

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 4th August, 2004

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

Mr. Speaker: Hon. Members, we will restrict Questions to one hour. There will be a Supplementary Order Paper containing proposed amendments to the Constitution of Kenya Review (Amendment) Bill. I want it distributed as quickly as possible.

ORAL ANSWERS TO QUESTIONS

Question No.046

DISMISSAL OF CHIEF SIMON NJOROGE

Mr. Wamwere asked the Minister of State, Office of the President:-

(a) under what circumstances chief Simon R. Njoroge was dismissed from duty on 25th January, 2001; and,

(b) whether he could consider reinstating him.

Mr. Speaker: This Question was before the House. Why was it deferred?

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, in the morning we did not deal with Ordinary Questions. So, this caused this Question to come up today.

Mr. Speaker: Very well.

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, at any rate I was going to ask for the indulgence of the House because the information I have is not satisfactory. So, I would like this Question to be deferred to Thursday.

Mr. Speaker: What is your reaction, Mr. Wamwere?

Mr. Wamwere: Mr. Speaker, Sir, Thursday is tomorrow and I am quite prepared to wait in order to get a more satisfactory answer.

Mr. Speaker: Mr. Assistant Minister, is there any problem with you bringing an answer tomorrow?

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, I trust that by tomorrow I will have the answer.

Mr. Speaker: Very well. It is so deferred.

(Question deferred)

Question No.220

TARMACKING OF CHABERA-

IKONGE-CHEBILAT ROAD

Mr. Angwenyi, on behalf of **Mr. Masanya**, asked the Minister for Roads and Public Works when Chabera-Ikonge-Chebilat Road will be tarmacked.

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

There are plans to upgrade the Chabera-Ikonge-Chebilat Road to bitumen standard, and the Ministry is in the process of procuring a consultant to undertake a detailed design study, after which the road will be programmed for tarmacking.

Mr. Angwenyi: Mr. Speaker, Sir, could the Assistant Minister tell us how much money has been set aside for the study and design programme of this road?

Mr. Kones: Mr. Speaker, Sir, I said that we are in the process of upgrading this road. Once we decide when we will procure this consultant, we will set aside money.

Mr. Angwenyi: Mr. Speaker, Sir, this is a very important road. It serves a high potential area in the Gusii and Kericho Districts. Could the Assistant Minister consider upgrading this road for the time being?

Mr. Kones: Mr. Speaker, Sir, indeed, we realise the importance of this road. In the current Estimates we have set aside Kshs2 million for upgrading this road. We want to put the road in motorable standards. This money has been used for spot gravelling. We are also doing opening of culverts. We have done 36 culverts as of now and we want to put the road in motorable standards throughout the year.

Mr. Speaker: Very well.

Next Question!

*Question No.266*TOTAL INDEBTEDNESS OF GATUNDU
NORTH COFFEE SOCIETIES

Mr. Muiruri asked the Minister for Co-operative Development and Marketing:-

(a) what the total indebtedness of Mangu, Makaiga and Buchana Coffee Co-operative Societies of Gatundu North is; and,

(b) whether he could confirm that the three co-operative societies are operating economically.

Mr. Speaker: Is there anyone from the Ministry of Co-operative Development and Marketing? They are not here, Mr. Muiruri.

Mr. Muiruri: Mr. Speaker, Sir, this Question is on the Order Paper for the fourth time. Is it possible for you to defer it to tomorrow afternoon, if the Minister does not turn up by the end of Question Time?

Mr. Speaker: I will consider that, but I wish to make a further observation. As I remarked two weeks ago, the Ministry of Co-operative Development and Marketing finds it difficult to come to the House.

Next Question!

*Question No.296*SAFETY OF LIVESTOCK AT
TERMINAL MARKETS

Mr. Wario asked the Minister for Livestock and Fisheries Development:-

- (a) what policy measures he is taking to address safety of livestock for trade and disease control at our terminal markets; and,
- (b) when resting grounds will be provided at all terminal markets for cattle.

The Assistant Minister for Livestock and Fisheries Development (Dr. Wekesa): Mr. Speaker, Sir, I would like to seek your indulgence for more time to enable me confer with my field officers. This answer was given to me two hours ago, and I was not happy with it. I have already issued instructions that the field officer concerned should come and see me. I will be very glad to answer this Question tomorrow.

I sympathise with Mr. Wario, who is my colleague in the field of livestock development. I would like him and the House to bear with me.

Mr. Speaker: Is that okay with you, Mr. Wario?

Mr. Wario: Yes, Mr. Speaker, Sir. However, this is an Ordinary Question and it has taken the longest process. So, could the Assistant Minister consider answering it tomorrow?

Mr. Speaker: I will order that he does so tomorrow.

(Question deferred)

Next Question, Mr. Khamisi!

Question No.190

ELEPHANTS MENACE IN
BAHARI CONSTITUENCY

Mr. Speaker: Is Mr. Khamisi here? The Question is dropped.

(Question dropped)

Question No.335

IMPLEMENTATION OF REP IN KITUTU CHACHE

Mr. Angwenyi asked the Minister for Energy:-

- (a) if he is aware that members of Mosochi/Raganga/Nyabururu/Keore/Matongo rural electrification projects paid the mandatory 10 per cent of the cost for the provision of electricity ten years ago;
- (b) if he is further aware that Kenya Power and Lighting Company (KPLC) has not to date implemented these projects; and,
- (c) if he could, therefore, urgently implement these projects.

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware that members of Mosochi, Raganga, Nyabururu, Keore and Matongo rural electrification projects paid any amount of money to KPLC towards meeting the cost for the provision of electricity ten years ago.

(b) Yes, I am aware that all the projects listed by the hon. Member have not been supplied with electricity. However, due to resource constraints, the Ministry of Energy is currently considering subsidizing only those projects which entail supply of power to public schools, health centres and markets in line with the Government's strategy of wealth and employment creation. However, the merit order ranking of candidate projects has to be done by the DDCs. They have

already been asked to submit lists of five top most projects in their districts. Individual homesteads are supposed to pay the full cost of supply.

(c) The Ministry of Energy cannot commit itself to implement the projects urgently as requested by the hon. Member because implementation of the projects under the Rural Electrification Programme (REP) is based on their priority ranking by the respective DDCs, which in this case is the Kisii DDC, and on the availability of funds. I would, therefore, like to request the hon. Member to liaise with the Kisii DDC on the issue of having any projects merit order ranked against the list of the five top most projects, which is still being awaited by the Ministry of Energy.

Hon. Members: What do you mean by "hon. Member"?

Mr. Kiunjuri: Honourable Member!

Mr. Speaker: Mr. Kiunjuri, why are you lazy? Why do you find it difficult to say "honourable Member" in full instead of "hon. Member"?

Mr. Kiunjuri: Mr. Speaker, Sir, first of all, it is not in order for me to respond to the hon. Members instead of addressing the Chair. I withdraw the use of "hon. Member." I meant honourable Member of Parliament.

Mr. Speaker: Very well!

Mr. Angwenyi: Mr. Speaker, Sir, the requirement of a deposit of 10 per cent for the provision of electricity has been an avenue for taking money away from the citizens of this country, without providing the services. It is not only the people in my constituency who have paid this money, which cannot be traced, but this applies to people throughout the country. Could the Assistant Minister undertake to seek an audit of these funds which have been deposited over the years for the REP, and thereby, may be find out where the money for my constituency went to? He should also take action against those people who may have looted the money.

Mr. Kiunjuri: Mr. Speaker, Sir, I agree that collecting funds for this purpose is not in order before we are sure that we will implement the programme. The Ministry has taken it upon itself not to collect any monies for any project until we are sure the project will be implemented.

On part "b" of the Question, I have already indicated that I am not aware whether the money was paid. However, if there is any proof that this money was ever paid, I would like the hon. Member to produce the receipts and we will take the necessary action.

Mr. J. K. Kilonzo: Mr. Speaker, Sir, indeed, this is not the only area where money has been collected for the REP programme. Chanika REP in Nzambani, Mutito Constituency, paid Kshs300,000 ten years ago. Unfortunately, to date, nothing has been done to make sure that this area has electricity. Could the Assistant Minister bring to this House a list of areas in the whole country which have paid the 10 per cent? Not only should he say that the money should be refunded, he should also ensure that electricity is given top priority in these areas.

Mr. Kiunjuri: Mr. Speaker, Sir, I would like to bring to the attention of the hon. Member that we did exactly that a month ago when answering a Question by Mr. Wamwere.

Mr. Speaker: Last question, Mr. Angwenyi!

Mr. Angwenyi: Mr. Speaker, Sir, could the Assistant Minister categorically undertake that upon my producing the receipts for this deposit that within two months, this rural electrification project will be undertaken by the Ministry?

Mr. Kiunjuri: Mr. Speaker, Sir, I would not want to give the undertaking because it will depend on the availability of funds. However, the hon. Member should be happy that we have also been able to award him Rioma Market Project which is in progress. We have already put aside money during this financial year to connect the whole market through the Government of Kenya funds. We are also implementing the Kenyoro Secondary School, Ekurubo Coffee Factory and Metembe Secondary School under French Phase II. I think the hon. Member should be happy about that.

Question No.325

ESTABLISHMENT OF AGRO-BASED INDUSTRIES IN LUGARI

Dr. Kibunguchy asked the Minister for Trade and Industry:-

(a) considering that Lugari District is an agricultural area, what plans the Ministry has for the establishment of rural agro-based industries; and,

Dr. Kibunguchy

(b) what further plans the Ministry has to organize, co-ordinate, restructure and modernize the brick making business in Western Province.

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

(a) The Ministry of Trade and Industry is not directly involved in the establishment of agro-based industries. However, it encourages industrial development, which includes agro-based industries included by creating and facilitating an enabling environment through District Industrial and Trade Development (DITD) officers in their respective zones. These officers provide assistance to potential and existing industrialists by identifying sources of financing projects, new industrial development opportunities, modern technology and markets for their finished products.

Lugari District, which previously was part of the larger Kakamega District, is served by a District Industrial Development Officer (DIDO), based at Kakamega. Existing and potential agro-based industrialists in Lugari are, therefore, encouraged to explore and make full use of this opportunity.

(b) The Ministry, jointly with the Kenya Industrial Research and Development Institute (KIRDI), the Integrated Technology Development Group (ITDG), GTZ and Approtech (K), who are developing new technology in brick production, will co-ordinate initiatives on how to improve on the quality of bricks. Application of the new technology will yield stronger, better-shaped and quality bricks.

Dr. Kibunguchy: Mr. Speaker, Sir, first of all, I would like to thank the Assistant Minister for that answer. Secondly, as we think about our rural areas in terms of job creation, it becomes imperative that areas where certain products can be produced, should be encouraged. That is why I asked this Question. I would like to know specifically from him what specific plans the Ministry has in terms of the rural based industries?

Mr. Miriti: Mr. Speaker, Sir, the Ministry is trying to identify new industrial development opportunities in various areas. It is also involved in formulation and promotion of industrial projects. Officers from the headquarters and the field are always on the ground, trying to establish which products are viable in various areas.

Mr. Leshore: Mr. Speaker, Sir, I do not know why the Assistant Minister is shying away. I understand that the Industrial and Commercial Development Corporation (ICDC) is under his Ministry. They are the ones who have been spearheading those rural projects in the rural areas. Why is he shying away? Is it that the NARC Government has changed the policy of taking those small projects to rural areas? What is happening?

Mr. Miriti: Mr. Speaker, Sir, there is nothing to shy away from. The ICDC has been supporting investors financially, but not spearheading. It is the people on the ground who identify projects and the ICDC comes in handy to support any entrepreneurs.

Dr. Kibunguchy: Mr. Speaker, Sir, some of the biggest constraints in setting up rural-based industries is finance and expertise. I am made to understand that the Lake Basin Development Authority (LBDA) had undertaken to set up brick-making and tile-making industries in their area of jurisdiction. How far has that gone?

Mr. Miriti: Mr. Speaker, Sir, I cannot tell how far the LBDA has gone with its brick-making plans at the moment.

Mr. Speaker: Very well! Next Question! Mr. Keter, you said you wanted your Question deferred?

Mr. Keter: Yes, Mr. Chairman, Sir.

Mr. Speaker: To when?

Mr. Keter: I would like it deferred until tomorrow.

Mr. Speaker: Until tomorrow! Very well. Is the Minister for Lands and Housing here? This Question is deferred until tomorrow.

Question No.154

IRREGULAR ALLOCATION OF KERICHO DISTRICT HOSPITAL LAND

(Question deferred)

Next Question, Mr. Kipchumba!

Question No.371

TREE HARVESTING AGREEMENT BETWEEN
PANPAPER MILLS AND GOK

Mr. Kipchumba asked the Minister for Environment and Natural Resources whether he could table the agreement between Webuye Panpaper Mills and the Government of Kenya (GoK) on commercial harvesting of trees in public forests.

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Speaker, Sir, I beg to reply.

I hereby table the agreement between Webuye Panpaper Mills and the Government of Kenya licensing the Pan Paper Mills to fell and extract timber from public forests. The agreement was signed on 29th June, 1970 for 31 years, effective from 1st January, 1973. The agreement expired on 31st December, 2003, and a one-year extension granted with effect from January, 2004 to 31st December, 2004.

*(Prof. Maathai laid the document
on the Table)*

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Mr. Kipchumba, would you like to peruse it before you ask questions or are you ready?

Mr. Kipchumba: Mr. Speaker, Sir, I will, but I want to ask something else.

Mr. Speaker: No! No! You cannot have it both ways. I just wanted to be very fair to you!

(Loud consultations)

Order, hon. Members! I want to be fair to you, Mr. Kipchumba! Now that the agreement has been laid on the Table, would you like to study it or would you like to proceed now?

Mr. Kipchumba: Mr. Speaker, Sir, I would like to proceed.

Mr. Speaker: You would like to proceed? Well, so long as you do not ask me for more time.

Proceed!

Mr. Kipchumba: Mr. Speaker, Sir, I would like the Assistant Minister to assure this House that, before the agreement is renewed again, if it will ever be, all the stakeholders, including the local authorities, will be included in the negotiations. We are aware that, that agreement was done in favour of Panpaper Mills. Could the Assistant Minister assure us that, that will happen?

Prof. Maathai: Mr. Speaker, Sir, the Ministry has put in place a technical working group, which is looking at all those matters, some of which have been addressed by the Forest Bill which, unfortunately, we did not pass. I do not think it is unreasonable to ask stakeholders to participate in whatever will be agreed upon in future.

Dr. Kibunguchy: Mr. Speaker, Sir, one of the problems with Panpaper Mills is that it pollutes the environment. The other problem is that it does not have any recognised corporate social responsibility. I would like to ask the Assistant Minister: What plans does the Ministry have to enforce a corporate social responsibility in that company, so that it could assist communities living in areas where it gets its trees from?

Prof. Maathai: Mr. Speaker, Sir, 30 years is a very long time. 30 years ago, such concepts as corporate social responsibility were hardly mentioned in the environmental circles. The Forest Bill that we presented here was trying to capture the development of the environmental thought that has evolved since 30 years ago. The Bill emphasized very much that the communities living near forests would benefit in the new concept of management.

(Mr. Sambu interjected)

Mr. Speaker: Mr. Sambu, why are you agitated? Do not be agitated! Relax first!

(Laughter)

Mr. Sambu: Mr. Speaker, Sir, I have been here throughout! I do not get agitated over Parliament. I only get agitated over land.

Mr. Speaker, Sir, I am surprised that the agreement was renewed this year without any consultations whatsoever! They are now cutting trees at a fast rate. They cut the trees up to midnight and ferry the same the whole night with over 100 lorries. They cut so many trees in a day. The Forest Bill has nothing to do with that. Even if the Assistant Minister for Trade and Industry consoles her---

Mr. Speaker: Order!

Mr. Sambu: Mr. Speaker, Sir, the land where the trees are being cut is in the North Rift, and most of it is trust land. Section 14---

Mr. Speaker: Order, Mr. Sambu! Could you now put the question? You are now getting agitated!

Mr. Sambu: Mr. Speaker, Sir, I have said that when it comes to matters of land, it is life and death! So, could the Assistant Minister ensure that no agreement is renewed until we get the new Constitution? Forests should belong to communities living around them.

Prof. Maathai: Mr. Speaker, Sir, I said that the Ministry has put in place an Inter-Ministerial Technical Working Committee that is looking into those issues. It is not true that the licence was extended. It was extended to give ourselves time to look at all the issues and make proper decisions. That is all I can say.

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. During the last Parliament, this House

passed the Environmental Management and Co-ordination Bill. It became an Act of this House. In it, we have provisions that before you licence the operations of such a giant factory, there must be an environmental impact assessment report.

Mr. Speaker: What is your point of order?

Mr. Osundwa: Mr. Speaker, Sir, could she tell this House whether, before extending that agreement, any such report was prepared?

Mr. Speaker: That is a supplementary question!

Mr. Osundwa: But let her answer it, Mr. Speaker, Sir.

Mr. Speaker: No, I cannot! It is against the Standing Orders.

Mr. Serut: Mr. Speaker, Sir, you have heard the Assistant Minister say that the agreement was extended for one year. She knows very well that there is what we call the District Roads Committees (DRCs) money which repairs our roads.

The lorries which carry those logs from the forests destroy our roads. How much money has the Ministry or Panpaper Mills set aside, on top of what we receive from the Ministry of Roads and Public Works, to repair roads in areas along forests?

Prof. Maathai: Mr. Speaker, Sir, I have answered that question before when I said that some of the benefits that communities get from this harvesting of timber is the taxes that this company pays into the Consolidated Fund and which money eventually reaches hon. Members of Parliament through the roads' funds that we get.

(Mr. Sambu consulted loudly)

Mr. Speaker: Order, Mr. Sambu!

Prof. Maathai: Mr. Speaker, Sir, therefore, the best one can do is to wait for the Inter-Ministerial Technical Committee to do its work. Then we shall have to come up with an agreement with an understanding that we did not have 30 years ago. I wish all of you hon. Members were there 30 years ago and you would maybe not have approved the agreement.

Mr. Speaker: Last question, Mr. Kipchumba!

Mr. Kipchumba: Mr. Speaker, Sir, I wish the Assistant Minister actually understood the seriousness of licensing this very big company that destroys the environment where some of us stay. I wanted to ask the question that was raised on the impact assessment done by the National Environmental Management Authority (NEMA). It is a very critical question before you made this extension. Or did she just blindly decide to sign the agreement?

Prof. Maathai: Mr. Speaker, Sir, I understand very much the seriousness of what the hon. Member is raising. However, I also know that it is partly because of that understanding that instead of giving the company a new lease, we decided to put together this working group. I am quite sure that part of the steps that may be required is to have an environmental impact assessment.

Mr. Speaker: Very well! Very quickly for the second time, the Question by Mr. Muiruri! Or did I defer it? I did not and the Minister is here, so can you ask the Question?

