

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 1<sup>st</sup> December, 2010

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

### QUESTIONS BY PRIVATE NOTICE

LOSS OF HIGH COURT FILES HCCC 1909/09 / HCCC1416/95

**(Mr. Kioni)** to ask the Minister of State for Provincial Administration and Internal Security:-

(a) Could the Minister confirm whether the police established the circumstances surrounding the loss of two High Court files No.HCCC 1909/09 and HCCC 1416/95 from the court strong room?

(b) Could the Minister also clarify whether the police investigated the loss of a title deed and transfer transaction of a proposed sale of property LR 36/VII/586 original No. 50-52, 117) LR 5666/2 by Mr. George Chege and Mr. Mark Ngarira?

**Mr. Deputy Speaker:** Mr. Kioni not here?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, Mr. Kioni has been delayed in traffic and has requested that, if you cannot delay the Question, then you can allow the House to receive the answer.

**Mr. Deputy Speaker:** Dr. Khalwale, this is a Question by Private Notice! This is your second term in Parliament and you know that Questions by Private Notice cannot be relegated. In any case, this morning, you were very adamant that the Questions should be dropped at the first mention. The Chair has not given direction on that, but you can see how soon you want to change your mind!

DISCONNECTION OF POWER AT LELBOINET HEALTH  
CENTRE OVER NON-PAYMENT OF BILLS

**Mr. Kiptanui:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Public Health and Sanitation the following Question by Private Notice.

(a) Is the Minister aware that Lelboinet Health Centre has been without electricity for over six months due to non-payment of electricity bills by the Ministry?

(b) When will the Minister pay the outstanding bill to the Kenya Power and Lighting Company (KPLC)?

(c) Could the Minister state whether there are any other Health Centres and Dispensaries affected by the same in the constituency?

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware.

(b) My Ministry is in the process of opening a bank account to enable the facility pay the outstanding bill through the recently disbursed Health Sector Services Fund (HSSF).

(c) There are no other health centres or dispensaries affected in Keiyo South Constituency.

**Mr. Kiptanui:** Mr. Deputy Speaker, Sir, whereas I thank the Assistant Minister for attempting to answer this Question, he has tried to avoid answering part “b” of the Question. My Question was very specific: When will the Minister pay the outstanding bill to Kenya Power and Lighting Company (KPLC)? The Assistant Minister has said that he is in the process of opening a bank account. This process may take a year or two from now. Could he be specific in answering part “b” of the Question?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, within the next two weeks we should be able to open that account and be able to pay for that electricity that has been disconnected.

**Mr. Cheruyiot:** Mr. Deputy Speaker, Sir, in view of the fact that this problem is in all health centres, could the Ministry come up with a policy and tell us what they plan to do to ensure that all the KPLC bills for all health centres are paid? Even Olenguruone and Kuresoi health centres have had their power disconnected and this is affecting the provision of services. Could the Ministry do something practical?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, the Ministry Headquarters discussed with the KPLC so that we can pay them directly from the headquarters. Unfortunately, the amount of money allocated to us by the Treasury is not adequate. Now that we have funds for the health sector, we encourage health facilities to pay their electricity bills from the funds that we send to them.

**Dr. Kones:** Mr. Deputy Speaker, Sir, may I know from the Assistant Minister whether the money health centres and dispensaries are supposed to use to pay for the electricity bill is sent directly to them or it is the headquarters that pays on behalf of the dispensaries?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, electricity consumption by health facilities has been quite huge and the amount allocated to us has not been enough to pay for electricity. What usually happens is that we ask the facilities to send us the bills and then we ask the Treasury to give us money to pay the bills. That is what we do at the moment. However, as I have said, we have begun to send money to every facility in the country and the electricity bills will be paid from that money.

**Mr. Kiptanui:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for assuring the House that in the next two weeks, power will be restored at Lelboinet Health Centre. In my constituency there are two other health facilities, that is, Flat Dispensary with an outstanding electricity bill of Kshs76,000 and Chepkoria Health Centre with a bill of Kshs35,000. Could he assure this house that in the next two weeks, he will also settle these bills?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, I have indicated that we shall pay for the dispensary in question now. We have asked the health facilities whose power has not

been disconnected to send their bills to us so that we can see whether we can pay from the headquarters. For the health facility in question, we ask them to open an account fairly quickly so that we can send the AIE and they pay in the next two weeks.

NON-ALLOCATION OF FUNDS FOR  
CLASS C ROADS IN KILGORIS

**Mr. Konchella:** Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Why have Class C roads in Kilgoris Constituency not been allocated sufficient funds for maintenance and repair for the past 3 years?

(b) When will the Ministry repair Kilgoris-Logorian Road (C17), Logorian – Mara Bridge (C13) and Abosi – Angaga (C14) which are currently in a deplorable state?

(c) Could the Ministry provide emergency funds to repair the said roads considering the fact that all tour operators have stopped using the said road resulting in economic and financial loss to the local people?

**The Assistant Minister for Roads** (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, I beg to reply.

(a) My Ministry has undertaken the necessary measures to ensure that priority is given to all roads in the country. Nevertheless, considering the Ministry's objective of ensuring that all roads are in motorable standards, Class C roads in Kilgoris have been funded accordingly for routine maintenance.

(b) My Ministry, through the Kenya National Highways Authority (KENHA) has budgeted for the maintenance of the above-mentioned roads during the current financial year. Works on these roads will be awarded and the contractors will start their works by January, 2011.

(c) Since the stated roads have been budgeted for maintenance works to be undertaken during this current financial year, emergency funding will, therefore, not be applicable.

**Mr. Konchella:** Mr. Deputy Speaker, Sir, I find the answer by the Assistant Minister to be very unsatisfactory and for many reasons. I did not ask the Assistant Minister to tell me what the priority in the whole country is. I am talking about roads in Trans Mara which is an economic hub in this country. The roads in that area are totally neglected. The Assistant Minister has said that he has already procured contractors for January, 2011. This is a high season for tourism and yet tourists are unable to visit western parts of Kenya or Tanzania because of the impassable roads which have been destroyed totally. It is not an issue of maintaining these roads but rather it is an issue of constructing them. Is the Assistant Minister in order to tell us that he has allocated enough money to those roads? The money he has allocated for the Logorian - Mara Bridge Road which is 73 kilometres long is Kshs3 million. What will that amount of money do to a road that measures 73 kilometres and has been destroyed by heavy rainfall?

The Assistant Minister has allocated Kshs1.8 million to the Logorian-Kilgoris Road which is 31 kilometres long. What will that money do? I think the Ministry is not interested in supporting the people of Trans Mara and, therefore, tourism in this country.

Could the Assistant Minister, therefore, review the whole allocation? I find this to be unfair and the Assistant Minister needs to do something about it.

**Mr. Deputy Speaker:** You have not asked the Assistant Minister your question; have you?

**Mr. Konchella:** Mr. Deputy Speaker, Sir, could the Assistant Minister consider allocating sufficient money, for example, a minimum of Kshs30 million for the reconstruction of these roads which are now impassable after being destroyed by the rains?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, the hon. Member has raised a critical issue which has to do with the maintenance of the roads especially those leading to areas that are of high tourist potential. I agree with him that we need to do much more. However, I also want to bring to the attention of the House that for many years, our budget has been limited. As a result, we have not been able to do the roads as we had planned.

Three weeks ago, my Ministry released the Road Sector Investment Programme that clearly outlines roads that will be prioritized in the next five years. Roads leading to tourist sites such as the ones in Kilgoris will definitely be prioritized. Part “a” of the Question had asked about funds for maintenance and not reconstruction. Therefore, the answer I have given is as per the Question that I was asked.

**Mr. Kizito:** Mr. Deputy Speaker, Sir, I am happy that he has answered this Question, but I would like to know whether the Assistant Minister is also giving the same treatment to the sections of the roads going to tourist areas. I have in mind the Kisumu-Kakamega Road, where we have a contractor doing very shoddy work on the road. I wonder whether you are also supervising work on this road for which you are giving money. Shoddy work is going on along the Kisumu-Kakamega Road and the contractor is too slow in doing his work. Are you supervising these works? Is the Ministry doing something to make sure that this work is done fast?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I am not aware that the contractor on that section of the road is doing a shoddy job. However, I wish to undertake to pursue that matter, and if the contractor is found to be doing unsatisfactory work, action will be taken immediately. I would also like to assure the hon. Member that my Ministry, through the Kenya National Highways Authority, will continue to supervise all works contracted under the same authority.

**Mr. Lang’at:** Mr. Deputy Speaker, Sir, this Ministry has an annual allocation for Class B roads and above, which is used for annual maintenance of the roads. Could this Ministry also come up with an annual allocation for all the Class C roads, so that those roads are not left far behind in terms of repairs?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, that is so. What the hon. Member is referring to is Class A, B and C roads, which are under the Kenya National Highways Authority. This Authority will come up with an annual work programme that will be available for public scrutiny, and on the basis of which hon. Members will be able to interrogate the works that will be done during each particular financial year.

**Mr. Konchella:** Mr. Deputy Speaker, Sir, my concern is that the Assistant Minister is not really helping us in this particular Question. You can see in the newspapers that people are demonstrating. They are blocking the roads because the roads are useless; they are impassable. The issue here is that we talk about construction work,

but you have to inject sufficient funds into construction of roads. Could the Assistant Minister allocate emergency funds to simply repair the very bad pot holes, which have now made roads impassable and small cars are not able to pass through them anymore? Even four wheel vehicles cannot pass there. Could the Assistant Minister allocate money for just emergency repairs for the moment because of the Christmas holiday and then maintain the roads thereafter in January?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I agree with the hon. Member. We will send our technical team out to assess the roads, and, thereafter, we will be able to take the necessary action.

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

LOSS OF HIGH COURT FILES HCCC  
1909/09/HCCC 1416/95

(**Mr. Kioni**) to ask the Minister of State for Provincial Administration and Internal Security:-

- (a) Could the Minister confirm whether the police established the circumstances surrounding the loss of two High Court case files No. HCCC 1909/09 and HCCC 1416/95 from the court strong room?
- (b) Could he also clarify whether the police investigated the loss of a title deed and transfer transaction of a proposed sale of property LR 36/VII/586, original number 50 – 52, 117; IR 5666/2 by Mr. George Chege and Mr. Mark Ngarira?

**Mr. Deputy Speaker:** Is Mr. Kioni not here? The Question is dropped!

*(Question dropped)*

**ORAL ANSWERS TO QUESTIONS**

*Question No.473*

RESTORATION OF GACHARAGE COMMUNITY  
FIELD TO ORIGINAL STATE

**Mr. James Maina Kamau** asked the Minister for Roads when the contractor who repaired the Thika-Kangari Road will restore Gacharage Community playfield to its original state after using it as a site office.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, I beg to reply.

The contractor who used Gacharage Community Field as a site office is not expected to repair it since he has already handed it over to the school management in accordance with the terms of the lease agreement.

**Mr. James Maina Kamau:** Mr. Deputy Speaker, Sir, I do not know whether to thank the Assistant Minister or not. I have nothing to thank him for because this is a very short answer on a very serious issue. He gave only one sentence.

The community of this area is suffering. Their children are suffering because they do not have a playing field. The Assistant Minister knows that the contractor, S.S. Mehta, who used that place as a site office, did not clear the field on completion of his work. I wonder what kind of lease these people might have signed. I would like the Assistant Minister to provide a copy of that lease so that it can be interrogated further.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I agree with the hon. Member that the answer is short, but the Question was equally short. For now, I wish to table a copy of the hand-over documents between S.S. Mehta, who was the contractor, and the headteacher of Gacharage Primary School, which states as follows:

“We have completed the works on the Thika-Gacharage Road as per our initial understanding, and we hereby hand over the site camp which was set up in your school playing field. An inventory was jointly made by our representative, Mr. Frederick Njoroge, and yourself, Mr. Wanyoike, on 1<sup>st</sup> April, 2009 which is attached. We take this opportunity to thank you and your management for availing the facility for use and hope that this co-operation will be continued”.

Mr. Deputy Speaker, Sir, this letter is signed by the school management committee together with the representative of the contractor. I, therefore, find the concerns of the hon. Member misplaced.

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

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is avoiding the question that was asked to him. He was asked whether he could table the contract so that it can be interrogated to see whether they returned the field in the state that it was in before they took it over as a site office. Is he in order?

**Mr. Deputy Speaker:** That is a supplementary question by an hon. Member that nobody can take into consideration. The only document that is written and which the Assistant Minister is obliged to come with is specifically what is stated there. The body of the Question does not talk about the contract. The Question asks: “When will the contractor who repaired Thika-Kangari Road restore Gacharage Community playing field to its original state?”

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, it is obvious that the Questioner is asking about repairing the place that was being used as a site office. The Assistant Minister is avoiding answering that part of the Question by saying that there is a hand-over note, but the note does not speak about the status of the field.

**Mr. Deputy Speaker:** Mr. Assistant Minister, you can proceed. Whereas I do see the presumption is that there was a contract between the school and the contractor; when the school took back the site without complaining, then the contract was not--- Anyway, proceed, Mr. Assistant Minister.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, as I have indicated, the contract that is in question is not between the Ministry of Roads and the School. It is between the contractor and the school. Therefore, it is a private arrangement. Upon completion of using that particular field as a site office, the two parties, that is the school and the contractor sat down and prepared an inventory, which I have attached; it includes the perimeter fence, pit latrine, store, kitchen and all the facilities that were being used. After inspection of all those, the school signed the document, which showed that they were

satisfied. Therefore, my Ministry has no business to come between the contract by the contractor and the school; this is because it was a private engagement.

**Mr. James Maina Kamau:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is out of order, because there is something that is not adding up here. The same community has come to me. The same school has approached me regarding the same issue. How could they have signed this lease agreement when it was like that? It was not in their favour. This was a playing field that was used by the community of that area. Now it is riddled with a lot of stones that were not cleared. How can they sign that agreement?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I am not too sure that the hon. Member has asked a question. He is asking: How come the community did all this? I cannot answer that. My responsibility is the section the part touches on the Ministry of Roads and with the contractor; they clearly have a letter that indicates that they were cleared to leave.

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

**Mr. Deputy Speaker:** Could you allow him to respond to the point of order? The hon. Assistant Minister is responding to a point of order.

**Mr. Mwangi:** He said the hon. Member never asked any question.

**Mr. Deputy Speaker:** Order, Mr. Mwangi!

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I said that the question that the hon. Member asked really, is not for me to answer. It does not relate to my Ministry. It does not relate to me or the contractor. That is where we have a contractual obligation. The contract that is there is between the school and the contractor and they were clearly paid. At the completion of the exercise, they have signed saying that they are happy with the way the contract has ended. I wish to assure the House and the hon. Member that with this copy--- If there is any other document that has been contravened or any other provision that was signed between the school and the contractor, we would be happy to take it up.

**Mr. Jamleck Irungu Kamau:** Mr. Deputy Speaker, Sir, that road was completed just the other day and I know there is something called defects liability period, which I believe is not over yet. I just want to find out from the Assistant Minister whether he can consider talking to the contractor and ask him to restore the play field to its original place. That way, the school will stop suffering. It will be part of the contract that they have. He could also look at the lease agreement between the two parties with a view to talking to the contractor so that, that problem could be sorted out peacefully and amicably.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, it is true that we have the contract liability period and during that period, any defect that is found on the road will be repaired by the contractor. But the school was not part of the contract and, therefore, it cannot be considered under the defect liability period. However, under corporate social responsibility, we will request the contractor to consider repairing the school field to ensure that it is restored.

*(Applause)*

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, the Assistant Minister, surely, must know that contractors and school management are not on equal level in terms of negotiating anything. The contractors are normally stronger partners in terms of reaching any form of agreement with the school. For example, the field of Itsoi Primary School in Garsen suffered the same problem when the contractor was doing the Garsen-Malindi Road. The Question I want to ask is: Since it seems it has been repeated in Kandara and, maybe, in other parts of the country, could the Assistant Minister consider to include a clause that will protect any site, considering that this may include public schools or public fields in the lease agreement? That clause should make a specific requirement that the contractor must leave it in a shape that it can be utilized so that Kenyans can be protected in future.

