Mr. Deputy Speaker, Sir, when will these workers be paid bearing in mind that this factory has already been sold?

**Mr. Leshore:** Mr. Deputy Speaker, Sir, our hands are now tied because the case is still pending in the High Court.

**Mr. Mukiri:** Mr. Deputy Speaker, Sir, the Assistant Minister is not serious! The principal owner of the company was Nalin Nail Works, who at that time was under receivership. The company has already changed hands, to Devki Engineering. All along the Ministry knew that this company was indebted to these workers, and they allowed the company to change hands. Why did they not intervene, so that KCB was not allowed to sell this company before the workers' rights were sorted out?

**Mr. Leshore:** Mr. Deputy Speaker, Sir, when the KCB appointed the receiver managers who declared all the workers redundant on 30th September, 1999, the Kenya Engineering Workers Union (KEWU) representing the workers, disputed the redundancy and reported a trade dispute leading to the appointment of an investigator to look into the dispute. The report released to the parties stipulated that all the workers be paid their redundancy benefits.

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, I agree with my colleagues that this Ministry is not serious. These type of Questions have been asked in this House on many occasions. I represent a constituency with half of the industries in this country. If you visit most industries, you will realise that many of them have been closed down and the workers have not been paid their terminal dues for more than two years. Could the Assistant Minister tell this House, what the Ministry is doing to make sure that those workers who are hovering around in those industries are paid their dues immediately?

**Mr. Leshore:** Mr. Deputy Speaker, Sir, my Ministry takes that issue very seriously. That is why, under the collective bargaining agreement, we sit with the employers and employees. Once the case is before the High Court or is taken to the Industrial Court, our hands are tied. We cannot do more than that.

**Mr. Gitau:** Mr. Deputy Speaker, Sir, this Ministry is completely asleep. It is colluding with *Mhindi* employers *kunyanyasa wananchi*. The Kenya Commercial Bank (KCB) was ordered by the High Court to pay these employees yet the Ministry allowed the change of hands of this institution. Could the Assistant Minister undertake to make sure that the KCB pays these workers?

**Mr. Leshore:** Mr. Deputy Speaker, Sir, first, I would like to tell my colleague that my Ministry is not sleeping. We are doing all our best to ensure that Kenyan workers get their dues at the right time. I hope my colleague will now understand that we are serious and we are committed to ensure that the Kenyan workers get their dues at the right time.

**Mr. Deputy Speaker:** Very well done, Mr. Assistant Minister! Hon. Members, that is the end of Question Time!

Next Order!

**Mr. Gitau:** On a point of order, Mr. Deputy Speaker, Sir. My question was not answered. I asked him to comment on whether he is going to order the KCB to pay those workers.

**Mr. Deputy Speaker:** Order, Mr. Gitau! I said from the Chair that, that was the end of Question Time! I am not going to open it again. That is end of Question Time!

Next Order!

## BILL

### *First Reading*

#### THE NUTRITIONISTS AND DIETICIANS BILL

*(Order for First Reading read -  
Read the First Time - ordered to  
be referred to the relevant  
Departmental Committee)*

## PROCEDURAL MOTION

NOMINATION OF HON. SALAT  
TO PAN AFRICAN PARLIAMENT

**The Vice-President and Minister for Home Affairs (Mr. Awori):** Mr. Deputy Speaker,

Sir, I beg to move:-

THAT, pursuant to the provisions of Article 7 of the Treaty establishing the African Economic Community relating to the Pan African Parliament and Rule 8(4) of the Rules of Procedure of the Pan African Parliament; this House approves the nomination of the hon. Nicholas Salat, MP, to be a Member of the Pan African Parliament to replace hon. Abdirahman Ali Hassan, MP.

*(Applause)*

**Mr. Deputy Speaker:** Do we have a Seconder?

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to second.

*(Question put and agreed to)*

### **BILL**

#### *Second Reading*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(The Attorney-General on 18.7.2006)*

*(Resumption of Debate interrupted  
on 20.7.2006)*

**Mr. Deputy Speaker:** Ms. Karua was responding. You may proceed!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Deputy Speaker, Sir. Like I have said, the Bill is now the property of this House. It is, therefore, our duty as hon. Members to scrutinise it, make additions; subtractions where we think it is necessary and turn it into law.

I have been looking at the various contributions of hon. Members and I want to say that we, on the Government side, will be willing to look at the amendments, especially those proposed by the Departmental Committee on Administration of Justice and Legal Affairs, which I said most of them were really very well-thought-out. We are also prepared to discuss the ones that we feel need re-thinking and any other proposals that hon. Members may bring. I have in, particular, looked at the contributions made by one hon. Member; Mr. M. Kilonzo, where he lamented about the new rules made by the Chief Justice in January, 2006, which repealed the Chunga Rules which were allowing an automatic stay whenever someone made a constitutional reference. I am not able to understand how anybody who believes that justice delayed is justice denied would complain about the new rules. The new rules do not stop Kenyans from ventilating where they think their constitutional rights are being stepped on. What the new rules introduced is a time-line so that you do not stop the hearing of an economic crime case against yourself and then go to sleep and cause internal paralysis. It introduces a time-line so that within 45 days of filing, you must be getting to the hearing of that suit. If, indeed, your rights have been violated, then the court will be able to protect you. If the application was merely meant to obstruct, then the case must proceed.

Mr. Deputy Speaker, Sir, I am, therefore, persuading hon. Members that we accept the amendments that are being sought in this Bill with regard to stay. However, perhaps, we could modify and agree that it is the court that has the right to grant or deny stay so that after hearing an

applicant, the court then is at liberty to give orders and the applicant, upon filing, must follow the rules as set out by the Chief Justice. Nobody has a right to cause permanent paralysis to a case. If you are innocent, prove it before a court of law. If your rights have been violated, agitate before the court and get a decision. However, you should not hide behind a constitutional application when all you mean is to delay the hearing of a case.

There was also the complaint that the rules are retro-active. I would like to explain a little bit. The rules are not retro-active in the proper sense of the word. All that the rules state is that any party aggrieved by a stay granted under the old rules may re-apply for a review of the grant. Therefore, both parties will have a right to a hearing. Thereafter, the courts will be able to adjudicate on their rights.

Mr. Deputy Speaker, Sir, there were also the complaints about amendments to the Anti-Corruption and Economic Crimes Act. The Main complaint from the Shadow Attorney-General was about the sacking of an officer by the name of Mr. Were. I would just like to remind my learned friend, and other hon. Members, that the right to hire and fire is recognised by law, just as the right to be hired and to resign is recognised by law. In the course of being hired and fired, should anybody feel that their rights have been violated, then they have an option to go to court and ventilate. It is not right for hon. Members to confuse the public by talking as though an employer has no right to hire and fire. That is a right properly recognised by employment laws. I do not see, therefore, any connection between the hiring and firing of Mr. Were and the debate before this House.

I would also like to note that there was the suggestion that instead of the amendments proposed, we should review the entire Anti-Corruption and Economic Crimes Act. The Statute Law (Miscellaneous Amendments) Bill, which in most cases is an annual event, which provides an avenue for quick amendments to various statutes to keep abreast with trends. It is not reasonable to suggest that Parliament should wait to amend statutes by other statutes when they are minor amendments that can be effected omnibus. It is our chance to look at these amendments and decide whether they should pass as they are, or whether we should have another look at them.

It is true that certain issues that have been raised in the Statute Law (Miscellaneous Amendments) Bill have also brought problems to the parent Ministry. I am referring to the Ministry of Health, which has written complaining about proposed amendments to Section 58 and Section 80 and Section 90, which would make it impossible for Kenyans to access reasonably priced anti-retroviral drugs. I want to say that, as a Government, we are totally agreeable to having these proposed amendments deleted. The Ministry of Health has disowned these amendments. They are not in line with the move by this House to make anti-retroviral drugs affordable to Kenyans. Therefore, we will, at the Committee Stage, introduce amendments to ensure that we do not pass any law that will jeopardise the health of Kenyans, or that will affect accessibility to drugs by the needy.

Mr. Deputy Speaker, Sir, I have heard some hon. Members suggest that we should have judges per district. I do not think that, that suggestion would be very helpful. We should be looking at the case load in an area before suggesting an increase in courts. It is not only the number of judges that will affect the speed at which we dispose of cases, but both numbers and actual management of courts by judicial officers. I would like to urge hon. Members to note that we require a multi-pronged approach to the problem of backlog in cases. We also need our lawyers to play their part in the reduction of backlogs. We need to encourage both litigants and their lawyers to stop delaying cases by asking for unnecessary adjournments. We need to encourage judges and magistrates to take full charge of their courts, and not to allow adjournments of cases on flimsy grounds. In this way, we shall overcome the issue of case backlogs. The suggested hiring of additional judges by these amendments will also be of help.

I would like to remind hon. Members that an increase in the number of judges will mean more cost to the Exchequer. We should note that any additional officer is an extra cost to the



Exchequer. Since Kenya has many needs and not just the need for judges, we will have to balance allocation of resources. We should ask ourselves: How do we allocate the available resources? How do we balance between the needs for health services, infrastructure and the need for access to justice? Let us realise that we are the managers of this country, as national leaders. Let us sit down and deliberate on how to balance its needs before we suggest increment of judges beyond what is being proposed by these amendments.