Question No.266

TOTAL INDEBTEDNESS OF GATUNDU
NORTH COFFEE SOCIETIES

Mr. Muiruri asked the Minister for Co-operative Development and Marketing:-

(a) what the total indebtedness of Mangu, Makaiga and Buchana Coffee Co-

operative Societies of Gatundu North is; and,

(b) whether he could confirm that the three co-operative societies are operating economically.

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): Mr. Speaker, Sir, first I want to apologise to the House for not being here when the Question was called the first time. However, I beg to answer.

(a) The total indebtedness of Mangu, Makaiga and Buchana Coffee Co-operative Societies totals to Kshs33,214,747 as at the end of May 2004. From the production trend of the three societies, only Buchana Coffee Co-operative Society was able to pay some 80 per cent of the gross sales to members. The other two paid 41 per cent and 35 per cent for Makaiga and Mangu respectively. The possible solution to improve returns to the members lies in the amalgamation of the societies so as to make them more viable and maximise on the economies of scale. However, the decision shall ultimately lie with the respective members.

Mr. Muiruri: Thank you very much, Mr. Speaker, Sir. From the answer given by the Minister, it is very clear that Makaiga and Mangu are insolvent and so are many other co-operative societies including another one in my constituency; The 3Gs Co-operative Society. We just passed the Co-operative Act which empowers the Minister to dissolve all co-operative societies that are not economically able to perform. Would he consider putting together all these societies in Gatundu North and make one viable co-operative society? This is because this indebtedness of over Kshs33 million is too much for the coffee farmers. Moreover, farmers are not actually able to come up economically unless they are grouped together.

Mr. Ndwiga: Yes, Mr. Speaker, Sir. Indeed, I am just about to publish the rules in this Month; August. I intend to visit Gatundu and urge members to amalgamate voluntarily. It is the best thing because we cannot allow this trend to continue and therefore, we shall invoke the Act and do the necessary.

(Loud consultations)

Mr. Speaker: Order, hon. Members! We cannot communicate so please take your seat and consult quietly. We must be in business!

Proceed, Mr. Muiruri!

Mr. Muiruri: Mr. Speaker, Sir, I would like to thank the Minister for his very good answer and I am sure he is going to come to Gatundu North and do what he has promised. I thank him; he is doing a very nice job.

Thank you.

Mr. Ndwiga: Mr. Speaker, Sir, I accept the gratitude.

Mr. Speaker: Very well! We will now move to Questions by Private Notice.

QUESTIONS BY PRIVATE NOTICE

ADMINISTRATION POLICEMEN FOR SHIANDA AP CAMP

Mr. Osundwa: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Shianda Administration Police Camp in East Wanga Location, Mumias Division has only one Administration Police Officer?

(b) Is he further aware that on 6th July, 2004 heavily armed thugs raided shops and a petrol station at Shianda Market near the above camp injuring attendants?

(c) When will the Government post additional Administration personnel to the AP camp to beef up security in the area?

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, I beg to reply.

(a) The Administration Police Post at Shianda has always had four officers. However, on 28th July, 2004 three officers were transferred during a country-wide mass transfer and their replacement reported on 2nd August, 2004.

*(Mrs. Mwendwa crossed the Floor
without bowing to the Chair)*

(Mr. Wanjala stood up in his place)

Mr. Speaker: Order! What is it?

Mr. Wanjala: Mr. Speaker, Sir, Mrs. Mwendwa just crossed the Floor and went to sit without bowing to the Chair.

Mr. Speaker: Who?

Mr. Wanjala: Mr. Speaker, Sir, Mrs. Mwendwa.

Hon. Members: No! Did you see her?

Mr. Wanjala: Yes! She just crossed from here!

(Loud consultations)

Mr. Speaker: What are you saying? Order, hon. Members! What did you say, Mr. Wanjala?

Mr. Wanjala: Mr. Speaker, Sir, when I came in, Mrs. Mwendwa was seated here and she just woke up and crossed the Floor without bowing to the Chair.

*(Ms. Abdalla was applauded as she
entered the Chamber)*

Mr. Speaker: Order, hon. Members! A very warm welcome-back to Ms. Abdalla!

(Applause)

Where is Mrs. Mwendwa?

(Laughter)

(Mrs. Mwendwa stood up in her place)

Is that allegation true?

Mrs. Mwendwa: Mr. Speaker, Sir, I want to accept what Mr. Wanjala has said. However, he pushed me out of the chair but I am going to cross the Floor properly.

(Laughter)

(Mrs. Mwendwa bowed to the Chair)

Mr. Speaker: Very well! Where were we? The Minister was on the Floor.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, I beg to continue replying.

(b) I am aware of the said robbery at Shianda Petrol Station on 6th July, 2004. Two suspects were arrested in connection with the incident and arraigned before Mumias Senior Resident Magistrate Court vide Criminal Case No.925/37 of 2004.

(c) Two more Administration Police (AP) officers have already been deployed to Shianda AP Camp and additional two officers will be posted as soon as the district personnel strength is beefed up.

Mr. Osundwa: Mr. Speaker, Sir, I thank the Assistant Minister for the answer. Shianda is the headquarters of East Wanga Location with a population of 80,000 people. Four APs are not enough, because Shianda has eight sub-locations.

Mr. Speaker, Sir, is he saying that four APs are enough to police eight sub-locations? How many more APs is he going to post to this AP Camp?

Prof. Kibwana: Mr. Speaker, Sir, as the hon. Member is aware, we have a shortage of AP officers. That is why the complement for this camp is four for the eight sub-locations. However, since some recruits have just graduated from the Administration Police Training College (APTC), we will see what we can do to help in terms of security in Shianda.

Dr. Galgalo: Mr. Speaker, Sir, most of the AP posts in this country are understaffed. There are other places, especially in Nairobi, where we have too many AP officers. In my constituency, about two months ago, when Ethiopian military invaded a village where we have an AP camp; there were only three APs against a force of about 500 men. What is the minimum number of APs required per post? Could the Minister ensure that, that number is maintained throughout the country?

Prof. Kibwana: Mr. Speaker, Sir, when we presented the budget of the Office of the President to this House - we had provided funds for recruitment and training of adequate personnel because they do a splendid job - the budget was reduced by half. Parliament cannot have its cake and eat it. It has to assist us, so that we can recruit and train adequate APs and distribute them accordingly.

Dr. Ali: On a point of order, Mr. Speaker, Sir. The Assistant Minister knows that we wanted to reduce the Vote of the Office of the President by Kshs20. When the question was put to the vote, it was defeated. When did Parliament reduce the Vote of the Office of the President by half? Is he in order to mislead the House?

Mr. Speaker: Did you say that, Prof. Kibwana? Mr. Assistant Minister, when did the House reduce your Ministry's budget?

(Mr. Sambu stood up in his place)

Prof. Kibwana: Mr. Speaker, Mr. Sambu is interfering. I intended to say Ministry of Finance.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. How am I interfering? Have I shut his mouth? Why is he misleading the House?

(Laughter)

Mr. Speaker: Order! Order! Mr. Sambu, you are now directed by the Chair to completely relax.

(Mr. Sambu resumed his seat)

Very good! So, in that spirit, shall we proceed smoothly. I understand the Assistant Minister to say that it was the Treasury which reduced the Vote of the Office of the President by half, and not Parliament.

Mr. Osundwa: Mr. Speaker, Sir, the Assistant Minister has admitted that Shianda Market has a complement of four AP officers. Could he tell the House why they removed three AP officers on the same day leaving behind only one officer? Robbery is prevalent at Shianda Market because the robbers know that there is no security. Why did the Assistant Minister transfer three AP officers from Shianda Market leaving only one officer? Even Mr. Noah arap Too, who is a former police officer, can tell you that no police officer can go out on duty on his own. He must be accompanied by a colleague. Why did you leave only one AP officer at Shianda Administration Police Camp?

Prof. Kibwana: Mr. Speaker, Sir, I have indicated that since we passed out APs just last week, we will rectify that situation. A decision to that effect has been made. So, the hon. Member is completely safe.

COMMUNICATION FROM THE CHAIR
DISTINGUISHED GUESTS FROM RWANDA
IN THE SPEAKER'S ROW

Mr. Speaker: Order! Order! Hon. Members, I wish to interrupt Question Time very briefly to introduce to the House with great pleasure, the following Members of Parliament from the Republic of Rwanda, who are seated on the Speaker's Row. They are in Kenya to meet Members of the Departmental Committee on Defence and Foreign Affairs, to discuss the role of parliamentarians in conflict resolution within the Great Lakes Region. They are:-

The hon. Amb. Munyababicha Valens, MP (Senate) -
Head of the Delegation.
The hon. Kayajire Agnes, MP (Senate).
The hon. Muhongayire Agnes, MP (Chamber of Deputies).
The hon. Munyaragabo Francis, MP (Chamber of Deputies).
Mrs. Balinda Elizabeth - Secretary to the Delegation.

I am sure that they are accompanied by His Excellency the Ambassador of Rwanda to Kenya.

On behalf of the Parliament of Kenya, and on my own behalf, I warmly welcome them to Nairobi, Kenya, and to this National Assembly, and wish them a very pleasant stay during the course of their visit.

Thank you.

(Applause)
(Resumption of Questions by
Private Notice)

Mr. Speaker: Next Question, Mr. Gachagua!

EVICTON OF FAMILIES FROM HOMBE/RAGATI FORESTS

Mr. Gachagua: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that there are 3,000 families living on the roadside without any

food or water after having been evicted from Hombe and Ragati forests in Mathira?

(b) What urgent measures is the Minister taking to ensure that these families are provided with food to prevent deaths arising out of starvation?

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I beg to reply.

(a) The Government is aware that there are 544 families living on the roadside after being evicted from Hombe and Ragati forests in Mathira. The breakdown is as follows:-

173 families at Ragati-Moroto Village

259 families at Hombo-Moroto Village;

112 families at Chacha-Moroto Village.

(b) From July, 2003 to July, 2004, the Government has sent 9,250 90-kilogramme bags of maize, 1,700 90-

kilogramme bags of beans and 924-6x3 litre cartons of vegetable oil for free distribution to the needy people, particularly the distressed families. Also, Kshs1,137,500---

(Loud consultations)

Dr. Ali: On a point of order, Mr. Speaker, Sir. We cannot hear the Assistant Minister's answer. The "voting machines" are making too much noise.

(Laughter)

COMMUNICATION FROM THE CHAIR

DIGNITY OF THE HOUSE AND THAT OF THE CHAIR TO BE PRESERVED

Mr. Speaker: Order! Order! Hon. Members, I think we are developing a terrible habit in this House. Hon. Members are always insulting one another. In fact, some hon. Members have gone to the extent of uttering derogatory terms at the Chair, like it happened this morning when Mr. Mwenje uttered terrible words against the Chair. So, Dr. Ali, will you apologise to the House?

Dr. Ali: Mr. Speaker, Sir, I withdraw and apologise.

(Loud consultations)

Mr. Speaker: Order! Hon. Members, how do you run a Parliament which cannot have order? This morning, when Question No. 541 was being replied to by Mr. Ojode, Mr. Mwenje said the following:-

"Mr. Deputy Speaker, Sir, you are favouring this Question because it is an LDP affair. I beg to walk out. If the Chair itself is not listening because of the LDP, then you can continue". Then the hon. Members shouted: Out! Out!, and the hon. Member left.

Hon. Members, that is a direct assault on the Chair. It is my business, not only to preserve the dignity of this House, but much more so that of the Chair. We cannot have a Parliament where the Chair is perpetually under assault. This must come to an end. This is uncalled for and it is gross misconduct. I will ask the hon. Member to apologise to the House and withdraw those remarks.

Hon. Members: Throw him out!

Mr. Speaker: Order! It is me making the decision, and not you! Will you, Mr. Mwenje, please, withdraw and apologise?

Mr. Mwenje: Mr. Speaker, Sir, I hope you got the chronology of the story that happened

this morning.

Mr. Speaker: I have, indeed.

Mr. Mwenje: Mr. Speaker, Sir, the Question was *sub judice*---

(Loud consultations)

Mr. Speaker: Order! Order! Hon. Members, from now on, any hon. Member who is not orderly will be expelled from the House. There must be order in the House!

As the House will notice, I have a full transcript of the HANSARD for this morning in respect of that Question and this incident. I am, really, not concerned at all about the antecedents of this issue. I am concerned about the direct assault, in my view, on the Chair, which is my business to protect. I must proceed to do that and I am asking Mr. Mwenje, without further ado, to withdraw his remarks against the Chair and apologise.

Mr. Mwenje: Mr. Speaker, Sir, in the morning, what happened is that---

*(Mr. Mwenje was booed by
other hon. Members)*

I have a responsibility for the people of Embakasi and I---

Mr. Speaker: Order! Will you sit down?

Mr. Mwenje: May I finish my words, Mr. Speaker, Sir?

Mr. Speaker: Will you sit down? I am giving you the final chance. I am not pleading. I am ordering you to withdraw and apologise.

(Laughter)

Mr. Mwenje: Mr. Speaker, Sir, just before I do that, could you, please, give me one minute?

Hon. Members: No! No!

Mr. Speaker: Order! Will you withdraw?

Mr. Mwenje: Mr. Speaker, Sir, I will withdraw after saying this: I raised an issue---

Hon. Members: Throw him out!

Mr. Speaker: Order, hon. Members! It does not matter to me what happened. What matters to me is that there was a slur on the Chair. That is what bothers me.

(Mr. Billow stood up in his place)

Order, Mr. Billow! Just relax. If you do not, I will throw you out. Mr. Mwenje, you must withdraw those remarks and apologise to the House.

Mr. Mwenje: Mr. Speaker, Sir, for the sake of this afternoon's vote, I withdraw and apologise.

Mr. Speaker: Order! Mr. Mwenje, since you are unwilling---

Mr. Mwenje: Mr. Speaker, Sir, I have withdrawn.

Mr. Speaker: Will you withdraw and apologise unreservedly?

Mr. Mwenje: Mr. Speaker, Sir, for now, I withdraw and apologise.

Dr. Godana: On a point of order, Mr. Speaker, Sir. We fully understand the concern of the Chair. This matter, as you said rightly, touches on the dignity of this House. A direction from the Chair that an hon. Member withdraw and apologise is a requirement for unequivocal apology. The hon. Member has not apologised unequivocally.

Mr. Speaker: Indeed, he has not. Make up your mind, Mr. Mwenje.

Mr. Mwenje: Mr. Speaker, Sir, I withdraw and apologise.

Mr. Speaker: Very well! Next Question, Mr. Twaha.

Dr. Galgallo: On a point of order, Mr. Speaker, Sir. Mr. Mwenje said that he will apologise because he wants to vote. You will recall that---

(Loud consultations)

Mr. Speaker: Order, you will not finish because you are being frivolous too. Mr. Mwenje apologised without reservations the last time he stood up. That is what I wanted him to do. He had complied and there is no further issue with the Chair. The Chair has finished. That is the end of the issue.

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. We have noted the inordinately long time you have taken pleading with Mr. Mwenje, but you throw some of us out on the first incident.

Mr. Speaker: Order! Do you know that, that is another assault on the Chair? Just attempt one more and you will be out!

Next Question, Mr. Twaha!

Mr. Gachagua: On a point of order, Mr. Speaker, Sir. The Assistant Minister, Office of the President, was in the middle of answering my Question.

Mr. Speaker: Order! Sit down!

(Loud consultations)

Order all of you! Dr. Rutto, will you sit down, please? I am informed that, indeed, Mr. Gachagua is right. This is all your fault, hon. Members. The Assistant Minister, Office of the President, was in the middle of answering Mr. Gachagua's Question.

So, shall we proceed?

(Resumption of Answer to Mr. Gachagua's Question by Private Notice)

The Assistant Minister, Office of the President (Dr. Machage): Thank you, Mr. Speaker, Sir.

(b) In the months of August and September, 2004, the Government intends to send 11,414 bags of maize, each weighing 90 kilogrammes.

Mr. Gachagua: On a point of order, Mr. Speaker, Sir. When you interrupted the discussion, the Assistant Minister could hardly be heard in the House. We did not hear what his answer on part "a" of my Question was. I think it is in order for him to repeat the whole answer so that hon. Members can have a chance to hear what he is saying.

Mr. Speaker: Oh, yes!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I beg the House to listen to what I am saying.

(a) The Government is aware that there are 544 families living on the roadside after being evicted from Hombe and Ragati Forests in Mathira. The breakdown is as follows. There are 173 families at Ragati Muoroto Village; 259 families - Hombe Muoroto Village and 112 families in Cheche Muoroto Village.

(b) From July, 2003 to July, 2004, the Government has sent 9,250 bags of maize each weighing 90 kilogrammes, 1,700 bags of beans each weighing 90 kilogrammes---

Mr. Gachagua: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Gachagua! I will go to the next Question if you are not interested in your Question!

Mr. Gachagua: But Mr. Speaker, Sir---

Mr. Speaker: Order, Mr. Gachagua! What is the matter with you? Let him finish and then you will rise on a point of order! Mr. Assistant Minister, which Question are you replying to?

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I am replying to Question No.2 by Private Notice.

Mr. Speaker: Is that your Question, Mr. Gachagua?

Mr. Gachagua: Yes, Mr. Speaker, Sir.

Mr. Speaker: What is your complaint?

Mr. Gachagua: Mr. Speaker, Sir, the answer I have here is different from the one the Assistant Minister is reading out.

Mr. Speaker: He does not have to read the answer that you have!

Proceed, Mr. Assistant Minister!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, in the months of August and September, 2004, the Government intends to send 11,400 bags of maize each weighing 90 kilogrammes, 1,880 bags of beans each weighing 90 kilogrammes, 3,100 cartons of six by three litre each of vegetable oil, 2,485 cartons of milk powder and Kshs1.741 million for secondary transport to the district to cater for the drought victims and the displaced families.

Mr. Gachagua: Mr. Speaker, Sir, those families have lived on the roadside since 1998. First of all, I want to disagree with the Assistant Minister that those are not 500 families. They are over 2,000 families. Secondly, I dispute the quantities of the food which was sent there sometime in 2003. The food was sent to the district but it never reached those families. The third point is that---

Mr. Speaker: Order, Mr. Gachagua! You are debating instead of asking your question! Could you ask your question now?

Mr. Gachagua: Mr. Speaker, Sir, is the Assistant Minister in order to tell this House that food has been sent to those families, when it was sent to the district and never reached those families? This is because the food is shared out amongst the Provincial Administration officials and other families, which do not live on the roadside.

Dr. Machage: Mr. Speaker, Sir, the food which is distributed now reaches the villages and the village elders are involved in the exercise. When we send food to the districts, we assume that it has reached the villages because that is the method we use. I will investigate the matter, if it is true that, that is what happened.

Mr. Kembi-Gitura: Thank you very much, Mr. Speaker, Sir. I think this Question is more than just providing food to those families. Mr. Gachagua has said---

(Loud consultations)

Mr. Speaker: Order, hon. Members! That corner over there, you are really making the House to completely be unable to transact business! Could you, please, keep order?