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I agree with the hon. Member that, indeed, the contractors have superior manpower in terms of crafting leases and, therefore, the schools may be disadvantaged. But I think it would also be important, as leaders, to agree that any decision to lease part of the school or the school fields must go through the district education boards. That is because that is a public asset. It is a school asset and through the district education office, they would get better offers. However, I also wish to say that in our agreements or contracts, our contract is strictly between the contractor, the Ministry and the road in question. Where the contractor gets the materials, including the site office and all that, is a private engagement and, therefore, my Ministry will not want to get into the business of knowing where the site office will be, how much will be paid and all that. However, I think it is important to ensure that the contractors who get sites are able to restore those sites to the same state they were before, after the completion of the contract. This is a matter, as the hon. Member has requested, that can be incorporated in future contracts.

**Mr. Deputy Speaker:** Mr. James Maina Kamau, are you satisfied or you still want to ask the last supplementary question?

**Mr. James Maina Kamau:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for attempting to answer this Question. But I would like him to give an undertaking that he is going to order the contractor--- The contractor is actually nearby. He is in Kandara right now. He can ask him to go and clear that field and, at the same time, he has said that the school was paid by the contractor. Could he produce those receipts? I would also like to see a copy of the original lease agreement. I hope he will give that undertaking to this House!

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, as I have said, we will try and talk to the contractor with the hope of getting him to restore the school to the way it was before. The issue, once again, of the contract between the school and the contractor, as I have said, is not a matter that is within the Ministry of Roads. However, I am sure that, under corporate social responsibility, the contractor will basically want to ensure that, that matter has been addressed once and for all. I want to assure the hon. Member that within no time, I will give him an answer to that effect.

*(Dr. Eseli stood up in his place)*

**Mr. Deputy Speaker:** Order! Next Question by Mr. Mbadi!



*Question No.527*

LIST OF PERSONS RECRUITED INTO KENYA  
DEFENCE FORCES

**Mr. Mbadi** asked the Minister of State for Defence whether he could provide a list per-district of the persons recently recruited to the Kenya Defence Forces, indicating the gender distribution in each district.

**The Minister of State for Defence** (Mr. Haji): Mr. Deputy Speaker, Sir, I have discussed with Mr. Mbadi, my friend, of my inability to answer this Question today. He has consented and with your permission, I would like to answer it on Tuesday.

**Mr. Deputy Speaker:** Mr. Mbadi, are you comfortable with this Question being deferred to Tuesday next week?

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, the Minister explained to me that he was not able to prepare the answer today, and he will be ready to do it on Tuesday. I hope he will do it on Tuesday. The explanation he gave me was that he got this Question yesterday, although it was approved more than a week ago.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that the Question appears on the Order Paper next week!

*(Question deferred)*

Let us move on to Question No.537 by Mr. Mbau. Is Mr. Mbau not here?

*Question No.537*

EVICION OF KWOKA FARM RESIDENTS IN MAKUYU

*(Mr. Orengo moved to the Dispatch Box)*

**Mr. Deputy Speaker:** Are you Mr. Mbau, by any chance?

*(Laughter)*

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, I am standing on a point of order!

**Mr. Deputy Speaker:** Go ahead!

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, Mr. Mbau had talked to me about this--- Rather, I am the one who talked to him and told him that I did not have this answer ready because I did not have the particulars of that farm. With his indulgence, this Question could be deferred until next week when I will be in a position to answer it. But I think he assumed then that he need not come so as long as I was here.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to make an arrangement with the hon. Questioner outside Parliament and appear to be asking the Question on behalf of the hon. Member? That is because the Question has not even been asked. Is it in order?

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. You recall that in the morning, this thing came up and the Standing Orders are very clear. That can only be done with the leave of the Chair. The Minister is entering into some informal “*mpango wa kando*” against the Standing Orders.

*(Laughter)*

As we await your ruling on the matter this morning, you should also be very harsh on this particular Minister!

**Mr. Deputy Speaker:** Mr. Minister, your responsibility comes in when the Questioner asks the Question or when the Questioner approaches the Chair or the Clerk’s Department to say that he would not be in a position to ask the Question today. That information is not with us as of now. In any case, you will have the time because the Question will be dropped. The hon. Questioner is not here unless he has delegated to you to come and apologize on his behalf.

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, all that I was doing--- Mr. Mbau is an hon. Member of the House and when an hon. gentleman is not where he is supposed to be, there needs to be some explanation. That is all that I was doing. But I was not inviting anybody to ask the Question nor did I attempt to ask the Question.

**Mr. Deputy Speaker:** Fair enough, Mr. Minister!

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, in the absence of a gentleman in such a person whose whereabouts can be determined at any one time--- But Mr. C. Kilonzo, being a Mkamba, I cannot be able to explain his whereabouts all the time!

*(Laughter)*

**Mr. Deputy Speaker:** Fair enough! Under the circumstances, given that Mr. Elias Mbau is not here to ask his Question, the Question is dropped!

*(Question dropped)*

Next Question by Mr. C. Kilonzo!

*Question No.565*

NON-SUPPLY OF ELECTRICITY TO KITHIMANI  
MAKUTANO WATER PROJECT

**Mr. C. Kilonzo** asked the Minister for Energy:-

(a) why the Kenya Power and Lighting Company has not supplied electricity to Kithimani Makutano Water Project despite Matuu Town Council having paid the required amount for connection; and,

(b) when the project will be supplied with electricity.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Matuu Town Council applied for electricity connection to Kithimani Makutano Water Project in September 2008 under reference No.E25832008090101. The Kenya Power and Lighting Company (KPLC) Limited issued a budgetary estimate of Kshs384, 006 in December 2008 which Matuu Town Council settled in January 2009.

The KPLC Limited identified the final borehole location and prepared a firm quotation for supply early November 2010 with a difference of Kshs110, 000 between the budgetary estimate and the firm quotation. The applicant was informed to top up the difference so as to facilitate the power connection.

(b) I have given instructions to the KPLC to have electricity supplied to the borehole by December 15<sup>th</sup> 2010 and recover the balance of Kshs110, 000 in five equal installments.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, Matuu Town Council rightly paid in January 2009. This is about two years ago. The amount of Kshs110, 000 which the Assistant Minister purports to be the difference can only be a difference because of the time lapse. This is two years ago, whereas Matuu Town Council were given a quotation in December 2008 and a month later in January 2009 they paid the amount as per the cost during that time. The KPLC Limited gave the quotation two years ago and Matuu Town Council paid the right amount that time. The KPLC Limited never supplied the goods they were required to supply. Why is the Assistant Minister demanding more money from Matuu Town Council?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I agree with the hon. Member that there was delay on the part of the KPLC Limited. In fact, when we got the information we were not happy with what they had done. However, the fact of the matter is that the amount of Kshs110, 731 is now due. We have instructed them to connect power to the borehole by December 15<sup>th</sup> and recover the extra money in five equal installments.

**Mr. C. Kilonzo:** On point of order, Mr. Deputy Speaker, Sir. If the works were done two years ago, the quotation was the amount which was paid by Matuu Town Council; that is Ksh384, 000. The reason the cost went up is that KPLC Limited never did the works. Now, two years later, they are demanding more money.

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I informed the House that the initial Kshs384, 000 was a budgetary estimate. The figure including Kshs110, 000 is a firm quotation. I agree there was a delay on the part of the KPLC Limited after receiving the payment not to connect electricity to the borehole. However, they did not do the firm quotation which was done much later. Therefore, the initial figure was a budgetary estimate. When they did the survey itself and got the quantities, the figure went up by Kshs110, 000.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, in simple commercial arrangements, when an amount is quoted, that amount is valid for a certain period of time and it is paid for. Could he inform the House that this is not an additional cost? At that time it would have been an additional cost because of variations and inflation.

I want to inform the Assistant Minister that this is the same thing that has happened in my constituency. We paid the amount, and they did nothing. The KPLC only came up after three years, quoting double the original amount. Could the Assistant

Minister inform the House that this case is a result of inflation and he must bear the blame?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, the hon. Member is trying to answer the Question for me. It is true that we gave an estimate in 2008 and prices could have changed. However, we are telling them to pay the difference due to the delay in connection in installments. However, the actual cost to supply power to the borehole now is Kshs110, 000 on top of the Kshs384, 000.

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading the House. We would like him to go back to the day that they paid the deposit and assess the amount as it would have been on the day the deposit was paid and not three years later. Could the Assistant Minister inform us that the Kshs110, 000 he is claiming, would have been payable if they had done the connection on time and not a forward value, taking into account inflation and change of prices?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, yes we did the estimates in 2008 but the actual cost of supplying now is Kshs110, 000 more than the original.

**Mr. Gabbow:** Mr. Deputy Speaker, Sir, this is not the only project that has been delayed by the Ministry. We are aware that the Rural Electrification Authority projects which were sanctioned two years ago have not started even to date. Could the Assistant Minister explain why this Ministry delays projects?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, that is a different Question. Delays occur due to many reasons. However, on this particular case, we were not happy with the KPLC Limited because of the two years delay. The fact of the matter now is that for us to connect power to the borehole, we require Kshs110, 000. I am saying we are going to ask them to pay in installments, which is not normal.

**Mr. Deputy Speaker:** Last supplementary question, Mr. C. Kilonzo!

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, when Matuu Town Council was given the initial quotation, this is what the KPLC Limited had to say:-

“Kindly pay this amount within a period of 90 days from the date of this letter”.

They went on:-

“If payment is not received within this period, the terms may be revised”.

Matuu Town Council met that condition. They actually paid not within 90 days but 30 days. But even after paying within 30 days, the terms have been revised. Could the Assistant Minister consider waiving this amount of Kshs110, 000? They are punishing Matuu Town Council when the council met the terms given by the KPLC Limited.

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I appreciate the sentiments of the hon. Member. However; I am not in a position to say whether we are going to waive this amount. The KPLC Limited delayed in connection and we have reprimanded them and instructed them to do it by 15<sup>th</sup> December. However, that cost cannot be easily offset now on the microphone.

**Mr. Ochieng:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to insist that Matuu Town Council pays an extra amount of money yet according to me, it is the KPLC who are supposed to pay the council because the council was supposed to sell this water? They have lost for all that period because there was no power to supply them with water.

**Mr. Deputy Speaker:** Assistant Minister, is there not a contractual obligation for the supplier and whoever was to be supplied? If the problem is on the side of the KPLC Ltd---

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, we did not sign any contract.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. The Kenya Power and Lighting Company (KPLC) is a company out there and Matuu Town Council is part of the Government. So, what the Assistant Minister is condoning is the wastage of taxpayers' money because of the mistake of a private company there. Is he in order to allow the taxpayers money to continue to be wasted in the manner he is suggesting here, by paying the KPLC the additional money, yet this was a mistake of the KPLC?

**Eng. M.M Mahamud:** Mr. Deputy Speaker, Sir, I am not saying that taxpayers' money is wasted. I will not encourage that but this cost must be paid for because the cost of installing power in that place is the figure we gave. So, it must be paid for.

**Mr. Deputy Speaker:** Next Question, Mr. Chachu!

*Question No.585*

LIST OF PERSONS EMPLOYED BY KRA  
IN PAST THREE YEARS

**Mr. Chachu** asked the Deputy Prime Minister and Minister for Finance:-

(a) whether he could table the list of all persons employed by Kenya Revenue Authority (KRA) in the past three years, indicating their respective constituencies and districts of origin;

(b) what criteria was used by KRA in recruitment is; and,

(c) what measures he will put in place to ensure all Kenyans have equitable access to employment at KRA.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I have communication from the Deputy Prime Minister and Minister for Finance that they are still collating the answer to this Question. We would request that they get the opportunity to answer this Question on Wednesday next week. I believe there has been discussion with the Member who asked the Question to that effect.

**Mr. Deputy Speaker:** When do you want the Question to be put on the Order Paper?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, next week on Wednesday morning.

**Mr. Deputy Speaker:** Hon. Chachu, are you comfortable with that?

**Mr. Chachu:** That is okay, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Fair enough! The Question is deferred to next week on Wednesday morning.

*(Question deferred)*

*Question No.595*

INFORMATION ON AMBULANCES PURCHASED/  
DISTRIBUTED TO DISTRICTS

**Mr. Mwaita** asked the Minister for Medical Services:-

- (a) whether he could provide a list/details of ambulances purchased and distributed to all districts in the last three years; and,
- (b) when he will provide an ambulance to Marigat District Hospital.

**The Assistant Minister for Medical Services (Mr. Kambi):** Mr. Deputy Speaker, Sir, before I answer this Question, I want to apologize on behalf of the Ministry and the Government that in the morning, neither my Minister nor I were in the House to answer Questions directed to our Ministry. I am very sorry and I promise this House that it is not going to happen again.

Mr. Deputy Speaker, Sir, I beg to reply.

- (a) I wish to table the list of ambulances purchased and distributed to all the districts in the last three years.

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

- (b) It is not possible to state a specific time when the Ministry will provide an ambulance for Marigat District Hospital because there are many hospitals without ambulances and the Ministry's allocation for procurement of ambulances is very limited. However, I can confirm that Marigat is included in the inventory of hospitals that require ambulances and it will continue to be considered for provision of an ambulance within the Ministry's budgetary provision along with other deserving facilities.

**Mr. Mwaita:** Mr. Deputy Speaker, Sir, I have just seen the list that has been tabled. The Assistant Minister has just said that there is a problem of funds. Could he confirm whether this leasing of vehicles is extended also to ambulances throughout the country?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, if you look at the Budget of 2010/2011, there was a provision of Kshs300 million to our sister Ministry to lease ambulances. I have taken this matter up to the highest office in the land because it does not make economical sense to lease ambulances. You can lease other things but not ambulances. We have discussed the matter with His Excellency the President and I am sure sooner rather than later, we are going to sort out this issue.

**Hon. Members:** Well done!

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. Only last month, the Minister for Public Health and Sanitation was here to say that her Ministry has allocated just over Kshs300 million for lease of ambulances. Despite objection from hon. Members, the Minister insisted that they were drawing a paper on which they are going to base the way they are going to lease these ambulances. Is it in order, therefore, for the Minister to come before the House and contradict what the other Minister has said when he knows that, that other one is wrong?

**Mr. Deputy Speaker:** How do you know whether the Assistant Minister has changed his mind? The Assistant Minister is allowed to change his mind. Indeed, it is

possible that he is still in line with the collective responsibility that this new change in the policy is there.

**Mr. Olago:** Mr. Deputy Speaker, Sir, what the Assistant Minister has told the House this afternoon contradicts what his sister Minister said last month, and that is why I am saying so. What is the policy then?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, I am not contradicting my sister Ministry. If you look at the Budget, we were only allocated Kshs30 million to buy ambulances. This amount can only buy ten ambulances and that is what we bought. But if you look at the budget of the Ministry of Public Health and Sanitation, it was allocated Kshs300 million to lease ambulances. According to me, ambulances are supposed to be for referral purposes. So, we can lease other things but not ambulances. If we lease the ambulances, are we also going to lease the equipment and doctors? I have taken this issue with the highest office in the land.

**Hon. Members:** Well done!

**Mr. Letimalo:** Mr. Deputy Speaker, Sir, could the Assistant Minister explain the criteria he uses to distribute these ambulances to the hospitals?

**Mr. Kambi:** Mr. Deputy Speaker, Sir, we distributed the six ambulances that we bought and I have tabled the list here. We could only buy six ambulances given our budget for this financial year.

**Mr. Mwaita:** Mr. Deputy Speaker, Sir, the Assistant Minister is actually confirming the issue of leasing. However, could he confirm that Marigat District Hospital will be considered in the next financial year? In the list he has tabled, I could see that there are even health centres which have been provided with ambulances.

**Mr. Kambi:** Mr. Deputy Speaker, Sir, I want to promise the hon. Member that Marigat will be the first district to receive an ambulance within our budgetary allocation in the next financial year.