Mr. Deputy Speaker, Sir, I have seen the proposed amendments by this Committee to the Advocates Act. I agree with the amendments proposed by the Committee on Justice and Legal Affairs, that an officer in a public body, private corporation or local authority, who has been exempted, should not charge professional fees for acting. That is completely agreeable. However, for those who have been suggesting that Members of Parliament should be exempted from undergoing continuing legal education, this suggestion is not tenable. Why should professionals, who are in Parliament, be exempted from continuing education in their professional line, whether they are lawyers or engineers? I have never heard in any country of professionals seeking refuge of the law from further knowledge. Let us agree to be at par with our colleagues, who are not in the House, when we wear the professional feather. If the professional society has suggested that there is need for continuing legal education, let those of us in Parliament, who are lawyers, submit ourselves to continuing legal education, otherwise we risk becoming irrelevant by protecting ourselves, with legal amendments from the favour of further knowledge. I want to persuade the worthy Members of the Justice and Legal Affairs Committee that this proposal ought to be abandoned when it comes to the Committee Stage.

Mr. Deputy Speaker, Sir, there is also the issue of State Corporations Act. I agree that we need to have another look at the issue of exemptions, and decide whether we need to completely exempt them or we need to balance the private sector interest in our State Corporations *vis-a-vis* the public interest. We will be seeking out our colleagues in this Committee, and in the House generally, so that we may agree on the best way forward when this Bill comes to the Committee Stage.

I do not want to go amendment by amendment. However, I wish to note that on the Anti-Corruption and Economic Crimes Act, the Committee proposes an amendment which will make it mandatory for the President to approve names that Parliament passes on to him. This amendment is totally unconstitutional. You will recall that the Constitution vests executive authority in the presidency. When the President is by law mandated to appoint, he is not doing it ceremoniously. He is taking up his role as the person in whom executive authority is vested to finally accede to the suitability of a person. The Chief Executive must, therefore, be able to have a say on the suitability, or otherwise, of a candidate to be appointed to a position. I want to persuade my colleagues in this Committee, and the House at large, to appreciate that there is no need of putting in a futile amendment which a constitutional court can easily strike out. You cannot take away from an Act of Parliament what has been given by the Constitution. This is the same view that I bear of the amendments relating to stay. We cannot say no to stay; we can only let the courts to decide. I want to persuade my colleagues that we look at this issue so that we see how we can balance and have amendments that serve the country and not sectional interests.

Mr. Deputy Speaker, Sir, I am aware that the Anti-Corruption Advisory Board looks at the applicants and passes their names to Parliament which finally passes them on to the President. The Board, Parliament and the President have a role to play. Let us not try to impose or short-circuit the responsibility of any of these three stages. Let us allow the Board, Parliament and the President to do their work. These amendments are not for the sitting President, rather they are for posterity and any President in this country will have to abide by, be it today tomorrow and any other day, until the law is repealed. I, therefore, suggest that this amendment be abandoned.

Hon. Members will remember that recently, when I was answering a Question relating to the Kenya Anti-Corruption Commission, I lamented that there is absolutely no connection between

the Advisory Board and my Ministry, and yet the Ministry is made to answer for it in Parliament. They report directly to a Parliamentary Committee. If the Executive is to answer any Questions on behalf of anybody, it is our submission that we need to give the Executive a window to interact with that organisation. I am proposing here that we need to make the Permanent [Secretary of the Ministry responsible for that institution a member of the Board. That will not compromise the independence of the Board; after all, it has more than 12 members. How can the inclusion of one member compromise the independence of the whole Board. It only serves to provide the vital link so that when you ask questions about salaries and performance contracts, the Executive is able, through that window, to answer those questions.

Mr. Deputy Speaker, Sir, there is also the issue of the Kenya Nation Commission on Human Rights (KNCHR) which reports directly to Parliament. The reports of that body come directly to Parliament and are seen by the Executive later. If there are issues that need attention or practices that need to be curbed, it means that they can only be attended to much later after the report has gone through the Motion stage.

It is possible to introduce amendments that do not water down the independence of this institution where the report goes simultaneously to Parliament and also to the Executive. It should be more or less the way the Controller and Auditor-General deals with reports taken to him.

This Parliament has a responsibility to ensure that we pass laws that assist us in this transitional stage. We, therefore, propose that we engage each other before the Committee of the Whole House so that we come with acceptable amendments which can serve us today and tomorrow. There are many other amendments relating to the various statutes which we are willing to look at the proposals both from the Ministry concerned and hon. Members of this House. We are even willing to hear from hon. Members who did not have a chance to contribute to the debate concerning the various sections of this Bill. That move will ensure that the Statute Law (Miscellaneous Amendments) Bill that we pass here will help us and serve the interests of the country.

Finally, I have heard one or more hon. Members complain that we should not open our wealth declarations to the public. What is being sought here is exposing them to the investigative agencies so that they are able to verify and investigate where necessary. I would urge hon. Members to let these amendments pass so that we do not render the Public Officer Ethics Act which obligates us to list down our wealth, irrelevant. If we leave our Wealth Declaration Forms to go to the archives with nobody to monitor them, verify them or check on compliance, of what use will they be? If we were serious in passing this Act, we shall welcome the amendments that have been sought and we shall be seeking to open a window so that the investigative agencies can be able to do the enforcement. We shall be ready, at the Committee the Whole House stage, to engage and bring amendments that will serve this country.

Mr. Deputy Speaker, Sir, I have just remembered that somebody took issue with the remuneration of Constitutional office holders. He claimed that this was meant to compromise them.

*(Mr. Syongo walked around  
the Chamber)*

**Mr. Deputy Speaker:** Who is that? Is it Mr. Awiti?

**Hon. Members:** Mr. Syongo!

**Mr. Deputy Speaker:** Hon. Syongo, we want to see you seated!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, I was saying that whenever hon. Members feel that this Bill requires adjustment, let us get together and look at it afresh. However, I urge that this Bill, which is urgent and necessary, be passed now so that we can look at the proposals during the Committee of the Whole House.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time  
and committed to a Committee of the  
whole House tomorrow)*

### MOTION

#### ADOPTION OF PIC REPORT ON LOSS ON EXPORTATION/IMPORTATION OF RAW SUGAR

THAT, this House adopts the Report of Public Investments Committee on the Kenya Sugar Board - Loss on Export and Import of Raw Sugar pursuant to Legal Notice No.2 of 2006 laid on the Table of the House on Wednesday, 29th June, 2006.

*(Mr. Muturi on 13.7.2006)*

*(Resumption of Debate interrupted  
on 13.7.2006)*

**Mr. Muturi:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to continue moving this Motion.

I had given the background information regarding the issues that the Committee was examining. Indeed, it is important to recapitulate on some of the issues. During the year ended 30th June, 2001, the Sugar Development Fund incurred a loss totalling to Kshs54,843,925 on the export of sugar procured from Nzoia and Chemelil Sugar companies on the ground that in order to secure the European market, it was in the national interest and unavoidable to incur such losses.

However, no evidence has been provided to confirm that the European Union (EU) sugar market was secured through that action. The Fund further imported 2,000 metric tonnes of sugar from the third lowest tenderer, ED&S Man Sugar Company Limited of South Africa at the price of US\$305 per metric tonne all valued at US\$660,000 or the equivalent of Kshs52 million at the then prevailing exchange rates.

However, records which were made available showed that Hira Enterprises of Brazil and Gandsnewflux CC of South Africa had quoted to supply and deliver the sugar at US\$160 and US\$188 per metric tonne, respectively. It was, however, found out that had the Fund purchased the sugar from the lowest bidder at the price of US\$160 per metric tonne, there would have been a possible saving of Kshs26,787,880. Although the sole aim of the importation was to stabilise the availability of sugar in the local market, the consignment was released into the market six months after it had arrived at the Port of Mombasa, when other Common Market for Eastern and Southern African (COMESA) countries had gained access to the Kenyan market with cheap sugar. The purpose of the importation was, therefore, defeated, and that led to over-flooding of sugar on the local market and, thereby, affecting local sugar companies. In the circumstances, therefore, and in absence of any plausible explanation for those imprudent decisions, there is no justification for the total loss of Kshs81,631,805 made by the Fund. That comprised of the export loss of Kshs54,843,925, and an import loss of Kshs26,787,880. The Committee took evidence from the Chief Executive Officer (CEO) of the Kenya Sugar Board (KSB) and made the following observations:-

As much as the importation was intended to meet and secure the European Union quota, that justification, eventually, did not hold water as the sugar was not only sold in the local market and thereby defeating the sole purpose for the importation, but it also deteriorated the already flooded local sugar markets. In the circumstances, the Sugar Development Fund made an import loss as shown above. Even though the Board, the parent Ministry and the Ministry of Trade and Industry, viewed the justification of meeting the European market as urgent, Government procurement procedures were, nevertheless, flouted! The approval of the Directorate of Public Procurement not to employ international open tendering in procuring the sugar was not sought.