Proceed, Mr. Kembi-Gitura!

Mr. Kembi-Gitura: Thank you, Mr. Speaker, Sir. I was saying that, to me, it is a bigger issue than just one of food. Those families have lived on the roadside since 1998. Those people had no other homes when they came out of the forests to the roadside. Will the Government continue to feed them, assuming that, that is the case, or what permanent solution does it have for those families?

Dr. Machage: Mr. Speaker, Sir, it is true that the said families were initially residential forest cultivators but in 1988, they were evicted from the forest as per the Government policy then. In 1992, the same group was allowed to cultivate in the forest as non-residential cultivators. However, as per Government directive on forests, they were compelled to stop cultivation by 31st March, 2004. We do not intend to make them perpetual dependants of food distribution. The Government is in the process of seeing how they can be rehabilitated and settled.

Mr. Gachagua: Mr. Speaker, Sir, before I asked this Question, I had asked the Minister for Lands and Housing a supplementary question on this matter. This is because the solution really is not to feed those families but to get them off the roadside. However, I want an assurance from the Assistant Minister that the food he has now promised the Government will send, will actually reach those families. I assure him that as long as the food is sent through the Provincial Administration in Nyeri District, it will not reach those families.

Could I get an explanation from him on how that food will be distributed to those very needy families?

Dr. Machage: Mr. Speaker, Sir, may I then assure the hon. Member that I will make sure that the food I have sent to those people will reach them.

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: No, sit down! Let us move on to the next Question by Mr. Twaha!

WHEREABOUTS OF MR. MOHAMMED ABDALLA SWALEH

Mr. Twaha: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that Mr. Mohammed Abdalla Swaleh, holder of Kenya Passport No.A758766, who is an employee of Jamia Mosque, who travelled to Sanaa, Yemeni to attend a cultural course at the invitation of the Al-Quds Institution, has gone missing?

(b) What urgent measures has the Minister taken to establish his whereabouts and bring him home?

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Mohammed Abdalla Swaleh, holder of Passport No.A758766 was reported to have gone missing in Yemeni. Information on the missing person first came to my attention on 13th July, 2004, through a letter from the Jamia Mosque committee and the family. The committee informed me that Mr. Swaleh travelled to Sanaa, Yemeni to attend a cultural course organised by a religious institution called Al-Quds. The course was to run from 10th to 18th June, 2004.

(b) Immediately we received that information, my Ministry sent a diplomatic note to the Yemeni Embassy in Nairobi, seeking the intervention of the Government of Yemeni in establishing the whereabouts of the Kenyan. In addition, the Ministry instructed our embassy in Cairo, where Mr. Swaleh was expected to stop over en-route to Nairobi by Egyptian Air, to communicate the information to the Egyptian authorities. Similar instructions were given to our embassy in Riyadh, Saudi Arabia.

I would like to inform the House that even as we await official communication from the Yemeni authorities, our embassy in Cairo is making frantic efforts to establish the whereabouts of Mr. Swaleh through all the possible means, including tracing of the person known to him who may shed light on the circumstances surrounding Mr. Swaleh's whereabouts.

Mr. Twaha: Mr. Speaker, Sir, let me express my gratitude for the frantic efforts this

Ministry has been making to establish the whereabouts of this missing gentleman. However, could the Assistant Minister inform this House what information these frantic efforts have produced? Has the trail gone cold? If so, at what point did it go cold? Is the Ministry still following some useful leads?

Mr. M. Kariuki: Mr. Speaker, Sir, the information we have received both from the relatives and the Egyptian Embassy is that this person was invited to attend a course which was to run from 10th to 18th June. He travelled on 11th June and he was supposed to come back by Egypt Air. Together with him was a Tanzanian.

Mr. Swaleh has been attending several conferences on culture. While he was in Yemen he did write an electronic mail (e-mail) to his wife. He also wrote a short message service (sms) to the family on 18th June. The leads that we have and which we are pursuing is that Mr. Swaleh could have been arrested because the information we have is that he checked in at the airport, but he did not get into the plane. Those are the leads that we are pursuing and I hope we will get some information from Yemen.

Mr. Wario: Bw. Spika, ukweli ni kwamba Bw. Swaleh alifika Yemen kwa kutumia pasi ya Kenya. Kwa hivyo ni wajibu wa Serikali ya Yemen kuwaambia Wakenya mahali yuko Bw. Swaleh. Je, Wizara hii inafanya nini kujua mahali yuko Bw. Swaleh?

Mr. M. Kariuki: Mr. Speaker, Sir, I have already stated in my reply that we have contacted the Yemeni Embassy in Nairobi and we are waiting for information from them. We have also contacted Egypt Air in Cairo and they say this person did not disembark in Cairo. We tried to get in touch with Tanzania to find out whether their national came back to Tanzania and the information we have is that he has not gone back to there. So, there were two in the same company; one Tanzanian and one Kenyan. They checked in and they have not been seen. So, we are trying to pursue the leads as to whether they could be in anybody's custody. Since we have not received any reply from the Yemeni Embassy in Nairobi, we are not able to give further information.

Mr. Twaha: Mr. Speaker, Sir, I think the Assistant Minister should pressurise the Yemeni Embassy and push them harder to come up with a reply. This is because the Ministry sent an official note to them a long time ago, but still they have not replied. I do not think they are keeping up with protocol and I am sure the Assistant Minister knows what to do about it.

Mr. M. Kariuki: Mr. Speaker, Sir, we are doing our best. I know that yesterday, our officer called the Yemen Embassy for a response and we are looking forward to it as soon as possible.

Mr. Speaker: Order, hon. Members! Mr. Munya's, Mr. Boit's and Mr. Bahari's Questions will take priority tomorrow. They are all deferred!

Mr. Mwiraria!

STATUS OF GOVERNMENT BORROWING
IN THE LAST SEVEN YEARS

(Mr. Munya) to ask the Minister for Finance:-

- (a) How much money has the Government borrowed from the international donors in the last seven years?
- (b) How much money has the Government spent in repaying loans from the international donors over the same period?
- (c) What is the Minister doing to reduce our country's over dependence on donor financial support?

(Question deferred)

SALE OF ALCOHOL IN KNH

(Mr. Boit) to ask the Minister for Health:-

- (a) Is the Minister aware that police have been fully licensed to sell alcohol in the middle of Kenyatta National Hospital?
- (b) Is the Minister further aware that the targeted consumers/customers are patients, staff (doctors, nurses and other paramedics) and students from KMTC and University of Nairobi's School of Medicine?
- (c) What is the Ministry doing to stop this business?

(Question deferred)

CLOSURE OF IBNI-TANIYA
CHILDREN'S HOME

(Mr. Bahari) to ask the Minister for Home Affairs:-

- (a) Is the Minister aware that Ibni-Taniya Children's Home in Isiolo Town previously funded by Al-Haramin Foundation has closed down?
- (b) Is he further aware that the orphans of the said home are now on the streets?
- (c) What action will the Minister take to ensure that the orphanage resumes operations?

(Question deferred)

MINISTERIAL STATEMENT

IMPLEMENTATION OF THE
CONSTITUENCY DEVELOPMENT FUND

The Minister for Finance (Mr. Mwiraria): I stand to speak on my pet project of Constituency Development Fund (CDF).

As I came in this afternoon, I saw a memorandum prepared by Eng. Muriuki and it is the one which has prompted me to give this Statement to clarify the position to the hon. Members of this House, who I know, hold the CDF very close to their hearts.

(Applause)

Mr. Speaker, Sir, let me start off by congratulating many of the Members of Parliament who have already taken action to prepare themselves for the implementation of the Constituency Development Programme in their constituencies. I want to say that many of these hon. Members have established their Locational Development Committees (LDC). They have held meetings and established the Constituency Development Committees (CDC). They have also made lists of priorities in their constituencies and the project proposals for the year 2003/2004 were sent to the Clerk of the National Assembly who in turn sent these projects to the Treasury.

Mr. Speaker, Sir, as I speak here today, 86 constituency bank accounts for the Fund have been established. I am sure the other hon. Members who have not established theirs are making

efforts to do so. At the national level, the Act is operational.

Mr. Speaker, Sir, the Constituency Fund Committee and its Secretariat is in place. This morning I inaugurated the national Committee for the Fund. As I said the other day, I have already appointed an Executive Officer for the Fund. But even more important, we have opened the national account of the Fund at the Central Bank of Kenya and Kshs1.26 billion is already deposited there.

Mr. Speaker, Sir, from the memorandum I am referring to, it looks as though there must be some misunderstanding somewhere. One of the points raised is that District Accountants have been instructed to keep off the CDF by the Treasury. Nothing could be further from the truth because all the 86 accounts which have been established have been established with the support and consent of the district accountants.

So, I really want to correct this impression. But in case there are some district accountants who are not complying with the instructions which will assist in establishing the accounts, please, give me the names before I leave the House, so that appropriate action can be taken.

Mr. Speaker, Sir, there is one very good point made by Eng. Muriuki in his memorandum. That is, that the constituency bank accounts cannot operate without the district accountants. I fully agree. These accounts must be operated professionally. The operations must be transparent, accountable and quarterly audit reports must be prepared on them, so that we can assure our electors that, in fact, we are using the community development funds to their benefit.

Mr. Speaker, Sir, I also want to tell hon. Members that the Treasury cannot go slow on an issue as important as this. As one of you; as a Member of Parliament with a constituency, I have as much interest, if not more, than some of you! So, really, I want to dispel the fears that anybody in the Treasury could be slowing down or fooling around with the Constituency Development Fund (CDF). One point I need to make clear, and I am sure hon. Members will understand, is that, as of today, we have not yet put into the central account any money for this financial year. The reason being simply that---

(Loud consultations)

Mr. Speaker: Order, Members! If you do not want to hear this---

The Minister for Finance (Mr. Mwiraria): Mr. Speaker, Sir, the reason being that we do not have to start off the financial year with a pot full of money ready. We collect money and spend it as we move on.

Now, each week, and I think I have said it many a time in this House, we have a Committee that sits and shares whatever little we have collected between the Ministries, in order to keep the Government services running. What I intend to do, with respect to the CDF, is to put money in the accounts on a quarterly basis. After we have had enough time to collect money every quarter, I will put money into the accounts.

Mr. Speaker, Sir, let me also admit that we have a team of people in the Ministry of Planning and National Development, who are working around the clock to establish poverty indices for constituencies in Nairobi and North Eastern provinces. That is because according to the Act, 22 per cent of the funds are going to be shared out according to the poverty index of various constituencies. That is intended to give more money to poorer constituencies and less to wealthier ones.

Mr. Speaker, Sir, I want to assure you that the exercise of making that possible is proceeding on very well. We shall get it done and the 22 per cent will be shared out fairly according to the ratios which will come out.

Mr. Speaker, Sir, let me conclude by saying that, today, we have very good communication systems. I will get a list of districts where the district accountants have not been co-operative. I will make sure that, by tomorrow morning, we have sent messages to them with copies to the Members of Parliament concerned, so that, at least, anyone with problems of opening an account can be sure that the instructions have been received for the second time; to make sure that we facilitate the operations of the CDF fully.

Mr. Speaker, Sir, may I conclude by appealing to hon. Members to make sure that, since this is the first time we have funds to take right to the grassroots in our constituencies, those funds should be put to good use! They should be used to tackle projects which will help alleviate poverty.

Thank you, Mr. Speaker, Sir.

Mr. Mwenje: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. Mwenje?

(Loud consultations)

Order, Members! By the way, as you raise your points of order, it is actually disheartening to note that, out of 210 constituencies, only 86 have opened their accounts!

Mr. Mwenje, please, proceed!

Mr. Mwenje: Mr. Speaker, Sir, the Minister promised that for those who have opened their accounts - that is the 86 which have been mentioned - the money will be in the accounts either by 12.30 p.m. today or latest, tomorrow at 12.00 noon! That was in another forum! Does he still stand by that? Is that going to happen?

(Applause)

Mr. Sungu: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! If I may wonder aloud on this; I do not want to take time on this!

An hon. Member: There will be no recess!

Mr. Speaker: Even if there will be no recess, there is no problem! Please, do not threaten! Now, the thing is this: If you were meeting the Minister this morning to, first, set up a national committee which did not exist and, secondly, to recruit a national executive officer, how would it be practical to expect the money to be there by mid-day?

Hon. Members: He promised! He promised!

Mr. Speaker: Order, Members! We will not debate it now! I think you have heard the Minister!

Hon. Members: No recess! No recess!

Mr. Speaker: If there are threats that there will not be a recess, then we do not even need to talk about it! Let us proceed with the business of the House! All right?

Next Order!

Mr. Sungu: On a point of order, Mr. Speaker, Sir. I just want one clarification from the Minister. I want to thank him for coming up with that Statement, without being asked by any hon. Member to do so. On Monday---

(Loud consultations)

Mr. Speaker: Mr. Sungu, we cannot hear you! There is too much noise!

Mr. Sungu: I agree with you, Mr. Speaker, Sir, but let me go on. On Monday, I was at the

Kisumu District Accountant's office! I know that the account for Kisumu Town West Constituency has been opened. The lady accountant there, by the name of Wasilwa, refused to open the account claiming that there must be a circular from the Ministry of Finance giving them instructions to open the account!

(Applause)

Mr. Speaker, Sir, the good lady produced a red book like this one and quoted a certain number--- That is the Government Financial Management Regulations and Procedures which require the Treasury to issue a circular. Could the Minister issue that circular to all district accountants, so that those accounts could be opened? That way, there will be no discrimination in the matter. That should be done as soon as possible.

Mr. Speaker: Very well! Proceed, Mr. Billow! Then, I will call the Minister!

Mr. Billow: Mr. Speaker, Sir, mine is with regard to my Question on Wednesday last week, which you allowed me to---

Mr. Speaker: I thought it was satisfactorily answered! Is that adequate?

Mr. Minister, can you respond to Mr. Gor Sungu?

The Minister for Finance (Mr. Mwiraria): Mr. Speaker, Sir, I will check and if there is no such circular, I can assure the hon. Members that I will bring a copy of the circular issued by tomorrow, at the start of Parliament.

Mr. Speaker: Very well! Mr. Billow now!

An hon. Member: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Sorry! I have gone over!

POINTS OF ORDER

ADDITIONAL INFORMATION TO QUESTIONS NOS.678 AND 387

Mr. Billow: Mr. Speaker, Sir, with regard to my Question on Wednesday, last week, I sought to know the nature, terms and conditions which led to the external debts as listed in the Printed Estimates. I was, specifically, interested in the Universal Satspace and Silverson-Forensic debts. The Minister undertook to bring---

Mr. Speaker: Sorry, Mr. Billow! Just a moment! Will you sit down? The Assistant Minister was here ready to do exactly that! Please, must you ask again when he is ready? Where is Mr. Katuku? Can you put those documents there?

The Assistant Minister for Finance (Mr. Katuku): Mr. Speaker, Sir, last week, I promised to lay on the Table additional information regarding Question No.678 and Question No.387. I, hereby, lay them on the Table.

*(Mr. Katuku laid the
documents on the Table)*

Mr. Speaker: Very well. Dr. Galgallo, what is it?

Dr. Galgallo: Mr. Speaker, Sir, is the Minister for Health is ready to give me a Ministerial Statement on some expired medicines that found their way to our health facilities?

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, I do have the facts, but I do not have a written Ministerial Statement. So, I would suggest that the hon. Member waits until tomorrow when I will have the written Ministerial Statement ready.

Dr. Galgallo: Mr. Speaker, Sir, if she has the facts, then there is no need of a written Ministerial Statement.

Mr. Speaker: Do you want to issue the written Ministerial Statement tomorrow?

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, I can give a written Ministerial Statement tomorrow, but I do have the facts about the Statement the hon. Member asked for.

Mr. Speaker: So, do you want to give it out now?

The Minister for Health (Mrs. Ngilu): Yes, Mr. Speaker, Sir.

Mr. Speaker: All right. Proceed!

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, the company that supplied us with drugs in the month of December, 2003 to March, 2004 was contracted by the Danish Development Authority which offered to donate drugs to dispensaries and health---

(Loud consultations)

Should I continue?

Mr. Speaker: There is nothing I can do!

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, I will issue a written Ministerial Statement tomorrow.

(Loud consultations)

Mr. Speaker: Order, Members! Order! My voice is growing hoarse calling for order! I do not intend, in fact, to break my voice any further than this! So, make up your minds whether you want to hear one another or not.

Dr. Galgallo: Mr. Speaker, Sir, I do not know why hon. Members are anxious. So, I will wait until tomorrow for the written Ministerial Statement because I want to know what happened.

Mr. Speaker: Fine, let us have it tomorrow.

Mr. Kirwa, proceed!

MINISTERIAL STATEMENT

FOOD SITUATION IN THE COUNTRY

The Minister for Agriculture (Mr. Kirwa): Mr. Speaker, Sir, I wish to make a Ministerial Statement on the food situation in the country and related issues as requested by hon. Ndambuki.

(Loud consultations)

Mr. Speaker: Order, Members! Order! Mr. Kirwa, I am not too sure whether you will be heard. Do you think you will be productive?

Hon. Members: No!

The Minister for Agriculture (Mr. Kirwa): Mr. Speaker, Sir, I will be on record!

Mr. Speaker: You are right. I agree with you. Let it be on record!

The Minister for Agriculture (Mr. Kirwa): Mr. Speaker, Sir, with regard to wheat and rice, the country is not self-sufficient. The country is expected to realise normal supply from production and imports of the same. Supply of beans is expected to remain adequate since consumption is supplemented by other pulses.

A shortfall of around 4 million bags of maize is anticipated during the period between July and October before the harvest of the main crop begins in early November, 2004. The purchases from the long rains' harvests by the National Cereals and Produce Board (NCPB) have commenced in some parts of Rift Valley Province. Maize buying in other areas will commence immediately the crop is ready for marketing. The Government currently has about one million bags of maize of which 600,000 bags of maize are for SDR and 400,000 bags are for purposes of famine relief.

Mr. Speaker, Sir, the most affected areas include the entire North Eastern and Coast Provinces. Also affected are parts of Rift Valley Province especially Turkana, West Pokot, Samburu, Kajiado and Narok Districts; most of the Eastern Province, more so Kitui, Marsabit, Mwingi, Mbeere, Moyale, Isiolo and Tharaka Nithi Districts; and pockets of Nyanza and Central Provinces.

Mr. Speaker, Sir, about 3.3 million people including 1.5 million children in the mentioned areas are most affected and require food aid for at least six months, that is, from August, 2004 to January, 2005. In case the worst happens and the 2004 short rains fail to start, then, the number will rise to 4.4 million.

So, far the Cabinet has approved importation of 4 million bags of maize, duty-free, in order to cover for the shortfall. Maize imported by the Government will start arriving into the country in the course of the month. In this regard, therefore, the Government has put up an inter-Ministerial Committee that will monitor the imports. Maize imports by NCPB will be conducted transparently and in strict compliance with the existing Government regulations governing such activities. Every year, limited quantities of maize flow into Kenya from Tanzania. This is what happened in the last financial year when 1.1 million bags of maize were exported to Tanzania and about 110,000 bags of maize were bought officially by the Tanzanian Government from the Kenya Government.