**Mr. Deputy Speaker:** We will now move to the Prime Minister's Time.  
Yes, hon. Prime Minister!

## PRIME MINISTER'S TIME

### PRIME MINISTERIAL STATEMENT

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, when I addressed this House last Wednesday---

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I am sorry to interrupt our Prime Minister, but, indeed, he knows that the country is very anxious because the Government Spokesman, Dr. Alfred Mutua, has just announced that the Government of the United States is going to overthrow the Government---

**Mr. Deputy Speaker:** Order, hon. Dr. Khalwale! The Prime Minister is going to give a Statement. Let him read his Statement and then you can rise on a point of order in the process of the Statement itself. The business has not started.

Proceed, Rt. hon. Prime Minister!

**The Prime Minister** (Mr. Raila): Thank you, Mr. Deputy Speaker, Sir. As I was saying before I was interrupted by the hon. Member for Ikolomani, when I talked about the threats posed to our nation by drug trafficking and other aspects of serious and

organized crime last Wednesday, I said that I would talk about other problems later. We have since then taken a number of steps to address the matter. More interventions are in the offing whose impact you will soon be able to witness.

PIRACY IN THE INDIAN OCEAN AND ITS IMPACT  
ON KENYA'S ECONOMY AND SECURITY

Mr. Deputy Speaker, Sir, today, I want to address this House on the issue of piracy in the Indian Ocean which has gained worldwide interest since 2008. This may look like a far removed matter. Indeed, it began as a distant matter. However, it has become increasingly costly and it has come dangerously closer home. This year alone, there have been nine pirate incidences within Kenya's exclusive economic zones, which is 200 kilometers of the Indian Ocean waters. The incidences have been as follows:-

1. MV Golden Wave, attacked 40 nautical miles off Kiunga on 17<sup>th</sup> October, 2010.
2. Spanish Warship, attacked 50 nautical miles off Kiunga.
3. MV Chulsang Bong attacked 30 nautical miles off Lamu on 13<sup>th</sup> March, 2010.
4. MV Izumi, attacked 45 nautical miles off Malindi on 10<sup>th</sup> October, 2010.
5. MV York, attacked 90 nautical miles off Mombasa.
6. MV Ayala, attacked 17 nautical miles off Mombasa on 29<sup>th</sup> October.
7. MV Bosco, attacked eight nautical miles off Msambweni on 29<sup>th</sup> October.
8. MV Tom Kansas, attacked 40 nautical miles east of Pemba Island on 5<sup>th</sup> November.
9. KNS Galana, attacked 21 nautical miles North East of Mombasa.

Mr. Deputy Speaker, Sir, the recent pirate attacks just outside the Port of Mombasa will have serious effects and dramatic consequences if not addressed properly. There is rising likelihood of ever increasing costs as certain shipping companies will take their ships off the routes plying Mombasa. The piracy is causing longer sailing distances meaning that Kenyan products in some cases will have to be air shipped and thus increasing the costs and reducing the competitive edge in areas where the Kenyan economy has shown a significant growth potential. The global shipping industry has been hit hard. The cost of insurance is rising. In some instances, insurance increased from US\$500 to US\$20,000 per transit. The Kenya Shippers Council indicates that the region has been paying Kshs2 billion every month to cover the cost of piracy over the past one year. The International Monetary Fund (IMF) has warned that, that instability could slow down growth and leave many countries unable to meet their medium term targets. After the seizure of the vessel Cyrus Star in the year 2008, a leading Norwegian Shipping Group suspended transit through the area. Denis Shipper Maesk is considering routing its ships along the Cape of Good Hope in order to avoid piracy prone Somalia.

Mr. Deputy Speaker, Sir, piracy is undermining our tourism and fishing industries. Cruise ships are seeking alternative routes. Fishing within Kenya's territorial waters has become too risky. Piracy is contributing to the rising prices of fuel as ships take longer routes and that comes with high insurance premiums. Piracy is undermining our anti-money laundering efforts. We fear that some foreign actors could exploit the situation to dump toxic wastes especially along the Somalia coastline. Piracy is undermining the competitiveness of the Port of Mombasa. Our Government is spending a lot of resources on warding off pirates. The Ministry of State for Defence has been forced



to deploy assets to counter the menace both on land and at sea. Only recently, our navy shot dead three pirates who mistook a Kenya Navy vessel for a merchant ship and attacked it in Kilifi waters. I must commend our forces for the work they are doing. We assure them of our full support and the Government will do whatever it takes to protect our waters and safeguard our trade in the rest of the world.

Mr. Deputy Speaker, Sir, we are reaping the results of many years of neglect of what is going on in Somalia. Piracy goes hand in hand with poverty and a weak or non-existent government, both of which are found in plenty in Somalia. We are witnessing the culmination of years of inattention, desperation and lawlessness in an area bordering that vital shipping route.

As a Government, we have stood for a coordinated approach to those growing problems. Since 2008, we have signed agreements with the United Kingdom, the United States of America, the European Union, Denmark, China and Canada to apprehend piracy suspects and have them transferred to Kenya for prosecution. Those agreements were concluded within the framework of various UN Security Council Resolutions that obligate the international community to collaborate in fighting piracy. However, there has been little or no corresponding complementary obligation on the other parties to those agreements.

As a Government, we are appealing to the international community to collaborate fully on this matter in line with the UN recommendations. We need accelerated efforts to partner with shipping states, original coastal states and major ports' states to create a more effective international legal and enforcement network. We are demanding joint efforts at economic rehabilitation and creation of alternative livelihoods, including development and rehabilitation of coastal fisheries. We need to jointly embark on creation of opportunities for the youth, not only in Somalia, but along our shared water boundaries. The youth in the region need greater incentives not to succumb to the lure of the pirate economy.

Mr. Deputy Speaker, Sir, the Seychelles, Tanzania and Mauritius recently joined a collaborative arrangement which we signed earlier for receiving piracy suspects. However, they have limited capacity compared to Kenya. This has left Kenya to receive the bulk of the suspects. We, however, note with some relief that on 26<sup>th</sup> July, 2010, the Supreme Court of Seychelles sentenced 11 Somali pirates to ten years imprisonment for attempting to seize a coast guard boat last December. The ruling was the first of its kind in that country and was a big boost to the war on pirates. In contrast, however, in the recent case of Mahamoud Mohamed Dadahashi and eight others, the High Court of Kenya, while sitting in Mombasa, ruled in favour of suspected pirates. The ruling was quite a big blow to our efforts to secure our waters and safeguard our economy. The office of the Public Prosecutor is appealing against the ruling and it is our hope that the appeal succeeds to remedy this anomaly.

Mr. Deputy Speaker, Sir, we fully welcome the recently passed UN Security Council Resolution No.1918 of 2010 fronted by Russia, which recognizes the burden Kenya carries. We also welcome Resolution No.1950 which calls on States to take necessary domestic measures to ensure successful prosecution of persons suspected of piracy within their jurisdiction. We are seeking to convene a meeting early next year with all partner States with a view to seeking a complete implementation of the recommendations presented by the UN Secretary General in regard to Resolution

No.1918. We will be asking for, among others, the enhancement of UN assistance to build capacity of regional States to prosecute and imprison pirates. Secondly, the establishment of a Somali court sitting in the territory of a third State in the region, either with or without the participation of the UN. It is our hope that the international community will take an active role and fulfill its obligations. We believe we have done our part in Kenya.

Finally, let me state this and I have told members of the international community recently that the war against piracy cannot be won on the high seas. The war against piracy will be won on land because we must deal with this menace at the source. So long as there is instability and insecurity in Somalia, there will continue to be these problems of pirates. We have urged the international community to fulfill their obligations and support Kenya, Ethiopia, Djibouti and all the front line States, in order to find a lasting solution to the crisis in Somalia. Somalia, with the kind of instability that exists right now is a major threat to security within our country. We are receiving on a daily basis so many refugees coming across our borders. Our borders are long and porous. But more importantly, we cannot send back women carrying children running away from insecurity and famine. So, our refugee camp at Dadaab, which was designed to contain 90,000 people is right now overflowing with over 350,000 refugees. We not only need assistance to deal with the refugees, but need support in order to be more effective in providing assistance to our brothers in Somalia.

The African Union (AU) initiative needs full support. The AU troops around Mogadishu are completely outnumbered. So, I end by saying that we, as a country, are standing firm in our obligation to support a peaceful resolution to the conflict in Somalia. We need the full support of the international community.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. First, I want to thank the Prime Minister for the Statement he has given. There is currently a very sensitive issue touching on the security of this country. Only yesterday, the Government Spokesman issued a statement saying that a friendly country, namely, the American Government, wants to overthrow the Kenyan Government. At the same time, there are 1,800 cables on Kenya on documents which are being released on the Wikileaks Website covering the period from 1996 to date. I understand that yesterday, the United States Assistant Secretary of State for African Affairs, Mr. Johnny Carson, called the Prime Minister to apologize to the Kenyan Government over comments by some American diplomats in the country. Could the Prime Minister consider addressing the hot issue, which is there today? The issue of piracy has been going on for a long time. Could he consider addressing this issue? Since it is on his fingertips, he should address it now.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I stand on the same point of order to request the Chair that while making this ruling, to seriously consider the fact that this matter is not only topical, but the Government of the United States, we are given to understand, took the trouble to contact our Prime Minister. Could he, therefore, kindly accept to step down his Statement from being interrogated and instead tell us what the conversation was about? Probably, he could clarify if that conversation was trying to make sure that whatever Wikileaks will leak in respect of the concealed names of the perpetrators of the post-election violence and the names of the drug barons; probably, they fear that this will leak to us. He could tell us if Johnny Carson told him whether in those Wikileaks there is a list of the Ministers who are considered to be the top corrupt

people in the country. Finally, he should confirm whether in their discussion, also the issue of money stuffed in foreign accounts by Members of the Cabinet was also discussed.

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. I had sought your approval to seek a Statement from the Government. Now that the same matter has been brought up, if it does happen that the Prime Minister will respond, I would request that he also responds specifically to the issues that the American Government is apologizing for. Under normal circumstances, one does not apologize for something he does not understand. What is it that the American Government is apologizing for? In their discussion, did the American Government tell him what they will do with the mental and social anguish and the economic effects to the Kenyan people by these very damning reports that are supposed to come out from the Wikileaks dossier?

**Mr. Deputy Speaker:** Order, hon. Members! Whereas the Chair understands the gravity of the issues being raised, it is important for us to dispose of the Statement that has been read. The practice has been that the Prime Minister's Statement is well circulated well in advance. The Chair did allow you, hon. Kabogo, to rise up to seek a Ministerial Statement on the same matter that you have raised now. But nonetheless, because of the urgency, I am sure the Government, in its own wisdom, does understand that there is need to respond to such things, so that anxiety which is in the public domain can also be addressed. But can we also, first of all, dispose of the Statement in its current form? Then you can have him responding to the issues that you have raised. Hon. Mungatana, are you seeking clarification on the Statement by the Prime Minister? What is it?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, first of all, I want to thank the Prime Minister for bringing up this matter. This issue has affected the Coast very seriously. Last year alone, on cruise tourism alone, we had about 11,000 people coming to visit. Around the same time this year, we have just about 500 people. This is about 95 per cent drop on cruise tourism alone. I could not agree more with him that piracy has affected the Kenyan people seriously. However, the issue I want to raise concerns the court ruling that he has referred to. I have with me here, Section 69 of the Penal Code, which states as follows, in Subsection (1):-

“69(1). Any person who in territorial waters or upon the high seas commits any act of piracy *jure gentium* is guilty of the offence of piracy”.

Mr. Deputy Speaker, Sir, despite this specific provision, the High Court, sitting in Mombasa, acquitted eight people. This is the clarification I want to seek from the Prime Minister. Although he has said that the Attorney-General has gone on appeal, there are two specific arguments he needs to look at and tell us what the Government is doing about them.

The first thing the lawyers of the pirates were saying was that the Kenya Government has not signed any international maritime convention. Can the Prime Minister clarify why the Kenya Government, has not done that? Why are we being exposed to a legal incapacity to deal with pirates?

The second specific question, on which I want clarification, is that the Prime Minister has said that we have signed agreements with the United Kingdom, Denmark and other countries, including Canada, the European Union, *et cetera*; but the lawyers have argued that those agreements that have been signed between Kenya and other

countries are of no legal effect, because the Ministry of Foreign Affairs never brought those agreements to Parliament for ratification and, therefore, they are not applicable.

Mr. Deputy Speaker, Sir, these arguments, amongst others, led to the acquittal of the eight suspects. The Prime Minister says that he is appealing for international support, yet the High Court has ruled that, as a country, we do not have jurisdiction to try these people. What are we doing about the two issues I have raised? Can the Prime Minister---

**Mr. Deputy Speaker:** Hon. Mungatana, you have made your point very clear. Allow other hon. Members to also seek clarifications.

**Mr. Mungatana:** Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Yes, hon. Kapondi!

**Mr. Kapondi:** Thank you, Mr. Deputy Speaker, Sir. First of all, I would like to appreciate the Statement given by the Prime Minister. Given the incidents he has clearly stated here that happened within the Kenyan territorial waters, and the fact that the Kenya Navy has boats along the Kenyan coast that monitor incoming and outgoing ships, what would the Prime Minister tell us about the state of preparedness of our naval forces to protect our territorial waters? The agreements we have with the European Union, NATO, UK and USA are supposed to supplement our efforts and take care of the international territorial waters. So, can the Prime Minister tell us the state of our own navy to take care of our national interests along the coast?

**Mr. Gabow:** Mr. Deputy Speaker, Sir, I also wish to thank the Prime Minister for the presentation he gave. Mine is to follow on Mr. Kapondi's clarification. Could the Prime Minister tell us why foreign navies are patrolling our seas? Could he tell us what the capacity of the Kenya Navy is? We are not hearing anything about them.

Mr. Deputy Speaker, Sir, I can see the Minister of State for Defence here. With your permission, could the Minister give information on the status of our naval forces to handle this problem? Some of the ships being attacked, as I hear, are warships. I have heard that there is a Spanish warship which was attacked by pirates. If a warship can be attacked and, maybe, hijacked, what could be the capacity of the Kenya Navy to defend this country's territorial waters?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, as he addresses the issue of Kenya Navy's capacity to protect our territorial waters, could the Government consider seriously funding the Kenya Air Force, so that they can also chip in and address the current situation? With the current condition of the Kenya Air Force, it would actually be impossible for us to fight this war.

**Mr. Mwiru:** Mr. Deputy Speaker, Sir, it looks like with the intensity of piracy within the Indian Ocean, there is also intensity in social and economic activities within Kenya. It looks like the benefits accruing from piracy are landing on Kenyan soil and being invested here. I want to know whether there are any plans by the Government to know whether there is direct correlation between the piracy activities going on in the Indian Ocean and the kind of heavy investment taking place in Kenya today, and what measures the Government is taking to ensure that this money does not land in Kenya. It could be benefiting some people here.

**Mr. Deputy Speaker:** Hon. Member of Parliament for Tharaka, please get closer to the microphone and speak a little better than you are doing.

**Mr. Mwiru:** Thank you, Mr. Deputy Speaker, Sir. It is only that I am a little bit short. That is the problem.

I was saying that there is some intensity of activities of piracy in the Indian Ocean, and it looks as if there is some direct correlation between those activities and the social and economic activities in Kenya. I wanted to know whether the Government has any plans to make sure that the benefits accruing from those bad activities do not get into the Kenyan economy, and what the Government can do to stop the same.

**Mr. Deputy Speaker:** Rt. Hon. Prime Minister, can you respond to those clarifications?

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, hon. Mungatana asked about the agreements which have been signed between the Government of Kenya and other governments, and whether the agreements have been brought to the House for approval. He further quoted Section 69 of the Penal Code, which says that, any person within Kenyan territorial waters, or upon the high seas, who commits any act of piracy *jure gentium* is guilty of the offence of piracy.

Mr. Deputy Speaker, Sir that section was actually quoted by the parties to the suit in the case that has just been cited. The judge's own view was that this provision, or section, is inconsistent with Section 5 of the Penal Code to the extent that it includes the high seas in respect of where the acts of piracy *jure gentium* are committed. Section 5 confers on the Kenyan courts jurisdiction over all matters under the Penal Code.

All those matters were canvassed during the hearing of this particular case but the learned judge, in his own wisdom, decided that even with these provisions in our law, still the offence took place outside Kenyan territory and, therefore, were not offences under the Kenyan laws. As I mentioned, the Attorney-General has appealed against this ruling, and the matter is going to be discussed during the hearing of the appeal. So, to that extent, it would be *sub judice* for us to discuss this issue; it is still a subject of an appeal filed by the Government.