Finally, the Board seems to have been used by the parent Ministry and the Ministry of Trade and Industry as a conduit for delivering sugar into the country at zero-rated import duty under the guise of meeting the European Union market quota. In view of the foregoing, and because most of the evidence is contained in the Report, minutes and deliberations of the Committee in the HANSARD - it is in the library - the Committee recommends that the Director of Criminal Investigations Department (CID) urgently institutes investigations into the manner in which the 2,000 metric tonnes of sugar was imported from South Africa through MSED and F Man-Sugar Limited in South African, with a view to preferring charges against any person found culpable in the irregular transaction which made the Sugar Development Fund (SDF) to incur a total loss of Kshs26,797,880. The Treasury should grant a suspension to the Board for the loss of Kshs26,787,880. We were informed that the Board, through the Fund, has sought the same from the Treasury!

Mr. Deputy Speaker, Sir, this Special Report is in two parts. The first part primarily related to the issue of the losses incurred by the SDF, as captured by the Controller and Auditor-General in his report for the financial year ending 30th June, 2001. The rest of this report comprises of evidence taken by the Committee, relating to the execution of importation of sugar into Kenya pursuant to Legal Notice No.2 of 2006 - Legislative Supplement, which has been reproduced in the report. It is important to observe that, in the course of preparing the 13th PIC Report, which was tabled before this House last year, the Committee addressed the issue of sugar importations from COMESA, within the arrangement of PTA. It was in that process that it became apparent, towards the end of last year, that, indeed, there was going to be the issue of further importations into the country this year. The Committee directed the KSB to meet urgently, as the body mandated under the law--- For clarity, Section 33 of the Sugar Act, 2001 reads:-

"The Minister may, in consultation with the Board, make regulations generally for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations shall provide for:

- (a) The regulation and control of the production, manufacturing, marketing, importation or exportation of sugar and its by-products.
- (b) The forms of licences to be issued under this Act and the form and manner of application therefor.
- (c) The fees which may be charged for any activity relating and incidental to the development, products, marketing and distribution of sugar and its by-products."

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Mr. Kagwima) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, from the foregoing, it is very clear that Parliament, not too long ago - in 2001 - when it was crafting this law, desired that KSB must be consulted - and it is mandatory - by the Minister for Agriculture whenever he felt like exercising his power to make regulations relating to production, manufacture, importation and marketing of sugar. It is not

optional. It is a mandatory requirement! Should the Minister wish - and that is why he is given the permissive "may" - to make regulations, he is then enjoined by law to consult the KSB. Therefore, in 2003, the Minister, in exercise of that power, issued out, in consultation with the Board, Legal Notice No.39 of 2003. Subsequent to that, various importers were invited. Indeed, both the Minister, his Permanent Secretary and the KSB appeared before the Committee on a number of occasions, and explained to us the various difficulties that were experienced by KSB which had spent, in the words of the Minister, over Kshs200 million in litigation arising from costs incurred in trying to defend the various suits that were filed by importers. Between 2003, 2004 and 2005, it became necessary for both the Kenya Sugar Board (KSB) and the Ministry of Agriculture to sit with the Office of the Attorney-General, to see how best to enforce those regulations or control the importation of duty-free sugar from within the Common Market for Eastern and Southern Africa (COMESA) region. Indeed, I want to confirm that on various occasions that the Committee met with the Minister, it did discuss at great length the pros and cons. It was a big problem because Legal Notice No.39 which advocated a free-for-all importation regime, landed the KSB and other importers, in court. The Minister and the KSB, in 2005, decided to go through the quota system. Again, the KSB found itself in court. A lot of sugar remained uncleared in various godowns at the Port of Mombasa, as the suits remained pending in courts. It was, therefore, a very trying moment for both the KSB and Ministry, to see how best to regulate these imports without necessarily breaching the law. We, as a Committee, encouraged both the KSB and Ministry, to engage in meetings; to try and find out how best they could streamline the importation of sugar.

Mr. Temporary Deputy Speaker, Sir, I do not wish to read through the evidence that was given to the Committee by various witnesses, who included, but not limited to, Mr. Andrew Otieno, the Chief Executive of the KSB, the then Chairman of the KSB, Mr. Joseph Mbai, who on his own volition, offered to give his testimony on oath under the National Assembly Powers and Privileges Act; the Minister for Agriculture, Mr. Kipruto arap Kirwa; the Company Secretary and other officers of the Board.

In order to put this matter into proper perspective, one will need to understand some background. As I indicated earlier on, both the Ministry and the KSB were, in our view, concerned about the litigation and costs arising from the implementation of the Legal Notice No.39 of 2003, which was, subsequently, supplemented by another Legal Notice No.1405 of 2005, issued by the Chief Executive of the KSB. We did encourage both the Minister and the KSB to see how best the costs arising from the implementation of this Legal Notice would be minimised. The KSB agreed that there was need to amend Legal Notice No.39 of 2003. Several options were considered; the free-for-all and quota systems. Various arguments did arise. One of them was that Kenya, being a signatory to the COMESA free trade area and other international conventions, having been allocated a quota of 200,000 metric tonnes to be imported duty-free up to the year 2008, to control who brought how much of that sugar would be going against the spirit of a liberalised market.

The other counter-argument that was presented before the Committee was that Kenya gets 200,000 metric tonnes of sugar from the COMESA areas duty free. Therefore, it is the business of Kenya, as a sovereign entity, to decide that once we have 200,000 metric tonnes, COMESA cannot come now to dictate to us how this is going to be administered. That is the function of Kenya. It was, therefore, open both to the Ministry and the KSB to decide whether they would go quota way on the basis of first come, first served or free-for-all system.

Therefore, on 10th November, 2005, at the instigation of the then Permanent Secretary, Mr. Ongwae, the Chairman, Vice-Chairman, Chief Executive and Corporation Secretary of the KSB were invited to Kilimo House, which is the headquarters of the Ministry of Agriculture, to a meeting, which was in the opinion of the then Chairman of the Board, an exploratory one. The purpose of the meeting was to try and see how best they were to address the issue of sugar imports for the year 2006. At that meeting, various options were considered. However, I have taken the liberty to say who from the KSB attended that meeting because of a technical issue that arose

subsequent to that. There were in attendance, the Permanent Secretary and other Government functionaries in that meeting. The meeting of 10th November, which the then Chairman of the KSB says he left midway, did not arrive at any particular conclusion. But quite surprisingly, the Company Secretary of the KSB purported to write a letter dated 14th November, indicating that a particular position had been arrived at. But in evidence, the Chief Executive denied any knowledge of that letter when he appeared before the Committee to give evidence on 8th and 9th February, 2006, when he was shown that letter. I will be demonstrating why this is important for everybody to understand. People should not be worried because it is part of my background.

It was interesting that the Chief Executive purported that he did not know the contents of that letter. That letter is annexed there as an appendix, for those who may wish to look at it.

Mr. Temporary Deputy Speaker, Sir, during the 58th meeting of the Kenya Sugar Board (KSB) which took place on 20th December, 2005, the management presented Board Paper No.35 of 2005, along the lines requested by the Board. Based on this, the Board resolved that the status quo on the administration of imports and exports as contained in Legal Notice No.39 of 2003, which was communicated to the parent Ministry, be maintained as earlier on resolved. Secondly, due to the build up of stocks in the sugar factories that was likely to result in a glut in the domestic market, the need for the Board to regulate the timing of the sugar inflows was more urgent now.

Mr. Temporary Deputy Speaker, Sir, the Board met again in its 59th meeting on 11th January, 2006. It referred Paper No. 1 of 2006 to the Tender Committee of the Board to consider and make specific recommendations to the full Board on the modalities for quota allocation under a regulated regime. This was concluded at the 38th meeting of the Tender Committee which was held on 12th January, 2006, and detailed recommendations were made for the Board's adoption. This is a build up to what is really the issue today. Due to the urgency, the full Board observed on 20th December, 2005, that there was a need to urgently address the issue of regulating sugar inflows into the market. By December, 2005, when they appeared before the Public Investments Committee (PIC), they informed the Committee that there was a noticeable build-up in sugar stocks within the sugar factories. Therefore, that explains why the Board would meet on 11th January, refer the matter to its Tender Committee, which met on 12th January, 2006, and made detailed specific recommendations which the Board was to meet and consider on 13th January, which was a Friday. At that meeting, which was the 60th meeting of the Board, after considering the recommendations of the Tender Committee, they adopted the following procedures to be followed:-

(i) That it will determine and make public vide a Gazette Notice our domestic needs for both refined and mill white sugar having taken into account the shortfall in the country.

(ii) That it will make an application to the Treasury seeking exemption from the 28-day period requirement for advertisement of tenders, as it was constrained by time.

(iii) That it would then issue a notice on or before 30th January, 2006, in the three main local daily newspapers; *The Standard*, *Daily Nation* and *The Kenya Times*, inviting all registered importers to come forward and apply for quotas, specifying the quantities and timings of actual entry by month with regard to the Treasury's approved advert time limits.

(iv) That immediately the applications are closed, evaluation should be undertaken using the below listed criteria and the Tender Committee be convened to adjudicate accordingly. The results should be made public within 24 hours to avoid interference and lobbying. They indicated that:-

(a) The importer qualification was mandatory. It has to verify the applicant against the register of importers to confirm that the candidate qualifies as such importer and eliminate any applicant who does not hold a valid import certificate.