Mr. Speaker, Sir, all other issues have been taken into consideration and there is no cause for alarm.

(Loud consultations)

Mr. Speaker: Order! Order, Members! It is now a few minutes past 4.00 p.m. and we must get to business now.

I have directed for the last three weeks that all Sessional Committees be appointed. I do not know whether they are ready. All I know is that the old Committees will not operate. New ones must be created.

POINT OF ORDER

FORCED DELIVERY OF TEA LEAF
TO KIANCHORE TEA FACTORY

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. I rise to seek an urgent Ministerial Statement from the Minister for Agriculture with regard to collection of green tea leaves from

farmers in my constituency and in the following buying centres: Kemberana, Bobaracho, Nyangabaro, and Isecha. Farmers in these centres are being forced to deliver their tea to Kianchore Tea Factory against their wishes because they would prefer to deliver their tea to Tombe Tea Factory until the tea factory at Marani is constructed.

Mr. Ndambuki: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: No, Mr. Ndambuki! Order, Mr. Ndambuki!

Hon. Members, there is a Supplementary Order Paper which contains the proposed amendments to the Constitution of Kenya Review (Amendment) Bill. It also contains the re-arrangement of business for today.

PROCEDURAL MOTION EXTENSION OF SITTING HOURS

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Orders No.17(1) and (2), this House orders that the sittings of the House be extended as follows:

Wednesday 4th August, 2004, from 6.30 p.m. to 8.00 p.m.;

Thursday 5th August, 2004, from 6.30 p.m. to 8.00 p.m.

Mr. Speaker, Sir, I am bringing this Motion to the House because, as it is already shown in the Order Paper, there is quite a lot of business that has to be transacted before the House goes for recess. As hon. Members are aware, according to our approved programme, this House is supposed to go on recess tomorrow.

Mr. Speaker, Sir, it will look much better if, indeed, we could actually be able to address some of this very substantive business today and, indeed, tomorrow. It should also be appreciated that once we do go on the long recess, this House will not reconvene until the first week of October, 2004.

So, there are three businesses of very fundamental importance; one of them, of course, is the Vote which is going to be coming shortly under Motion No.8. The other one which is extremely important has to do with the Constitution of Kenya Review (Amendment) Bill, and no doubt, the importance of the Constitution is so great that it will be very useful if this House could deliberate on this particular Bill as it will push us much closer to addressing this very fundamental issue of the Constitution.

There is also a Motion on the Adoption of Sessional Paper No.4 on Energy.

I wish to---

(Loud consultations)

Mr. Speaker: Order, Members! I am sorry, Prof. Saitoti, but Order No.10 in the Supplementary Order Paper has changed! So, it is not the Sessional Paper on Energy; it is the Motion by the Chairman of the Public Accounts Committee in respect of the Special Audit Report on the Procurement of Passport Issuing Equipment. That is what appears there.

Proceed!

The Minister for Education, Science and Technology (Prof. Saitoti): Thank you very much, Mr. Speaker, Sir, for drawing my attention to the Supplementary Order Paper. What you have just said underlines the importance of the fact that we do need extra hours today and tomorrow to address those issues which have to do with the Public Accounts Committee Report and, of

course, the Bill on the Constitution.

With these few remarks, I do beg to move.

Mr. Speaker: Is there anybody to second this Motion? Maybe, you should make a formal secondment.

The Minister for Lands and Housing (Mr. Kimunya): Mr. Speaker, Sir, I beg to second this Motion and call upon hon. Members to just make some extra sacrifice so that we can work harder and finish all this business.

(Loud consultations)

Mr. Speaker: Order! Order, Members! Order!

(Mr. Billow stood up in his place)

Mr. Billow, for heaven's sake, please, you are not doing my job!

Hon. Members: Out! Out!

(Question proposed)

Mr. Speaker: What have you got to say, Mr. Billow?

Mr. Billow: Thank you, Mr. Speaker, Sir. The Members of Parliament have been steadfast and committed to the subject of the two main businesses for which the extension of this House is being sought. The extension is being sought---

Mr. Speaker: Order! You cannot go to the other business! The simple issue here is this: Do you want an extension or not?

Hon. Members: No! No!

Mr. Billow: I am coming to that, Mr. Speaker, Sir.

Mr. Speaker: You had better say so now! I want to dispose of it. I do not want to take time on it!

Mr. Billow: Mr. Speaker, Sir, I stand to object or to oppose the extension that is being sought by the Government, and I want to give the grounds, if you would allow me in a minute.

(Applause)

Mr. Speaker: Five minutes is the maximum!

Mr. Billow: That is very generous, Mr. Speaker, Sir. Hon. Members have laboured for the last one year on the subject of the constitutional review process and corruption in this country. If anything, the Government---

Mr. Speaker: Why do you not wait? That is in the next Order.

Mr. Billow: I just have to---

(Loud consultations)

Mr. Speaker: Order! Order! Order, Members! The next Order, Order No.9, is about the review. You can talk about that issue during the debate on that Order. You are anticipating debate!

Mr. Billow: No, Mr. Speaker, Sir! The Mover gave the reasons for the extension, and the reasons were because of the extensions!

(Applause)

So, I have to give the reasons why I do not agree with the extension. My argument is this: That the hon Members do not see why the Government deems it necessary, at this late hour when the House is due to adjourn tomorrow, to ask for an extension of the House to discuss very crucial matters that should have been brought to this House long before. It is for these reasons that we think it is not appropriate or proper for the Government to push the hon. Members to sit until late in the night simply to pass or to discuss resolutions, and the risk is that when hon. Members are tired, at 8.00 p.m. at night, people are exhausted and even other hon. Members have left, the aim is to push through those Motions or Bills that the Government has been dragging its feet on all this time. It is on those grounds that I believe that this is not appropriate and I stand to oppose the extension of the House.

Mr. Speaker: Order, Members! I will now dispose of this issue. By the way, what I am doing is under Standing Order No.45. I am satisfied that there is no further ground for discussing this issue, so I will dispose of it.

(Loud consultations)

Order! Order! I have been very patient with hon. Members who have completely refused to maintain order the whole of this afternoon for one reason: That we anticipate that there will be very contentious votes. I have restrained myself from expelling hon. Members. I think my patience is running out now! So, I am sorry for anybody or any side which, from now on, becomes disorderly. Do not blame me!

(Question put and agreed to)

Hon. Members: Division! Division!

Mr. Speaker: Order! It is your right to have a Division. If you demand it, you will have it. You have the numbers. Ring the Division Bell.

(The Division Bell was rung)

Order, hon. Members! Take your seats.

(Mr. Boit remained standing)

Mr. Boit, why are you standing over there? You do not have anything to do? The House is still duly constituted. Even when a Division is called, the rules of the House still apply! The Mace is still in its usual position. So, let us respect our rules.

Will you draw up the Bar and close all the doors? The tellers for the Ayes will be Mr. Alfred Nderitu and Mr. Kipchumba. The tellers for the Noes will be Mr. Keter and Mr. O.K. Mwangi.

(Loud consultations)

Order, hon. Members! Quite frankly, we cannot go on like this! There is noise in front of me and I do not even know what some hon. Members are doing at the back. Let me just make the

following remarks for your consideration. Unless you change for the better and obey the rules of the House, and hold yourselves in dignity, the Ninth Parliament may end up in the annals of history as probably the worst. So, please, ponder over that.

You know the rules. Those for the Ayes will go to my right. Those for the Noes will go to my left. You have no obligation to vote. If you do not want to vote, record your name with the Clerk-at-the-Table. You have a specified time in which to vote; a maximum of 15 minutes. If at the end of that time you have not voted, you will forfeit your right to vote. The time begins to run now!

DIVISION

(Question put and the House divided)

(Question carried by 104 votes to 82)

AYES: Messrs. Akaranga, Angwenyi, Arungah, Bifwoli, Ms. Chelaite, Messrs. Dzoro, Gachagua, Gitau, Githae, Gumo, Kagwe, Kagwima, Kaindi, Kamama, Kamanda, Karaba, G.G. Kariuki, M. Kariuki, Ms. Karua, Messrs. Karume, Katuku, Kembu-Gitura, Khamasi, Prof. Kibwana, Mrs. Kilimo, Mrs. Kihara, Messrs. Kimathi, Kimunya, Kingi, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, J.K. Koech, Kombo, Konchella, Kones, Dr. Kulundu, Mr. Kuria, Prof. Maathai, Dr. Machage, Messrs. E.K. Maitha, Manduku, Manoti, Masanya, Metito, Ms. Mbarire, Messrs. Mbau, Mganga, Michuki, Miriti, M'Mmkindia, A.M. Mohamed, A.H.M. Mohamed, A.C. Mohamed, Muchiri, Mrs. Mugo, Messrs. Muiruri, Mukiri, Mungatana, Munya, Munyes, Muriithi, Muriuki, Muriungi, Dr. Murungaru, Messrs. Murungi, Mwakwere, Ms. Mwau, Messrs. Mwanicha, O.K. Mwangi, Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ms. Ndung'u, Mr. Ndwiga, Mrs. Ngilu, Messrs. Ngozi, Ochilo-Ayacko, ole Ntimama, Nyachae, N. Nyagah, J. Nyagah, Obwocha, Onyancha, Oporo, Rai, Prof. Saitoti, Sugow, Messrs. Shitanda, Tarus, Mrs. Tett, Messrs. Arap Too, Tuju, Twaha, Waithaka, Wambora, Wamwere, Wanjala, Wekesa, Were and Wetangula.

The Tellers of Ayes: Messrs. Nderitu and Kipchumba.

NOES: Ms. Abdalla, Dr. Ali, Dr. Awiti, Messrs. Bahari, Bett, Billow, Boit, Cheboi, Chepkitony, Choge, Dr. Galgalo, Dr. Godana, Messrs. Ivuti, Kajwang, Kamotho, Dr. Keino, Messrs. Kenyatta, Keter, Dr. Khalwale, Mr. Khamisi, Dr. Kibunguchy, Messrs. C. Kilonzo, M. Kilonzo, Kimeto, Kipchumba, S.C. Koech, Kombe, Korir, Koros, Kosgey, Maj. Madoka, Messrs. Magugu, M.M. Maitha, L.B.M. Maitha, Prof. Mango, Messrs. Marende, Midiwo, H.M. Mohamed, Moroto, J.M. Mutiso, Muturi, Mwandawiro, Mwanzia, Mrs. Mwendwa, Messrs. Ndambuki, Ndolo, Ngoyoni, Maj-Gen Nkaisserry, Mr. Ntutu, Eng. Nyamunga, Rev. Nyagudi, Dr. Oburu, Messrs. Ogur, Ojaamong, Dr. Ojiambo, Messrs. Okemo, Okundi, Prof. Olweny, Messrs. Oloo-Aringo, Omamba, Omondi, Prof. Oniang'o, Messrs. Oparanya, Osundwa, Owino, Rotino, Ruto, Salat, Sambu, Sang, Samoei, Serut, Shaaban, Dr. Shaban, Messrs. Shakombo, Sirma, Sudi, Sungu, Wamunyinyi, Wario and Weya.

Tellers of the Noes: Messrs. Keter and O.K. Mwangi.

ABSENTION: Mr. D. Musila

Mr. Speaker: Next Order!

MOTION

APPROVAL OF NOMINATION
OF KACC DIRECTORS

THAT, pursuant to Section 8(3) of the Anti-Corruption and Economic Crimes Act (No.4) of 2003 and on the recommendation of the Kenya Anti-Corruption Advisory Board, this House approves the following nominations to the Kenya Anti-Corruption Commission:-

Hon. Justice A. Aron Ringera	- Director of		
		the Kenya Anti-	
		Corruption	
		Commission	
Dr. Julius Tangu Rotich	- Assistant		Director, Finance
	and	Administration	
Dr. John Parmenas Mutonyi	- Assistant	Director,	Investigations
	and Assets	Recovery	
Dr. Smokin C. Wanjala	- Assistant	Director,	Research, Policy
	and Preventive	Services	
Ms. Fatuma Sichale	- Assistant	Director, Legal	Services

*(The Minister for Justice and
Constitutional Affairs on 29.7.2004)*

*(Resumption of Debate interrupted
on 29.7.2004)*

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, I want to urge my colleagues on both sides of the House to vote in support of this Motion and demonstrate that, as a House, we are united in the fight against corruption.

This Motion is a litmus test on whether this House is committed to the fight against corruption or not. Hon. Members from both sides of the House have spoken both in this House and outside and shouted very loudly against corruption in this country. Let us demonstrate our commitment by creating a powerful Anti-Corruption Commission by appointing the Director and Assistant Directors.

(Applause)

With those few remarks, I beg to move.

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

Mr. Speaker: Order, hon. Members! You cannot divide on nothing!

(Question put and agreed to)

Hon. Members: Division! Division!

*(Several hon. Members stoop up
in their places)*

Mr. Speaker: Are you claiming for a Division?

Hon. Members: Yes!

Mr. Speaker: All right but do you have the numbers? Order! This has become part of our lives now and being so, we must continue to live and, therefore, we must continue to divide. Therefore, a Division having been requested and enough numbers having been acquired, I do order that the Division Bell be rung for five minutes.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question carried by 114 votes to 74)

AYES: Messrs. A.C. Mohamed, Akaranga, A.M. Mohamed, Angwenyi, Arungah, Bahari, Bifwoli, Boit, Mrs. Chelaite, Messrs. Dzoro, E.K. Maitha, Gachagua, G.G. Kariuki, Gitau, Githae, Gumo, J.K. Koech, Kagwe, Kagwima, Kaindi, Kamama, Kamanda, Karaba, Ms. Karua, Messrs. Karume, Katuku, Kembu-Gitura, Dr. Kibunguchy, Prof. Kibwana, Mrs. Kilimo, Mrs. Kihara, Messrs. Kimathi, Kimeto, Kimunya, Kingi, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, Kombo, Konchella, Kones, Dr. Kulundu, Messrs. Kuria, Leshore, Lesirma, Prof. Maathai, Dr. Machage, Messrs. Magugu, M.A. Mohamed, Dr. Manduku, Messrs. Manoti, Maore, Masanya, Metito, Ms. Mbarire, Messrs. Mbau, Mganga, Michuki, Miriti, M. Kariuki, M'Mkindia, Moroto, Muchiri, Mrs. Mugo, Messrs. Muiruri, Mukiri, Mungatana, Munya, Munyes, Muriithi, Muriuki, Muriungi, Dr. Murungaru, Messrs. Murungi, Mwakwere, Mwanacha, Ms. Mwau, Messrs. O.K. Mwangi, Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ndung'u, Messrs. Ndwiga, Ngozi, ole Ntimama, Nyachae, N. Nyagah, J. Nyagah, Obwocha, Onyancha, Oparanya, Opore, Rai, Prof. Saitoti, Messrs. Sambu, Serut, Shitanda, Maj. Sugow, Mr. Tarus, Mrs. Tett, Mr. Too, Tuju, Twaha, Waithaka, Wambora, Wamunyinyi, Wamwere, Wanjala, Dr. Wekesa, Messrs. Were and Wetangula.

Tellers of the Ayes: Messrs. Kipchumba and Nderitu.

NOES: Ms. Abdalla, Dr. Ali, Dr. Awiti, Messrs. Billow, Cheboi, Chepkitony, Choge, Dr. Galgallo, Dr. Godana, Messrs. Ivuti, Kajwang, Kamotho, Dr. Keino, Messrs. Kenyatta, Keter, Dr. Khalwale, Mr. Khamisi, Messrs. M.C. Kilonzo, M. Kilonzo, J.K. Kilonzo, Kimeto, Kipchumba, S.C. Koech, Kofa, Kombe, Korir, Koros, Kosgey, Maj. Madoka, Messrs. M.M. Maitha, L.B.M. Maitha, Prof. Mango, Messrs. Marende, Midiwo, H.M. Mohamed, Musila, J.M. Mutiso, Muturi, Mwandawiro, Mrs. Mwendwa, Messrs. Ndambuki, Ndolo, Ngoyoni, Maj-Gen. Nkaijerry, Ntutu, Eng. Nyamunga, Rev. Nyagudi, Dr. Oburu, Messrs. Ogur, Ojaamong, Dr. Ojiambo, Okemo, Eng. Okundi, Mr. Oloo-Aringo, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Osundwa, Owino, Rotino, Dr. Rutto, Messrs. Salat, Sang, Samoei, Shaaban, Dr. Shaban, Messrs. Shakombo, Sirma, Sudi, Sungu, Wario and Weya. Tellers of the Noes: Messrs. O.K. Mwangi and Mr. Keter.

ABSTENTIONS: Messrs. Bett, Ochilo-Ayacko and Mwanzia.

Mr. Speaker: Order, hon. Members! Let us now move on to the next Order! I am sorry; open the Bar and all the doors!

BILL

Second Reading

THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

*(The Minister for Justice and
Constitutional Affairs on 3.8.2004)*

*(Resumption of Debate
interrupted on 3.8.2004)*

Mr. Speaker: Dr. Oburu, you were on the Floor! Proceed, Dr. Oburu!

Dr. Oburu: Mr. Speaker, Sir, I was contributing to this Bill yesterday and I was talking about consensus. If we recall, I made a statement yesterday to the effect that there are people who believe that consensus only means agreeing with them. If you want to know that, that is true---

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): On a point of order, Mr. Speaker, Sir. Given the trend which we have adopted in this House and considering that we really debated this Bill last week and even my brother, Dr. Oburu, had ample time to contribute to it, could I be in order to request the Chair to call upon the Mover to reply?

(Applause)

Mr. Speaker: Order, hon. Members! I think from yesterday, there have been claims of closure of this Bill. I think I am inclined to let Dr. Oburu contribute for another five minutes. That may be renewed if you please.

Dr. Oburu: Mr. Speaker, Sir, I will accept your ruling and contribute to the Bill for five minutes, although I had an extra 15 minutes.

To prove my point that some people only believe in consensus when a decision is taken in their favour, you will notice that there was a group of less than 100 hon. Members of Parliament who called themselves "consensus". They were less than half of the hon. Members of this House. When they came back, they drafted a Bill which they called a "Consensus Bill". How can it be consensus when less than half of the Members of this House attended the so-called "consensus" meeting in Mombasa? I do not want to continue for long but I would like to propose the way forward.

Mr. Speaker, Sir, If we are genuine that we want to build true consensus for this process to be concluded and be acceptable to the majority of Kenyans, we should have recalled Bomas IV to re-examine the issues which we call "contentious". This is because the Act which is currently in place states exactly how consensus has to be reached. If we want consensus, we should follow the law which is there, instead of coming up with amendments when the process is almost 90 per cent complete.

If this is not possible, then, perhaps, any amendment which we should suggest here should bring the Bomas draft because we have enough experts at the Commission. They should draft a Bill and bring it directly before Parliament, so that Parliament would then either reject or accept it as a whole. This is because even the amendments which are being presented here are a complete negation of what has already been passed.