Mr. Deputy Speaker, Sir, I want the hon. Member to appreciate that Seychelles has almost similar laws to ours. However, their courts decided to pass a judgment imprisoning people who were found to be within their territorial waters in almost similar circumstances like ours. That is why we were disappointed by that ruling, although it is part of our democratic governance. Therefore, there is very little that we can do until the court of appeal has successfully heard this matter.

Mr. Deputy Speaker, Sir, the agreements that had been signed were not really the cause for the dismissal of this case against the accused. These agreements are only intended to mobilise collective action by the parties in the fight against piracy in the high seas. I have not checked the records fully, but if the agreements have not been brought for ratification by this House, action will be taken to ensure that, that is done at the earliest possible opportunity.

Hon. Kapondi---

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. Sorry, Mr. Prime Minister.

There is a specific thing which I said about Kenya failing to sign the International Maritime Convention and, therefore, leaving the country open without jurisdiction, which is separate from inter-country agreements, which he has effectively addressed. So, could he undertake to look at why Kenya has not ratified the International Maritime Convention, as he checks for the records for the others? This would have helped in the fight against piracy, but he has not addressed it.

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, the hon. Member should be specific because Kenya is a signatory to the International Maritime Organization. So, he should tell us which specific convention Kenya has not signed and we will be able to deal with it.

Mr. Deputy Speaker, Sir, hon. Kapondi wanted to know the capacity of our navy to defend our territorial waters. He wondered why our navy is not able to effectively deal with this menace. I want to assure him that our navy has got the full capacity to deal with this matter. However, the national waters are very expansive. We are not only dealing with Kenyan territorial waters, but we are also dealing with activities that are well beyond our own territorial waters. That also leads us to hon. Gabbow's concerns. The waters are very huge and that is why we need a global collaboration in this matter. That is the reason we have got navies----

*(Mr. Kapondi stood up in his place)*

**Mr. Deputy Speaker:** Allow the Right Hon. Prime Minister to conclude.

**The Prime Minister** (Mr. Raila): That is why we need global collaboration in this matter. That is the reason we got navies from NATO, Indian navies, and Chinese warships are all there, involved in this activity of trying to control the piracy menace. It requires a concerted effort. We are grateful to all these countries, who are working together with our own navy, in order to deal with this menace that is called piracy.

Hon. C. Kilonzo wanted to know why the air force is not involved. I would like to confirm to him that our air force is actively involved in patrolling our territorial waters. They are engaged, almost on daily basis, flying along the coastline to detect pirates. That is what has made our navy much more effective in dealing with the pirates who intrude into our waters.

*(Mr. Kapondi stood up in his place)*

**Mr. Deputy Speaker:** Why do you not allow the hon. Prime Minister to conclude all those clarifications, including the last one by the hon. Member for Tharaka Constituency?

**The Prime Minister** (Mr. Raila): The hon. Member for Tharaka wanted to know if piracy money is finding its way into our economy. Yes, the fear is that part of the piracy money might be finding its way into our economy here. There are some very artificial indicators in our economy. For example, you will notice that the property prices within the Nairobi City have skyrocketed. There are people who are coming to pay cash dollars to buy property in several parts of this City. This matter is being dealt with by the security agencies of our country. So, I do not want to deny, but to confirm that yes, we fear that part of this piracy money might be finding its way into our own economy here in this country. But we are definitely, actively, pursuing, investigating and trying to deal with these issues.

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

**Mr. Deputy Speaker:** Are you on a point of order, hon. Kapondi because you cannot seek another clarification?

**Mr. Kapondi:** On a point of order, Mr. Deputy Speaker, Sir. I think it is not right for the Prime Minister to mislead the House by saying that the Kenya Navy has the capacity when he admits here that what we have agreements with the UK, USA, Denmark and the EU. Those agreements were done because of the deficit that we have. We lack the capacity to do so. That is why we are calling in the EU and others to come and assist us. If the presence of the EU forces is within our territorial waters, how come--

*(Mr. Haji stood in his place)*

**Mr. Kapondi:** Mr. Deputy Speaker, Sir, my question is directed to the Prime Minister for clarification, unless the hon. Minister wants to assist him because he is the Minister of State for Defence.

How come the incidences of piracy within our territorial waters are increasing instead of diminishing? Is he in order to mislead the House?

**The Prime Minister (Mr. Raila):** Mr. Speaker I would like to invite the hon. Member to listen very carefully when I am responding. First, the pirates do not come from Kenya. They come from outside our territorial waters. He should know that the territorial waters are very expansive. We are talking in terms of 200 nautical miles inside the sea from the coast. But these activities are not confined to our territorial waters. They go right up down to the Gulf of Aden; that is where it starts coming down and it goes several kilometers. Some ships have been hijacked 300 kilometres off the coast; that is deep in the high seas.

So, these kinds of activities require collaboration internationally. Kenya does not have capacity and no country in the world alone has that capacity. Maybe probably, it is the only super power. We do not have all the ships but this does not mean that we do not have enough ships to patrol our territorial waters alone here. But we do not want to wait for the menace to come here because some ships which are destined to Kenya are hijacked, sometimes in the Somali waters but those ships were actually carrying goods which were coming to Kenya. That is why we cannot just wait for these ships until they come to Kenyan waters to deal with them. Ultimately, it is Kenya that is affected. I have given an example how the insurance premiums have gone up for goods destined to Kenya. So, this is making both our imports and exports much more expensive. Some ships have had to detour, avoiding the Somali coast and going deep inside the ocean plying more than 1,000 kilometres extra in order to come. Others have rerouted to come through the Cape of Good Hope, South Africa, instead of coming through the shorter route through the Suez Canal to here. So, this problem is much bigger than the hon. Member may be thinking about it. The problem is bigger and requires concerted international collaboration.

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. While thanking the Prime Minister for this very timely Statement, I would request him to inform the House the steps the Government is taking to make sure that the Kenyan youths are not recruited into the piracy gangs currently operating in the Indian Ocean. Finally, could the PM inform

the House any investigations that are being done to establish whether there could be any collaboration by local elements into the piracy dragon?

**Mr. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. While thanking the PM for the attempt to give us answers on these intricate Somali pirates, could he tell the House what steps he is taking to ensure that Kenyans are not susceptible to risky situations by keeping the pirates here in Kenya?

**Ms. Abdalla:** Thank you, Mr. Deputy Speaker, Sir---

*(Mr. Gabbow stood up in his place)*

**Mr. Gabbow:** On a point of order, Mr. Deputy Speaker, Sir. I have just heard the hon. Member saying Somali pirates. Does it mean that the pirates are all Somalis?

**Mr. Deputy Speaker:** Order, hon. Members! I think this is a definition for the benefit of this House we need to clear between the Somali and Somalian. The Somalian is from the Somali Republic, and the Somali is a Somali tribe just like the Luo tribe or the Luhya tribe. They are in many countries in the world. Maybe, for the benefit of the House, we should say Somalia is from the failed state of Somali.

Proceed, hon. S. Abdallah!

**Mrs. S. Abdallah:** Thank you, Mr. Deputy Speaker, Sir. This piracy business all started, initially, when the trawlers started to be licensed in Kenya. It started with trawlers which used to come and do fishing here and then it turned on to the ships. Could the Prime Minister assure this House that they are going to stop licensing the trawlers which is the cause of this piracy? When he says that he is going to fight this war in the land, how does he intend to fight the war in the land?

**Mr. Kutuny:** Mr. Deputy Speaker, Sir, of late, the real estate sector of the economy in this country has flourished. One of the factors that is attributed to the growth of this sector is suspected to be the influx of the money from piracy. Could the Prime Minister deny or confirm that this sector has grown because of the piracy that has been going on along the coast? Who has been facilitating this money to find its way to the other parts of the country?

**Mr. Deputy Speaker:** Hon. Kutuny, if you had been attentive, you would have realized that the hon. Prime Minister addressed that question. The same clarification was raised by the hon. Member for Tharaka.

**Mr. Konchella:** Thank you, Mr. Deputy Speaker, Sir. I would like the PM to clarify the following or to decide otherwise; Kenyan territorial waters is more than 368 nautical miles which means we need enough security to cover all these waters other than, of course, the fact that we can work with our friends. Warfare in the world has changed. We are no more in the traditional warfare. It is now given that we need humans and, therefore, new systems. It is time for Kenya led by the two principals to call a conference of defence experts to address the issue of security of Kenya for the future. We are procuring obsolete equipment and which we do not need when we can sit down and identify the needs for Kenya so that we can get the right equipment for the right job. Could you assure us that you are going to look into this issue and call experts to address this issue? We have many retired officers and other experts from whole world. There are many things we cannot discuss on the Floor of this House because they concern the security of the country. However, we can discuss them in a conference.



**Mr. Deputy Speaker:** You made your point, hon. Konchella.

**Mr. Konchella:** Thank you, Mr. Deputy Speaker, Sir.

**Mr. Yakub:** I would like to thank the hon. PM for the indepth on the issue of the piracy money. We have also heard that piracy money has entered into our country and the real estate business. I do not believe that only money coming from pirates is being invested in real estate business. There is also money coming from drug trafficking and which has spoiled the economy of this country. What is the Government doing on the issue of drug trafficking money which has entered into this country?

**The Prime Minister (Mr. Raila):** The hon. Member for Lari wanted to know the protection the Government is giving to the Kenyan youths so that they are not drafted into this activity of piracy. The Government is very much alert and it is aware that attempts have been made to recruit Kenyan youths into this negative activity but most of them have been nipped in the bud. The Government is also warning Kenyans that piracy is a very dangerous undertaking. In the end, it does not pay and, therefore, we have warned our youths to desist from any temptation to be drafted into this negative activity. If any Kenyan gets involved in this kind of activities, then he will be treated just like any other criminal who is involved in the negative activity of piracy. Mr. Cheruiyot was concerned about pirates being kept or hidden in Kenya. We are looking for pirates. So, if there is any hon. Member or Kenyan with information about any pirate being kept anywhere, we would be very glad to receive that information. Mr. Cheruiyot knows how we have been looking for one Mr. Kabuga for a very long time but we have not been able to find him in Kenya. So, if he has any information that he can volunteer about any pirate in the country, that information would be very welcome. Mr. Gabbow's concerns were handled by the Chair but he was talking about Somalia and not Somali pirates. So, I do not need to dwell on that point. Ms. S. Abdalla suggested that piracy started with trawlers and that it has expanded. Therefore, the Government should stop licensing trawlers. I do not think that equipment is at fault. A trawler is equipment that is used. If that was the case, then we could say that robbery started with guns when they were licensed but even without guns, people were using other items.

**Ms. S. Abdalla:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Ms. S. Abdalla, are you sure you do not want to allow the Prime Minister to conclude and then you rise on a point of order?

**Ms. S. Abdalla:** Thank you, Mr. Deputy Speaker, Sir. The trawlers which I am talking about were pushed from Lake Victoria to Coast Province. They were given 24 hours to leave. That is the cause of piracy. So, for the Prime Minister to say that robbery and other things is an excuse, it is not an excuse but a reality. Trawlers are the sauce of piracy. They were given 24 hours to leave to Coast Province.

*(Mr. Shakeel consulted loudly)*

**Mr. Deputy Speaker:** Order! Order, Mr. Shakeel!

Proceed, Mr. Prime Minister!

**The Prime Minister (Mr. Raila):** Mr. Deputy Speaker, Sir, the hon. Member will agree with me that trawling is an activity that is allowed in certain circumstances for efficient fishing. Fishermen use trawlers to catch fish rather than using the old ancient traditional methods of using ordinary dhows. Trawlers are much more efficient in fishing.

What I am trying to say is that without trawlers, there would still be pirates because they can use other boats to physically go and board the ships. Piracy is like any other criminal activity. These people forcefully board the ship and take it hostage. So, the trawler is just a mechanism or an equipment that is used. Therefore, we should not address the symptoms but the cause of the issue. That is what we are trying to deal with here.

Mr. Deputy Speaker, Sir, Mr. Konchella has made a suggestion and I agree with him. The Minister of State for Defence has taken note of the National Defence Conference to talk about the security situation in the country. We are grateful to the hon. Member for his useful suggestion. Mr. Yakub was concerned about the money, and not just the piracy money but also the drug money. Last week, I addressed this House at length on the issue of narcotics. I went at length to explain how money comes to the country through money laundering and so on. That is another source of illicit funds which come into our economy. I also explained in great detail, steps that the Government has taken to deal with that issue of drug trafficking. I just want to inform the House that as I gave an undertaking last week, the Government is setting up a serious crimes unit to deal with organized crime. This morning, I set up a task force which is in the process of working out strategies to create that unit in our country.

**Mr. Jamleck Irungu Kamau:** On a point of order, Mr. Deputy Speaker, Sir. Last week, the Prime Minister talked about the issue of drugs or narcotics in this House. He was asked to give the names of those barons but he said that he did not have the names. Today, when he was being asked a question by Mr. Yakub, he confirmed that it is possible that there is a relationship between drugs and piracy. While we know that there is a relationship between piracy and drug trafficking, the Police Commissioner has a while ago, publicly received the names of those prominent Kenyans who are suspected to be dealing in drugs in this country. Could the Prime Minister not be in order to table the names of the prominent Kenyans who have been named in the report?

**The Prime Minister (Mr. Raila):** Mr. Deputy Speaker, Sir, last week, I said that if it was fit for me, I will come and table the names here. I have no fear of doing that. However, of what use will it be for the House if the culprits are not apprehended and brought to book? Receiving the names is one step in this exercise. The next step is to investigate and get sufficient evidence which will be used to prosecute the suspects in a court of law. If you come and table the names, then you are forewarning them. I do not think that, that is the best way to go about investigations. If we are serious, let us allow the authorities that we have charged the responsibilities of investigating to carry out proper investigations. If they fail---

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

**Mr. Deputy Speaker:** Order, Mr. Mbugua! The Prime Minister is responding to a point of order.

**The Prime Minister (Mr. Raila):** Mr. Deputy Speaker, Sir, I want the House to give time to this matter. I have said that we have started a new journey to deal with this issue. Let us be methodical and consistent in dealing with this issue. Let us not just seek publicity.

**Mr. Mbugua:** On a point of order, Mr. Deputy Speaker, Sir. I think the Prime Minister is misleading the House by telling us that investigations will be done. I am wondering how the American Government, which is foreign, arrived at those four names. Had they, done investigations or not?

**Mr. Deputy Speaker:** Is that a point of order? How is the Prime Minister out of order?

**Mr. Mbugua:** Mr. Deputy Speaker, Sir, he is out of order by telling the House that investigations will be done while the American Government has done investigations. So, he should just table the names.

**Mr. Deputy Speaker:** Mr. Mbugua, Kenya is a sovereign state and America is a sovereign state. This is the Kenya National Assembly and the Rt. Hon. Prime Minister represents the Government of the sovereign Republic of Kenya. Maybe, you need to understand. If others say that because Americans have carried out investigations then the matter is over, that is not the way governments work.

**Mr. Mbugua:** Mr. Deputy Speaker, Sir, how are we sovereign when just today, policemen were on the streets collecting copies of *The Star* newspaper. How are we sovereign?

If the American Government can order the Police Commissioner to go and get newspapers from the vendors, how are we sovereign?

(Applause)

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I am at a loss, because when the Americans say that they have passed this information to the Government and that they have given travel bans, they actually gave these names to the airlines and the travel agents have the information. So, if this information is with the airlines, how come the Government cannot give Parliament that information? There are people who are wrongly being accused while others are being rightly accused.

**Mr. Jamleck Irungu Kamau:** On a point of order, Mr. Deputy Speaker, Sir. The Constitution which we just passed the other day is very clear on this; that, every citizen has the right of access to information held by the State. As we speak right now, the Police Commissioner has received those names and, therefore, the State has the names. The Standing Orders are very clear here that a Minister must answer any Question that is asked by any hon. Member. What we are asking is for the Prime Minister to just name those individuals. There is no big deal about it!