(b) Importer capability/resources which was to be awarded 50 per cent or 50 points. They indicated that this was to eliminate briefcase importers, examine and confirm that the applicant has the ability to import, peruse tender security/bank statements, audited accounts and establish ability

to raise the required funds to import within a specified period.

(c) Past performance: This was to be awarded 20 per cent as points. The content of the applicant in the last quota to determine whether they followed the laid down rules or not, for example, whether one used the licence to import the wrong type of sugar or whether one imported without a valid import licence. For those who benefitted from the quota last year, they were to examine how much the applicant imported then. Secondly, the returns to confirm that they satisfactorily complied with the provisions of Regulation 7 of the Sugar (Imports, Exports and By-Products) regulations on filing of returns.

(d) Storage, which was also to be awarded 20 points. Evidence of adequate storage facility, whether the owner owns a godown or it is a hired one, and their capacity *vis-a-vis* the quantity the applicant applies to import.

(e) Tax Compliance, which was to be awarded 10 per cent. They were to examine the certificate of tax compliance from the Kenya Revenue Authority (KRA). Since the applicants are benefitting from tax-free imports, they must prove that they have always paid their taxes as required.

In their deliberations, the Board decided that those who will qualify, in the interest of equity, a maximum allocation of 5,000 metric tonnes be applied. However, this quantity may be varied depending on the total number of applicants qualifying for the importation exercise. Based on the foregoing, the Board decided that it shall:-

(i) Prepare and sell the tender documents at a non-refundable fee of Kshs10,000.

(ii) Communicate the outcome to each applicant, both successful and unsuccessful.

(iii) Communicate to the successful applicants, stating the quantity and month of importation, and consequence of non-compliance.

(iv) Submit to the KRA a list of successful applicants after publishing the same in the *Kenya Gazette*. Thereafter, strict surveillance and monitoring by the KSB be done at the Port of Mombasa and other designated ports of entry to guard against paper clearance. Only the quantities allocated were to arrive at a particular time and should be cleared.

During the Board's 60th meeting of 13th January, 2006, the Board further resolved that the importation of the sugar quota be spread throughout the year; from March, 2006, to February, 2007. It was also resolved that only sugar importers or exporters whose registration has been issued as at 11th January, 2006, would be considered for allocations. Further, the management was requested by the Board to formally communicate the Board's decision to the parent Ministry and work in close consultation with other arms of the Government to ensure effective administration of the sugar quota as approved. At the adjournment of its 60th meeting of 13th January, 2006, at 2.15 p.m., the Board was presented with copies of Legal Notice No. 2 signed by the Minister for Agriculture. The members of the Board were surprised because, among other things, the Gazette Notice read as follows:-

"In exercise of the powers conferred by Section 33 of the Sugar Act, the Minister for Agriculture, in consultation with the Board, makes the following regulations:-

These regulations may be cited as the Sugar Imports/Exports and By-products (Amendment) Regulations, 2006.

The Sugar Imports/Exports and By-products Regulations are amended by deleting Regulation 6 and substituting therefore the following new regulation-

"The Board shall facilitate the importation of raw or milled white sugar, mild and final sugar by registered importers and millers on a none discriminatory and liberalised basis."

Made on 12th January, 2006, and signed by Kipruto arap Kirwa, Minister for Agriculture.

The Board had all along been deliberating on how to regulate, in exercise of its powers under Section 27(1), which reads as follows:-

"Subject to such regional and international trade agreements to which Kenya is a

party, all sugar imports into the country shall be subject to the prevailing Import Duties, taxes and other tariffs, and such imports shall be controlled by the Board."

Mr. Temporary Deputy Speaker, Sir, it is, therefore, very clear that when the Board was burning the midnight oil, trying to see how best to come up with regulations that best address the question of these imports, after concluding its 60th meeting, during which it mandated the Chief Executive to communicate to the parent Ministry its decision regarding how it intended to have the imports regulated and controlled, its members were served with copies of a Legal Notice that purported to say, among other things, that the Board had been consulted. The members of the Board were, obviously, taken aback. They were actually, in the words of the chairman, "surprised" because, in their view, this was a misrepresentation; that the Board had been consulted, because they had not been consulted.

Mr. Temporary Deputy Speaker, Sir, the Minister for Agriculture appeared before the Public Investments Committee. In his evidence, excerpts of which are reproduced in this Report, he said that, in his view, when the chairman and the vice-chairman of the Board walked to his Kilimo House office and discussed the problems that had been experienced regarding sugar imports, that amounted to consultation of the Board. We took the Minister to task over that position. It is clearly indicated in the Act that importation of sugar shall be controlled by the Board. Are the chairman, vice-chairman and the chief executive the Board? Clearly, the answer is in the negative. The constitution of the Board is provided for under Section 5 of the Sugar Act, 2001, which reads as follows:-

"5(1) The Board shall consist of a none executive chairman elected by the Board from among the representatives of growers, representatives on the Board and appointed by the Minister; seven representatives elected by growers and appointed by the Minister; three representatives elected by millers and appointed by the Minister; the Permanent Secretary in the Ministry for the time being responsible for matters relating to agriculture; the permanent secretary to the Treasury; the Director of Agriculture, and the Chief Executive of the Board appointed under Section 10, who shall be an *ex-officio* member and the secretary to the Board."

It is clearly indicated under the same Section, Sub-section 2, that the Board shall elect a vice-chairman from amongst its members. That should be the composition of the Board.

Mr. Temporary Deputy Speaker, Sir, of course, the quorum for Board meetings is also provided for within the Act. So, the question that we asked ourselves is: "Was the meeting of 10th November, 2005, which was called at the behest of the then Permanent Secretary, Ministry of Agriculture, Mr. Ongwae, at Kilimo House, a Board meeting?" Again, the answer is "no". Was the meeting between the Minister for Agriculture and the chairman, and vice-chairman, of the Board a meeting of the Board? Clearly, the answer is "no" because the Minister is not even supposed to sit in the Board.

Therefore, a meeting between the Minister, the chairman and vice-chairman of the Board cannot, for all intents and purposes, constitute "consultation with the Board". That is the point we are making. We have tremendous respect for the Minister for Agriculture. We appreciate the very good work that he has done in the Ministry. However, as PIC, we have a responsibility to point out mistakes.

It is very clear that when the Minister for Agriculture prepared Legal Notice No.2 of 2006 on 12th January, 2006 and published it in the *Kenya Gazette* issue of 13th January, 2006, when the Board was meeting to develop the criteria that was to be followed in the issuance of the Gazette Notice, for purposes of clarity, he was misleading not just the Board but the entire world and Kenyans, that he had consulted the Kenya Sugar Board in making that Gazette Notice.

Mr. Temporary Deputy Speaker, Sir, misrepresentation constitutes a crime. The Public Officer Ethics Act, Sections 10 and 19, obliges public officers to act within the law. So, the question that the Committee Members asked themselves was this: "Did the Minister act within the



law, as provided for under Sections 10 and 19 of the Public Officer Ethics Act, which we passed here in 2003?" And in his capable answer, he would say "no". The Minister did not act in accordance with the law. The relevant body, the Sugar Act, 2001, specifically Section 33, enjoins him to consult. Indeed, among the appendices here, is the Board's resolution in which it directed the management, through the Chief Executive to communicate to the parent Ministry, its resolution which forms the basis of what we would call consultations. Consultations cannot be done over a cup of tea or within corridors and the Board cannot, certainly, be consulted by the Minister in Kilimo House. The Board can only be consulted in writing.

Mr. Temporary Deputy Speaker, Sir, we gave the Minister the opportunity to appear before the Committee and provide any evidence of consultation with the Board. The records which are here, show that the Minister did not provide the Committee with any empirical evidence of any form of consultation, other than what we alleged he assumes, because of the word "may" in Section 33. That is why as I read it out, I took the liberty to point out where the comas are. It reads in part: "The Minister may, in consultation"--- If the Minister decides to make regulations, because he may decide not to or he may decide to--- If he decides to make regulations such as this one relating to sugar importation, then---

**The Minister of State for Administration and National Security** (Mr. Michuki): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to turn himself into a court of law and begin to interpret laws which he has passed himself?

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, hon. Michuki, obviously, has not understood what I am doing. However, I am sure by the time I am through, he will have fully understood what I am doing.

**The Temporary Deputy Speaker** (Mr. Kagwima): Mr. Muturi, I am sure you are concerned about the audience. So, you should make your presentation interesting so that hon. Members can follow.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, as you know, the rules of this House stipulate that I can go on talking until next week. These are Committee reports. I am just about to conclude. However, just before I do that, it is important that I point out this issue; that Section 33 - and anybody is at liberty to tell us about their own understanding of it--- Therefore, rather than interrupt me by saying that I have turned myself into a court of law, it is important that everyone gives it his own reflection and meaning. In consultation with the Board, the Minister makes regulations. So, if the Minister decides to make regulations, he has no option but to consult with the Board. When he makes those regulations, he shall, and it is mandatory, that abides by the regulations that control the production, manufacturing, marketing, importation or exportation of sugar and its by-products.