Mr. Speaker, Sir, some of the amendments, for instance, on Section 27, subsection (1) is calling for the deletion of that subsection (1) completely. That particular subsection is only taking about the Bomas process which is already concluded. Now, how can we delete a process which is

already completed? That means that we are actually deleting and negating everything that has been done and replacing it with our own views of how a constitution should have been done. We had that opportunity to make this Constitution at the very beginning. I do not really understand why, at this late hour, we are even proposing to delete, for instance, Subsection 27(2). It is only talking about the composition of the Bomas conference. Why should we now delete a subsection which is only dealing with the composition of a conference which has almost concluded its work?

Subsection 37(3) is only talking about the Chair of the Commission. These are processes which are already complete. I, therefore, even doubt whether some of these suggestions about amendments were done genuinely.

Without going too much into details I would only like to caution my friend, Mr. Samoei, that, perhaps, he is dealing with people he might not be knowing very well. These are people who can renege on a document which they signed under oath, and yet, they ask people to trust them. My friend, Mr. Samoei, should tread carefully!

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

Dr. Galgallo: Thank you, Mr. Speaker, Sir, for giving me---

Hon. Members: Call the Mover!

Mr. Speaker: I do not just call the Mover! There has to be an application!

Dr. Galgallo: Mr. Speaker, Sir, in any case, Mr. Murungi will give me two minutes to support him!

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): On a point of order, Mr. Speaker, Sir. I think there is nothing new that we will hear! May I, therefore, move that the Mover be now called upon to reply?

Mr. Speaker: Well, I suppose you should make the decision now. I will put the Question.

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

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, I beg to reply.

In replying, I would like to refer the hon. Members to the Supplementary Order Paper which was published this afternoon, and especially the amendments which are contained from page 408 to 412 of the Order Paper. It is true, we said yesterday that at the Parliamentary Select Committee on the Constitution agreed on the amendments to this Bill. However, the amendments which are contained in the Order Paper are not exactly what we agreed on. So, I am just pointing out this because I know we will be dealing with them at the Committee Stage. I have noticed three errors.

With regard to Clause 5, subsection 27(1), the agreement was that the Parliamentary Select Committee would, indeed, identify and recommend contentious issues to the National Assembly, but the National Assembly would approve those contentious issues. So, the approval of the National Assembly has been left out.

In Clause 5, subsection 27(3) on page 409, again, on the contentious issues, it says:-

"Within 30 days after the National Assembly submits the Draft Bill to the Attorney-General, the Attorney-General shall publish a proposed new Constitution based on the Draft Bill and amendments as recommended on the contentious issues."

Again, it is necessary to point out, through this amendment, that the agreement was that the proposal should be by the Parliamentary Select Committee, but approved by Parliament.

Mr. Speaker, Sir, the last mistake is contained at page 410 which has introduced a

completely new clause, that is, the amendment to Clause 5 which says---

Mr. Speaker: If I may just help you on that, this is actually a clause that was introduced by Mr. Samoei, as Mr. Samoei, and not as a Committee, and he is entitled to do that.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, indeed, it is the right of every hon. Member to introduce any amendment he or she feels fit. However, it has to be shown that it is an amendment by Mr. Samoei and not by the Committee.

So, with that clarification, we do not have any problem. I would like to thank all hon. Members who have supported this Motion. We shall now clearly demonstrate to Kenyans that we are not a selfish lot who only come together when we are talking about our own salaries. Indeed, we do put the people of Kenya first.

Mr. Speaker, Sir, in addition, this Parliament, indeed, wants to put down a foundation that will lay a firm basis for a new democratic and prosperous Kenya. So, I believe with the passage of this Bill, the review process will now move forward to a successful conclusion.

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

(Applause)

(Question put and agreed to)

Mr. Speaker: Next Order!

(Loud consultations)

Order! I invite attention of all hon. Members to the Supplementary Order Paper.
Proceed, Mr. Omingo!

MOTION

ADOPTION OF PAC SPECIAL REPORT ON PROCUREMENT OF PASSPORT ISSUING EQUIPMENT

Mr. Omingo: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Public Accounts Committee on Special Audit Report on Procurement of Passport Issuing Equipment by the Department of Immigration -Office of the Vice-President and Ministry of Home Affairs laid on the Table of the House on Tuesday 6th, July, 2004.

Mr. Speaker, Sir, this Report was compiled at the instigation of this House after establishing that there was an issue regarding the passport scandal involving the Office of the Vice-President and the Ministry of Home Affairs. The Membership of that Committee was:-

The hon. J.O. Magara - Chairman

The hon. U.M. Kenyatta, MP

The hon. Archbishop S. Ondiek, MP

The hon. J.L. Kipchumba, MP

The hon. E. Ethuro, MP

The hon. B. Mganga, MP

The hon. Dr. J. Ojiambo, MP

The hon. W. ole Ntimama, MP

The hon. S. Ojaamong, MP
The hon. K. Wamwere, MP
The hon. K. Billow, MP

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, on behalf of the Public Accounts Committee (PAC), and pursuant to the provisions of Standing Order No.147, I take this opportunity to present to the House the Report and recommendations of the PAC on the special audit of the procurement of passport issuing equipment by the Department of Immigration, Office of the Vice-President and Ministry of Home Affairs.

Mr. Deputy Speaker, Sir, the Committee commenced its sittings for the special audit report on 24th May, 2004. It held 14 sittings in which officers from the Ministry of Finance, Office of the President, Office of the Vice-President and Ministry of Home Affairs and the Central Bank of Kenya (CBK) appeared before the Committee to respond to queries raised by the Controller and Auditor-General for the special report thereof.

All the witnesses appeared before the Committee when asked to do so, except - and I emphasize this fact - the Minister for Finance! The Committee Members critically scrutinised both oral and written submissions very carefully. Most of the witnesses were co-operative and gave vital information to the Committee. That made the production of this report possible. The information assisted the Committee in reaching its recommendations.

Mr. Deputy Speaker, Sir, the PAC consisted of 11 Members, whose names I have just read. It also important to note that the Mr. William ole Ntimama and Mr. Boniface Mganga ceased to be Members of this Committee on 30th June, 2004, upon being appointed Minister and Assistant Minister, respectively, in the new Government.

Mr. Deputy Speaker, Sir, Standing Order No.147(1) states as follows:-

"There shall be a Select Committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet public expenditure, and of such other accounts laid before the House, as the Committee may deem fit.

The Public Accounts Committee shall consist of a Chairman who shall be a Member who does not belong to the parliamentary party which is the ruling party and not more than ten Members who shall be nominated by the House Business Committee to reflect the relative majorities of the seats held by each of the parliamentary parties in the National Assembly, at the commencement of every session."

Mr. Deputy Speaker, Sir, Standing Order No.147(6) states:-

"The minutes of the proceedings of the Public Accounts Committee shall be brought and laid on the Table of the House with the report of the Committee."

The minutes of the Special Audit Report are, therefore, annexed and attached. The verbatim report of the Committee's sittings is also available. All the decisions made by the Committee were arrived at by consensus by all the Members sitting. However, it is important to note than one Member of the Committee, that is Mr. Uhuru Kenyatta, did not attend any of the sittings of the Committee, and he was not involved in the production of this Report.

The Committee presents and recommends the Report to the House for debate and adoption. The Committee urges the House to implement the recommendations contained in the Report as adopted by a resolution of this House. As Chairman of the Committee, it gives me great pleasure to

express and record my gratitude and appreciation to all Members for their dedication and commitment to the work of the Committee. The Members endured long sittings and sacrificed both leisure and the interests of their constituencies. The Committee also wishes to record its appreciation for the services rendered by the Controller and Auditor-General and the officials from the Treasury. Indeed, their commitment to duty has made the work of the Committee and the production of this Report possible.

Mr. Deputy Speaker, Sir, there are a few things that I would like to clear as regards the work of the Committee. I requested the indulgence of the Chair to allow me to put my papers the way I can be able to communicate. I wish to petition that you will allow me.

Mr. Deputy Speaker: But, Mr. Omingo, you know there are rules and we subscribe to those rules. So, you speak from where you are!

Mr. Omingo: Thank you very much, Mr. Deputy Speaker, Sir. I have to pay for the pain of being a Back-bencher! But one time, things will change.

Mr. Deputy Speaker, Sir, I need to clarify a few issues that were raised. It has been mentioned quite adversely that my Committee summoned some of the witnesses through funerals and the Press. I wish to state here that those facts are not true. My Committee wrote letters and they were properly served to the Minister - particularly the one who refused to appear before the Committee. The Minister, in his response, appreciated the fact that he received the letter from the PAC and, in total contempt of the Committee and disregard to the rules of the House, he declined to come! He stated in part:-

"I am not able to appear before you, but you can arrange for a meeting in my office to deliberate and I will avail information as you desire!"

That, in itself, was an abuse of the entire proceedings of this House. That is because the PAC actually works, and I believe, on behalf of this House. The Minister, in fact, indicated that PAC, as a Committee of this House, could be summoned to his office. That was in total breach of parliamentary regulations and procedures. I feel it is unfair for a senior Member of the Cabinet to allude to the fact that we were doing that work very casually.

Mr. Deputy Speaker, the letter from the Minister is annexed and attached to the Report. It is meant to show that he declined and, in fact, he did it on record! He actually signed the letter using his own hand. I want to clear the following: It is not the Committee that was doing those things through the Press. But it was actually the Minister who was playing to the gallery. Why am I saying that? The only time it appeared in the Press that the Minister did not appear before the Committee is when he had defaulted. As a matter of follow-up, the Press were probing and realised that the Minister for Finance did not appear before the Committee.

Every report then came out in the negative; that the Minister actually snubbed or declined to appear before the Committee. Therefore, there was no one side. There has not been a case that this Committee did its work in the manner suggested by the Minister for Finance; who refused to appear before the Committee. It is for this House to decide what to do. The essence of the matter is that the Committee was ridiculed and, under the Powers and Privileges Act, it is only the President of the Republic of Kenya who can fail to appear before the Committee or, alternatively, if any Member is given express permission by the President not to appear before the Committee.

Mr. Deputy Speaker, Sir, let me now go to substantive matters. I would like to state as follows: The Passport Tender deal is an issue that Kenyans have been watching. I am glad that we are mentioning this before we go on recess. Otherwise, it was only going to be left to the Press to interpret and give various meanings to the Report that the PAC presented.

Mr. Deputy Speaker, Sir, what has ailed this country is the casual manner in which people apply the resources of this nation. It is upon that basis that the Committee has given various

recommendations which we believe, at the end of time, and upon adoption by this House, their implementation will be critical.

I must say here without fear of contradiction that, most recommendations by PAC are actually given to the Attorney-General's Chambers for implementation. But, more often than not, they are shelved. As a result, you will find that company, that has been black-listed by PAC, being given lucrative contracts!

The Attorney-General (AG) did not make a follow-up. Most of the financial losses that we have incurred in this country arising from the so-called pending bills that were as a result of a deliberate move by the Attorney-General (AG) not to represent the Government in the court cases. Consequently, the so-called "cowboy contractors" would carry the day through vested interests by imposing additional costs computed on top of the principal sums. So, the cancer of pending bills will never heal if the legal arm of the Government is reluctant to take action.

Mr. Deputy Speaker, Sir, I must say, and I wish the AG was here today, that actually you can count the number of cases the AG has won in court since Independence and this does not shame him! It is either he is not there or he loses the cases in court. Even when he loses unfairly, he does not appeal. He chooses to throw in the towel and then the Government pays millions of shillings.

The tender on the acquisition of passport equipment was initiated by a method called selective tendering twice. In the first instance three companies failed to clinch the tender because "they never met technical specifications". Another tendering process was initiated and the companies failed because the Government changed its mind and said that it was enhancing the project and, therefore, it required a more qualified and competent contractor to do the job. This was done on 6th June, 2003. Someone in the Office of the Vice-President and Ministry of Home Affairs said that he had identified a donor to finance the programme. The irony of the matter is that after bids for the tender failed through selective tendering, the next thing on board was single sourcing. You can imagine that when the tenders were floated, they were evaluated, and dropped twice because of technical reasons and at last a single person was awarded the tender.

Mr. Deputy Speaker, Sir, as you will realise at the end of this Report, the winning contractors had foreknowledge of what the Government wanted. In fact, for your information, the contractor actually presented to the Government what it wanted before the Government requested them to do so.

Mr. Deputy Speaker, Sir, I want to talk about lease financing as I know it in accounting. If I give an example, lease financing means that if I go to Toyota Kenya and take a vehicle, I am supposed to deposit Kshs40,000. I am also supposed to pay the balance in instalments so that I own the car jointly together with Toyota Kenya. I will continue using the car which is an asset owned jointly by me and Toyota Kenya. I will be servicing the payments demanded of the vehicle in form of a lease. That is what is called lease financing. Upon the end of the lease payment, the vehicle reverts to me upon paying a token fee for transfer of the vehicle. Essentially, however, the vehicle is owned jointly between myself and the company leasing it out to me.

Mr. Deputy Speaker, Sir, with regard to the case about Anglo Leasing and Finance Company Ltd., the arrangement of lease financing in the context of public finance was totally up-side-down the reason being that the Government signed a contract and yet there was no asset for the Kenya Government to use in form of passport procurement documents. The Government paid a deposit and it continued to pay. One of the payments of about US\$3.7 billion was stopped when this scam came to the fore. What I am saying is that the Kenya Government acquired an imaginary asset and commenced paying for it using the taxpayers money. There was no money that came to this country to finance the project and no asset was acquired by the Government and yet it continued to pay by instalments for the imaginary asset.

We have evidence of promissory notes which were actually stopped at the Central Bank of Kenya. The same story applies to the Forensic Science Laboratories. When somebody stands up to say that he is ready to construct a fantastic Forensic Science Laboratory for the Government, it is similar to what I have just explained. The Government continued to pay lease money for nothing. You can actually lease an imaginary item and continue servicing the lease payment before you actually receive the item. However, the most ironical thing that Kenyans should know is that the long-term lease payments that were made for nothing had actually been converted into public debt. That is why I brought a Motion in this House seeking to interrogate and find out more about the public debt owed. Where were the long-term imaginary assets that our children will continue paying for? Through the Forensic Science Laboratory scam, we were going to incur a long-term debt. The money that was returned was paid through a scheduled long-term payment. Some hon. Members rejected the Motion I had brought in this House on public debt simply because they were partakers of the money or they intended to use the loophole to collect money illegitimately and at the expense of the taxpayers.

Mr. Deputy Speaker, Sir, it is high time our country was run in a business-like manner. We should cry for the children of this nation. We need to worry about our grandchildren who are going to, indeed, inherit these imaginary debts. Yesterday, when I was with the PAC team in Uasin Gishu District, we actually found out that the Government had paid out money without necessarily receiving its value. The Kenyan taxpayers continue to pay heavily. That pains me very much; as the Chairman of PAC. Before coming to this House I was a tax official. I pray God that he forgives me my sins because I collected revenue from Kenyans with the hope that it would be used to help Kenyans, but only to realise that the money was being thrown in the waste basket. Even if we want to shoot down this Motion, let us do it with reasons.

Mr. Deputy Speaker, Sir, it is ironical and it takes a very simplistic and basic mind to determine that there is fraud in this kind of arrangement. When we met the Permanent Secretary in charge of Governance and Ethics, he told us that even today the third party who signed this agreement is not known. It is not known how he looks like. It could just as well be another imaginary animal. Take for instance, you have an apple and you want to share it among three people. You either divide the apple into three parts or two parts. If you divide the apple into three parts and the third person to eat the apple is not present, the implication is that the apple has been shared between two people because the third person did not show up. It takes a very basic investigatory mind to determine that this was a pure hoax and the intent of this transaction, as evidence will show, was to defraud the Government of its revenue.

Mr. Deputy Speaker, Sir, three people signed the award of the contract; the Office of the Vice-President and Ministry of Home Affairs, the Treasury and the so-called financier. When the time for reckoning came, the third party disappeared into thin air and he could not be found. It is interesting to note that with regard to the third person, whoever it is, a letter was written on 30th March, 2004 to a Liverpool company. The Government claims that it does not know anything about the address that was used and yet it wrote to the same particular company in Liverpool. On 4th April, the letter was replied to in physical form and not through fax or e-mail. What does that tell you? If you were to move from here to London, given the time differential, it will take you at most two or three days to get that issue back, and for them to give you a response, it will take you maybe another two or three days to have that letter delivered physically.

In this particular transaction, the imaginary person; a person who was never there and who was never to be, but who could reply to a letter physically from Liverpool Street, which was actually a pretentious or an imaginary being--- Kenyans can make conclusions!

QUORUM

Mr. Wamunyinyi: Jambo la nidhamu, Bw. Naibu Spika. Kulingana na umuhimu wa Hoja iliyoko mbele ya Bunge hili, haifai tuendelee kama hakuna Wabunge wa kutosha.

Mr. Deputy Speaker: Very well! Clerk, how many Members are present? It is obvious that they are less than 30! Therefore, there is no quorum. I order that the Division Bell be rung. Members have just extended the time to 8.00 p.m. Where are they?

(The Division Bell was rung)

Mr. Deputy Speaker: Order, Members! We now have a quorum! Please take your seats so that we can proceed!

Proceed, Mr. Omingo!

Mr. Omingo: Mr. Deputy Speaker, Sir, it takes some magical power for a letter to leave this country on 30th June, and on 4th April, it is delivered to Liverpool Street not by fax or e-mail, but by hard copy. What does that tell you? Given the time differential, even if you were to charter a plane to go to Liverpool Street and have somebody to sign that letter so that you can bring it back alongside the promissory notes--- You will also remember that we did get evidence in physical terms of the promissory notes, which we insisted that they be cancelled, and they are here for the record. That letter came. That tells you that, that person is a mirage within the Government.

Mr. Deputy Speaker, Sir, when we talk about the financing agreement, there was a basic thing that was supposed to be done; the Government, through the Ministry of Finance, was simply supposed to carry out a diligence test in order to find out where the directors are, who they are, their physical address, the shareholding of the company and their competence to deliver on their mandate. Unfortunately, there is one quote that we got from a senior Government officer, and I quote:

"I did not do a diligence test simply because the same company was actually servicing the Government under the Office of the President".

That is how we actually discovered that there is another "animal" called the Forensic Science Laboratory.

Secondly, the signing of this document did reflect that the Minister authorized the Permanent Secretary in the Ministry of Finance to actually sign on his behalf. But the supply and financing agreement did have signatures of three people and, therefore, negating the entire delegation of authority, because it meant that the Minister delegated to his Permanent Secretary in the Treasury, but the other Permanent Secretary in the Office of the Vice-President and Ministry of Home Affairs did sign the document. In which case, the authority on the same record indicates that the two signed the document as officers delegated upon.