**Mr. Chepkitony:** On a point of order, Mr. Deputy Speaker, Sir. The Prime Minister has accepted that some of the money from piracy is finding its way into Kenya. If this is so, then those people who have been doing these criminal activities are also bringing their money into Kenya and they must be residing here. I think our bank systems are able to know how this money is coming in and they can be able to trace those people. So, is it really in order that these people cannot be known where they are staying here in Kenya?

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

**Mr. Deputy Speaker:** What is your point of order? That is the last point of order that the Chair is taking.

**Mr. Shakeel:** Thank you, Mr. Deputy Speaker, Sir. Could the Prime Minister kindly inform the House whether he is aware that readers of *The Star* newspaper have been arrested this morning on Kenyatta Avenue just by reading it? Is he aware? If that is the case, can they be released, because they have done nothing wrong?

**The Assistant Minister for Defense** (Maj-Gen. Nkaisserry): On a point of order, Mr. Deputy Speaker, Sir. You cannot allow hon. Mbugua to get away with a very serious allegation. Hon. Mbugua has alluded that the Americans have given the Commissioner of Police some information or some names and he must substantiate. We cannot allow hon. Mbugua to get away with that!

**Mr. Deputy Speaker:** Why did it take you such a long time to respond to that and seek substantiation?

**The Assistant Minister for Defence** (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I thought that you were taking your time to respond.

**Mr. Deputy Speaker:** Order! It is upon the Chair, on his own volition! The Chair does not direct substantiation. A substantiation, as per the practice of the House is sought by another hon. Member and that is when the Chair enforces the provisions of the Standing Orders. Indeed, you are time barred. If you had risen on a point of order at the appropriate time to seek substantiation from hon. Mbugua, the Chair would have done the needful.

Allow the Prime Minister to respond to the many issues raised.

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, the questions here are about names, names and names. Hon. Chepkitony asked about the names of those who are bringing in piracy money into our economy, and I did say that the Central Bank has been instructed to investigate and to identify the sources of this money that is flooding into our economy. That exercise is going on and I do not have any names to table here.

Secondly, I mentioned last week that names have been given to the Kenya Anti-Corruption Commission (KACC) by the American Ambassador, and that KACC was going to carry out investigations. I said that KACC is an independent institution which does not receive directions from any other authority, including that of the Prime Minister.

Mr. Deputy Speaker, Sir, I have said that, yes, I am very conscious of that provision of the Constitution on the freedom of information that we have been talking about all the time. But it is always a proviso; it is not open ended. If that information will compromise investigation which is ongoing, then that information is not given. If that information will help a thief to escape, then that information is not given. Otherwise, why else would you be talking about investigations if you have to be throwing all that information out there in the air for everybody to see?

So, I want the House to believe that we are not trying to hide any information. We are not afraid of any warlord. The hon. Member talked about four names. I do not know where he got that information about those names, and I want him to be careful when talking about those four names because he does not know if his name might be on that list.

*(Laughter)*

So, Mr. Deputy Speaker, Sir---

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

**Mr. Deputy Speaker:** Order! Order! The Prime Minister is responding to points of order.

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, I want to urge hon. Members to hold their horses. This information is going to come to this House, but it will

come in good time when we know that it can no longer jeopardize the course of investigations.

**Mr. Deputy Speaker:** Next Order!

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

**Mr. Deputy Speaker:** Order! I think the issues you want to raise are best served in the Next Order.

Yes, what is your point of order? The Chair has called for the Next Order and I am sure you want these issues---

**An hon. Member:** Just one last point of order.

**Mr. Deputy Speaker:** Order! Order!

Next Order, hon. Members!

## POINTS OF ORDER

### APOLOGY FROM THE US GOVERNMENT

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Office of the Prime Minister regarding a phone call that he received or it is alleged that he received with an apology from the American Government. In the Statement, I would want the Prime Minister to state what exactly it is that the American Government is apologizing for; whether it is to the person of the Prime Minister and, if so, he is the Prime Minister of the Republic of Kenya, to state what it is that the American Government has done to the Prime Minister. And if---

**Mr. Deputy Speaker:** Order! Order! Hon. William Kabogo, your Statement was approved by the Chair and it will be very bad for a hon. Member to seek a Statement that was approved by the Chair and read a different Statement. Can you read the Statement that you had brought to the Chair this morning without any variations?

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I was just elaborating. Also in the statement, I would like the Prime Minister to state what the American Government is apologizing for. While discussing the apologies, he should also state whether they stated in their apology what they will do to cater for the mental, social and economic negative effects of that apology. I would also like the Prime Minister to state the issue in public domain that the American Government, or foreign governments, are about to overthrow the Government of Kenya.

**Mr. Deputy Speaker:** The Right hon. Prime Minister can give an undertaking on that.

**The Prime Minister (Mr. Raila):** Mr. Deputy Speaker, Sir, I want to clarify this issue, because I think it has not been properly recorded in the media. I did talk to the Assistant Secretary of State for African Affairs, Amb. Johnny Carson, whom many of you in this House know was ambassador of the US to Kenya for quite some time.

Mr. Johnny Carson talked to me and said that he was calling me to warn me that there was some information that was going to come out over the next coming days. He said that somebody had hacked into their website and sent information across the world. There will be information coming from American missions abroad, not just Kenya; it will go to other parts of Africa, Europe, Asia and so on. There was communication between these embassies and their head office in Washington. He said that some of this

information may not be very pleasant. There is a way in which they do communicate, and sometimes the language may not be very pleasant.

He told me that he was just calling me to warn me because this matter was already in the media in Europe and also in the United States of America, and a lot of it will be coming in the next few days.

Mr. Deputy Speaker, Sir, this information is now public knowledge. The US Government has apologized to many governments which they have rubbed the wrong way. Some unpleasant comments were made about the Chancellor of the German Government, the Italian President, French President, the new British Prime Minister and so on. So, Kenya is not alone in this.

It was a communication which I felt was civilized; as a friendly government, they were taking the opportunity to let us know in advance what would come out. I want to reiterate here that the United States of America is a friendly government. We have not had any quarrel with them. We still have not received all that information about Kenya. So, we do not know how negative or positive it is for that matter.

Mr. Deputy Speaker, Sir, I want, therefore, to say that we, as a Government, are treating this as some kind of information which we were not entitled to. It was an internal communication and it has come out. We now know what some of our friends think about us. It is helpful because you can look at it as a criticism which is positive, in my view.

Mr. Deputy Speaker, Sir, on the plan to overthrow the Government, I am not privy to that information at all. All that we have informed the US Government is that whatever they are doing needs to be done within the framework of co-operation between the Government of the USA and the Kenya Government. If they want to empower the Kenyan youth, which we are also doing jointly with the World Bank, there is a proper fund through which they should channel their money.

We have said that it will not be proper for any foreign envoy to come to this country and begin to recruit youths from different parts of the country and then put them together, supposedly to empower them, and tell them what to do with their country. This is all that we have said. But we have never interpreted any action as implying that any government wants to overthrow the Kenya Government.

The Kenya Government will not be overthrown in that way. This Government, as all hon. Members know, is a stable Government politically. Therefore, it would take much more than hiring a few youths here and there and giving them money to overthrow this Government.

Thank you.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I would like to remind the Prime Minister that listening to him, he wants to treat the call from the Government of the USA to the Prime Minister of Kenya as being casual. Mr. Prime Minister, unless you are referring to the old Constitution, Article 35(3) of the new Constitution states as follows:

“The State shall publish and publicize any important information affecting the nation”.

Mr. Prime Minister, in view of this, I have stood here on an earlier point of order and asked that you make a full disclosure of that conversation. I requested that you tell us whether in that conversation you pinned down Mr. Johnny Carson to tell you what the things they are fearing are. Is it about the names which have been concealed in this country about the perpetrators of post election violence? Is it about the drug barons?

Have the names been made public? Is it about the Ministers in your Government who are corrupt? Have their names been made public? Or, is it about the known money which your Government has stashed in foreign accounts? It is important that in view of our new Constitution, you make a full disclosure.

**Mr. Deputy Speaker:** Order. Dr. Khalwale, under the provisions of the Standing Orders, if you have information that is contrary to what the Right hon. Prime Minister has stated, then you can say that this is not what you discussed with hon. Johnny Carson. The Right hon. Prime Minister has said there is this information which will be in the public domain. This basically means that the American Government is not in control of that information, neither the Kenya Government, nor anybody else; only the Wikileaks have it.

For you to insinuate something against the Prime Minister is not fair, and is not in line with the Standing Orders of the House. You have to respect the dignity of the House. Do not impute any improper motives, even in touching on anybody without substantive process, essentially in a substantive Motion. So, just hold your horses. It is a matter of days as the Right hon. Prime Minister has said.

*(Mr. Kabogo stood up in his place)*

Do you want to seek any clarification on the statement issued by the Right hon. Prime Minister? Do not go out of the Statement.

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I will not dare go out of it. The Right hon. Prime Minister did confirm that he received a phone call from a former ambassador. The Right hon. Prime Minister is a principal in this Government, and a very serious principal at that. I am certain that he has the concerns of the people of Kenya at heart. I am sure he did discuss the issues that are getting the Americans worried. So, I am only trying to persuade the Prime Minister to clarify further, whether there is cause for alarm in terms of the Kenyan public, whom he cares very much about.

**Mr. Deputy Speaker:** For purposes of gender sensitivity, I will allow Mrs. Shebesh to seek the last clarification. We will allow one more clarification!

**Mrs. Shebesh:** Mr. Deputy Speaker, Sir, could the Prime Minister clarify why, after yesterday's Cabinet Sub-Committee Meeting, the Government Spokesman's highlight of the discussion around the leaks was the issue of young Kenyans being empowered by the Government of America? Does that mean that, that is one of the leaks; that the money is really being used to sabotage the Government of Kenya? That is what came out clearly from the Government Spokesman yesterday?

*(Applause)*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. Is Mrs. Shabesh in order to imply that the Government Spokesman is part of Wikileaks?

**An hon. Member:** Yes!

**Mr. Deputy Speaker:** Proceed, Mr. Prime Minister!

**The Prime Minister (Mr. Raila):** Mr. Deputy Speaker, Sir, I think I could not be much clearer than that. I said, in summary, that is what I discussed with Amb. Jonnie Carson on the phone. That is all that I know. That is because the information that he is

talking about has not come out. He said that it was going to come out in the coming days. It is only a day after we spoke. So, we cannot deal with them until they fully come out and we know exactly what has been said. But we do not fear because we know that, as a Government, there is very little to hide. So, I have no fear that something untoward is going to come out of those communications; what Kenyans do not already know.

With regard to the issue of youths, I have already said exactly what this Government feels, and what has been made clear to the Government of USA. It is not as if the Government is panicking! I have said that this Government cannot panic because some money is being given to some youths around the country. That money cannot empower our youths! What is Kshs1.2 billion? We, ourselves, are putting over Kshs5 billion in youth empowerment programmes, while the World Bank is putting US\$61 million in the same programme. So, we are not afraid and I think that, that statement was only meant to point out the right channels through which that money needs to be put, so that the money can be more effective in helping to empower the youth of our country. I want to inform this House that we are at a very critical stage right now as a country in the process of implementing the Constitution. We need, at this moment, concerted efforts and unity of purpose. We want to work together with our friends from outside this country. We want our friends to help us in the process of trying to consolidate our people to unite them; not just along ethnic lines, but along gender lines, age lines and class lines. There are so many other classifications in our society and it is important that this country remains strong and united, so that we can be able to push through this very crucial phase of our country's development.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Next Order!

## MOTION

### ADOPTION OF PAC REPORT 2006/2007

**Mr. Deputy Speaker:** Dr. Khalwale, can you move your report?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I was interrupted yesterday soon after I started. So, I wish to anchor the Motion properly.

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

THAT, this House adopts the Report of the Public Accounts Committee on the Government of Kenya accounts for the year 2006/2007 laid on the Table of the House on Thursday, 25<sup>th</sup> November, 2010.

*(Dr. Khalwale on 30.12.2010)*

*(Resumption of Debate interrupted on 30.12.2010)*

Mr. Deputy Speaker, Sir, I want to do this on behalf of PAC and pursuant to the provisions of Standing Order No. 181(3). Therefore, it is my pleasure and privilege to present to this House the Report of the Committee on the Government expenditure for the year 2006/2007 Financial Year. Also included is a Report on the expenditure of the Electoral Commission of Kenya (ECK) for the years 2004/2005 and 2005/2006. I am



doing this in accordance with the mandate of our Committee. May I, before I go into the details of my Report, reconfirm to the House that the Committee was reconstituted during the Third Session of the Tenth Parliament in June 2009, when Parliamentary Standing Orders came into force and it comprises of myself as the Chairman, Dr. Kones as the Vice-Chairman, hon. David Muoki, MP, hon. Charles Onyancha, MP, hon. Alex Mwiru, MP, hon. Boaz Kaino, MP, hon. Francis Chachu Ganya, MP, hon. Dr. Nuh Nasri Abdi, MP, hon. David Ngugi, MP and hon. Edick Anyanga, MP.

Mr. Deputy Speaker, Sir, on the workload of this Committee, it will be noted that in the previous years, the Committee had a huge backlog of the Controller and Auditor-General's reports to deal with. This was mainly occasioned by a relatively weak parliamentary committee system from the time of Independence until the late 1990s, when there were constitutional reforms that saw the strengthening of Parliament as an institution, through the establishment of the Parliamentary Service Commission (PSC). I am, today, indeed, very glad to report to the House that with the tabling of these reports; 2006/2007 and the ones that will follow tomorrow of 2007/2008, my Committee has now cleared the entire backlog and is now up to date in the examination of the reports of the Controller and Auditor-General. Hon. Members are upbeat in examining the reports for the 2008/2009 Financial Year.

Mr. Deputy Speaker, Sir, allow me to thank the entire membership of this Committee and previous Committees for their good work, hard earned in terms of credit and commitment, and without which the backlog would have continued to be bogging down this Committee and Parliament.

By way of evidence taking, the Committee held a total of 100 sittings during the period under review; 95 per cent of which involved examining the accounting officers on audit queries raised by the Controller and Auditor-General. The Committee also discussed cross-cutting issues with the Big Five; namely, the Attorney-General, the Head of the Public Service and Secretary to the Cabinet, the Permanent Secretaries in charge of Ministries of Finance and that of State for Public Service and the Controller and Auditor-General. The Committee also took evidence from the Accounting Officer, Interim Independent Electoral Commission of Kenya (IIECK) on the Controller and Auditor-General's reports for the financial years 2004/2005 and 2005/2006, which my Committee could not take the previous year as the ECK had been disbanded by this House. All minutes of the Committee sittings on evidence taking are attached to this particular Report.

Mr. Deputy Speaker, Sir, the Electoral Commission of Kenya (ECK) accounts for 2004/2005 and 2006/2007 financial years are also attached.

The Committee received both oral and documentary evidence during its sittings and made fact finding tours where necessary to collect additional evidence. The fact finding tours made involved Custom Bonded Warehouses in Mombasa where goods worth custom value of Kshs679,046,383 and worth Kshs566,428,551 could not be accounted for.

We also made tours in respect of projects for rehabilitation and reconstruction of the Machakos turn-off, Jomo Kenyatta International Airport (JKIA) section of the Nairobi – Mombasa Road.

Mr. Deputy Speaker, Sir, on the new Constitution, it restructures the Kenya National Audit Office (KENAO) by creating two new offices under the office, namely;

that of the Controller of Budget and that of the Auditor-General. The Controller of Budget would be overseeing the implementation of Government budget by authorizing withdrawals from the Consolidated Fund while the Auditor-General will be auditing and reporting on Government accounts and or any other entity that is funded by public funds and or as required by legislation by this House.

The Constitution mandates the Controller and Auditor-General to continue performing the functions of the Controller of Budget and that of the Auditor-General for a period of not more than 12 months after the effective date of the new Constitution and subsequent appointments to the two offices.

Mr. Deputy Speaker, Sir, pending the transition period, the Committee and the accounting officers will continue dealing with the KENAO headed by the Controller and Auditor-General as outlined above and in the new constitutional transition provisions until the two new offices are established and are fully operational.