Therefore, the point I am trying to bring out is this; because we may not all be able to read through the evidence that is in the report, I want to bring out the issue that we engaged the Minister, as a Committee, and he gave us his interpretation of Section 33. The Committee found different meaning and understanding regarding the role of the Minister. The Sugar Board as we have seen in Section 27 of the same Act, is the one that is vested with the power to control and regulate. It is therefore, under Section 27, that one understands why under Section 33, the Minister should not decide to make any regulations which have the effect of controlling and regulating, while he is enjoined to consult with the Board. The point I am trying to make is; the evidence we have shows that he says he consulted the Board, when the Board says clearly that it was not consulted. In fact, when the Board finished the meeting which would have formed what it considered as its consultations with the Minister, which was to be communicated to the extent that the Board was served with a notice that said that it had been consulted, the Minister did not act in accordance with the law.

Therefore, before I move on to the recommendations, I must say that the Committee also took evidence from the Chief Executive, Mr. Otieno. The Chief Executive of the Board appeared

before the Committee on three occasions. The Committee observed that he was deliberately giving conflicting evidence, and on several instances attempted to mislead the Committee. Later in the evidence, the Board Chairman and the Company Secretary confirmed this misconduct in their evidence to the Committee. Indeed, the Committee, pursuant to Section 16 of the National Assembly Powers and Privileges Act, Cap 6. of the Laws of Kenya, decided to examine the Chief Executive on oath. He informed the Committee of the meetings that took place prior to his appearance on 8th and 9th of February this year. Among other things, the Chief Executive confirmed that contrary to instructions by the Board, that he consults with the Attorney General regarding the best way to deal with the issue of COMESA, and the other conventions they were trying to hide under, he did not consult the Office of the Attorney-General.

In light of the overwhelming evidence that we took, the Committee made the following recommendations: As I read through the recommendations, because I have already tabled the 13th Report of the PIC, I do not intend to repeat the issues captured in it.

Mr. Temporary Deputy Speaker, Sir, first of all, we made the following observations--- Arising from the evidence from papers laid and the foregoing deliberations by the Board, the Committee made the following specific observations. Those observations are on page 33 of this Report.

"(i) That, by instructing the management of the Board to attend and draw the letter Ref.KSB/COM/1A/A of November, 14th, 2005 - which is Appendix iv - the Permanent Secretary, Ministry of Agriculture, at the meeting at Kilimo House, had issued other instructions to the Chief Executive, who is only answerable to the Board as per Section 10 of the Sugar Act (2001) - the Ministry of Agriculture usurped the powers of the Board. The Committee expresses the view that, it was on the strength of that letter that the Kilimo House meeting was formalised and the contentious Legal Notice issued. The Chief Executive denied knowledge of that letter when he appeared before the Committee on 8th, February, until it was shown to him!

(ii) That, the continued usurping of the statutory powers of the Board is not only irregular and illegal, but also renders the regulatory and control functions of the Board futile and, therefore, negating its very existence.

(iii) That, the continued usurping of the regulatory and control powers of the Board on sugar importations would have direct negative implications on the Board's financial performance.

(iv) That, considering that prior to February, 8th, 2006, the Board was not privy to the management's letter Ref.KSB/COM/1A/A of November, 14th, 2005 to the then Permanent Secretary, Ministry of Agriculture, there was deliberate action by the KSB management to conceal its dealings with the Ministry in respect to the intended importations and as such, the Board was not aware of such dealings.

(v) That, the Board was not consulted prior to the releasing of the Legal Notice No.2 of 2006.

Mr. Temporary Deputy Speaker, Sir, in view thereof, the Committee recommends:-

(i) That, the Director of Kenya Anti-Corruption Commission (KACC) institutes investigations into the execution of sugar importations into the county under the COMESA/FTA arrangements for the periods 2004, 2005 and 2006 and, particularly, on the roles played by the officers in the Ministry of Agriculture, Ministry of Trade and Industry, Kenya Revenue Authority (KRA), Kenya Sugar Board (KSB), (including Board members), with a view to preferring appropriate charges against any person or persons found culpable.

(ii) That, the Director of KACC institutes investigations into the role of Mr. Kipruto Arap Kirwa, MP, Mr. James E. Ongwae and Mr. Andrew Otieno, in the execution

of sugar importations into the country under the COMESA/FTA arrangements for the periods 2004, 2005 and 2006.

(iii) Pursuant to Sections 10, 35 and 36 of the Anti-Corruption and Economic Crimes Act (2003), the findings and recommendations of the Director of KACC in respect of (i) and (ii) above, be included in the Report of the fourth quarter for the year 2006.

(iv) That, Mr. Kipruto Arap Kirwa and Mr. Andrew Otieno, the Chief Executive of KSB, immediately step aside to allow KACC to carry out the above mentioned investigations.

(v) Without compromising the autonomy of KSB, and in order to streamline the sector and safeguard national interests in the importation of sugar, an inter-Ministerial Committee be formed, comprising and not limited to, representatives of KRA, Office of the Attorney-General, Ministry of Agriculture, KSB, Ministry of Trade and Industry and (all not below the level of Deputy Secretary), to set up guidelines for sugar importation by 31st, December, 2006, and make public the resultant regulations and guidelines, which would then be employed in all sugar imports under the COMESA/FTA safeguard window, for the period up to the year 2006.

(vi) The Minister for Agriculture, now and in the future, refrains from interfering with the day to day activities of the Board.

(vii) Where the parent Ministry has in the past irregularly negated administrative decisions made by the Board in its exercise of statutory powers, the Board should be at liberty to revisit the matter or matters and make appropriate decision or decisions."

With those few remarks, I beg to move that the House adopts this Report and request my friend, a colleague in the Committee, Mr. Bahari, to second.

**Mr. Bahari:** Thank you, Mr. Temporary Deputy Speaker, Sir. From the outset, I would like to say very clearly that public investments are key to the revival of the economy of this country. That can only happen when those institutions are properly managed. I must appreciate that, at the macro-level, the Government has done a lot in terms of trying to streamline State corporations. They have introduced the issues of performance contracts and other reforms. But as the Public Investments Committee (PIC) Members, it is our duty to ensure that we scrutinise the activities of specific parastatals under specific Ministries, and ensure that they perform their mandate as set out under the law. Our mandate emanates from the authority of this House, which is extended to the people of the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, it is in this spirit-- Sugar is a very important commodity in this country. Everybody knows that, that sector has experienced problems over a period of time. At the same time, you know how many Kenyans are dependent on that sector; directly and indirectly. Therefore, the PIC made sure that it made a move to ensure that the Board is given a free hand in the management of sugar affairs, as is required by the law.

Mr. Temporary Deputy Speaker, Sir, it is this same House that has carried out many reforms, both legal and administrative, to ensure that, the sugar industry is streamlined. It is in that spirit that the PIC came up with this Report. The laws are very clear. We have talked to the Minister, just as the Mover has pointed out, and we did not get justification for his actions. When a Board like KSB is put in place, it is expected to regulate its activities. A board sends a Chief Executive on compulsory leave, but the same Chief Executive is reinstated without any consultations. You cannot expect harmony in that industry!

Mr. Temporary Deputy Speaker, Sir, we respect the Minister with all his powers, but at the same time, harmonious working relationship is absolutely necessary. It is extremely irregular and unfair to put in place a Board and incur a lot of expenses and then behave like you do not need that

Board, and yet the members of that Board are elected by the stakeholders. It is absolutely necessary for the people in positions of power to ensure that institutions are run in accordance with the law that has been put in place by this House.

The Chairman of the Public Investments Committee (PIC) has clearly explained all the pertinent details, namely, the interpretations and misinterpretations from other quarters. I do not need to dwell on the legal issues and how they have been misinterpreted. Sugar is one of the key items in the basket of a common man and when its price is affected as a result of mismanagement and abuse of offices, then you know what the implications are. I know that the Government is very keen on the feelings of the public and I do not think that it will support this kind of mismanagement in public affairs. We expect to get support from all quarters on this.

Mr. Temporary Deputy Speaker, Sir, now that these issues are very clear in the minds of everybody, I beg to second.

*(Question proposed)*

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, there are issues here which are very difficult to understand unless you have the background to what is before us.

What is before us is a story of sweet sugar. Sugar is sweet. There is a lot of war because sugar is sweet. A Board has been given powers to regulate the importation of sugar because we need to import some sugar. I do not have the correct figures, but I think we need to import about 200,000 tonnes of table and industrial sugar. There is a general agreement within COMESA that we import that sugar, as much as possible, from the COMESA region, if we can get it from the region. If you import that sugar from the COMESA region, you do not pay duty for it. There is an exemption of duty because when we trade with countries in the COMESA region, they do not charge duty on sugar imported from the region.

This 200,000 tonnes of sugar is very attractive business. It is business in terms of billions of shillings. If you import that sugar and you are lucky that it passes through the port without paying duty for it, then you become a billionaire. That is where the war is. The war is not about the Minister making certain rules and overriding the Board, the Board overriding the Minister or people chasing each other between the Minister and the Board. The war here is about billions of shillings. The question here is: Who will get the billions amongst the possible importers and what amounts to regulation?

I was involved in this thing before, but it did not sound good to me that we can now say that so and so can get a licence to import 20,000 tonnes and so and so can get a licence to import 5,000 tonnes of sugar. Getting a licence to import 20,000 tonnes, 10,000 tonnes or 5,000 tonnes, means millions of shillings. There is an attempt to give out kick-backs and this is a hot-bed of corruption. That is the bottom line and the beginning of the war that we are now seeing here.