What are we saying? That there was supposed to be two separate agreements, one for supply and the other for financing. The Minister authorized delegation of authority on financing and, fortunately or unfortunately, the two Permanent Secretaries signed the documents as if they had delegated authority on both of them, which makes this agreement illegal and a nullity. This Government, through the Attorney-General, never actually provided for an exit clause, in which case, when there is a failure, then the Government is protected. Even now when the contract stands suspended, we are not too sure whether the Government is not going to be called upon to pay for damages, because there was no proviso for protecting the Government in terms of failure on its part.

Mr. Deputy Speaker, Sir, I am not a lawyer, but I want to believe that all these contracts, which were signed, were actually subject to the English law. In which case, if we failed, if anybody

was interested in taking us to court, what would happen is that we shall be picked up by Interpol and be prosecuted, for example, in the United Kingdom.

There are a few issues that I want to highlight. The letter I did mention is hereby attached; where the Minister declined to come on record. I had quoted it earlier, only that I did not have the document with me. But with your indulgence, I want to read one paragraph. The letter, written by the Minister for Finance says in part, "negating and insulting the power bestowed upon the Committee and, therefore, ridiculing the entire House." I did restrain myself a great deal, because when somebody imputes a wrong motive on your part on a matter which is supposed to be on the Floor of the House and takes the debate out there in order to provoke you--- I held my horses until today. That is the more reason why I will table this letter where the Minister was properly summoned but refused, and said the following in part:

"In the letter, you did not inform me what information the Public Accounts Committee will require from me. Although I am willing to talk to the Committee as a friend of the Committee, I would rather have the Committee visit me in my Ministry, where I will have access to all the required information".

The Minister summoned Parliament to his office! I wish to table these documents.

*(Mr. Omingo laid the documents
on the Table)*

Most importantly, there are several issues that we encountered when we were writing this Report. One, the Ministry did not have sufficient budgetary provisions for the project. Therefore, it was something that was drawn, passed and financed on a table. The most interesting thing is that this was a capital investment that required its Development Vote component to be approved by Parliament. Its amount was taken from Head 371, Items 185 and 220 of the Recurrent Vote of the office of the Vice-President and Ministry of Home Affairs. This is an anomaly again. It means that laws are in place but nobody cares to follow them because of what is in a project for anybody who is handling it.

I want to summarise in order to give time to my colleagues to contribute, and we make progress. The Committee also noted that even after it was discovered that there was no provision in the Estimates for the project, the amount needed was quickly converted into a public debt. This public debt is what worries all Kenyans because of its illegitimacy on our balance sheet.

There is this notion that money did not come back. We want to bury our heads in the sand and believe that money never came back. I want to state here that we actually received back money on the passport deal. Money which had been paid out came back. So, there is no question whatsoever of anybody trying to mislead Kenyans that we did not lose anything. There was fraud in the transaction. We received back Kshs95,361,269, but because the CBK had paid the money in foreign currency, when we received it back, there was a foreign exchange loss. Nobody should try to mislead Kenyans that there was no actual money sent out.

This Government, which I respect a great deal, cannot even avail proper information to its own spokesperson. The result was that it ended up ridiculing that young man from Dubai, who has a doctorate degree in communications; that there was no scam. In fact, he was given the wrong figures. Kenyans must understand that the Government is even dishonest with its own spokesperson. Money actually did come back!

There was a flaw in observing Section 5 of the External Loans Act, Cap.422, that states:-

"As soon as practicable, after a loan has been arranged or credit obtained under the Act, the Minister shall lay before the National Assembly a report on the transaction, specifying the parties and the circumstances giving rise to the transaction, the amount or value of the transaction, the currency in which the amount or value is expressed, the terms and conditions as to interest and repayment or payment and the

aggregate of the capital sum borrowed and the credit obtained under the Act up to the date of the report and any further information which he considers appropriate."

No report has been tabled here so far. So, we can see the flaws that can occur in our system.

Mr. Deputy Speaker, Sir, we also need to note that it was the responsibility of the Minister to bring that information to this House, but he never did so. The problem here is that the intent was actually wrong. The amount required was converted into a public debt to finance a capital item. That was the most unfortunate thing!

Mr. Deputy Speaker, Sir, it is also important to note that in as much as the Minister ran away from his responsibilities, but I also believe that somebody may have been misled to do things. I wish we had information from the Minister who I have tremendous respect for. I believe that he may have done this under pressure. Unfortunately, we never had any information from him. In fact, in our final recommendation, we said that we were not able to know how much information the Minister for Finance had before he signed the documents. Suffice it to say, having had nothing to rely on, the only proper assumption was this clause we call precarious liability. This means that the principal is actually liable for the conduct of the agent. That is the only unfortunate thing about this. However, I am sure that if we had the Minister's side of the story, things would have been different.

Mr. Deputy Speaker, Sir, there are also issues of transactions that were stopped before they were incurred. There are the promissory notes that we received and cancellations to that effect. There is also a payment advice that was intercepted at the Central Bank of Kenya (CBK), which means, had this issue not been brought to the fore, Kenyans would still be paying these debts which are actually a fraud. I would like to confirm here that the Government cancelled the contract and we received the promissory notes, which came in hard copy. We also had an opportunity to see them. However, nobody wanted to tell us who handed them over to the Ministry.

Mr. Deputy Speaker, Sir, I would like to briefly take this House through the chronology of events that led to this transaction. I would like to refer the House to this letter. It says:-

"On 30th March, 2004, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs wrote to Anglo Leasing Finance Limited to commence implementation of the project. On 2nd April, 2004, the Director of Anglo Leasing and Finance Company acknowledged receipt of the letter from the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs."

Mr. Deputy Speaker, Sir, that tells you that, that letter actually went and was brought in physically by somebody who knew about this issue. I want us to be fair to each other. Let us not point fingers at any one person. However, we know that the speed at which this transaction was initiated, and upon cutting down or stopping the selective tendering process and immediately single sourcing commenced from a company that had not even indicated that they wanted to supply, suggested fraud. It is for that reason we are saying that those officers who were mentioned; who participated in this particular scam should not hold a public office. It is upon this House, and upon adoption of this Report, because we know the intent was actually to defraud the NARC Government of revenue and enrich somebody after supplying nothing. In the interest of this nation and our children, the House should consider this Report in its form and pass it.

However, having said that, we cannot afford, as Kenyans, to sit on the fence as things happen. It is unfortunate that these things are happening when Kenyans are suffering from abject poverty; Kenyans are suffering because our people are poor. However, it is also unfortunate that the little we receive is being used in a manner that does not reflect proper usage of resources. The Government has been entrusted to work properly for the benefit of the nation.

Mr. Deputy Speaker, Sir, we established in our Report that the Office of the Vice-President and Ministry of Home Affairs was actually aware of the transaction and was party to it from

initiation to completion!

Mr. Deputy Speaker, Sir, it is unfortunate that with the knowledge the Permanent Secretary (PS) Ministry of Home Affairs had that the transaction was illegal, he went ahead to participate in an evaluation tender commissioned by the Treasury on 27th August, 2003. He went to evaluate something that he knew he had already awarded to somebody. Upon the recommendations of the Committee that sat in the Treasury to evaluate, enlarge and expand the programme on passport processing equipment, the PS knew that he had already awarded a contract. The issues were on board and he had even got quotations. But he went ahead to participate in the task force that was created by the stakeholders to evaluate that tender. That, in itself, is a waste of Government resources. If I know what I have done, why must I spend time opening a tender that has already been out? It is for that reason that we hold the PS, Ministry of Home Affairs responsible for his reckless behaviour in conducting that matter.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, why are we talking about the PS, Treasury? I do appreciate, from the wording of the letter, that the Minister for Finance signed. It reads:- "Please, read these recommendations and give me authority to sign on your behalf".

He was asking for it! If he saw the Minister, things would have been different. That man was actually asking for authority from the Minister for him to sign. He saw that the Minister was too busy. I am not sure if the Minister was too busy because he did not ask to be relieved of his duties. But that person, in the name of the PS, wrote and requested for authority from the Minister. If he had not written to the Minister, things could be different. In the recommendation that the Minister authorised the PS to sign, there is paragraph 4.1 which states that everything was done including the diligence test. In the other context, the PS, himself, stated as follows:-

"I did not do a diligence test because this company was transacting business with the Government!"

Should we have had that information from the Minister, maybe, things could be different. But since we did not get it, we will carry the liability clause, just like in the insurance industry, and hold the Minister responsible.

Mr. Temporary Deputy Speaker, Sir, I am being reminded here that in the law of tort, the liability clause takes effect. We are saying that most of those things were done in full knowledge of the PS. If you ask for authority to sign on something, and then you tell the Committee that you did not do a diligence test because you believe those people were actually serving the Government, it means that you actually played into the hands of trying to scheme a fraud.

Again, one may ask: Why did we have to summon the Minister for Finance? I want to be on record that, indeed, the Minister for Finance was not supposed to come to the Committee. Unfortunately, one of his officers disowned him on record and said: "Let him come and prove to you how and where he was misled!" I begged and said to the Minister: "As a friend of the Committee, please come on board! We have to clarify some matters!" Without that information, he carries liability in the law of tort.

Again, our Minister sits in a very unique position. He is an executive Minister who can commit an expenditure on the Government. He is a policy maker and also an indirect implementer. That is why, having been mentioned, we thought that it was important for the Minister to clarify. In

our Report, we have made it very clear that we never knew what information the Minister had before he signed.

Mr. Temporary Deputy Speaker, Sir, I would like to conclude by saying that the Public Accounts Committee (PAC) of the Republic of Kenya has no intention of maligning anyone or trying to create imaginary barriers, and neither do I expect these things to be taken personal. When we deliberate on that matter, I beg the House to look through the Report soberly, adopt it and implement it. It did occur to me that there is a worrying trend in this nation. The Attorney-General, who is actually the advisor to the Government, has failed this country. It is also important to note that even when we pass these recommendation, our Standing Orders in terms of implementation and procedure of reversing that trend, are very critical for us to make progress. It is not enough for a Committee to be a talking shop. It is not enough for a Committee to just make recommendations. It is also important that the implementing organ of this report be actually brought to account and give Kenyans the report, through what we need to create; an implementing Committee of the House.

Mr. Temporary Deputy Speaker, Sir, I also want to finalise by allaying the fears of those--- There is an issue of the papers that are in a mess. I want to table in this House the brief given by the Central Bank of Kenya (CBK) that indicated the initiation of this project and the reversal of the payments that were made to the payee who was later refunded the money. I also want to state here that there was a payment voucher which was fleecing the Exchequer of 3.7 million Euros which was cancelled. In the report, which is so critical, in line with what the Minister signed and the approval that he signed, we have attached that appendix to confirm that the Permanent Secretary (PS) asked for permission from the Minister. The PS wrote: "It is recommended that you approve recommendation of 4.3 (1), (2) and (3) and authorise me to sign." It means that somebody wanted a job for himself and it is only the Minister who would have clarified whether, really, he was overburdened by this responsibility given.

With those few remarks, I want to ask Mr. Wamwere to second the Motion.

Mr. Wamwere: Mr. Temporary Deputy Speaker, Sir, I beg to second the Motion. I want to begin by stating that I believe that corruption is our worst enemy and that for anything else that the Government intends to do for the people of this country to work and succeed, we must win the war against corruption.

I know that there are many people who want to contribute to this debate and I will, therefore, try to be as short as possible. However, in doing so, I would like to borrow the words of my friend, Mr. M. Kariuki, and say that the whole issue surrounding the Anglo Leasing project was an attempted robbery. I say that it was more or less an attempted robbery because the scandals were exposed; the contracts were cancelled and monies that had been taken were returned. An amount of Kshs93 million would have disappeared if the scandal would not have been discovered. However, I want to say that the fact that I am terming Anglo Leasing project an attempted robbery does not mean no crime was committed.

An attempted robbery is a crime for which I happen to have the experience of being charged with. I know that if you are charged with attempted robbery under Section 297(2), which I was charged with; if you are found guilty, you are hanged. If you are charged with attempted robbery under Section 1, you can go in for as long as 14 years or even life.

So, when I say that Anglo Leasing was an attempted robbery, those who are involved in the scandal should not think that I am trying to exonerate them from having committed a crime. They committed a crime and they must be pursued.

Mr. Temporary Deputy Speaker, Sir, I have a very strong belief that the Minister for Finance and the Vice-President and Minister for Home Affairs can easily be accused of gross incompetence, according to the way they handled the entire subject. However, we have to admit that

Anglo Leasing and Finance Company came before the NARC Government. There was a Minister for Finance before Mr. Mwiraria, called Mr. Okemo. It was during his tenure at the Treasury that Anglo Leasing and Finance Company was brought into the picture. Although we did not get much information on the role played by Mr. Okemo, there is information that when Anglo Leasing and Finance Company first came into the picture, there was objection from a Permanent Secretary called Mr. Mwachofi, but he was overruled. Anglo Leasing and Finance Company was brought into the picture before it started dealing with the project of the passport equipment.

Mr. Temporary Deputy Speaker, Sir, when you accuse a Minister of gross incompetence, you also imply that, indeed, some misdeeds have been committed that deserve some punishment. To illustrate this, I would ask you to imagine having a watchman who lets robbers into your house when you are asleep to rob you without establishing their identity. Even if the robbery is foiled, if you get out and look at your watchman, most likely, you will be tempted to fire him. I do not know what others will want to do with a watchman who has let robbers into their compounds. For me, most likely, I will just fire him and look for another one.

Mr. Temporary Deputy Speaker, Sir, the Anglo Leasing Scandal should, therefore, be some kind of a very serious warning to our Ministers. They should take their work of running the Ministries a lot of more seriously than they have done so far. Any attempt to be casual with their responsibility could, indeed, cost this country billions of shillings that this country cannot do without.

Other than the Ministers, whom we accuse of great incompetence, there was subversion of justice by the witnesses we interviewed from the three Ministries. The officers are guilty of subversion of justice, because they withheld a lot of information on this scandal.

Mr. Temporary Deputy Speaker, Sir, as we talked to these officers, they behaved as if they knew nothing about what had happened, despite the fact that it is not possible for a scandal like this one to happen in a Ministry without the officers detecting it. The fact that the officers were not willing to give us all the information that they had, is evidence that they cannot be trusted to cooperate in the Governments's effort to fight corruption.

In fact, I will go further and say that an officer who refuses to give information to help the Government to uncover a scandal as bad as this one deserves to be dismissed from his job. He also deserves to be jailed. The best way of getting the officers to talk about this scandal, because not all information has been discovered about it, is to suspend and threaten them with a dismissal, if they are implicated in the scandal.

Mr. Temporary Deputy Speaker, Sir, in the course of our interviews, we found out that these officers were not only refusing to give information to us, but they were also withholding information from the Permanent Secretary for Governance and Ethics, Mr. John Githongohave who is in charge of investigations into this scandal. At one point, we were shown the promissory notes when the Permanent Secretary had not seen them. Due to lack of co-operation from these officers, Mr. Githongo, has been forced to seek information from foreign Governments. He has written to them and asked them to give his team whatever information they may have, in order to uncover the scandal and those who were involved in it.

If Government officers are co-operative, Mr. Githongo would not have to seek the assistance of foreign Governments, unless all our officers are out to sabotage the efforts to uncover this scandal. There was corruption in Anglo Leasing and Finance Company because it is impossible to imagine the Government doing business with a non-registered company. Sometimes you do not even want to imagine that the Government could award a contract to a company without establishing whether it is a legal entity or not. That is exactly what happened. The Government entered into a deal with a company that was not registered. When the Attorney-General looked at

the contract, he asked the Ministry of Finance to do the diligence test that the Chairman has talked about. The Ministry of Finance never did the diligence test to establish the legal status of Anglo Leasing and Finance Company, and find out whether the company had done similar jobs elsewhere.

The diligence test was not done to find out who the directors of the company were, and whether it had credible credit status to carry out the job that it had applied for.

Mr. Temporary Deputy Speaker, Sir, that the diligence test was not done, to me, is not an accident. I believe that it was skipped because the people who were involved wanted to engage in corruption as a result of failure to do that diligence test. If the diligence test had been carried out, it would have revealed that Anglo Leasing and Finance Company was not a company that the government could do business with. I believe that all the officers who failed to do the diligence test should, in fact, be accused of having partaken in corruption and duly punished.

There was also corruption in the sense that, Anglo Leasing and Finance Company was shielded from competition through direct procurement and single-sourcing. When a company is granted the privilege of direct procurement or single-sourcing, it means that it is not subjected to the tender system and it does not have to compete with any other company. The Government suffers great loss because it means that whatever is quoted by that company is what the Government agrees to work with. There can be no worst form of corruption than single-sourcing. Despite the fact that there have been many other cases where single-sourcing has been proven to be a source of loss, single-sourcing was recommended for Anglo Leasing and Finance Company. I can only believe that this was done deliberately in order to facilitate corruption.

Corruption was also prevalent in Anglo Leasing and Finance Company when it made its application. In fact, it was assisted with inside information from the Government Information Technology Services (GITS). It was very surprising to find out that when Anglo Leasing and Finance Company wrote its report, it coincided so much with inside information that had been drawn by the GITS. Clearly, one could see that it gained from inside information. Somebody gave Anglo Leasing and Finance Company information that it should not have had access to. To me, the giving of inside information to a company amounts to corruption and nothing else.

There was another form of corruption which involved the Attorney-General surrendering the right of our government in dealing with Anglo Leasing and Finance Company to English and Swiss courts in the promissory notes. It was shocking to see that in the promissory notes, everything was left to the jurisdiction of English and Swiss laws. It was as if this country has no judicial system and, therefore, we had to surrender and leave everything to the English and Swiss courts and laws.

It is my belief that, in fact, we were lucky, given this loophole, to recover the money that we have so far recovered. This is because if what was carried in the promissory notes was adhered to, those crooks could have challenged the legality of our Government seeking the recovery of the money that was returned. I do not think that if this case had been taken to the English and Swiss courts, we would have won. I think it was a great mistake by the Attorney-General to let that happen, although, of course, throughout the report of the Controller and Auditor-General, there are almost hundreds if not thousands of cases where the Attorney General has done a very poor job of giving terrible legal advise to the government, that has resulted into this country losing hundreds of millions and billions of shillings.

I almost feel that if there is one officer who should have quit his job on account of his poor performance, that officer is the Attorney-General. I think something drastic needs to be done if this Government will recover the monies that we have lost, and have been losing for a very long time.

At one point, one wonders: What has one got to do in this country to deserve a sack or even to feel that it is time to quit? People commit blunder after blunder and engage in corruption cases, but they continue to do their work as if absolutely nothing has happened. One wonders whether a

country that has this sort of culture can ever save itself from corruption.