I now want to turn to our general observations when we did this Report. Arising from the evidence taken, the Committee made the following general observations on the performance of accounting officers and their Ministries:-

1. There was inadequate preparation and failure to avail documentary evidence in time for audit review. Some accounting officers were inadequately prepared to respond to issues during appearance before the Committee and the Committee had no choice but to send them away so as to reappear at a later date when adequately prepared. This seriously interfered with the Committee's otherwise tight sitting schedule and also inconvenienced Members of Parliament.

2. Many accounting officers failed to provide explanations to reconciliations and failed to avail documents by way of evidence to the Controller and Auditor-General in time for audit review, thus culminating into audit queries that would otherwise have been avoided.

In fact, some of them even produced documentary evidence as late as on the sitting day without reasonable cause while others could not produce evidence at all.

Mr. Deputy Speaker, Sir, the Committee, however, faulted the Government investigatory agencies, particularly the Kenya Anti-Corruption Commission (KACC) and the Anti-Fraud Banking Unit in a few instances for holding on to original documents of some Government entities for far too long while carrying out investigations, thereby making them inaccessible for audit.

In this regard, my Committee makes the following recommendations to the House:-

1. The accounting officers should ensure that accounts are well prepared and in the unlikely event of anomalies, corrective action be taken and documentary evidence availed in time for audit review to forestall unnecessary audit queries. Further, we recommend that punitive action be taken against officers who fail to ensure compliance to this.

2. We recommend that Government investigatory agencies should liaise with accounting officers and agree on the modalities of making available, original documents in their possession accessible for audit whenever required.

Mr. Deputy Speaker, Sir, we also observed that there is a serious culture of impunity and lack of physical discipline amongst accounting officers. We observed that some accounting officers repeatedly committed financial irregularities knowing very well

that they would get away with them as they have done in the past and did not even waste time in admitting the irregularities before the Committee or even bothering to apologise.

Key among the irregularities was incurring expenditure contrary to Government Financial Regulations and Procedures. The Committee also observed that some accounting officers either willfully or negligently failed to enforce clear Government Financial Regulations and Procedures particularly on imprest, culminating in huge outstanding imprest. The Committee attributed the impunity and lack of physical discipline to lack of clear legal framework for disciplining accounting officers by the appointing authority.

According to the Permanent Secretary, Treasury, the current Government Financial Management Act was under review and he would be proposing radical changes that would give him powers to sanction and terminate appointment of errant accounting officers, thereby improving financial accountability. As a result of this, we have recommended as follows:

Accounting officers should at all times, exercise prudent financial management to ensure that public funds are well spent and value for money is realized.

The Permanent Secretary Treasury, should move with quick speed in ensuring that the Government Financial Management Act is reviewed to ensure improved physical management and that he should particularly ensure that the Act gives him powers to sanction and terminate appointments of inept and errant accounting officers if impunity is to be rooted out in our Ministries and the Government in general.

Mr. Deputy Speaker, Sir, we made the following observations on the statement of public debts.

According to the Permanent Secretary Treasury, the public debt stood at Kshs1.2 trillion by May 2010 compared to only Kshs744 billion as at June 2007. Out of this Kshs1.2 trillion, 60 per cent constituted domestic borrowing while 40 per cent was foreign and the increased borrowing was in line with the country's development agenda as envisaged in Vision 2030.

Domestic borrowing had surpassed external borrowing within the last one year and a huge junk of the borrowing was for infrastructural development. The Committee observed that while there were adequate control measures on external borrowing particularly through Parliamentary oversight to guard against abuse, such was not the case with domestic. The Committee was concerned that the Government of the day could at one time unilaterally and clandestinely borrow domestically, thereby abusing the facility and causing the public to pay dearly.

Unless sufficient checks and balances are put in place, the public interest will not be---

**The Minister for Transport (Mr. Kimunya):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I did not want to interrupt the Chairman as he moves this Motion, but he made a very serious allegation that the Government would borrow clandestinely. I am not aware of any domestic borrowing or any other borrowing by the Government that has ever been done clandestinely without the participation of the public or without advertisement. Could he substantiate what he means by "the Government is borrowing clandestinely?"

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I have this entire Report to move. What I have done is to sum it up in my paper to move the Motion. The details of

what the hon. Minister is asking for are, indeed, genuine. They are all contained in this Report, which I know as a former Minister in charge of Finance he will have time to go through. If you doubt any of the recommendations and observations that we have made here, we have also accompanied them with actual evidence including the HANSARD record of the proceedings. I will allow you so that I am able to continue and allow the hon. Member to take the trouble a little bit to stress and read.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): I think it is a matter of the language you are using. You can substitute that word with the right word.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I wish to move forward. If the word “clandestine” is making my brother, the hon. Minister, uncomfortable, then we would substitute it with “unclear.”

Mr. Temporary Deputy Speaker, Sir, the Committee recommends that the Permanent Secretary, Treasury, should move with speed in ensuring that the Internal Loans Act is reviewed to provide for the approval of domestic borrowing by Parliament to safeguard it from possible abuse by the Government.

Mr. Temporary Deputy Speaker, Sir, we also made the fourth observation, which was that auditing of Government entities and value for money audit had issues. We observed that in as much as the Accounting Officers may have properly incurred expenditure as required by Government financial regulations and procedures, the quality of works, goods and services procured were at times grossly unsatisfactory. Consequently, it was necessary that the Kenya National Audit Office (KENAO) also carries out value for money auditing on all Government expenditures as opposed to financial audit alone. This will call for strengthening of the Office of the Controller and Auditor-General and expanding the budget because without value for money auditing we cannot get down to the bottom of corruption in Government, which is the reason today I am faced with a very fat book. In fact, if the fathers of liberation and forefathers of Independence in this country found that only 45 years after Independence audit queries have come to the extent of bringing this kind of book, they would turn in their graves. This is because I had the privilege to look at the first report and it was a little thing. But the grandchildren and sons of the forefathers of Independence have gone on and become so inefficient and interested in corruption that today, we waste public funds trying to get to the bottom of the kind of financial iniquities that they perpetuate.

Mr. Temporary Deputy Speaker, Sir, the Committee further observed a conflict between Sections 54 and 56 of the Central Bank of Kenya (CBK) Act, Section 105 of the previous Constitution and Section 229 of the current Constitution of Kenya. We found that whereas the Constitution mandates the Kenya National Audit Office to unconditionally audit all Government entities, the CBK prohibits the office from auditing the bank which is a Government entity unless authorized by the Minister for Finance. The Committee observed that Sections 54 and 56 of the CBK Act were against the spirit of public audit and transparency as captured by the Public Audit Act of 2003.

Mr. Temporary Deputy Speaker, Sir, the Committee recommends the following:-

1. The Kenya National Audit Office should expedite the establishment of value for money auditing unit and ensure that value for money audit reports are produced alongside the financial audit reports of every financial year.
2. The Permanent Secretary, Ministry of Finance should take appropriate action to ensure that the CBK Act is reviewed to allow the Kenya National Audit Office to

be auditing the CBK without conditions that contradict the spirit of the Constitution of Kenya and the Public Audit Act of 2003.

Mr. Temporary Deputy Speaker, Sir, the import of this is that if financial irregularities are done at the CBK, the Controller and Auditor –General has his hands tied. He cannot go to it because the CBK then runs to the Act and says: “Whereas Section 105 of the former Constitution and Section 229 of the current Constitution give you this power, we are protected by the Central Bank of Kenya Act, unless you go to the Minister for Finance.” So, in the unlikely event – and this event is fairly likely in this country – where the Minister for Finance has an interest in something being covered, he will then not give that authority.

Mr. Temporary Deputy Speaker, Sir, we also observed that the Ministry of Public Works in its procurement and execution of public works of Government entities had many issues. There was general dismissal and unsatisfactory performance by the Ministry of Public Works in the procurement of service providers and implementation of Government projects across several Ministries. Some of the Government projects with unsatisfactory matters included numerous variations of projects indicating poor planning, award of tenders to contractors that were incompetent or lacked capacity, delayed completion of projects, poor quality of works and general lack of prudence in utilization of public funds.

Mr. Temporary Deputy Speaker, Sir, the Committee also observed that the role of the Ministry of Public Works as the sole procurement and implementing agency of all public works for all Government Ministries was against the Restrictive Trade Practices, Monopolies and Price Control Act and also contravened the spirit of Public Procurement and Disposal Act of 2005. We recommend that the Government should review the role of the Ministry of Public Works in the procurement of service providers for the Government and execution of public works with a view to enhancing accountability, professionalism, transparency and overall public satisfaction for work done.

Mr. Temporary Deputy Speaker, Sir, we also observed general lack of a legal framework to regulate the building and construction industry. We recommended that the Government should, as a matter of urgency, develop a legal framework to regulate the building and construction industry to ensure satisfactory completion of works and delivery of service to recipients.

Mr. Temporary Deputy Speaker, Sir, we also observed under-expenditure and under-collection of Appropriation-in-Aid. To this end, we recommend that the Government should once and for all, address the issue of under-expenditure and under-collection of Appropriations-in-Aid in the Ministries and departments.

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

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) took the Chair]*

Madam Temporary Deputy Speaker, we also made observation on pending bills; that several Ministries had pending bills at the end of every financial year, some of which had been carried over from previous years. The trend was becoming business as usual in

some Ministries and departments. The Committee noted that the failure to settle bills during the year, to which they relate, distorted financial statements and adversely affected provision for the subsequent year to which they were to be charged.

Madam Temporary Deputy Speaker, the Committee also noted that failure to settle bills in time could result in court cases and refusal by suppliers to supply goods and services, thereby, adversely affecting service delivery by the Government.

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) left the Chair]*

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

We have made the following recommendations:-

That Accounting Officers, in conjunction with the Treasury, should put in place sufficient austerity measures to ensure that bills are cleared within the financial to which they are related, to avoid possible negative consequences that may arise from their being carried over to subsequent financial years.

Two, the Government should ensure that Pending Bills Closing Committee, which has been around for far too long, immediately finalizes its work, and we have given a deadline of 31<sup>st</sup> December, 2010, and immediate action should be taken on the report that the Committee will give. We also observed general lack of clear Government policy on bailing out ailing State corporations. The Committee observed that whereas certain ailing State corporations were quickly bailed out by the Government, others were not so lucky or did not benefit at all. The bailing out of State corporations had taken a political dimension rather than being guided by general public interest and economic consideration.

One sticking out on this is the Pan Paper Mills. Due to lack of clear guidelines on this matter, today, Pan Paper has become a political issue. So, every time there is a moment to ask the people of that community to participate in a national agenda, the leadership of the country goes there and tells them that the company will be re-opened. However, when it comes to effecting the promise, that is never done. The Committee recommends that the Government must develop a clear policy on the bailing out of ailing State corporations which it must strictly adhere to at all times. We also saw lack of policy on recovery of Government dues from deceased officers. We recommended that the Government must develop a clear policy on recovery of its dues from deceased officers to enable Accounting Officers to act in time on such matters and avoid unnecessary audit queries. There was an observation of conflict of interest on the part of the Attorney-General in acting in certain court cases. Let me explain this.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General is the Government's Principal Legal Advisor and as such, advises the Government on all contracts before execution. The Committee observed that the office of the Attorney-General, having advised the Government in the execution of contracts like the one on Anglo Leasing and Ken Ren Chemicals and Fertilizers in which the Government was defrauded, did not have the moral authority to represent the same Government in court cases arising from such

contracts. If I will have more time, I will dwell briefly on Ken Ren and also on Anglo Leasing.

We recommend that the Office of the Attorney-General should disqualify itself from acting for the Government in all matters in court arising from contracts in which it advised the Government to execute and the Government has been defrauded. Instead, this should be left to the Kenya Anti-Corruption Commission (KACC) which should take over the prosecution of all such matters with immediate effect. We found blatant breach of Government financial regulations and procedures by Accounting Officers appointing authority and recommend that the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Finance, being the appointing authority of all Accounting Officers, must lead by example by strictly adhering to all Government financial regulations and procedures at all times.

We also found out that the new system called Integrated Financial Management Information System (IFMIS) has brought quite a number of financial difficulties. We observed that the introduction of that system was problematic at the time of implementation and it crippled accounting operations in some Ministries. That made it impossible for the Ministries to properly effect certain accounting transactions leading to audit queries and also affected service delivery. Furthermore, the software related to revenue had not been fully operationalized. We have made the following recommendation regarding IFMIS:-

The Government should always ensure that operational systems to be introduced are thoroughly evaluated, decided upon and adequate measures put in place to mitigate against any disruption of Government operations. The Government should implement IFMIS in full to cover both revenue and expenditure transactions. Why we are saying that is because in those Ministries where IFMIS has now been successfully implemented, the arm called “expenditure” is very well addressed. However, until you also cover it to apply on revenue, then it is very difficult for the system to be as successful as it was intended in its invention.

We also observed that in several instances, we had cases of missing documents and we have recommended that Criminal Investigations Department should investigate all cases of missing documents in this Report with a view to establish their status and prosecute officers responsible for their misplacement, loss or intentional destruction.

We also noted that there was need for creation of a forum on financial accountability in the public sector. The Committee observed that it was important that a forum comprising of all players in public financial accountability such as the Legislature, the Office of the Deputy Prime Minister and Ministry of Finance, the Kenya National Audit Office (KNAO), the KACC, Department of Police and Institute of Certified Public Accountants of Kenya (ICPAK) be created. The main objective of the forum could be to work jointly to enhance financial accountability in the public sector. I would like to volunteer information to hon. Members that the process of creating that kind of request that we are making--- If the Government does not have money, the World Bank has volunteered to finance that initiative fully to ensure that, that system becomes successful at no cost at all. The Committee’s desire is necessitated by the fact that the Controller and Auditor-General only comes in to audit at the end of the financial year when financial impropriety has already been committed and the Government has lost financially. With such a forum in place, it will be possible to develop a preventive line of action aimed at

saving the public from actual financial loss and ensuring adherence to Government financial regulations and procedures.

Mr. Deputy Speaker, Sir, towards that end, the Committee seeks your approval and support to spearhead the process of the creation of such a forum. I want to conclude. I would like to thank the Big Five, namely; the Attorney-General, the Head of Public Service and Secretary to the Cabinet, the Permanent Secretaries, Office of the Deputy Prime Minister and Ministry of Finance, Ministry of State for Public Service and the Controller and Auditor-General for the co-operation which saw cross-cutting issues within Ministries and institutions well discussed between them and our Committee. The Committee would also like to thank all the Accounting Officers who appeared before us and provided valuable insights into the issues raised above.

Finally, the Committee wishes to record its appreciation for the exemplary services rendered by the officers from the KNAO, Office of the Clerk of the National Assembly and the Treasury. Indeed, their commitment and devotion to duty has made the work of the Committee and the production of this document a success.

I wish, on behalf of this Committee, to point out two things in conclusion.

Mr. Temporary Deputy Speaker, Sir, the first one is that there are two animals which this Parliament must address itself to. If Members will not have time to read much of the report, I request them to read the statement on public debt, especially pages 17 to 23. I am saying this because it has beaten the logic of our Committee completely, just as much as it beats the logic of the Controller and Auditor-General. It was found that expenditures of Kshs4.7 billion and Kshs13.1 billion were incurred on external debt interest and redemptions respectively, including Kshs392,902,014.70 and Kshs135,266,404. This money was paid towards the settlement of a Government debt guaranteed in the 1970s arising from contracts entered into with two foreign banks on an account of Ken Ren Chemical and Fertilizer Company. Apparently, the project never took off and the Government of Kenya did not receive any value for the money against the debts which are now being settled. As a result, the expenditure of Kshs528.1 million charged to the Consolidated Fund during 2006/2007 Financial Year, could not be confirmed as a proper charge to public funds.

Can you imagine this happened in the 1970s when, probably, two-thirds of Members of this House were not yet born? A debt was incurred, no services or goods were delivered and no payment was made from 1970. I want to leave it to the House to find out who was the Minister for Finance and the Attorney-General at that time. Then from that time, President Moi came in and refused to pay these debts for 24 years. Then all of a sudden, this new Government starts paying that debt. Why?