I remember that I castigated the Minister whenever I got an opportunity one or two years ago. I used to tell him that he is not supposed to be giving out licences because when he starts giving licences to some people and depriving others because some people qualify and not others, whatever qualification means, he will be creating possibilities for corruption. I remember the Minister was even taken to court for giving those licences. I remember there was a war for about half a year or so of sugar being stopped at the port. There was not enough sugar in the country and the prices of sugar almost doubled. We had a big war with the Minister.

Mr. Temporary Deputy Speaker, Sir, the Minister did the right thing later on after listening to the industry. The COMESA region was telling us to liberalise and let whoever can import sugar import. If your ship reaches the Port of Mombasa first and you clear 200,000 tonnes of sugar, too good for you. If others do not import anything, *shauri yao*. That is the meaning of a liberalised economy. The issue of licensing different people to import, for example, 5,000 tonnes, 10,000 tonnes or 20,000 tonnes, is, as I said, the beginning of corruption.

The Minister did the right thing by directing that there should be liberalisation in the market, so that we stop giving licences to preferred people or denying licences to people who are not preferred. This will make sure that there is no corruption. If you make your billion, make it! If you cannot make the billion because your ship did not arrive quickly, that is too bad for you. Now, the Minister is being attacked because of that. That is the entire focus of Part Two of this Report.

Mr. Temporary Deputy Speaker, Sir, when we want to import maize into this country because there is famine, there is always a problem of who will import the maize. The question is: Do you have the money, the ability and when did you import last? This means that the people who are favoured import the maize. We know the people who have been importing maize and who have been making billions of shillings out of the relief efforts in this country. We have been asking the Government to liberalise the market and let whoever can import the maize import it at the most appropriate market price. Whoever can land his maize quickly, he should do it.

The issue of licensing and choosing the appropriate importer who has the storage capacity and all these other things which are inside results to a hogwash, kick-back-driven style of dishing out licences. The Minister is being fought because of that. We told him that we cannot accept this control of the market because it is bringing corruption. He listened to the politics, the country, the prices of sugar and the war and said: "Open it up"! That is why the Minister is being crucified. That is why we are saying that Part Two of this Report must be struck off. We cannot have people who support things which do not benefit the country. This country was liberalised a long time ago. We are not going to bring legislation and control just because some people must make money from some COMESA sugar, because there is a duty-free facility. We cannot allow that. It would be very bad for this Parliament to support a thing like this. We shall be taking the country backwards to where we came from. I propose that whatever we do with this Report, Part Two must be expunged.

*(Applause)*

With those remarks, I support this Report with the amendment that Part Two goes.

**The Minister for Agriculture** (Mr. Kirwa): Thank you, Mr. Temporary Deputy Speaker, Sir---

**Mr. Odoyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This Motion concerns the Ministry of Agriculture and perhaps, it would be useful to benefit from experience of the Minister if he can speak either last or near last, so that he is able to also benefit from our input and give us some appropriate enlightenment so that we can vote accordingly.

**Mr. Maore:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I believe that after the Mover comprehensively moved the Motion, and the Minister was listening, and the Seconder has already put up his case, there are many other Members who would want to contribute to this Motion from an informed position. Now that we have heard the Mover, it would be wise to hear the Minister and then we can contribute later without having to be bothered.

**The Temporary Deputy Speaker** (Mr. Kagwima): The rules require that the Minister has discretion to respond when he deems fit. So, if he thinks it is necessary to respond now, he can go ahead.

**Mr. Ojode:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have seen the Report, but I think it is biased. It has been on record that we are trying to do away with single sourcing. But if we support this Report the way it is, it means we are bringing back single sourcing. What do we do? I have proposed an amendment---

**The Temporary Deputy Speaker** (Mr. Kagwima): Order, Mr. Ojode! I thought you stood on a point of order?

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, I wanted to contribute so that I can move my amendment so that it can either be accepted or dropped.

**Prof. Olweny:** On a point of order, Mr. Temporary Deputy Speaker, Sir. My assumption is

that the Responder is to come from the relevant Ministry, which, in this case, should be the Ministry of Finance. The Minister for Agriculture can just make his contribution to the debate and not respond officially.

**Mr. Osundwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am getting worried because I represent 65 per cent of sugar farmers in this country, and my views have to be heard. But I suspect something might have happened that I may not be allowed to speak in this House.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Kagwima): Order! Let us take the business of the House seriously. The fact that Mr. Ojode has caught my eye does not mean you will not speak; you will have your turn.

**Mr. Ojode:** Mr. Temporary Deputy Speaker, Sir, I want to start by saying that I support the sentiments raised by some of my colleagues who have spoken, especially hon. Kajwang.

**[Mr. Ojode]**

Mr. Temporary Deputy Speaker, Sir, you are aware that we are trying to get rid of few selected firms from quoting for this commodity. But these firms are the same ones who are allowed to bring sugar. When you look at the whole Report, the other parts are not badly written. But when you get into the details of the Report, you will never find any name mentioned in relation to corruption. So, why should the Minister be vilified? Is it because he is trying to help farmers to improve the sugar industry? Why? Why can the Report not tell us? The interpretation of the law is what is now coming out clearly. You know, "shall" and "will" are different words.

Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Part Two of the PIC Report contained from pages 8 to 35 and any other related sections or any reference to Part Two, be deleted.

I am suggesting this because this Report has no reference to the Controller and Auditor-General's reports. So, I think there is a problem here. Let us call a spade a spade. Where is it mentioned by the Controller and Auditor-General that the Minister or the sugar board chief did this or that?

With those remarks, I beg to move, and ask hon. Ochilo-Ayacko to second.

**Mr. Ochilo-Ayacko:** Mr. Temporary Deputy Speaker, Sir, I beg to second the amendment. I want to say that the Report that the PIC has presented to the House is by and large good, especially Part One. In fact, Part One has been thoroughly done. As a person who grows sugar-cane and represents sugar-cane producers and millers, I am quite pleased with Part One of the Report, in so far as it is useful in helping the farmers get their merchandise to the market and promotes the welfare of the industry. I want to commend the Chairman of PIC for doing that.

Since 2002, the problem of sugar importation in this country has been a thing of the past. What sugar importation in this country was doing to the farmer was to occasion glut in the market. The importers were bringing a lot of sugar and, therefore, local sugar could not be sold. Our sugar industry has problems. Muhoroni, Chemelil, Nzoia, SONY--- We all have problems. But it is not that we cannot sell our sugar. We have problems because we are making losses arising from other activities. This *Kenya Gazette Notice* has not occasioned any problem in the sugar sub-sector. This is because if the Kenya Gazette Notice had occasioned problems, we would have Mumias Sugar Company, which is represented by hon. Osundwa, unable to sell its sugar. South Nyanza Sugar Factory (SONY) would also be unable to sell its sugar. However, being a representative of growers and millers, I can confirm that sugar is being sold.

Mr. Temporary Deputy Speaker, Sir, I am supporting the proposed amendment because, first, the contentious section which is Section 33 of the Sugar Act 2003, talks about: "The Minister

may in consultation---" Now, you can look at what Parliament did. Parliament made the Minister important. It is: "The Minister may in consultation". So, if we buy the proposition by the Chair of the Public Investments Committee (PIC), then we are letting in a situation where the tail will wag the dog. I think the dog, in this circumstance, is the Minister and we cannot allow the Board to be supreme because, if assuming for one reason or the other the Board was proposing rules that were injurious to the industry, who will we hold accountable? Is it the Minister or the Board? I think when we passed this law we had the Minister in mind and we thought that time and again, he would be able to consult with the Board, but it is not the Board's final authority to decide how the sugar process in this country is done.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I also want to add to you a background that may not be available to this House. Currently, there is a case in court regarding who chairs the Board. Even at that particular time, there was an issue regarding who chairs the Board. There seems to be a quarrel in that Board that is visiting this House, and if we are to pass this Report without deleting that section, we are going to make that quarrel worse. I believe that the administration of this country is normally given to the President and donated to the Minister, and if the Minister does not use it well, this House deals with him.

Mr. Temporary Deputy Speaker, Sir, now what needs to be done and what the PIC ought to have done was to recommend to this House an amendment to the Kenya Sugar Act, so that, that amendment would deal with conflict of power between the Minister and the Board. However, in the absence of that amendment, to do a recommendation that suggests that the Minister was involved in criminal activities without evidence is wrong. Even the people who testified before the PIC never alluded to any criminal activities here. If they had alluded to criminal activities, I am sure this side of the House would be happy to crucify the Minister. However, this side of the House is also enjoined to exercise fairness and responsibility when passing our own reports.

Mr. Temporary Deputy Speaker, Sir, so, I want to second the amendment that is being proposed by hon. Ojode and I also want to say that, currently, the problems we have are not related to sugar importation. We are experiencing problems that are related to under-capitalisation in this sector. In fact, if the Minister for Finance, in respect of whom this Report is made, was here, we would tell him that we need more investment in this sector. We need a lot of money to be given to Mumias and Busia sugar factories. We need plenty of money to be given to the Nyanza sugar belt which comprises of Chemelil, Muhoroni and the other sugar factories. We also need a tonne of money for SONY.

Thank you, Mr. Temporary Deputy Speaker.