Having said that, let me just mention what I think could be the way forward, given what we have learnt from the Anglo Leasing scandal. It is my belief that the President could help this country solve this problem of Anglo Leasing sooner than has so far happened, if he could appoint a judicial commission to look into the information. The judicial commission should use the report of the Public Accounts Committee (PAC) and all the other information that may be available to the Government, actually, to begin determining who needs to be taken to court right away. I do feel that the investigations that are being carried out by the Anti-Corruption Commission are actually taking too long. I think this country cannot be kept waiting forever. I also believe that investigations that take forever, sometimes almost take the shape of a cover-up. You cannot go on investigating corruption month after month, and year in, year out. There has got to be a point where the Government is able to say: "We have enough information." It is time to start taking people to court. That point, I think, should be reached very soon.

I believe that the President should set up the judicial commission in order for the country to move in that direction. Why do I say the President is the one who should set up this commission? I say so because I do not know whether a Minister has the authority to do so. I also believe that, quite frankly, the ultimate Accounting Officer in this country is the President. It is the President who is given the responsibility to guard our tax money. He is the one who has the means, if there are people playing games with corruption, to punish the guilty or, at least, order for their punishment.

Mr. Temporary Deputy Speaker, Sir, the other thing I would like to say is that the Anglo Leasing scandal is actually evidence that in this country there are networks of corruption from top to bottom, in both the Central and Local Governments, even though, the PAC is not empowered to look into the corruption that happens inside Local Authorities. These networks of corruption, I believe, were inherited from the past regime. However, that is no reason for them being allowed to continue. I talk about networks of corruption because I believe, trying to handle the problem of corruption as a problem that involves just individuals is actually to miss the point. This is because if you look at what was going on between the Attorney-General, the Office of the Vice-President and Treasury, you could clearly see some kind of network. I believe that this network exists in all the other scandals that the Controller and Auditor-General talks about.

Mr. Temporary Deputy Speaker, Sir, to get rid of corruption, I believe it is time that all corrupt civil servants are fired. I believe it is not possible to get rid of corruption or its network by working with people who have been corrupt for many years.

There is a Swahili proverb which says: *Aliyezoea ya haramu, ya halali hawezi*. The civil servants that we are talking about can be said: *wamezoea ya haramu na kwa hivyo ya halali hawawezi*. To that extent, those are people who deserve to be fired. They are not people you can live with, hoping that they are going to change. Old dogs do not learn new tricks! I believe that those people cannot be taught not to be corrupt. Given that this country has many young people who want to get rid of corruption and who are professionally qualified to do those jobs, it is high time that we sacked those old guards and replaced them with young people who want to get rid of corruption.

(Applause)

Mr. Temporary Deputy Speaker, in any case, if you look at history, any country that has been able to get rid of corruption has never relied upon people in the corrupt system. So, I think the President should make up his mind to work more with reform-minded persons and younger people, than old people who have been inherited from as far back as the colonial days. Those are guys who

worked with colonialists, Kenyatta, Moi and now with Kibaki cannot help us to change. To expect them to do so is actually to day-dream. So, I totally believe that it is high time that we sacked those fellows in order to get rid of corruption.

I would also like to amplify that when we were looking at the Anglo Leasing saga, as the Chairman of the Committee said, we stumbled upon the Forensic Laboratory Project. Although we were not able to call witnesses to talk to the Committee about that project, it is yet another scandal that involves Anglo Leasing Finance Company.

I would like to request the House to sanction another special audit on the Forensic Laboratory Project, so that the Public Accounts Committee can look at the corruption that took place there. That will enable this country to know more truths about how corruption works, in order to stop it in future.

Mr. Temporary Deputy Speaker, Sir, I believe that to fight corruption, we must rely on truth and not propaganda. We should be careful not to lie against others. I also believe that to be able to succeed in the war against corruption, we must not use the selective amnesia of Sir. Edward Clay, and what he also referred to Ambassador Muthaura. I do not know who is guilty, but whatever we think about what the British High Commissioner said, we must take care that there is no selective amnesia in the war against corruption. There should be no sacred cows whatsoever. Anyone who is found to be involved in corrupt business must be dealt with swiftly. We should not have a situation where---

I heard the other day - I do not know whether it is true or not - that somebody had said that in those things, there must be some sacred cows who should not be slaughtered without some ceremony or something of that sort. If the sacred cows are corrupt, there should be no ceremony involved in slaughtering them. They should be slaughtered and buried, so that no others can arise.

Mr. Temporary Deputy Speaker, Sir, I will stop there and urge the House to adopt this Report. It will not only give the PAC an opportunity to prove that it did not spend such money hearing all the evidence for nothing, but also because this information can become quite handy to a judicial commission. That is if the President agrees to set up one to deal with the Anglo Leasing and Finance Company saga. Those who are guilty of involvement in the Anglo Leasing scandal should be brought to book as soon as yesterday.

With those few remarks, I beg to second.

(Question proposed)

Mr. Khamasi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute on this very important Motion.

First of all, I would like to congratulate the hon. Members of PAC for going through those hard hours to come up with this Report, the first one of its nature since this Government took power. I want to reiterate what hon. Wamwere said here. Let us be factual in what we say. Our friends who want to support us in fighting corruption should be factual and when they lay claims, they should be able to come and substantiate those claims. Our development partners who have claimed that Kshs15 billion has been misappropriated in the last one-and-half years, should provide evidence in that regard. It is not good just to claim without adducing the evidence. Even us who are interested in routing out corruption from this country are still waiting to hear evidence on how Kshs15 billion has been misappropriated within the last one-and-half years.

Mr. Temporary Deputy Speaker, Sir, I have got one or two things to say about the Committee which produced this Report. In my view, the time given to produce this Report was very

short. The time was not enough and so I do not think they got into the depth of the matter. I was very eager to read the Report, but at the end of the day, I did not see much in it. There were no specific names mentioned in the Report; for example, so-and-so was involved in this scam and so-and-so took the money. Before I go further into details, I want to say that this is the first time in the history of this country that we are dealing with what I would call "raw Corruption" whereby this NARC Government and it must get credit for this, has dealt with Ministers or Civil servants who have been involved in corruption on the spot. This has never happened before. All we have done over the years is to deal with stories and history when, in fact, people have misappropriated funds. Similar Reports have been brought before this House with recommendations to prosecute or bar those who are adversely mentioned from holding public offices, and yet nothing has been done. Therefore, this Government has done very well.

Therefore, this Government, which I am a part of, has done very well to come up and deal with a situation which is real and alive. We want to see action being taken as the Government has promised.

Mr. Temporary Deputy Speaker, Sir, when the Chairman of the Public Accounts Committee was presenting this Report on the Floor of this House, he did say that the Leader of the Official Opposition never participated, although he was a member of that Committee. This is very unfortunate. How can a Leader of the Official Opposition never take interest in a matter like this? Yet he would want to claim that he wants to lead the Opposition to keep the Government on its toes. I think it is necessary for him to reconsider whether he really wants to work for this country. His mandate is to make sure that he keeps this Government on its toes. But if he neglects his duties and feels that it is not his responsibility to join others and seek to get the truth in a matter like this, then it is a very unfortunate matter. One would wonder how he is to be committed to a cause to fight corruption.

Equally, Mr. Temporary Deputy Speaker, Sir, it is very unfortunate that the Minister for Finance saw it fit not to appear before this Committee when allegations had been levelled against him. Many Kenyans know the Minister for Finance very well. Many would have given him "a clean bill of health", taking into account his track record. Many would have said:

"No, this is a man we have known, and he is a very hard-working Minister".

We know, some of us who are even in the Co-operative Society, that he is probably one of the few Ministers who still comes to our Co-operative Society to borrow little money like Kshs500,000 or Kshs600,000, when we do not see others. We are sure that those others who used to come to borrow money and are not coming any longer must have found something to fill the gap which used to be there. It is unfortunate that the Minister for Finance, refused to come and give evidence to this Committee in order to clear his name and give his side of the story about what he knows regarding this scam. It is very difficult for people now to give "a clean bill of health" to our Minister for Finance particularly having realized that he did not want to go and tell what he knows about this scam.

The Anglo Leasing Scandal is now called the "Anglo Fleecing Scandal", and it will not just go away. It is here to stay, and people must speak the truth.

Mr. Wamwere: They should go to jail!

Mr. Khamasi: Mr. Temporary Deputy Speaker, Sir, the Office of the Vice-President and Ministry of Home Affairs and the Treasury will have to come and tell their side of the story in no uncertain terms. They will not keep on telling us that some money has been refunded and we do not know who has brought this money back. That will just not do! They have got to come straight on this matter, and until they do so, we shall not leave them! Let them not think that we will do what we did here today; Back-benchers being used to vote on things which they should not even be

voting.

(Laughter)

We will come here and stand firm because we came to power on a platform of change and zero-tolerance on corruption. If they think we will come here and protect them in matters that we came to the House to prevent from happening, they should know that we will not. Let them be warned that we will not come here and vote in the manner which they think we should vote. On a matter of corruption, we shall not do so.

Mr. Temporary Deputy Speaker, Sir, the Ministers and civil servants who have been mentioned in this scandal should do one honourable thing, because the President does not want to do his bit. If they love this country they should step aside, so that independent investigations can go on. I cannot understand how you will investigate a person who still holds an office. It is difficult. I have stood on the Floor of this House to talk about civil servants in this Government. As long as we still have these civil servants, who were trained in the Kenyatta regime; and then specialised in what they were doing during the Moi regime, and are now even specialising more in the Kibaki regime, we shall get nowhere.

I am in the party that forms the Government. What is very difficult about changing civil servants in this regime? Why should we still retain civil servants who are untrustworthy? They have specialised in corruption but are still holding office. I have never received an answer to these questions because I am Back-Bencher. One would want to know why we still retain civil servants who even mislead Ministers. It is a shame for a Minister to come here and say: "I was misled".

We have employed some civil servants who had gone into retirement, because they have friends who are still in the Civil Service. They went home and now we are bringing them back. This Government must understand that you cannot change the political leadership and leave the Civil Service intact. This is a Civil Service that is, in our view, rotten. We said that when we came to power we would clean it. We have cleaned nothing in the Civil Service. The technocrats are still in it. When I speak to some of the Ministers who are my friends, they say: "Oh yes! These technocrats can even take a whole Vote into the area that they want that money to go to".

We want to understand why it is difficult for this Government to overhaul the Civil Service one-and-a-half years down the road. What is it doing with people who are untrustworthy and cannot guide it properly? I would like to get answers to these questions. We have actually misinformed the public. We are not truthful to the public. We would like to know why the Government is still holding on to the same civil servants we said we would chuck out and get people who want change. Such people are very many out there. We should not be looking for people aged 65 years and bringing them into the Civil Service. People who are in their late 70s are still in the Civil Service. I do not mind politicians who are aged 70 years and 80 years, but really, why do we need civil servants who are 80 years old in the service? It is as if people in this country have never gone to school. We have spent a lot of resources educating our people.

Mr. Temporary Deputy Speaker, Sir, following this scam, we are now threatened with withdrawal of aid by our development partners. This is a very big issue. It is unfortunate that nobody seems to mind about this. Just think of what happened a few years ago, we went through a number of problems because our development partners deserted us. Our economy failed, the infrastructure collapsed, hospitals had no medicines, schools never received equipment, and so on. The list is endless.

Are we now saying that we can go on keeping with corruption for our development partners to desert us again? The people who are involved in these scams are just like the Italian *mafia*; they

are not different. They do not care, so long as they get what they want. They do not care whether somebody will die of lack of medicine. They do not give a damn whether our hospitals have no medicines or drugs. They simply do not care whether this economy will fail or whether the price of bread will be tripled or cost 20 or 30 times more because they can afford it. Yet, we just stand there watching.

Mr. Temporary Deputy Speaker, Sir, I think my friends have said a lot; I do not want to repeat. However, I must say that the buck stops at the President's door. He is the one who appoints Permanent Secretaries, Ministers, Parastatal Chiefs and Assistant Ministers. We want to call upon him, that he will not keep quiet in State House. He does not come here for us to question him. That is why we want a new Constitution where we will want somebody to come to the Floor of this House and we can question him. The President must be told that the buck stops at his door, and he must move fast to make sure that we are actually able to eradicate corruption from our midst.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to support the Report.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I, indeed, attended two sittings of the Public Accounts Committee (PAC) and I want to say the following---

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Temporary Deputy Speaker, Sir. We are aware that a notice of amendment has been proposed to this Motion. I wonder whether it is in order to request the Chair to allow that notice to be given so that we can discuss or dispose of it first, before we proceed any further on this Motion.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Murungi! I am assure you appreciate the rules of the House. The Chair is looking for an appropriate opportunity to allow the amendment to be moved. So, just relax!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, you will note that the Chair was an hon. Member of the PAC and it should notice the caucusing going on---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Maore! When I am in the Chair, I am the Chair. When I am in the PAC, I am there as an hon. Member of that Committee. When I am at the Back Bench, I am at the Back Bench. At the moment, I am the Chair. The moment I will be appointed to the Front Bench, you know what will happen!

(Laughter)

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, in the two sittings of the Committee, I wanted to raise the following issues. When I tabled the papers on Anglo Leasing Finance Company on 20th April, 2004, I stood here and said that the contract had been quietly given to the directors of Kamsons Limited. Mr. Mwenje is boasting of having given the papers, but he does not want to say what he wanted to, or what he would have done if I never tabled them. When I said that the directors of Kamsons Limited were given the contract, the subsequent speech by the shadow Minister for Home Affairs, Mr. Salat, mentioned the name of Mr. Deepak Kamani. The House should ask why the Committee never summoned the said Mr. Kamani, who had already been interviewed by the police in regard to the Anglo Leasing issue.

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have just heard the hon. Member say that I mentioned the name of Deepak Kamani! I am not aware! I did not mention the name.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I agree with him that he did not mention the name. But the director of Kamsons is known. He is Mr. Deepak Kamani, whom the Committee avoided looking for.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Maore! You said that it was

Mr. Salat. If he did not say it, apologise to him and proceed.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I have admitted that he did not.

The Temporary Deputy Speaker (Mr. Ethuro): But that is not enough. You should withdraw and apologise!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, did he feel offended?

The Temporary Deputy Speaker (Mr. Ethuro): Yes and he is behind you.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I apologise to him for being a very good Member of this House. What I stated was that the Committee--- If you look at the recommendations, they are saying that the company did not have any physical location, directors and shareholders! They were unknown. We do not know whether they were British! We do not know the destination of the money. We have not seen an attempt to look for the names of the account holders of that account, where the money was sent. I know the Speaker's office is able to provide money for the Committee to travel anywhere in the world, or to seek any information through the embassies, to actually know who are the account holders of where the money was posted.

If you listen to the entire tone in the Report, you hear that there is need for carrying out investigations. But we are not being told who is actually keen on doing investigations. That is because the Vice-President and Minister for Home Affairs came here and defended the contract. Then, the other two Ministers; the Minister for Finance and Minister of State, Office of the President, came here and said that they had cancelled the contract and ordered investigations. Therefore, we are not sure which of the two versions of Government we are going to adopt as the final reason as to why we should have investigations as the route to end this matter.

What is true is that the operatives of Anglo Leasing and Finance Company have [**Mr. Maore**]

been very livid that they were ordered to return the money. They were very angry and that is why the story of selective leakages has been sustained up to today, whether it is by the Government or the Committee. I mean selective leakages in the sense that, if you look at the people who were interviewed by the Committee, when the former PS, Treasury, appeared there, most of the issues he raised were headlines in the *Daily Nation* Newspaper the following day. But the most important document, which the Committee is privy to, is the internal office memo of 2nd October, 2003, which shows the role that contract attained at the Treasury. For some very strange reasons, nobody has explained the technical advice that the Government Information Technology Services (GITS) and the Debt Department offered, in order to organise this four-page memo to the Minister for Finance.

Mr. Temporary Deputy Speaker, Sir, if the Committee was genuine in pursuing the actual issue of Anglo Leasing, it should have been able to scrutinise the summary project profile clause by clause and then say that this is where the Minister for Finance would have owned. If you look at the entire report, it says that the Minister for Finance is the one responsible. However, if you look at the entire report which is put as the legal opinion, on Clause 1, it says:-

"The Legal opinion of the AG on the suppliers financing agreement was sought, resulting in recommended versions that were discussed with the supplier and the necessary revisions have been undertaken."

That information was with the Committee. On the technical assessment and clearance on the scope of the project, it says:-

"The Government Information and Technology Services (GITS) corroborates that the project covers the requirements and the functionalities required by the Immigration Department and is consistent with the needs assessment and terms of

reference set out for the project."

If you can remember what happened in our Committee that day, they said they never actually did the terms of reference. It did not look like the Minister was told that there were terms of reference, but already the report is saying that the terms of reference were there. If you go down to Clause 2(4), you will be able to see that it is called "technology choice". It goes on to say:-

"GITS confirmed that the technology choices meet international standards and are appropriate for the high level security requirements and improved systems for the Immigration Department."

Note that this company is being said to be a ghost company that does not have a physical address or directors, yet in the GITS technical report to the Minister for Finance, it says that they are very satisfied that it has them.

If you go down again, you will see that on Clause 2(8), it talks of qualifications of the systems' provider and this means Anglo Leasing. It says:-

"The systems' provider is one of the reputable outstanding suppliers of security printing and system services in a global basis and brings significant experience in currency, passports, visas and other security documents on a world-wide basis, including Africa and this region."

Now, I have a problem with the conclusion of the report of this Committee. This is because if, indeed, it had this information and then it goes ahead and does pedestrian recommendations that the Minister for Finance should be held responsible for allowing his Ministry to involve the Government in a very expensive project with Anglo Leasing, I find that untenable and an insult to the intelligence of the House and the nation. The Committee, with all the resources and all the powers it has, did not find it necessary to actually scrutinise and see the conspiracy link between the officers who were doing this technical brief. What we should note is that when we are handling a document at the Treasury level, it is only paperwork that is dealt with; not directors of companies or agents of those companies. It is at the parent Ministry level where you are able to go and organise these issues of directors with due diligence. After you have organised everything, then you go and you are able to put these documents to the Treasury for approval. It is the onus of the parent Ministry to organise the approval by the Treasury, and not otherwise.

Mr. Temporary Deputy Speaker, Sir, lastly, I have a problem with the last two paragraphs of this Report. These paragraphs have been framed to hold the Minister for Finance, and the Vice-President and Minister for Home Affairs responsible. For some good reasons, the name of the Vice-President and Minister for Home Affairs was expunged on Monday evening before the Report was tabled here the following day. I am not after the name of the Vice-President and Minister for Home Affairs being in this Report. I am just trying to show the mischief and the intrigue that followed the tabling of this Report.

If the House adopts this Report in its present form, it will amount to what you would call a cover-up and escapism, and it will not have gone to the bottom of the Anglo Leasing scam. To expect a man like Mr. Githongo to provide information to the Committee would be asking for too much. The man is under what we call the Official Secrets Act. He is supposed to get Government secrets and maintain them in the office, and not to peddle them to politicians in Parliament. It is possible for the Committee to follow leads on its own. If the Committee has a problem, they should report to the Speaker.