In this particular case, I pray that the children of the Attorney-General of Kenya, who are my nieces and nephews, should find time and success to be Members of this National Assembly. I wish them, so that they may read these things. The Attorney-General represented this country when this matter went to the International Criminal Court (ICC) for arbitration and this country was awarded and he refused to pursue the matter. So, we have millions of shillings out there and the Attorney-General is forever making trips out of this country. Why can he not just reserve one trip to go and pursue these hundreds of millions of shillings? It is very sad. I hear there is a lot of excitement about this thing called the ICC. They are so keen on the violence we had here, but they



are not keen to help us to recovery our money which some jokers are enjoying at the expense of the poor people of this country.

The issue of Ken Ren, I want to beg Members after they read this, to debate it thoroughly and find out, because this matter is still active, whether we want to allow in this financial year and the subsequent years, this debt to continue being paid. That is the question this Parliament should decide, so that my Committee is not seen to be participating in matters that touch on the realm of theory.

Mr. Temporary Deputy Speaker, Sir, the last issue which stood out and which I would like Members to take time to read is, again, on public debt in respect of the so-called security related projects, otherwise, known as the Anglo Leasing Projects. My brother, hon. Kimunya, was my colleague in the last Parliament and he knows how well hon. Kenyatta, who is today Deputy Prime Minister and Minister for Finance, chaired the PAC and what a good job he did. I do not know whether it is because we allowed the same people who used to sit on that Committee to become Ministers that they have deliberately refused to act on their own recommendations. They made far reaching and very plausible recommendations. Why is the same Government, now controlled by the same people, not following on the recommendations they made? On this issue of Anglo-Leasing, we noted with concern the slow pace of action and in some instances, total inaction, particularly on the part of the office of the Attorney-General in implementing its recommendations in its report on this matter which was adopted by the House in April, 2006, and having it logically concluded. We also observed that the office of the Attorney-General, having advised the Government to enter into these fraudulent contracts, lacked moral authority to act for the Government in court cases arising from these contracts.

We recommend very strongly that the KACC, and I hope P.L.O Lumumba will be up to the task, should intensify its efforts in the investigations and prosecution of all the suspects in this matter, with a primary objective of punishing them and recovering stolen public funds by ensuring that all court cases in respect of the matter are quickly brought to logical conclusion. We also recommend that the Government should speed up the implementation of the Public Financial Management Reforms in order to prevent recurrence of such matters. We further recommend that the Government must ensure that the PAC recommendations in her report on this matter, adopted by the House in April, 2006, is fully implemented.

**The Minister for Transport** (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. Listening very carefully, I heard the Chairman mention my name and the name of hon. Kenyatta. He went on to show how the recommendations have not been implemented by the Attorney-General. Hon. Amos Kimunya has never been the Attorney-General of this Republic. The only thing I share with him is the first name. I am not aware of hon. Kenyatta ever having been the Attorney-General of this Republic. Would I be in order to ask the Member to substantiate the circumstances in which he has dragged our two names, the recommendations on the Attorney-General and the link between the two? As far as I am aware, in the subject here, namely, 2006/2007, when I was the Minister for Finance, we implemented to the extent possible, the recommendations of the Committee---

**Mr. Shakeel:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not understand what is happening here!

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You are out of order!

**Mr. Shakeel:** But he is not meant to raise a point of order!

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You are out of order!  
Proceed, Mr. Kimunya!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, would I be in order to ask the Member to substantiate the circumstances in which our two names have been dragged into the discussion? While I agree with him that action needs to be taken, I am not sure the recommendations by the Attorney-General---

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You have made your point very well!

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, the point of order is extremely valid, and I want to respect my brother for raising it.

You were talking about awareness – you were not aware about yourself and hon. Uhuru Kenyatta being part of the Office of the Attorney-General. I want you to stretch your awareness slightly further and realise that you, the Attorney-General, the hon. Uhuru Kenyatta and I, the Chairman of PAC, Dr. Bony Khalwale, owe it to the generations of this country. We are the leaders of this country, and that is why we shall not stop insisting that you people must play above board.

Do you not know, hon. Amos Kimunya, that at the same Cabinet meetings where the Attorney-General is supposed to answer to this, you not only sit but you also, for a long time, had the privilege of addressing this particular matter. That is why I brought in your name. I brought in the name of hon. Uhuru Kenyatta because I remember that he preceded me in PAC. So, if he was the author of the Report we adopted in April, 2010, why is he now, when in the Cabinet, not urging that his recommendations be acted upon? What is more, he is even a notch higher; he is a Deputy Prime Minister.

Please, do us a favour. We want this thing to stop. It is possible for a man and woman in this country to become rich without being corrupt. It is quite possible. That is why I, you and everybody else must do something.

**The Minister for Transport** (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. I still have not got the connection between what I failed to do and what the Attorney-General has failed to do. But I appreciate the fact that we all have collective responsibility. I believe that I am on record of the proceedings of this House on the measures that I took, under great pressure from hon. Members who were then sitting on the Opposition side, in terms of stopping payments in respect of Anglo Leasing contracts. That was when I was under pressure to stop any further payments in respect of Anglo Leasing contracts. I believe that I have done my bit. If the hon. Member is congratulating me because of that, then I am happy.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Minister, you have made your case very well.

Thank you.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, this is very important. There is something called “institutional memory”. Hon. Amos Kimunya has that privilege. I also have that privilege because we both sat in the last Parliament. You will remember that there was the issue of promissory notes. The Attorney-General recommended that the promissory notes were irrevocable; I tabled a recommendation in this House. You came and told this House that the stuff had been locked out, and that no payment would be made. So, the problem is, after the assurance that you gave to this House to the effect that

no payment would be made, how come that payments are now being made? That is our problem.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by telling the House what our specific recommendations are. We found that the Government had been defrauded of Kshs1.057 billion through questionable agreements that were executed over 30 years ago. We are now being defrauded. That is what we found. This fraud was occasioned by slow pace of action and, in some instances, total inaction, particularly on the part of the Office of the Attorney-General in taking action that would ensure this matter was brought to a logical conclusion.

There was also conflict of interest on the part of the Attorney-General in this matter; the office having advised the Government to enter into those fraudulent contracts lacked the moral authority to represent the same Government in court and in arbitration cases arising from the contracts. In view of the Government winning and losing some cases, under the same cause of action as stated in Paragraphs 5 and 7 above, it was evident that the Government was not well represented in court in the arbitration cases, and this puts the Office of the Attorney-General on the spot.

Mr. Temporary Deputy Speaker, Sir, we recommend that the Office of the Attorney-General should forthwith disqualify itself from prosecuting this matter, and that KACC should take over the prosecution with the primary objective of ensuring that the cases are expeditiously brought to logical conclusion and that those public funds are recovered.

Finally, we recommend that the Government should speed up the implementation of the public financial management reforms in order to prevent recurrence of such errors.

Mr. Temporary Deputy Speaker, Sir, I have had my say. I now want to take this opportunity to invite my brother, hon. C. Onyancha, to second the Motion. But before he rises, I would like to underscore the fact that my Committee is very unique. As the House will realise, personally I am qualified in the medical discipline.

My colleagues in the Committee include the hon. C. Onyancha, who is a man of outstanding knowledge in matters of accounts, accounting and auditing. My Committee boasts of the membership of hon. (Dr.) Julius Kones, who is an outstanding Mathematician who was, before he joined this House, a lecturer. My Committee's membership includes Hon. (Rev.) Daniel Muoki, who is an outstanding banker in this country and, as if that is not enough, he is a great man at calling us before the Lord before we start our deliberations.

Mr. Temporary Deputy Speaker, Sir, my Committee has got hon. Martha Karua, whom we all know. She becomes invaluable when we want to interrogate Government procedures, because she has not only been a Cabinet Minister but she has also served in two crucial Ministries, namely, the high spending Ministry of Water and Irrigation, and the Ministry of Justice, National Cohesion and Constitutional Affairs. In my Committee, I also have the youngest Member – hon. (Dr.) Noor Hassan Nuh – who keeps us up to date, especially when we are dealing with matters relating to ICT. When it comes to things you can easily miss like IFMIS, hon. (Dr.) Hassan Nuh comes in very handy.

We also have the hon. Francis Chachu Ganya, the man from North Horr, who succeeded none other than the late Dr. Godana. In fact, I wonder what it is that there is in North Horr. Hon. Amos Kimunya and hon. Jebii, remember the former Member of Parliament, the late Dr. Bonaya Godana. He was an outstanding personality in this

House. He made tremendous contribution in the many years he served this country. If only this House could listen and remember the late Dr. Bonaya Godana, then hon. Members would know that this young voice, which has international exposure, having been trained and worked in the United States of America for many years before he came to Parliament; he wishes to be supported, so that North Horr can be given a second constituency.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You are out of order, Dr. Khalwale!

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, when it comes to dealing with matters of land, the tallest man of the Committee, hon. Alex Mwiru, Member of Parliament for Tharaka, was a Lands Officer. He has been very invaluable because issues of land in this Report are numerous.

I also have hon. Boaz Kaino, who is the senior-most by way of the time he has been in Parliament as well as by age. He is the senior most in the Committee, and the experience he has gained over the years has been very invaluable.

Finally, I have in my Committee, the Member of Parliament for Kinangop, hon. David Ngugi. He is a short man, but extremely knowledgeable in matters of prudence, because he has been in the insurance industry for many years. In fact, he was the Managing Director of a firm he will comment on when he comes to speak.

Mr. Temporary Deputy Speaker, Sir, I want to thank all of them and invite hon. C. Onyancha, Member of Parliament for Bonchari, to take over from where I have left and second the Motion.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Dr. Khalwale, before you move, are you not forgetting another Member of your Committee, Mr. Anyanga?

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, you know, I have been speaking for so long. I am sorry for forgetting hon. Anyanga, the Member of Parliament for Nyatike, the only constituency which has part of it called “Migingong” in Uganda. This is a man who has worked in Government offices, and has a lot of experience in how officers do little things.

Mr. Temporary Deputy Speaker, Sir, I beg to move and ask hon. C. Onyancha to second the Motion.

**Mr. C. Onyancha:** Mr. Temporary Deputy Speaker, Sir, I rise to second this Motion and agree with the sentiments of our Chairman, hon. Dr. Khalwale, on the matters he has put forward before this House.

Mr. Temporary Deputy Speaker, Sir, I wish to add a few observations. One of the problems with regard to this Committee is obtaining on time Treasury Memoranda. This is an issue which has been raised over many years, but action on it has been wanting over all those years.

The next issue which I want to bring to the attention of the House is about imprests. The issue about imprests cuts across all Ministries. There are regulations from the Treasury that imprest should be surrendered within 48 hours of return from a trip, but unfortunately, in many cases this has not been the case. We commend the Accounting Officers in many Ministries who have tried to impose this rule and ensure that it works. But we also call upon other Accounting Officers who have not managed to collect imprests to do so, especially with respect to officers who have been transferred from various Ministries to others and those ones who have retired, as well as from politicians.

We must not forget that some of us here in this House have served in various Ministries and left those Ministries with debts. We must lead by example as leaders, especially in view of Chapter Six of the current Constitution to ensure that we have those commitments honoured.

Mr. Temporary Deputy Speaker, Sir, another issue of concern was under-expenditures as compared to the estimates which are approved by Parliament. The result of under-expenditure is non-delivery of services to *wananchi* as well as under-development. The reason for under-expenditure has mainly been Appropriations-in-Aid (A-in-A) not being realised on time. Also, there is the issue of donors and development partners who have conditions which are not conducive to quick release of funds. Such funds having been budgeted, lead to under-expenditure because they are not received on time. This is not an issue which could be ignored.

Mr. Temporary Deputy Speaker, Sir, let us touch on the Central Bank of Kenya (CBK ) from another angle. The CBK Act has provided a board for the bank whose meetings are chaired by the Governor. As a matter of governance, maybe, this Act should be relooked at with a view to making the Governor answerable to the Board, Chaired by somebody else other than himself. Much of the expenditure of Government has been incurred through the Public Procurement and Disposal Act. There are many instances where that Act is flouted, especially as regards variations of contracts beyond the allowed limits. These are issues that need to be addressed by various Accounting Officers.

We also have issues of fraud and overpayment of contractors and other service providers. In spite of the fact that in Government we have audit examiners in every Ministry, examining vouchers before payments are made, we are concerned that this function has not been quite well performed.

Mr. Temporary Deputy Speaker, Sir, on IFMIS, our feeling is that it is a good system. However, the accountants in Government needed training prior to its introduction to allow them use this facility to its full effect. We recognise that one of the problems in Government is insufficient salaries to attract accountants. We would like to call upon the Government to look at the issue of salaries for professionals, especially accountants, because the market dictates that they be well paid. The Government must rise to the occasion if it will attract people who will deliver services that are required in matters of accounting.

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

*[The Temporary Deputy Speaker  
(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, record keeping has been a problem, especially at the district level. An example is the District Loans Programme, which was introduced in 1950s and which has advanced hundreds of millions of shillings to traders and businessmen, which now, I am afraid must be written off because of lack of records. So, record maintenance is an issue which needs to be looked into and our Committee was concerned that this record keeping cannot possibly be achieved without good accountants.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by thanking the Committee and the Chair under who we serve.

With those few remarks, I beg to second.

*(Question proposed)*

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this debate on the report as presented by the PAC.

Mr. Temporary Deputy Speaker, Sir, let me start by congratulating the Committee, for not only doing a good job on this and highlighting the issues, but on coming up to speed with the audits and review of this. One looks forward to the day when we shall actually be debating the report of the year that has just ended rather than going back to history. The public out there are never sure of whether we are talking of current issues or issues that took place several years back. I believe that has been possible following the passage of the Public Audit Act in 2003. This follows the efforts that were put by the Kibaki Government from 2003 in terms of increasing and enhancing the levels of transparency. We were able to finish everything because of calling the auditors and telling them: "Go ahead, do the audit and let the public know how your Government has performed over the year."

This demonstration of enhanced transparency is something you do not hear much of in terms of appreciation of some of the positive things that this Government has done between 2003 and to 2007 and between 2008 to date.

Mr. Temporary Deputy Speaker, Sir, the whole issue of parliamentary democracy and oversight is premised on the fact that Members of Parliament have been appointed to come and represent the people of Kenya to receive the Controller and Auditor-General's Report as, indeed, Members receive an auditors report at the annual general meeting and interrogate it. If you go to any typical general meeting, you will find that debate on the accounts and the auditors report takes most of the time. It is the one that has most attention.

Mr. Temporary Deputy Speaker, Sir, looking at the House today when we are discussing the most important report for which the House has been set up and we talk of oversight role of this House, and we want even to increase the number of this House so that they can have proper oversight on the expenditure of Government, looking at the performance and this is a trend that we have observed on all the reports that have been tabled here, the most important report, the Public Accounts Committee Report, you can tell the interest on it by looking at the members who are here in the House today. It is a shame that this House that has 222 Members cannot spare this one or two afternoons to come and discuss the accountability by the Government and at least go and tell the people, "yes, your Government is doing well" or "your Government is doing poorly". So I sympathise with the Committee for all the 100 meetings they have had. I hope that the absence of the Members here is not indicative of the disinterest they have and that, hopefully, they will be looking at that report because fundamentally it is not about telling who did what and when. It is not about which officer did not account for their imprest because that has already been handled by the Accounting Officers. It is about what lessons we can learn from the issues that have been highlighted by the Controller and

Auditor-General; what issues we can learn as Parliament in terms of what laws we need to pass to seal the loopholes so that horses do not bolt. It is not about bolting the stable doors after the horses have gone; it is about what we could do to ensure that our finances are safe into the future. As we get Members to contribute and as we get the Committee to look at the Reports of 2007/2008 and 2008/2009, I would like to appeal to the PAC and indeed the other Parliamentary committees that we not only look at what has gone wrong, but more importantly what sections of our law we need to amend. We should be daring enough not only to recommend that this law be changed, but to actually sponsor the amendments on the Floor of this House. If there is a conflict, as indeed was raised, between the Central Bank of Kenya Act, the Public Audit Act and the new Constitution, that should be highlighted not just in terms of a report but we should take the earliest opportunity to sponsor an amendment even as we discuss the Finance Bill and any other legislation so that we can harmonise those things and we take them off from being matters that need just to be in the report but can become live on being implemented.