*(Applause)*

*(Question of the amendment,  
that the words to be left out  
be left out, proposed)*

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, today is a sad day for the minorities in this country. They say sugar is sweet and, indeed, we can see how sweet it is.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, I want to oppose the proposed amendment as the Chairman of the PIC for various reasons. One, the argument in support, particularly by the Mover, hon. Ojode, is misplaced. I request him to read Standing Order No.148(5), Paragraph "c" to appreciate that the PIC does not have to wait for the reports of the Controller and Auditor-General in exercise of its functions to do the following:

"To examine in the context of the autonomy and efficiency of the public investments whether the affairs of the public investments are being managed in accordance with sound business principles and prudent commercial practices".

**The Temporary Deputy Speaker** (Mr. Kagwima): Mr. Muturi, which Standing Order are you referring to?

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, it is Standing Order No.148(5)(c). It is very clear that the PIC, unlike the Public Accounts Committee (PAC), does not have to wait for the reports of the Controller and Auditor-General, which is reflected in Part 1 of the Report. Hon. Members need to distinguish between Standing Order No.147 which relates to the PAC, and Standing Order No.148 which governs the operations and where the functions of the PIC are clearly stipulated.

I think, as the Chairman of the PIC, I am obliged to state that nowhere in this Report have we suggested that the recommendations or the resolutions of the Board be adopted by this House, and it is very important, when hon. Members contribute, to bear that in mind. We have merely reproduced the decisions of the Board for everybody here to see how it, in its considered views, felt it should regulate and control the importations.

Mr. Temporary Deputy Speaker, Sir, a number of the hon. Members who have contributed and the ones proposing this amendment were the key proponents and architects of the Sugar Act, 2001. I was in this House and I know that they are the ones, in their wisdom, who felt and argued very convincingly and strenuously that the Minister must not be allowed to control the Board. All we are saying is that the legal notice was issued without due consultations with the Board, and for that, it is against the Public Officer Ethics Act. We passed it just the other day in 2003. It enjoins every public officer to act within the law. So, if the law says you must consult and you do not consult and then issue a legal notice misleading the entire world, you have not acted in accordance with the law.

I believe we can remove the Motion. It is for this House and I am willing to argue it even if I have to be alone on this, because I have nothing personal about this matter. The hon. Kipruto arap Kirwa, the Minister for Agriculture, is my very good friend.

**The Temporary Deputy Speaker** (Mr. Kagwima): Mr. Muturi, stick to the amendment!

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I am addressing myself to the proposed amendment, which proposes that no investigations be done; that whatever has happened has happened. However, the same people who are proposing to do away with this do not want recommendations that suggest that investigations be carried out. They are the loudest to shout that the Government must investigate about Armenians and others. How do you turn and twist at the same time? Are we becoming chameleons? When it is convenient, we shout this way. When it is not, we open our mouths loudest this other direction. Let us be compassionate about this matter. There is nothing personal. If we expunge the entire report, including the investigations carried out, we, as a House, will be judged harshly by history. This happened in this very House in 2004 and the consequences have lived for all of us to see.

Mr. Temporary Deputy Speaker, Sir, I would like to appeal to the House to reject the proposed amendments. Indeed, how can we expunge the whole recommendation about investigations? We, as a Committee, and as Parliament, are acknowledging the fact that we do not have the power and the capacity to investigate. That power is with the Executive. Strangely, we are



now being told there is need to investigate. We all know the report by the KACC will be out in their fourth quarter in December, 2006. In fact, this House does not want to be told anything.

**An hon. Member:** Let me deal with him!

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I hear claims of: "Let me deal with him." Nobody can deal with me! I am very firm. I hold very strong views about certain things!

In an attempt to propose the amendments, I hope we, in this House, do not bring in the ugly face of tribalism.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to oppose.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, I stand to support the amendment and make the following contribution. First of all, the Order Paper was erroneously structured in the sense that Order No.10, Motion, reads as follows:-

THAT, this House adopts the Report of the Public Investments Committee on the Kenya Sugar Board - Loss on Export and Import of Raw Sugar, pursuant to Legal Notice No.2 of 2006, laid on the Table of the House on Wednesday, 29th June, 2006.

I say so because it sends the erroneous implication that the loss of Kshs54 million was occasioned by the said Legal Notice No.2 of 2006, when the situation is different. This loss of Kshs54 million took place in 2001, two years before I took over the Ministry. That is the real essence of the audit query that my colleagues were pursuing, and then they strenuously decided to move into areas not within their purview.

Mr. Temporary Deputy Speaker, Sir, my colleague has tried this afternoon to make us believe that Standing Order No.148 gives them that particular mandate. However, he has selectively refused to read the second section of the Standing Order No.148. It says:-

"provided that the Public Investments Committee shall not examine any of the following, namely, matters of major Government policy as distinct from business or commercial functions of the public investment."

In my understanding, the Kenya Sugar Board (KSB) is not supposed to do any business because it is a regulator. I made that clear to the hon. Members of the PIC. I told them I stood my ground, and I was to seek legal advice from the Attorney-General whether I consulted properly or not. The Attorney-General later wrote to me, and a copy was given to the PIC. That copy is available, indicating that I made proper consultations with the Board. There is nowhere in the law that consultations must be done in the order Mr. Muturi has just told us this afternoon.

*(Applause)*

Therefore, we cannot turn ourselves into a court of law to start interpreting the statutes that we put in place. This is what my colleague has been trying to do this afternoon.

Mr. Temporary Deputy Speaker, Sir, I want to state the following.

One, the issue of sugar imports prior to 2003---

**Mr. Muturi:** Move faster!

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, the hon. colleague is urging me to move faster. However, I want to make some clarification on some of the issues, which I feel are not true and factual. It is not true that we spent Kshs200 million in terms of legal fees. This is because since the organisation was set up, the total amount of legal fees paid out is Kshs161 million, of which a sum of Kshs134 million was paid prior to my taking over the Ministry. A sum of Kshs27 million was paid during my tenure as legal fees. It is also important to indicate that since Legal Notice No.2 of 2006 was put in place, those who were supposed to do the importation were still having a balance of 28,000 metric tonnes.

Mr. Temporary Deputy Speaker, Sir, I support this amendment on one ground, that my colleague knows what it means to be convicted of a crime that one has not committed. He now wants me to be convicted and to step aside on issues that I have not committed. If it was not because of our good law process, my colleague could have been a criminal. He was acquitted after a conviction that was passed by a court of law over issues of corruption. This is something that disturbs me---

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister says that I have been convicted. Could he substantiate now and here that I have ever been convicted of corruption? This is a very dangerous and careless allegation by Mr. Kirwa! He has just said so! He must substantiate! He is making it personal!

**The Temporary Deputy Speaker** (Mr. Kagwima): Mr. Muturi, so that I make a ruling, I would like to hear what the Minister wanted to say.

**Mr. Muturi:** No, he should substantiate!

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, it is clear that there was a case against my colleague in a court of law. He was convicted. Later on, he was acquitted through an appeal.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I want proof that I was ever convicted! I am an hon. Member of Parliament. I want evidence! He cannot say that I have ever been convicted of any crime, let alone corruption! Could he prove his allegations with evidence?

**The Temporary Deputy Speaker** (Mr. Kagwima): Mr. Kirwa, it is your onus to prove what you have said or withdraw those remarks.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, it is not a rumour. The hon. Member was an hon. Member of my Committee and when we were supposed to travel to London, he was denied the visa. Information available to me, as the Chair of the Committee, is that he had a case in court; he was tried on issues of corruption, but later on acquitted.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, that is not enough!

**The Temporary Deputy Speaker** (Mr. Kagwima): I have now heard the Minister clearly. Mr. Minister, unless you have papers to prove what you are saying, withdraw so that we carry on. You cannot just allege!

**Mr. Odoyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Kagwima): Order, hon. Members! He has to respond to what I have ruled!

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, I am giving you information that I got as the Chair of this Committee. I can give you this report on Tuesday.

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. He must substantiate or withdraw and apologise!

**The Temporary Deputy Speaker** (Mr. Kagwima): Order, hon. Members! I am dealing with the Minister. I have already ruled that he should substantiate now or withdraws the remarks he has made.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, because the information is not available to me now, I withdraw.

**The Temporary Deputy Speaker** (Mr. Kagwima): I think the matter is put to rest. Let us, therefore, continue!

**Mr. Osundwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister has not even apologised.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, Mr. Muturi knows, and he has not denied the fact that he did not get a visa to London. He was supposed to travel with me.

**Mr. Muturi:** This is becoming personal!

**The Temporary Deputy Speaker** (Mr. Kagwima): Order, Mr. Minister! We are asking the Minister to apologise after withdrawing.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, I apologise on the issue of conviction. However, on the question of visa, he was not allowed to go to London.

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the Minister substantiate these allegations he is making? We are allowing him to get away with criminal utterances! He is disparaging me!

*[The Temporary Deputy Speaker  
(Mr. Kagwima) left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Deputy Speaker:** Order, hon. Members! I have followed very closely what was going on. I believe the Minister has just withdrawn and apologised. What is it now that is remaining? The Minister should continue because he alluded to a conviction. I was listening very well. Later on he said that the hon. Member was charged and that it was not a conviction. Therefore, you pressed for the Minister to withdraw and he withdrew. Then you asked him to apologise and he has done that. What else?