Mr. Temporary Deputy Speaker, Sir, my own submission is that this Report, in its present form, does not measure up. This Report is not investigative enough. The Committee has done a good job by putting in this Report, a chronology of all the documents that were available at the Office of the Vice-President and Ministry of Home Affairs, as well as at the Treasury. However, the

Report does not say what was this that the Government was paid. It does not tell you who was culpable. These are the issues that the Public Accounts Committee (PAC) goes for. It does not go to ask civil servants to provide it with information that can incriminate them.

So, when a Committee writes its recommendations in anger and reports to the House that since the Minister for Finance did not appear before the Committee, we find him responsible, that is not responsible behaviour. Responsible behaviour portends that you go by the evidence you have accrued. If you look at the entire paragraph, you will find that by the time you reach page 26 of the Report, you will not find a single evidence where any officer told the Committee: "This thing is owned by the Minister for Finance. He sent me to so-and-so. This is the businessman, and this is the business card of the Minister. He has sent me to you, as the Permanent Secretary." That is how Ministers own up corrupt deals. An officer comes and says: "So-and-so has sent me to you. Help me with this deal or with this contract." In the entire evidence received by the Committee in all its sittings, there is no single officer who told the Committee that the project was initiated, or conceived by the Minister for Finance.

The Committee wants the House and the country to believe that the Minister for Finance is responsible for the scam, of which I know it was a fix-up for political reasons and the donor arena, so that they fix him using a Report that does not mention his name. I find that malicious and mischievous. This House will be doing a great disservice if it ever adopts this kind of Report in its entirety.

I reserve my position on this.

Thank you.

The Minister for Water (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this Motion, and also to move my amendment.

I have looked at this Report. It appears that the Committee did some good work, became overwhelmed and made, at least, one or two recommendations that are not supported by the evidence it had gathered on this matter. They are not even supported by the summary of its own proceedings.

Mr. Temporary Deputy Speaker, Sir, the conclusion of this Report, which I have no quarrel with, lays blame where it lies; on the Accounting Officer. It appears that the Committee was struggling on the issue of their powers *vis-a-vis* summoning the Minister. The Committee was obviously totally unhappy that their summons through the Press and their letter to the Minister had not been heeded.

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member on the Floor to insinuate that the Committee was doing what it never did? The Minister was properly summoned by the National Assembly.

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I heard over the radio when the Chairman of this Committee purported to summon the Minister from Kisii. Even the results of this Report were given through the Press as though Parliament had passed it.

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister knows that we do not use media reports on the Floor of the House. Can she be responsible on that? That is irresponsible.

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I would suggest to my colleague---

The Temporary Deputy Speaker (Mr. Ethuro): Ms. Karua, just agree with Mr. Omingo on that one. I am sure you know it.

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I will go on to other matters, but I would like to say that all of us must insulate ourselves by our conduct inside and

outside this House. Otherwise, it will be subject to comment if it appears that hon. Members of a Committee or a section of a Committee is trying to steal the show elsewhere and not to make a case where it belongs. They should expect it to be commented on.

Mr. Temporary Deputy Speaker, Sir, with your permission, having laid the basis, I would, therefore, like to propose an amendment to this Motion. This report should be amended as follows:-

By deleting all the words after the word "behalf" on page 26; the last page of this Report, line five, paragraph 3.

If you look at page 26 paragraph three, line five, you will find that because the Minister did not appear before the Committee, they concluded that he was well briefed and satisfied with the way the relevant officers handled the transaction. They go on to recommend that the Minister be held responsible for allowing his Ministry to involve the Government in a very expensive project with Anglo Leasing and Finance Company, whose physical location, directors and shareholders were unknown.

They further recommend that for any fraudulent activity or embezzlement of funds in a Ministry, the relevant Minister must be held responsible because the Accounting Officer operates under his or her instructions. The Minister and his Accounting Officer should pay for the loss.

Mr. Temporary Deputy Speaker, Sir, with the greatest respect to the hon. Members of this Committee, this is a ridiculous proposition. There is separation of duties. That is why a Minister, although he is the political boss of a Ministry, is not the Accounting Officer. No Minister signs a cheque or sits on procurement committee. That is the duty of the Accounting Officers and the officers below them. This is, with respect, a ridiculous proposition, to suggest that if anybody steals in a Ministry, the Minister is personally responsible

In my humble view, the Minister would only be held responsible if he or she does not handle his or her duties with due diligence. The Minister should be held responsible if he or she is reckless in the performance of his or her duty; omits or fails to do what he or she must do. The Minister cannot be expected to become a messenger and, therefore, does the work of a messenger; the Minister cannot be expected to be an accountant and, therefore, does the work of an accountant. The Minister cannot also be expected to become an Accounting Officer. There is a measure of trust with people who work together, and if there is absence of that, then work will stop or come to a standstill.

Mr. Temporary Deputy Speaker, Sir, are we proposing, like this Report tends to propose, that the Minister for Finance, for instance, on receiving a written confirmation from his officers that the Attorney-General has given an okay to this particular transaction; that the details of the company and everything else has been checked--- Are they proposing that the Minister should have gone to the Registrar of Companies to do a search if the company was registered in Kenya? Are they suggesting that the Minister should have called the Attorney-General to verify that he was called? I am saying that let us be reasonable. If the Accounting Officer or any other officer below the Minister commits in pen and paper a matter that he or she knows to be false, which then induces the Minister to act in a manner he or she may not have acted, it is that officer who is responsible for the lie and erroneous recommendation which leads to a certain conclusion.

The chronology of events is given in this Report. It is quite clear from the chronology of events that the Committee was well aware of the memo which has just been read out by the Member who has contributed before me. The memo has a summary which shows that all the relevant questions had been answered in the affirmative by the officers below the Minister. The document, therefore, now that we know that information was false, proves one thing; that those officers deliberately gave false information to a public officer, namely the Minister and caused him to act in a manner he would not have acted. It is quite clear, therefore, where the fault lies.

Mr. Temporary Deputy Speaker, Sir, it is not correct for anybody to start claiming that the Minister must take responsibility. I heard a colleague who has gone through a court process for very serious offences contribute and he should appreciate the need of due process. Are we saying that when a scandal like this erupts, we abrogate the due process when it comes to thinking about Ministers and others?

Mr. Ndolo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister aware that--

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I do not want his information!

Mr. Ndolo: Mr. Temporary Deputy Speaker, Sir, is the Minister aware that the Vice-President and Minister for Home Affairs pointed out in this House that he was aware of what he was signing at that time?

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I do not need information from an uninformed source!

(Laughter)

(Ms. Karua and Mr. Ndolo stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order, both of you!

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Ndolo! Order, Madam Minister! Let me just explain. I think the House has arrogated itself the role of the Chair. I would have handled Mr. Ndolo very well. His was not a point of order.

Proceed, Madam Minister!

The Minister for Water (Ms. Karua): I am most obliged, Mr. Temporary Deputy Speaker, Sir.

I am, therefore, saying that we should all appreciate due process even when it does not involve one, but the next person. I want to say here now that I abhor corruption. I would not aid or abet it. However, we should not use our abhorrence of corruption to try and impute improper motives where we know there are none. It is clear, from the recommendations of this Committee, that the only reason they wish to drag the Minister for Finance into this matter is because they felt slighted when he asked them to clarify what information they wanted from him.

Mr. Temporary Deputy Speaker, Sir, Committees should not use their position, or power for either ego or to protect their own feelings. We should try to rise above that. Even if a person has refused to appear before a Committee unjustifiably, if the evidence before the Committee does not show any wrong-doing by that person, it is not right to recommend that he or she be held liable. That is why I am saying that an otherwise good report is mired by the last three paragraphs; one sentence in the third but last paragraph and the whole of the other two paragraphs, by recommending something untenable.

It is also not tenable to recommend that, for example, when the Permanent Secretary in my Ministry, or any other Accounting Officer commits a crime for which I am not connected, I be held accountable. We must be very careful about what we say. Let us not make sweeping recommendations. We must demarcate where personal responsibility lies. If, indeed, every Minister was to be held liable, the question that comes to one's mind is why this Committee, therefore, did not recommend all the Ministers in the Ministries where this scam is coming from, to be held

accountable. If it was not out of spite, for what other reason was it?

I want to say, in my view, let the investigations be completed. Now that we have given the go-ahead for the formation of the anti-corruption body, let this be the Kenya Anti-Corruption Commission's (KACC) first job. We need to know who entangled this thing. We need everything investigated. Whether it is the issue of the molasses plant or any other issue that comes up, we need to know the truth. It is not just the Goldenberg scandal that we shall be looking into in this country. It is all issues that have been handled improperly. Let the hon. Members who have the powers to question others as watchdogs in this House not use their positions--- Let it not be rumoured that we are also taking certain positions because we have been induced. Let us be above suspicion as hon. Members of this House. Let our conduct be able to vindicate us.

Mr. Temporary Deputy Speaker, Sir, I am, therefore, moving that we delete the paragraphs that otherwise mire good work. This is because the work is calling for responsibility of the Accounting Officers and for full investigation, so that we are able to know who else is involved. If, at the conclusion of the investigations, any Minister will be found to have been responsible, then, I too, would say, let everybody who ought to be held to account be made responsible. But let us not advocate lynching before due process. This House legislates. We are the ones who have advocated to defend the Constitution which advocates due process. So, let us not try to short-circuit each other.

Therefore, I beg to move that we expunge the offending paragraphs of this report and, otherwise, adopt the report as amended by this proposed amendment. I would beg that colleagues support this amendment, so that we are able to endorse the otherwise, good work of this Committee.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move and ask Mr. M. Kariuki to second.

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I beg to second the proposed amendment. First, I would like to speak about the question of summons which Mr. Omingo is very passionate about. The Powers and Privileges Act, Sections Nos.14 and 15 give some useful insight. There are two stages when you are summoning a witness. The first stage is sending a letter of invitation. This is the letter which was actually sent from the Clerk's office. If the letter of invitation is ignored by the witness, then the Clerk issues summons. The letter of invitation clearly is a request to appear before the Committee.

But summons are commands! I am sure Mr. Muturi, who has been a magistrate, knows the difference between a summon and a request. A summon commands you! In fact, the Powers and Privileges Act makes it an offence to disobey summons. So, in this particular case, it is very clear that summons were never issued. Once summons have not been issued, therefore, to proceed to condemn an individual in his absence is a breach of the rules of natural justice.

Mr. Kipchumba: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I do not want any information.

The Temporary Deputy Speaker (Mr. Ethuro): It is up to you, Mr. Assistant Minister! Do you want to be informed?

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I have already explained my case! I do not want any information. Fair trial, hearing or due process demands that, any adverse information being advanced against an individual, that individual must be put on notice. What emerges from what we have heard is that the Minister for Finance received a request to appear before the Committee. He explained his predicament. But no summons were issued. So, there is, in fact, a legal flaw in the sense that this Committee proceeded on the basis that proper summons had been issued when, in fact, no summons had been issued.

Mr. Temporary Deputy Speaker, Sir, if you look at the paragraphs that are proposed to be

removed, the fourth paragraph from the top on page 26 reads:-

"The Committee recommends that the Minister for Finance be held responsible for allowing his Ministry to involve the Government in a very expensive project."

Mr. Temporary Deputy Speaker, Sir, we have just heard it from the Members of the Committee. Hon. Wamwere was a Member of this Committee---

Archbishop Ondiek: On a point of order, Mr. Temporary Deputy Speaker, Sir. I was a Member of that Committee and I am sure the Minister was summoned. Is the hon. Member on the Floor not misleading the House that the Minister was not aware of what was going on?

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Assistant Minister, please, proceed!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I sympathise with the Archbishop! I think he is at a loss with the issue which is at hand now.

Mr. Temporary Deputy Speaker, Sir, we have heard it from hon. Wamwere---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to be very clear in my mind. It appears now that we are not being told the correct position. The Assistant Minister has said that the Minister for Finance was never summoned.

Mr. Temporary Deputy Speaker, Sir, under Standing Order No.151, the Committee is expected to issue summons through the Clerk of the National Assembly. What is the true position? Were the summons issued or not? It is one's word against the other! The Chairman says the summons were issued and the Assistant Minister is saying they were never issued!

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mwenje! We have heard your question.

Mr. Mwenje: Yes! Can we know the position now?

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, can I proceed?

The Temporary Deputy Speaker (Mr. Ethuro): You cannot proceed because an issue has been raised about the summons. Some Members are saying that the summons were given and others are saying they were not issued. According to the particular Standing Order, summons are usually issued through the Office of the Clerk of the National Assembly.

Hon. Members: What is a summon?

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I beg to produce the letter that is being referred to as a summon. The letter is dated 17th, June, 2004, and it is addressed to Mr. David Mwiraria. It reads:

"REF: APPEARANCE BEFORE PAC

Following the special audit report prepared by the Controller and Auditor-General on procurement of Passport Issuing Equipment, the Public Accounts Committee (PAC) has scheduled a meeting with you on Monday 28th June, in Committee Room No.9, Parliament Buildings, at 10.00 a.m., in order to respond to the issues raised in the special audit. This is, therefore, to request you to appear before the Committee to discuss issues raised in the Special Audit Report. You are free to choose to be accompanied by such officer or officers as you may wish to assist you."

Mr. Speaker, Sir, I am saying that the language used in this letter indicates that it is an invitation to appear before the Committee. It is actually a request and the word "request" has clearly been used. The word "summons" is a command.

(Loud consultations)

May I, therefore, produce the letter as evidence that there was no summons?

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. The letter which has been read in this House amounts to a summon.

I am Chairman of a Committee in Parliament and I know how a summons is written by the Clerk of the National Assembly. The Clerk writes the summons in a manner not likely to suggest that it is an order. After all, it is not supposed to be a court order. He must write the summons in an understandable language. To me, that amounts to a summon.

(Applause)

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to ask that we continue with our deliberations and if any one of us has got contrary views to what is being expressed by the hon. Member, he or she can express them here? We have got all the time on earth.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Angwenyi! I appreciate that you are a peacemaker, but, please, note that we are also responsible for the accuracy of the information we give here. The point in contention is whether a summons was there or not. That is the basis of the amendment.

The Minister for Water (Ms. Karua): No, it is not the basis of the amendment.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do know that when you summon an officer or Minister you state the subject matter for which the person is being summoned so that he or she can prepare for it. So, this was a request and if the Minister failed to---

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. M. Kariuki, do you want to be informed by the Minister for Justice and Constitutional Affairs?

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I thought we could dispose of this by reading the relevant Section of the Powers and Privileges Act. Section 15 states thus:-

"Any order to attend--"

A request is not an order. Summonses are what contain a command which in effect is an order. There is a difference between an invitation and a summons.

(Applause)

The Minister for Water (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. The Chair has said that the summons is the basis of the amendment. I note that it is not the basis of amendment.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Ms. Karua! You are now arguing with the Chair.

The Minister for Water (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I am just seeking clarification.

The Temporary Deputy Speaker (Mr. Ethuro): Please, do not be too eager to challenge the Chair. Let us talk about the summons or otherwise. What is it Mr. Mwenje?

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not against the matter of the Minister not appearing before the Committee. I will give my view on that later. But as to whether the summons was correctly written, I still maintain, and we need your ruling on this matter, that this letter actually served as a summons. I do not want it to be used in any case in the future where, for example, my Committee summons somebody and he refuses to appear before the Committee for a similar reason. Those kind of orders are sent to Ministers. So, according to the Standing Orders which govern this House, the letter that has been read out is actually a summons. I am not concluding anything about the Minister, but as for the letter, to me and according to the Standing Orders, it amounts to a summons.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! I think we have better things to do than continue this argument. The practice has been that Ministers are sent summonses in that kind of language because they are treated as friends of the House.

(Applause)

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, we have had this kind of issue before. I want to be very clear on this matter. There is an invitation and a summons. I have appeared in a Committee where we issued this kind of letter and the Speaker said that the letter was not a summons, but an invitation. That was the ruling of the Speaker. So, we need to be clear as we proceed with the business of this House. We have to be consistent in the way we define an invitation and a summons.

Mr. Temporary Deputy Speaker, Sir, if I may proceed with my argument---

The Assistant Minister for Finance (Mr. Katuku): Mr. Temporary Deputy Speaker, Sir, with due respect to the Chair, would I be in order to request the Chair to consider its position on the issue and give this House a considered ruling on this issue since the contributor on the Floor has just quoted an earlier ruling by the Chair? Could the Chair give its ruling at a later date?

(Applause)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! Order, Mr. Katuku! You may wish to challenge the Chair; otherwise, but I have made my ruling and that stands.

Proceed!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): If you look at page 26, where it says:

"The Committee, therefore, concluded that he was well briefed---

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. This House operates on established procedures and rules. If the substantive Speaker made a ruling, he set a precedent. Therefore, you cannot come back--- Even he himself, cannot also come back here and contradict that ruling which he made without due explanation as to why he has contradicted or reversed the decision made earlier. It has been quoted by the hon. Assistant Minister that the substantive Speaker did rule that there are two ways of inviting an individual to come and face a Committee. One of them is by sending a request invitation and the other one is by summons.

Mr. Temporary Deputy Speaker, Sir, we would like you to make it very clear to us whether the substantive Speaker made that ruling or not. If he did, then I do not think it is proper to reverse that decision which was ruled on before this matter came to the Floor of the House today.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! Mr. Angwenyi, you are right to raise that matter, and if I was aware that the substantive Speaker had made that observation,

then I would go by it. But I am not aware of it as I sit here today. You should be at liberty to give me a HANSARD copy of that ruling, and I will change my ruling. But as it stands now, that is the way to summon Ministers.

(Applause)

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect, is it in order for us to continue discussing this issue without even knowing from the Minister whether, in fact, he received those orders which were issued out in a funeral in Kisii?

(Laughter)

The Temporary Deputy Speaker (Mr. Ethuro): You are out of order, Mr. Kiunjuri!

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Omingo! I appreciate your predicament, but hon. Kiunjuri was addressing the Chair, and the Chair has to respond.

Mr. Kiunjuri, it is not necessary for the Minister to respond. He is here and if he wanted to clarify, then it is up to him! It is not up to the Chair or the House. I think the point is whether he was summoned or not, and the Chair is satisfied that he was summoned.

(Applause)

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not challenging your ruling, but regarding the contents and the words which have been used by the hon. Member who actually read and taught English in some secondary school in Kisii, he knows the difference between summons issued at funerals and hand-written summons signed by the Minister. Can he---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Omingo! That is not a point of order.

Mr. Muturi: On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that we appear to have difficulties with what happened in the past, will I be in order to request that the Chair does give us a substantively well considered ruling on this issue of what amounts to summons?

(Applause)

Mr. Temporary Deputy Speaker, Sir, I was also in this very House when hon. ole Kaparo did state and ruled that you cannot, by merely inviting a Minister to appear before you, conclude that you have summoned him.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! Mr. Muturi has made a formal request for a formal ruling, and it shall be done.

Hon. Members: Time up!

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, Members! It is now time to

interrupt the Business of the House. The House, therefore, stands adjourned until tomorrow, Thursday, 5th August, 2004, at 2.30 p.m.

The House rose at 8.00 p.m.