So, Mr. Temporary Deputy Speaker, Sir, I believe that if Members had more interest, they would be able to get these things out of the way. I commend the PAC for having gone through it and we hope that as we look through the Report and the subsequent ones coming after this, we will be able to pick lessons learnt and use them like we said to give Kenyan people better value for money. I say this because I am very keen, personally, to look at what happened between the year 2006/2007, 2007/2008 when I had the opportunity of being at the Treasury and implementing a number of reforms that were meant to ensure that Kenyans can get value for money including fast tracking issues of IFMIS and the procurement laws that had been finished and were just lying idle. I had to domesticate all that plus so many other things so that this country can get a better financial management oversight.

Mr. Temporary Deputy Speaker, Sir, just touching a bit again by way of clarification on the issue of public debt, and perhaps the one that sticks out most is the Ken Ren debt, the history of this project goes to over 30 years back. I think the intention was very noble; to create a fertilizer company not just for Kenya but for the region. As you know, we are an agricultural country and our agricultural productivity can only be enhanced if we can have affordable fertilizer rather than the current situation where we have to import all this at prices dictated by worlds out there. I believe the project was then worked out and there were some people who came out and said they could actually do it so long as the Government guaranteed a loan. It is a request that keeps coming to the Treasury and Ministries even up to date. Unfortunately, the guys never delivered but the Government was left with the debt. It is the same thing that happened with the taxis; it is the same thing that happened with molasses plant and it is the same thing that has happened on some other procurement that had been engineered from there. Unfortunately, when the Government signs a sovereign guarantee, whether the person has delivered or not, when it becomes due and payable, the people of Kenya have to pay. So it is an unfortunate situation that because of poor legal representation of the Government, we have been forced into these things. I hope it is something that will be sorted out in the future as we get a new Attorney-General or as we split the roles of Attorney-General and prosecution. The Government can seek better representation on all litigation against it. I am glad the Committee recognizes that there is a Pending Bills Closing Committee which

was set up to look at all issues of the pending bills that had been presented for payment to the Government, and these are huge.

If I remember, the initial tally in terms of the total claims against the Government that were presented to this Committee, may well have been in excess of Kshs119 billion. That is what Kenyans said the Government owes them. But within the first batch, if I recall clearly, the amount that was first investigated may well have been in the first tranche of about Kshs70 billion and this was reduced to a mere just under Kshs500 million as payable and all other claims were dismissed. Subsequently, I think in the second tranche the figures were about the same. By the time they closed, I can almost guarantee that the figure of Kshs119 billion that was claimed by people that the Government owed them would have been reduced to something like under Kshs2 billion.

The Chairman did indicate that they have overstayed their mandate. I will not be worried how long we keep that Committee. If we can reduce the total exposure by the Kenyan public from Kshs119 billion to probably under Kshs2 billion then it is worth keeping that Committee so that they can close those matters, and forever any regime that comes does not revive some of those bills because it is the people of Kenya who will be losing their money. I believe that the Committee requires some commendation for the work it has done. It has done super job in terms of reducing the overall exposure for Kenyan taxpayers' money against all odds.

Mr. Temporary Deputy Speaker, Sir, with regard to the Anglo Leasing contracts, hon. Members will recall that, indeed, there were 18 related contracts that had a similar pattern on how they were done. Contrary to the views that are usually peddled by the media that all these contracts were entered into during the Kibaki Government era, out of the 18 contracts, 12 contracts were entered into between 1997 and 2002. Indeed, these are the contracts on which there have been payments because the payments started in 1997 and could not be stopped. Some goods may have been supplied and nobody is quite sure of what happened. However, all the contracts that were started in 2003 were cancelled. It would be important for the PAC to look at those matters and confirm to the people of Kenya that those contracts were cancelled and the deposit that had been paid was refunded. So, there is no contract existing on the six contracts. It will be very good or for the comfort of the people of Kenya that when we talk about Anglo Leasing contracts, we tell them that 12 of the contracts were entered into with the previous regimes between 1997 and 2002. There was no running contract after 2003. Probably, there could be one that was subsequently cleared by the Parliamentary Committee. I am not sure why there is not progress on the naval ship that was purchased. The Committee said that they should continue but I believe that we have put a moratorium on all those payments.

Mr. Temporary Deputy Speaker, Sir, I would just like to commend the Committee for its work and request it to bring out some of those issues in the subsequent reports so that Kenyans can tell where we are on public debt. We should not leave Kenyans with the illusion that perhaps their money has been misspent. Part of the money has gone into roads and other developments. If there are any weaknesses that have been identified, as my friend Mr. Charles Onyancha would confirm, for us as accountants and auditors when we write letters of weaknesses or management letters to the management, it is never with the intention of telling them that they have failed. We say that we have discovered the following weaknesses which if not addressed the business could go down. For the purposes of this House, I would like to see the PAC bringing the laws that the auditors



have brought up that need to be changed. If this Parliament does not change those laws, and it is not just the Government because we are part of it, the Kenyan public will continue losing their money. It does not matter whether you have angels at the Treasury or in the Government at one time. People change and the nature of human beings is that if you do not seal all loopholes when you have an opportunity, one day somebody will come and exploit those loopholes and everyone will suffer.

At this time when we are all reform-minded, we are called upon to take it upon ourselves to ensure that our financial management issues are in top gear. We can learn lessons from this to ensure that the future is safe. I know that hon. Members want to contribute to this Motion and I hope that we can appeal to those who are outside to ensure that tomorrow we have a full house so that hon. Members can appreciate the role of Parliament in accountability. When we receive this report, we will tell our people out there that the auditor has reported. The Committee has received the auditor's report, reviewed it and this is what they are telling Kenyans in terms of how their money was spent. This is because Parliament appropriated that money through the Budget process and the auditor has reported how it was spent. If we can concentrate on that, perhaps even the time we spend with *ad hoc* Committees in terms of looking at the issues as they are reported in the media on daily basis will be reduced so that we can put more time into waiting for the auditor as we move into the new constitutional dispensation.

Mr. Temporary Deputy Speaker, Sir, I know I still have a lot of time but I would like to stop at that. I congratulate the Committee. I hope that as we go into the future, we will look at this from a forward-looking situation and not just at who did what, when, wrong or right.

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

**Mr. Muthama:** Mr. Temporary Deputy Speaker, Sir, I also rise to support the adoption of this Report which was done by the Chairman, Dr. Khalwale and his team. I stand with a very heavy heart after hearing and seeing what has been happening in our country. It is a great shame. This Report takes us back up to 1970s. What has been exposed in this Report is not everything that has been happening on a daily basis. What has been captured here is probably the biggest amount that could be traced quickly. The country is led by Kenyans, the custodians of the law are Kenyans, the Accounting Officers are Kenyans, the supervisors are Kenyans and the implementers are Kenyans and yet we are at this point. For God's sake, where are we moving to? Without shame, we have turned around and resulted into defending corrupt officials and thieves on the basis of "our people" or "our community". I thank the Chairman of this Committee, Dr. Khalwale because the country will remember him. Even if he does not make it back to this House, he has done his business. He has given service to Kenyans.

Mr. Temporary Deputy Speaker, Sir, our great concern and which needs to be looked at by all Kenyans is that as we stand here today, we have seen people we know very well who are mentioned in this Report and who have served as Permanent Secretaries. We know when they finished their education in colleges, when they were hired, the salaries they earned and what they left the Government with. We are not beating about the bush here. It is true that corruption is in this country. This is why even the international community is coming out to tell us that we have a country to protect. Those who have served as Ministers, and I am not mincing my words, have ended up setting up huge businesses and investments after getting into the Government without

anything. They have now become the biggest investors just after being appointed Ministers. It is only the children of the mighty in this country who will continue to rule. They will continue to rule this country by confusing or buying Kenyans. They will purchase votes of the poor. We are getting into a situation where unless you are a politician in this country or a senior civil servant your children will never see the universities in this country.

Former President Moi declined to pay money which was guaranteed in 1970 but immediately we came into power, we started paying that money. This money runs into billions of shillings. To make matters worse, this money was not paid to Kenyans.

This money is paid outside there and it is not helping any Kenyan outside there. How can it then be that I am going to a constituency which has no hospitals and Kshs4 billion has been paid outside there, and yet we want to stand here and camouflage issues? I want to inform my colleagues that the Business of this House is not just Question Time.

Mr. Temporary Deputy Speaker, Sir, I do not see why this House is not filled up when we are here to discuss issues that actually touch on 50 per cent of the wealth of this country, which has gone into people's pockets. These are issues which we should all be here raising, not just to come and when a report is being discussed, we all leave!

**Mr. Shakeel:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member who is speaking is the Chief Whip, and he is mourning that there are no Members here. Is it not your job, *Bwana* Chief Whip, to make sure that you whip hon. Members to be in here?

**Mr. Muthama:** Mr. Temporary Deputy Speaker, Sir, he has made his point and I do not want to respond to it.

I stand on one point here; that seriousness must be shown. It is time we got serious. With regard to what the Chairman of the Committee has said, it is up to the Attorney-General of this country to take action and, truly, prosecute. What the Chairman has said is that, if the Office of the Attorney General is not capable to prosecute those who have committed these crimes against Kenyans, then they should be handed over to KACC.

Mr. Temporary Deputy Speaker, Sir, I want to rest my case by saying that God, who created this country will punish those thieves on behalf of Kenyans.

Thank you.

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, there is a new Constitution in this country, but we are still living in the old one. This document was presented on Thursday. First, I do not think you had time to go through it. But the few people who have tried to go through it are shocked.

First, the Committee has done a tremendous job over a very long time and I think that should not be taken away from them. The past always determines the future. We cannot keep mourning about the past. However, we cannot keep mourning about the things we should have done or we are not doing. I repeat here that Ministers are not here. Nobody is on the other side; one Minister was there – Mr. Kimunya – and I am very grateful that he is still present. But I must say that it is time everybody took their duty seriously! The Whip must whip Members. The Committee must do its job and the Ministers must be here to listen. It is not very good just to see hon. Members of the Committee sitting here. Long gone are the times that the Attorney-General--- I want to read something here about the Attorney-General. I am totally shocked. It says here very

clearly that the Government objected to this case of Ken Ren. The courts in London accepted and agreed with the Government and said: “You have been defrauded and this is deceit.” They gave the Government US\$3 million. So, what do these guys do? They run off to Cyprus.

Mr. Temporary Deputy Speaker, Sir, as the Chairman said, there are the so-called “vultures” here and outside. What the vultures do is that, they come to people in power and say: “You know, there is an old debt; if you can help us, you will get a certain part of it.” So, I actually hold the Attorney-General 100 per cent responsible. The Attorney-General is supposed to be aggressive in the protection of the interests of the country. He is not supposed to be a docile person who is just taken from here to there and then he passes judgment. He does not even turn up in certain court cases. For example, the case of *Halaal Meat Company* – I do not know whether you have seen it – the Attorney-General did not even bother to turn up. There is another one involving the Charterhouse Bank where the Attorney-General has done absolutely nothing.

So, it is better to do without an Attorney-General. Even the Controller and Auditor-General(C&AG) was a very good man in the past. He stood up to Moi, but where were they relegated to? They were kicked out by us. The same people we had as our eyes were discredited by us, and I do not know where the former C&AG, a Mr. Njoroge is, but I think he did a great job. I think this is the sort of thing that we need. I think the C&AG has done his job.

Mr. Temporary Deputy Speaker, Sir, as an accountant, we usually say that when an auditor comes to the books of accounts, he says: “I have looked through the books of accounts and I find them to be a fair opinion of what is actually stated.” But, here, we have these sort of books of accounts from our C&AG, who has not had enough support. They come to us and it is taken as a normal routine. It is assumed that the Public Accounts Committee will do this report and it will be a big, thick report; we will not be there; there will not be enough people there; nobody will talk about it, they will make a bit of noise and everybody will forget about it. Now, it is our job not to forget about it. We need to be aggressive. There are lessons that we must learn. The lessons are that this cannot continue; things have to change.

The Constitution has given us more strength to get up and say: “We want to be counted so that we are not tear-gassed by people who are saying that you do not have your rights!” *Tuko na haki zetu!* I have rights for the people of Kisumu and we all have rights for Kenyans as a whole. We cannot sit back! I do not even know who this Voestalpine of Australia is, but if I had any rights – I am going to talk to my witchdoctors in Bondo to see whether we can curse these guys. The money they have got from the poor will not benefit them. You will find that, some of those people are Kenyans. Voestalpine Limited and Anglo Leasing are all from here!

**Mr. C. Onyancha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to imply, that we, hon. Members of Parliament are actually sometimes here because of cursing people like witchdoctors?

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, I did not say that I was cursing a witchdoctor; I said that I would go and take advice from a witchdoctor. Surely--

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Shakeel! The issue is witchdoctor and whether you are trying to connect Members of Parliament to that. Could you be specific on that issue of witchdoctors?

**Mr. Shakeel:** As a Kenyan, anybody who sucks the blood of Kenyans, I do not think should enjoy the stolen loot that they have taken. We will find a way to make sure that we, in Africa, also have our ways of ensuring that people can be followed in other ways other than perhaps the courts of laws, the ICC and others. We have our ways. I think that it is very important that the spirit and letter of the Constitution is observed in its totality and our change of attitude must be there.

Mr. Temporary Deputy Speaker, Sir, just the other day we were writing a report on Charterhouse Bank, and I was shocked---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! You are a member of that Committee.

**Mr. Shakeel:** I am not releasing any information, I am just talking about the issues---

**The Temporary Deputy Speaker** (Prof. Kaloki): As a Committee Member, I think you need to wait for the report to come to this House.

**Mr. Shakeel:** I am not talking about the committee, I am just saying that we did--

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Shakeel! You cannot do what you are doing now. You are a member of that Committee and you know for sure that we are waiting for the report. So, it is fair that the house waits for the tabling of the report, and then you can talk about it.

**Mr. Shakeel:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will not continue on that line, but I will suggest that many of us knew who Triton was, even before the swindlers did what they did. Many of us knew who Devani was before the swindlers acted. Many of us knew who Anglo leasing was before the swindlers acted. I think we need to be aggressive and say: "*Hii haiwezekani. We do not want this to continue*".

Once we see that somebody is not honest, we must take action to prevent them from taking us for a ride. The lack of attention and desire for us to follow up on people who have actually taken us for a ride is sometimes funny. I was sitting somewhere and I saw people walking in, who have swindled this country and they walk in through the VIP entrance at the airport, yet when they go to other countries they are treated with the contempt they deserve. But when they come in here, they walk in as VIPs. I want to talk about one or two whom you know. They are here. They come as VIPs. They are swindlers. Where are the Pattnis and Somaias? They are swindlers, yet they walk around here as free as birds and we give them all the respect.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Shakeel! Is Mr. Pattni in the report? Where are you referring to?

**Mr. Shakeel:** I am just giving an example.

**The Temporary Deputy Speaker** (Prof. Kaloki): You cannot do that. Stick to the report and withdraw the names of Mr. Pattni and others whom you have just mentioned.

**Mr. Shakeel:** I will withdraw the names of Pattni and others, but I will suggest that they should not be given VIP treatment when they are still suspects. I suggest that, that is a very important issue.

I want to take you back to the Ministry of Local Government. I was astounded that they were talking about LATF and it appeared that there was what was explained as a typographical error which caused a loss of Kshs286 million. I think that was raised by the Committee and I am very grateful that they did that.

Imprest is money held in custody. It is meant to be held for 24 or 48 hours, yet we are just bemoaning interest. It is stolen money. There is no shortcut to it. The money has been stolen because it was an imprest but after 48 hours it was not returned. It was stolen. Why can we not take action and take three or four people to court? If they are charged in court, then I know what will happen; everybody will start returning their money.

With those many remarks, I want to bemoan the fact that nobody has come over here. I want to congratulate Dr. Khalwale and his team for doing a great job. I had hoped that we would have more time to read through the report; I urge my colleagues to read through it. Thank you very much. I support.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, it is now time to interrupt the business of the House. The House stands adjourned until tomorrow, Thursday, 2<sup>nd</sup> December, 2010, at 2.30 p.m.

The House rose at 6.30 p.m.