**Mr. Odoyo:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** The Chair has handled this issue very well. Proceed, Mr. Minister!

**The Minister for Agriculture** (Mr. Kirwa): Thank you, Mr. Deputy Speaker, Sir---

**Mr. Odoyo:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect to the Minister, the hon. Member is chairing a very important oversight Committee of this House. Perhaps, if there was, indeed, evidence that the hon. Member is corrupt and has been charged, he should be given an opportunity to bring it next week or at an appropriate time. The Public Investments Committee (PIC) is one of the most important oversight Committees in this House. If somebody is going to chair that Committee and there are these allegations hanging over his head, the integrity of this House is being put at stake. Should it be that this matter is reported in the Press tomorrow, there will be further erosion to our capacity to gain public confidence. May I, at your discretion, humbly request that, even though he has withdrawn, he be allowed to table and bring more evidence to this House, so that should it be proved---

**Mr. Deputy Speaker:** Mr. Odoyo, will you sit down? I think you have made your point.

Hon. Members, we all know the rules of the House. Once an hon. Member withdraws an allegation and apologises, you cannot follow him up and say, "Bring further substantiation". This is because he has withdrawn. When a matter is withdrawn, it is withdrawn and an apology has been given! That is what the Standing Orders say. You cannot say, "Although you have apologised and withdrawn, you still must do this". That is not within our Standing Orders!

The Minister will continue without interruptions.

**The Minister for Agriculture** (Mr. Kirwa): I just want to finally say that it is not true, because the Committee wanted the Minister to do the business of giving directions to the businessmen. My job is to regulate. It is for the businessmen to decide whether they want to import 89,000 metric tonnes of sugar at one go or not. That is their business and not the business of the

Minister. The position we take, as a Ministry, is that we need to play within the COMESA rules; the rules that we have passed in this House and any legal notices that we have issued. All these allow a maximum of 89,000 metric tonnes.

Mr. Deputy Speaker, Sir, the issues that are important are the issue of COMESA, as discussed by hon. colleagues. In fact, this year, more than any other time, there has been no legal issue in court arising from sugar imports. Secondly, there has not been any serious problem occasioning loss of funds. Today, and even in any subsequent time, we do not require the Kenya Sugar Board to make allocations for sugar importation.

**[The Minister for Agriculture]**

With those few remarks, I beg to support the amendments.

*(Question of the amendment, that the words to be left out be left out, put and agreed)*

*(Part Two of the Report was expunged)*

**Mr. Osundwa:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to debate on this Report on the loss on export and import of raw sugar. As I begin my contribution, I want to register my greatest disappointment with contributions from hon. Members from sugar-cane growing areas. Most of them were in the last Parliament when we passed the Sugar Act. Since they are now acting contrary to the spirit of the Act, I must register my disappointment with them. In fact, after passing the amendment, there is no point of contributing to this Motion. This is because the gist of the Report is exactly what has been deleted.

Mr. Deputy Speaker, Sir, first and foremost, I want to thank the PIC for a job well done. In fact, I would say that its members went about their job with precision, because they pinpointed where the problem in the sugar industry is. I also want to note that the Minister is not being vilified for the gazette notice. He connived with thieves in the sugar industry and refused to consult the Kenya Sugar Board, contrary to Section 33 of the Sugar Act. The Board would have told him exactly when to import sugar. We, in the sugar industry, are faced with a glut. We cannot sell our sugar because a lot of it is being imported into this country. The reason why the last Parliament enacted Section 33 of the Sugar Act was to control the inflow of imports of sugar. One importer is not supposed to be allowed to import the entire 89,000 metric tonnes of sugar. Such a move will strangle the local sugar industry.

Mr. Deputy Speaker, Sir, I have great respect for the Minister for Agriculture because he is one of the Ministers who crusaded for the interest of all farmers in this country, to the extent that he was even fired as an Assistant Minister by the previous regime. However, today, I am seeing a pale shadow of hon. Kirwa.

There are two enemies of sugar-cane farmers in this country; that is, hon. Kirwa and hon. Kimunya.

*(Loud consultations)*

I am not ashamed to say that. Sugar is a very emotive subject because six million Kenyans depend on sugar.

Mr. Deputy Speaker, Sir, the Minister for Finance, in his Budget Speech, introduced the Sugar Development Levy. This, he said, only growers will pay and not consumers. That is a sure way of killing the sugar industry because it is going to allow sugar imports to come in duty-free

while the farmers shoulder the heavy burden of the Sugar Development Levy. There are so many levies in this country. We have the Rural Electrification Levy, the Catering Levy, the Petroleum Levy, the Standards Levy and so on. All these levies are paid by consumers. So, I do not understand why the Government of hon. Kibaki wants to punish sugar-cane farmers in this country.

**Mr. Deputy Speaker, Sir,** we want the Minister for Agriculture to tell us why he did not consult Kenya Sugar Board as is stipulated in the Sugar Act before he gazetted this legal notice, making the trade free for all. In fact, I want to inform the House that the 89,000 tonnes, which was a shortfall, was brought in by one importer whom the Minister for Agriculture knows. I do not know what he promised to give this Minister.

**Mr. Deputy Speaker, Sir,** 30 per cent of the 89,000 tonnes were supposed to be imported into the country by the sugar industry.

**The Minister for Agriculture (Mr. Kirwa):** On a point of order, Mr. Deputy Speaker, Sir. Hon. Osundwa has made an erroneous statement that, one, the 89,000 metric tonnes were imported by one single company, and secondly, he has imputed improper motive on my part by saying that the said importer could have given me something. Could he, please, substantiate his remarks?

**Mr. Deputy Speaker:** Mr. Osundwa, is that what you said?

**Mr. Osundwa:** Mr. Deputy Speaker, Sir, I said that I do not know what he may have been given. That is not the same as saying that he was given something. You can check with the HANSARD. I said that I do not know what he might have been given.

**Mr. Deputy Speaker, Sir,** with regard to the other allegation that only one importer brought--

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**The Minister for Foreign Affairs (Mr. Tuju):** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mr. Tuju! The hon. Member has not even finished responding to the point of order raised by Mr. Kirwa.

**Mr. Osundwa:** Mr. Deputy Speaker, Sir, what I said is that out of the 89,000 tonnes of sugar which were to be imported into this country, 30 per cent of it was to be brought in by one or two sugar companies in this country. What happened is that Mumias Sugar Company, Chemelil Sugar Company and Nzoia Sugar Company agreed that Chemelil Sugar Company be given that quota. It is surprising that Chemelil never imported the sugar. I want the Minister to tell us if I am not saying the truth. Chemelil was unable to bring in the 30 per cent quota, and instead the same person who brought in the rest of the sugar imported it. Chemelil never made any profit; it only collected a commission. We want to know where that commission is banked.

**The Minister for Foreign Affairs (Mr. Tuju):** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member of Parliament is saying that he does not know what Mr. Kirwa may have been given. We also do not know what the other potential importers may have given Mr. Osundwa to make the statement that he is making.

**Mr. Deputy Speaker:** Order, Mr. Tuju! That is certainly not a point of order. What you have done is actually to respond to the person. That is a point of argument. Hon. Members, please, let us not drift from the debate.

I want to draw the attention of hon. Members' attention to the fact that, in fact, what we are debating--- If you look at the Report, you have deleted its contents up to page 35, and what is remaining is only the appendix. Page 1 to 7 and Part II have already been deleted! Part two was deleted from pages 8 to 35. We deleted it! So, what are we remaining with? We are remaining with pages 1 to 7. I, therefore, want hon. Members to confine themselves to that part. I just wish that---

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. Could the Mover be now called upon to reply to the "skeleton"?

**Mr. Deputy Speaker:** That point of order is not misplaced. Therefore, I want to put the

Question.

*(Question, that the Mover be  
now called upon to reply,  
put and agreed to)*

Mr. Muturi, you may respond.

**Mr. Muturi:** Mr. Deputy Speaker, Sir, I want to thank hon. Members, particularly those in the Public Investments Committee (PIC), and Mr. Osundwa for seeing the merits in the expunged Report.

Mr. Deputy Speaker, Sir, because what is left now is a skeleton, there is no need for me to say anything. But history, which we all know has a tendency of repeating itself and visiting people's consciences, will no doubt do what it must [**Mr. Muturi**] do; repeat itself!

With those few remarks, I beg to move.

*(Question put and agreed to with expunction)*

## **BILL**

### *Second Reading*

#### THE KENYA INSTITUTE FOR PUBLIC POLICY RESEARCH AND ANALYSIS BILL

*(The Minister for Planning and  
National Development on 20.7.2006)*

**Mr. Deputy Speaker:** Is the Minister for Planning and National Development here? He was here a while ago. He appears to have left.

*(Debate deferred)*

I also want to inform hon. Members that the next Order, which is Order No.12 - The Refugees Bill is on the Order Paper by mistake. It has not been brought for First Reading and referred to the relevant Departmental Committee. Therefore, it was erroneously put on the Order Paper. That means we have no other business.

## **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, it is now time to interrupt the business of the House. The House is, therefore, adjourned until Tuesday, 1st August, 2006, at 2.30 p.m.

The House rose at 6.00 p.m.